

Minnesota Public Utilities Commission

*** Public Document –Trade Secret Information Excised***

Meeting Date: December 15, 2016 Agenda Item** # 2

Company: Minnesota Power

Docket No. E015/M-16-836
In the Matter of a Petition for Approval of an Amended and Restated Electric Service Agreement Between United States Steel Corporation and Minnesota Power

Issue: Should the Commission merge this docket with Minnesota Power’s rate case docket, E015/GR-16-664, so as to fully assess whether the proposed electric service agreement is consistent with the public interest?

Staff: Ganesh Krishnan.....651-201-2215
.....ganesh.krishnan@state.mn.us
Clark Kaml.....651-201-2246
.....clark.kaml@state.mn.us

Relevant Documents

Minnesota Power Initial Petition (Trade Secret)October 10, 2016
Department of Commerce Comments (Trade Secret)November 10, 2016
Minnesota Power Reply Comments (Trade Secret)..... December 1, 2016
US Steel Reply Comments (Trade Secret) December 1, 2016

Minnesota Power Rate Case (16-664)
Michael Perala (MP) Direct TestimonyNovember 2, 2016

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

This document can be made available in alternative formats (i.e., large print or audio) by calling 651-296-0406 (voice). Persons with hearing or speech disabilities may call us through Minnesota Relay at 1-800-627-3529 or by dialing 711.

Statement of Issue

Should the Commission merge this docket with Minnesota Power's rate case docket, E015/GR-16-664, so as to fully assess whether the proposed electric service agreement is consistent with the public interest?

Introduction

On October 10, 2016, Minnesota Power (MP) filed a petition for approval of a proposed Amended and Restated Electric Service Agreement (proposed ESA) with United States Steel Corporation (US Steel).

The proposed ESA would terminate the current ESA and replace it with modified provisions plus some new provisions.

The Proposed ESA would extend MP's currently effective ESA with US Steel's Minntac and Keetac facilities through at least December 31, 2021. The Proposed ESA would also modify certain terms and conditions of the current ESA and also incorporates new provisions. Many parts of the proposed ESA have been deemed trade secret information by MP.

The Department has indicated that one of the new provisions in the proposed ESA could potentially result in prejudicial, preferential, or discriminatory rates. The Department recommended that the Commission merge this docket with MP's rate case proceeding in order that the issue may be explored in greater detail.

MP, however, argues that the Commission should approve the entire proposed ESA as filed.

US Steel has proposed a trade secret modification to the proposed ESA and asks that if the proposed ESA, as filed by MP, is not approved, then the modified ESA be approved forthwith.

Summary of Minnesota Power's Filing

On October 10, 2016, MP filed a Petition for approval of an Amended and Restated Electric Service Agreement (“Agreement”) that extends MP’s existing electric service agreements with United States Steel Corporation (“US Steel”). The initial term of the ESA extends through at least December 31, 2021. The ESA continues after December 31, 2021 on a rolling four-year basis until a cancellation notice is issued by either party.

Minnesota Power currently serves the two US Steel facilities under a combined electric service agreement dated June 10, 2005 approved by the Commission in Docket No. E015/M-05-1175, effective November 1, 2008.

MP stressed that the proposed ESA “is not conditioned upon or in any way tied to Commission approvals under Minn. Stat. § 216B.1696 (Energy-Intensive Trade-Exposed statute, EITE) and any associated tariff filings.” MP noted that although US Steel’s operations fit the definition of an EITE customer, the proposed Agreement is not dependent upon or contingent on any EITE related decisions by the Commission or MP.

Under the proposed ESA, US Steel commits to purchase all of its electric service requirements for US Steel’s Minntac (taconite mining, processing and production facilities at Mountain Iron) and Keetac (taconite mining, processing and production facilities at Keewatin) facilities from Minnesota Power through at least December 31, 2021.

In many respects, the proposed ESA carries forward the provisions in the existing contract agreement. It also incorporates new features of which one provision, according to the Department, requires further examination.

Under the proposed ESA, US Steel agrees to purchase and/or pay for a Minimum Firm Demand (in kW). Under the proposed ESA, MP offers: **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END.

