

Staff Briefing Papers

Meeting Date January 14, 2021 Agenda Item 2*

Company CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas

Docket No. **G-008/AI-20-495**

In the Matter of the Petition by CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas, for Approval of an Affiliated Interest Agreement Regarding the Metro Belt Line System, Entitled 2020 (MBLSE) Replacement Project Contract Between CenterPoint Energy Minnesota Gas and Minnesota Limited, LLC.

Issues Should the Commission approve CenterPoint Energy Minnesota Gas' Affiliated Interest Agreement with Minnesota Limited, LLC?

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents****Date**

CenterPoint Energy Minnesota Gas – Petition (Public & Trade Secret)	May 15, 2020
Department of Commerce – Comments (Public & Trade Secret)	July 21, 2020
CenterPoint Energy Minnesota Gas – Reply Comments	July 31, 2020

I. Statement of the Issues

Should the Commission approve CenterPoint Energy Minnesota Gas' Affiliated Interest Agreement with Minnesota Limited, LLC?

II. Background

Before April 9, 2020, Minnesota Limited was a non-regulated business of Vectren Infrastructure Services Company, a subsidiary of Vectren Corporation (Vectren). Vectren was a wholly owned subsidiary of CenterPoint HoldCo.

On February 3, 2020, CenterPoint Energy Resources Corporation, d/b/a CenterPoint Energy Minnesota Gas (CPEM or the Company) issued a request for proposals (RFP) for pipeline rehabilitation, construction and installation work regarding the Company's belt line system (Contract).

On February 5, 2020, CenterPoint HoldCo submitted a letter to the Commission announcing that it had entered into a sales agreement to sell Minnesota Limited to Power Team Services, LLC.¹ This occurred after CPEM had issued its request for proposal (RFP) for the work included in the Contract, but before the Company awarded the Contract to Minnesota Limited.

On April 9, 2020, the sale of Minnesota Limited was consummated and, as a result, the Company and Minnesota Limited are no longer affiliates. However, the Company filed the instant petition because it had committed to the filing in its April 2, 2020 comments in the 2019 Affiliated Interest docket.²

On April 17, 2020, CPEM and Minnesota Limited contracted for pipeline rehabilitation, construction, and installation work for its Belt Line System. This contract will terminate on February 28, 2021.

On May 15, 2020, CPEM filed the instant petition requesting approval of its Affiliated Interest Agreement – Construction Contract with Minnesota Limited.

A copy of Minn. Stat. § 216B.48, Relations With Affiliated Interest, is attached to these briefing papers.

¹ The Company notified the Commission of the sale on February 5, 2020, in a letter filed in the 2019 AIA matter, in Docket No. G-008/AI-19-292.

² Docket No. G-008/AI-19-292.

III. CenterPoint Energy Minnesota Gas' Petition

A. Contract Description

CPEM stated that the estimated value of the construction contract is a trade secret and that the Construction Contract:

includes all supervision, labor and equipment to install large diameter high pressure steel pipe as well as various diameter low pressure steel pipe and below grade vaults. The estimated value also contains a contingency amount to cover potential cost overruns and unforeseen circumstances.

The Company explained the need for the Construction Contract as a part of its Transmission Integrity Management Plan (TIMP),³ of which one component includes the repair or replacement of larger transmission line segments identified through an assessment process. CPEM further stated that “[d]ue to the critical nature of the work, it is necessary to use skilled workers to replace transmission pipe that was originally installed in the 1950s.”

CPEM noted that awarding the Construction Contract to Minnesota Limited was the result of a competitive bidding process.

The Company argued that the Construction Contract with Minnesota Limited is in the public interest because:

- the contractor has prior experience working on CPEM’s distribution system;
- the contractor is one of the largest transmission pipeline contractors in the region;
- the contractor also provides maintenance services for pipeline systems including valve maintenance, recording, sleeving, line lowering, pipeline markers, anomaly investigation and right of way clearing; and
- the contractor has the capacity and expertise to perform all required aspects of the Construction Contract.

B. Commission Order in 2019 Affiliated Interest Docket

The Company noted that the December 30, 2019 Commission Order⁴ required CPEM to “propose improved procurement practices in future affiliated interest agreements”. The Company stated that it made the following improvements:

- The Company moved its RFP process to earlier in the year to compete more effectively for construction contractors.

³ See Mr. Kuchar’s testimony in Docket No. G-008/GR-19-524.

⁴ Docket No. G-008/AI-19-292.

- The Company reached out to six pipeline construction companies serving the Midwest and all six Companies attended the Company's pre-bid meeting, as opposed to five attendees in 2018 and three in 2019.
- The Company used its best efforts to ensure both primary work (Beltline) and emergent work (other large diameter steel pipeline projects) would be included in the scope of work in the RFP.
- In future construction seasons CenterPoint Energy will actively promote within both the National Pipeline Union and Distribution Pipeline Union the opportunity for contractors to become qualified to participate in an RFP process for Company constructions projects.