MP deems the details of this provision competitive business information and notes that they should remain Trade Secret in accordance with the Commission’s policies and procedures and MP’s initial trade secret justification that accompanied the Petition.¹

MP notes that US Steel’s minimum service requirement and its obligation to purchase all of its electric service needs from MP for at least five additional years would benefit all of MP’s

¹ Reference to this provision is marked by spelling it with capital “P” in this briefing paper.

customers. MP claims that the ESA is important to MP and its other customers because of the significant fixed cost recovery assurances that it provides and that it also optimizes the operating synergies between the two US Steel facilities.

While the Minntac facility is currently operating at or near full capacity, Keetac is currently idle.² MP has provided estimates of how much more revenue it would obtain from US Steel if production occurs at these two facilities (pp. 11-12, MP's Initial Filing). MP estimates that the Minntac facility can produce approximately 16 million tons of taconite per year, while Keetac is capable of producing approximately 6 million tons of taconite per year. The revenue from US Steel, MP notes, is a major contribution toward fixed cost recovery on Minnesota Power's system.³

MP stated that it has always applied the Large Power (LP) Service Schedule and other applicable tariffs and the service agreements it enters into in a fair and equitable manner between and among its LP customers and that it intends to continue this practice by ensuring similar terms and conditions are available to all LP customers who make similar commitments to MP.

MP assures that these benefits "will be realized without any substantial changes to rates provided in Minnesota Power's approved tariffs."

MP claims that the proposed ESA contains new language allowing Minnesota Power and US Steel to collaboratively explore and develop potential on-site cogeneration projects that would provide for lower ongoing electric power costs for US Steel.

MP notes that the energy charges set forth in the Agreement do not differ significantly from the energy charges which US Steel and other Large Power (LP) customers currently pay under the LP Service Schedule. Under the LP Service Schedule, MP executes with each LP customer an ESA that supplements the terms and conditions of service in the LP Service Schedule.⁴

² MP Initial Filing at 11.

³ Staff Note: In the pre-filed testimony filed in MP's rate case (16-664), MP notes that "[d]uring 2015, U.S. Steel expanded its Minntac mining operations by 483 acres through an expansion of its East Pit mining area, thereby extending the Minntac mine life by approximately 15 years. Due to low steel demand and adverse market conditions, U.S. Steel idled the Keetac mining operation in April 2015, and Keetac remains idled to date." MP also notes that the "2017 test year sales forecast reflects the implementation of the U.S. Steel ESA" and "reflects Minntac running strongly and Keetac remaining down." The cited testimony discusses the reasons why it is reasonable to assume that Keetac would remain shut down in 2017.

⁴ Department Comments, p. 1.

Comments of the Department of Commerce

On November 10, 2016, the Department of Commerce (Department) filed its comments.

The Department notes that the proposed ESA is satisfactory except for the Provision – **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END**. The Department has expressed a need for further analysis of this issue within the context of MP's rate case.

The Department suggests that the Commission close this docket and fold the matter into MP's rate case. To this end, the Department has recommended that the Commission direct MP to file supplemental testimony in the rate case proceeding addressing specific questions presented at the end of this briefing paper.

The Department evaluated whether this petition entailed rates which were unreasonably prejudicial, unreasonably preferential or discriminatory. The Department's review focused on the potential detrimental effects for rates of MP customers other than US Steel.

The Department noted that it reviewed the provisions in the proposed ESA which were carried forward either as they are in the present ESA or slightly modified and found these to be reasonable and not detrimental to any other party.

The Department initially entertained some concern with the provision in the ESA that MP would:

“continue to work” with US Steel on “electric cost saving initiatives” including a “biennial Energy Audit,” defined in Paragraph 1 as “a meeting between the appropriate personnel of [MP] and [US Steel] to identify and facilitate energy conservation and energy efficiency projects at the Customer's Minntac and Keetac operations;”

The Department's concerns were that the provision could be prejudicial if other customers had to pay for the benefits of “electric cost savings initiatives” accruing solely to US Steel, particularly as US Steel is exempt from MP's Conservation Improvement Program (CIP) and that the provision could be construed to be preferential/discriminatory to the extent that MP does not participate in similar “electric cost saving initiatives” with other customers.