IV. Department of Commerce Comments

A. Applicable Statutes, Rules, and Filing Requirements

The Department of Commerce – Division of Energy Resources (the Department or DOC) stated that Minn. Stat. § 216B.48 and Minn. R. 7825.2200 (B) govern the substantive criteria related to the Affiliated Interest Agreement – Construction Contract. These provisions do not establish an explicit timeframe for Commission action.

Minnesota Statute section 216B.48, subd. 3 dictates the requirements necessary to be met for affiliated service agreements:

No contract or arrangement . . . is valid or effective unless and until the contract or arrangement has received the written approval of the commission.⁵

The Department pointed out that Minnesota Statute section 216B.48, subd. 3⁶ (quoted in part below) additionally provides two tests to be applied by the Commission in cases of affiliated-interest contracts and the burden of proof for satisfying these tests rests with the Company:

The commission shall approve the contract or arrangement made or entered into after that date [January 1, 1975] only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest. [] The burden of proof to establish the reasonableness of the contract or arrangement is on the public utility.⁷

The Department further explained that, if the Commission determines that CPEM has met its burden of proof, then the Commission shall approve the Affiliated Interest Agreement – Construction Contract.

⁵ See Attachment A for full statute language.

⁶ Ibid.

⁷ Ibid.

The Department also asserted that Minnesota Statute section 216B.48, subd. 6⁸ is clear that the Commission has continuing authority over the Affiliated Interest – Construction Contract if actual experience results in rates that are unreasonable.

The Department concluded that CPEM was in compliance with Commission minimum filing requirements⁹ and had also complied with the following Commission Orders.¹⁰

- July 11, 1996 in Docket No. G-008/AI-96-37, the Commission ordered the Company to address: 1) the quantification of cost savings and other ratepayer benefits and 2) the explanation of changes made to the cost allocation manual or reasons why changes are not necessary. CPE addressed these two requirements on page 6 of its petition.
- December 30, 2019 in Docket No. G-008/AI-19-292, the Commission ordered the Company to propose improved procurement practices in future affiliated interest agreements. CPE provided the list of improvements to procurement practices on page 7 of its petition.

B. Department Analysis of Proposal

1. Competitive Bid Process

The Department stated:

On pages 5 and 6 of the Petition, CPEM explained that they initiated a formal RFP process beginning with a pre-bid meeting on November 14, 2019. CPEM invited six vendors representing a mix of local and national distribution pipeline companies serving the Midwest region to bid. All six invited bidders initially committed to submitting bids; however, only three of the invited bidders actually offered bids. CPEM, in evaluating the submitted bids, reviewed the design details as well as each phase of construction. CPEM noted that the bid documentation enumerated project design specification, including line item quantities and lump sum price requirements.

Regarding cost comparisons between the bidders, CPEM noted that the numbers are a trade-secret, but awarding the Construction Contract to Minnesota Limited “allow the Company to be prudent with capital dollars and gain pipeline construction capacity, assuring all planned capital construction projects can be complete on time and on plan in 2020”.

The Department said that CPEM indicated that it did not include vendor level cost estimates in its 2019 Rate Case. Because of this, the Department further reviewed the Construction

⁸ Ibid.

⁹ Docket No. E, G-999/CI-98-651.

¹⁰ Instant Petition, see pages 3-7.

Contract amount for the Belt Line project and compared it to the 2019 Rate Case on a per mile basis by individual component.

The Department explained that, in its Information Request No. 2, it asked CPEM to briefly describe the type of work, including the dollar amounts and miles of pipe that CPEM requested its Blanket Contractor to complete in 2020. The Department also asked CPE to show how the amounts for the Blanket Contractor work in 2020 tied to the amounts included in the 2019 Rate Case.

CPEM provided the following response (in part):

While the Company creates general plans and priorities for its construction activities each year, its specific slate of work is subject to emerging repair needs, customer and government requests, scheduling constraints, and costs versus budget.

The amounts will not tie to any figure from the Company's rate case filing because they represent only five months of the test year, and the forecast was not done at the vendor level.

Finally, the Department stated that, based on its review, it considered CPEM's selection of Minnesota Limited for the Construction Contract for Belt Line work to be reasonable.

2. Is the Construction Contract Reasonable and in the Public Interest?

The Department reviewed the Construction Contract in CPE's Exhibit B¹¹ and, based on its review, DOC recommended that the Construction Contract between CPEM and Minnesota Limited be approved because the contract price, contingency amount, and overall contract terms appeared to be reasonable.

The Department also said that CPE stated that it used a competitive bid process to select Minnesota Limited.

The Department concluded by saying:

The Department agrees with CPE that the selection of Minnesota Limited, LLC is supported and in the public interest, for the reasons indicated above. As a result, the Department recommends that the Commission approve the Affiliated Interest Agreement – Construction Contract between CPE and Minnesota Limited, LLC.

C. Department Conclusions and Recommendations

The Department concluded that CPEM complied with the filing requirements under Minnesota Rule 7825.2200B and Commission Orders in Docket Nos. G-008/AI-96-37 and G-008/19-292.

¹¹ Instant petition.

Additionally, the Department stated that, based on its review of CPEM's Exhibit C – Competitive Bid Sheet and Exhibit D – Competitive Bid Recommendation and CPEM's response to Department Information Request Nos. 1 and 2, CPEM's selection of Minnesota Limited for the Construction Contract for Belt Line work was reasonable.

The Department further stated that it reviewed the Construction Contract in CPEM's Exhibit B and, based on that review, the Department recommended that the Construction Contract between CPE and Minnesota Limited be approved because the contract price, contingency amount, and overall contract terms appear to be reasonable.

The Department agreed with CPEM that the selection of Minnesota Limited is supported and in the public interest. As a result, the Department recommended approval of the Affiliated Interest Agreement – Construction Contract between CPEM and Minnesota Limited.

V. CenterPoint Energy Minnesota Gas's Reply Comments

On July 31, 2020, CPEM filed reply comments thanking the Department for its analysis and agreeing with the Department's conclusion that the Commission should approve CPEM's 2020 construction contract with Minnesota Limited.

VI. Staff Comment

Staff appreciates the Departments detailed and substantive review of CPEM's petition and supporting documentation and agrees with the Department's conclusions and recommendations.

VII. Decision Options

1. Approve the Affiliated Interest Agreement – Construction Contract between CenterPoint Energy Minnesota Gas and Minnesota Limited, LLC, or
2. Take other action that the Commission considers appropriate.

MINNESOTA STATUTES 2018

216B.48

216B.48 RELATIONS WITH AFFILIATED INTEREST.

Subdivision 1. **Definition of affiliated interests.** "Affiliated interests" with a public utility means the following:

(1) every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility;

(2) every corporation and person in any chain of successive ownership of five percent or more of voting securities;

(3) every corporation five percent or more of whose voting securities is owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;

(4) every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities;

(5) every corporation operating a public utility or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal, and similar services to utilities, which has one or more officers or one or more directors in common with the public utility, and every other corporation which has directors in common with the public utility where the number of the directors is more than one-third of the total number of the utility's directors;

(6) every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of the public utility even though the influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section;

(7) every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising substantial influence over the policies and actions of the public utility in conjunction with one or more other corporations or persons with which or whom they are related by ownership or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated;

(8) every subsidiary of a public utility;

(9) every part of a corporation in which an operating division is a public utility.

Subd. 2. **Construing the term "person."** The term "person" as used in subdivision 1 shall not be construed to exclude trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers, and partnerships.

Subd. 3. **Contract between utility and affiliated interest.** No contract or arrangement, including any general or continuing arrangement, providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those above enumerated, made or entered into after January 1, 1975 between a public utility and any affiliated interest as defined in subdivision 1, clauses (1) to (8), or any arrangement between a public utility and an affiliated interest as defined in subdivision 1, clause (9), made or entered into after August 1, 1993, is valid or effective unless and until the contract arrangement has received the written approval of the commission. Regular recurring transactions under a

general or continuing arrangement that has been approved by the commission are valid if they are conducted in accordance with the approved terms and conditions. Every public utility shall file with the commission a verified copy of the contract or arrangement, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements, whether written or unwritten, entered into prior to January 1, 1975, or, for the purposes of subdivision 1, clause (9), prior to August 1, 1993, and in force and effect at that time. The commission shall approve the contract or arrangement made or entered into after that date only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest. No contract or arrangement may receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service to each public utility. Proof is satisfactory only if it includes the original or verified copies of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract or summary as the commission may deem adequate, properly identified and duly authenticated, provided, however, that the commission may, where reasonable, approve or disapprove the contracts or arrangements without the submission of cost records or accounts. The burden of proof to establish the reasonableness of the contract or arrangement is on the public utility.

Subd. 4. **Contract not exceeding \$50,000.** The provisions of this section requiring the written approval of the commission shall not apply to transactions with affiliated interests where the amount of consideration involved is not in excess of \$50,000 or five percent of the capital equity of the utility whichever is smaller; provided, however, that regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within the aforesaid exemption. Such transactions shall be valid or effective without commission approval under this section. However, in any proceeding involving the rates or practices of the public utility, the commission may exclude from the accounts of such public utility any payment or compensation made pursuant to the transaction unless the public utility shall establish the reasonableness of the payment or compensation.

Subd. 5. **Applicability to determining rates and costs.** In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with the affiliated interest unless the public utility shall establish the reasonableness of the payment or compensation.

Subd. 6. **Commission retains continuing authority over contract.** The commission shall have continuing supervisory control over the terms and conditions of the contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.

Subd. 7. [Repealed, 1978 c 795 s 10]

History: 1974 c 429 s 48; 1993 c 327 s 11-13