The Department, however, noted that the discovery it conducted clarified that this was not a valid concern. The Department's discovery revealed that MP did not envision any incremental cost from the provision because any projects under the provision would be done by US Steel and that the projects under the provision would not alter rates. Besides, the Department noted that the discovery revealed that MP has ongoing efforts to help US Steel and other CIP-exempt

customers save energy, pursuant to the Commission's November 12, 2013 Order in Docket No. E015/RP-13-53 regarding MP's 2013 Integrated Resource Plan. The Department concluded that this provision was not prejudicial or preferential/discriminatory.

The Department expressed two specific concerns regarding the proposed Provision of **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END.**

First, the Department raised a concern that there could be prejudicial/preferential/discriminatory pricing regarding **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END

Second, the Department acknowledged the importance of retaining US Steel on MP's system and supported the **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END, but raised the concern that this provision could be prejudicial to the extent that other customers continue to pay in base rates for the costs of MP being capable of providing service, whether or not **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END**, along with paying for the **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END**.⁵

Staff Note: Contrary to the Department's understanding, the contract Provision clearly notes **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END.

The Department also stated that since MP's test-year sales in its recently filed rate application do not include any Keetac sales that may materialize as a result of the **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END**, through MP's rate case and this petition, MP's ratepayers are currently being asked to pay for the costs of MP being capable of serving Keetac without any offset to that burden, let alone paying for the **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END** in the future.

The Department noted that it raised these issues with MP and noted that MP responded that the sales to Keetac **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END** would benefit other customers by assisting in fixed-cost recovery, and that **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END.

⁵ Trade Secret Attachment A, MP Initial Filing, p. 6 of 19.

The Department noted that MP's responses to its discovery represent a good starting point

TRADE SECRET DATA BEGIN

TRADE

SECRET DATA END. The Department believes additional analysis—concerning, among other issues: who pays for the facilities needed to serve Keetac, how exactly sales at Keetac would benefit other customers, and the **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END

— is needed to make a sufficiently informed decision on whether the **TRADE SECRET DATA BEGIN** **TRADE SECRET DATA END** provision of the ESA is consistent with the public interest.

The Department suggests that the Commission close this docket, and refer the matter to MP's rate case proceeding. The Department recommends that the Commission require MP to provide supplemental testimony in the rate case proceeding addressing, at a minimum, the following issues:

- 1) whether the **TRADE SECRET BEGIN** **TRADE SECRET DATA END** was offered in exchange for a benefit to MP or its other customers;
- 2) specifics regarding any benefits (including future revenue sharing) that MP's other ratepayers would receive due to **TRADE SECRET BEGIN** **TRADE SECRET END**;
- 3) Whether the Proposed ESA is the first to offer a **TRADE SECRET BEGIN** **TRADE SECRET DATA END**;
- 4) The extent to which MP's other customers pay for the costs of facilities in place that enable delivery of electricity to Keetac (i.e. fixed costs of Keetac embedded in rates);
- 5) Whether decisions to **TRADE SECRET BEGIN** **TRADE SECRET END** will occur independently of the decisions to **TRADE SECRET BEGIN** **TRADE SECRET END**; and
- 6) More specifically, whether and the extent to which **TRADE SECRET BEGIN**

TRADE SECRET END.

MP Reply Comments

On December 1, 2016, MP filed its Reply Comments.

MP asks that the Commission find the entire Agreement is in the public interest and approve the ESA as filed in this docket. MP adds that if and when the Provision takes effect, MP would submit a compliance filing with additional information on the Agreement and US Steel’s operations and any potential impacts and benefits for other customers in this Docket.

In support of its advocacy, MP notes:

1. that it is significant that the Department has concluded that “all but one of the provisions of the ESA is in the public interest (the Provision);”
2. the Provision is conditional and is not anticipated to be applicable in 2017 because
TRADE SECRET DATA BEGIN **TRADE**
SECRET DATA END **TRADE SECRET**
DATA BEGIN **TRADE SECRET**
DATA END would benefit all MP customers;
3. the Provision is exclusive of other terms and conditions of the ESA and that the Provision does not impact any other provision of the ESA;
4. if significant changes in customer operations and sales levels occur, MP will provide the appropriate data and analysis to allow the parties and the Commission to render judgment on the appropriateness of MP’s cost structure, including the Agreement, the sales forecast, and other relevant information and costs and that **TRADE SECRET DATA BEGIN**
TRADE SECRET DATA END would benefit all MP customers; and
5. the Provision is similar in intent with other concepts of combined contracts that have been approved by the Commission as being in the public interest; several of MP’s current and past electric service agreements have contained combined billing features and provisions applicable to the customers’ unique situations; this is not to say that US Steel could **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END

US Steel Reply Comments

On December 1, 2016, US Steel filed its reply comments.

US Steel recommends an alternative option to the Department's recommendation to refer this matter to MP's rate case proceeding. US Steel recommends that the Commission modify the Amended ESA **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END the Provision (the "Proposed Modification"). US Steel reasons that because the Provision **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END through the proposed modification.⁶ US Steel further claims that its proposed modification will ensure that the Provision serves the purpose of **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END, while alleviating the Department's concern about the potential long-term impacts of the Provision.

US Steel agrees to waive its rights under the Amended ESA with respect to the Proposed Modification if the Commission adopts its recommendation.⁷

US Steel submits that the proposed modification to the Amended ESA should resolve the Department's concern over the potential long-term impacts of the Provision at issue, and thus eliminates any reason to refer this matter to the rate case. US Steel argues that referring the ESA to the rate case would have a detrimental impact by delaying the benefits of the amended ESA to US Steel, Minnesota Power, and all of Minnesota Power's ratepayers.

US Steel claims that the Provision, with its proposed modification, is in the public interest because it meets the standard of not being "unreasonably preferential, unreasonably prejudicial, or discriminatory."

US Steel further notes that the Provision **TRADE SECRET DATA BEGIN**

TRADE SECRET DATA END. Yet, unlike a rate approved under the Competitive Rate Statute, the benefit of the Provision **TRADE SECRET DATA BEGIN**

⁶ MP notes that to the extent the Commission deems it necessary, it agrees with US Steel's recommendation to limit the application of the Provision consistent with other utility and customer rate limitations under Chapter 216B, recognizing that MP sought approval of the Agreement under Minn. Stat. §216B.05, subd. 2a.

⁷ Staff Comment: This offer contains no regulatory significance. As US Steel points out: Under paragraph 4 (I) of the ESA, both Minnesota Power and US Steel have the ability to renegotiate terms of the ESA in the event the ESA "is not approved by the Commission, is approved subject to terms or conditions to which either party objects, or is revised or modified in any material respect by the Commission."

TRADE SECRET DATA END.

Staff Comment

Neither the Comments of MP nor those of US Steel address the core concern the Department has raised with the Provision.

Staff agrees with and supports the Department's recommendation to close this docket and roll the issue over to MP's rate case. Staff also supports the Department's recommendation that the Commission seek supplemental testimony no later than January 13, 2017 in its pending rate case from MP on the 6 issues noted above. Alternatively, the Commission could approve a modified ESA without the Provision and refer the Provision for a more thorough analysis in this docket.

Decision Options

- Option 1:** Find that the entire Agreement is in the public interest and approve the ESA as filed in this docket (Minnesota Power Option).
- Option 2:** Close this docket, and refer this matter to MP's rate case proceeding in Docket No. E-015-GR-16-664; require MP to provide supplemental testimony in the rate case proceeding no later than January 13, 2017 and address the six issues identified by the Department at pp. 6-7 of its initial comments (the Department Option):
- 1) whether the **TRADE SECRET BEGIN** **TRADE SECRET DATA END** was offered in exchange for a benefit to MP or its other customers;
 - 2) specifics regarding any benefits (including future revenue sharing) that MP's other ratepayers would receive due to **TRADE SECRET BEGIN** **TRADE SECRET END**;
 - 3) whether the Proposed ESA is the first to offer a **TRADE SECRET BEGIN** **TRADE SECRET DATA END**;
 - 4) the extent to which MP's other customers pay for the costs of facilities in place that enable delivery of electricity to Keetac (i.e. fixed costs of Keetac embedded in rates);
 - 5) whether decisions to **TRADE SECRET BEGIN** **TRADE SECRET END** will occur independently of the decisions to **TRADE SECRET BEGIN** **TRADE SECRET END**; and
 - 6) more specifically, whether and the extent to which **TRADE SECRET BEGIN** **TRADE SECRET END**.
- Option 3:** Approve the proposed ESA incorporating US Steel's proposed Modification (US Steel Option).
- Option 4:** Find that, with the exception of the Provision, the proposed ESA, in all other respects, is in the public interest and approve it. Explore the Provision in this docket (Other Option).