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March 27, 2014

Burl W. Haar
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: Comments of the Minnesota Department of Commerce, Division of Energy Resources
Docket No. E002/AI-14-165

Dear Dr. Haar:

Attached are the *Comments* of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Approval of a New Administrative Services Agreement with Northern States Power Company – Wisconsin.

The filing was submitted on February 25, 2014. The petitioner is:

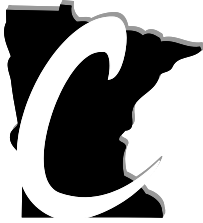
Paul J Lehman
Manager, Regulatory Compliance and Filings
Xcel Energy
414 Nicollet Mall, 7th Floor
Minneapolis, MN 55401
(612) 330-7529

The Department recommends that Xcel provide additional information in reply comments. The Department will provide its final recommendations after reviewing the information. The Department is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ ZAC RUZYCKI
Public Utilities Rates Analyst
651-539-1856

ZR/sm
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET NO. E002/AI-14-165

I. BACKGROUND AND SUMMARY OF FILING

The Minnesota Public Utilities Commission (the Commission) has approved two Administrative Service Agreements (ASA) for Northern States Power Company, a Minnesota corporation (NSPM or the Company) previously. The Commission first approved an ASA between the Company and Xcel Energy Services Inc. (XES) on April 27, 2001 in Docket No. E,G002/AI-00-1251. The Commission approved subsequent updates to the ASA on August 20, 2004 in Docket No. E,G002/AI-04-181, on October 22, 2004 in Docket No. E,G002/AI-04-666, on January 29, 2009 in Docket No. E,G002/AI-08-760, and most recently, on January 29, 2009 in Docket No. E,G002/AI-08-760. The XES Service Agreement specifies certain construction management services performed for the Company by XES, including transmission design and construction services. XES has a similar ASA with Northern States Power Company, a Wisconsin corporation (NSPW).

On June 22, 2001, in Docket No. E002/AI-01-493 the Commission approved the OpCo Service Agreement¹ proposed by the Company to facilitate lending or selling of services and goods between operating companies to allow Xcel to maximize economies of scale within the holding company structure, thus reducing duplicative costs between operating companies.

The OpCo service agreement provides, in Section 2.01, that operating company subsidiaries may provide “incidental” services to other operating utility subsidiaries at cost, including “construction and/or operation” services. These services have been provided by the Company to NSPW since the OpCo Service Agreement went into effect, as the work had been identified by the Company as “incidental” and routine in nature and because no major construction projects had been undertaken in Wisconsin until the Hampton-La Crosse Project.

¹ Between the Company, NSPW, Public Service Company of Colorado (PSCo), and Southwestern Public Service Company.

On December 3, 2013, Xcel requested approval of two affiliate contracts associated with the construction and operation of the Wisconsin portions of the CapX2020 Hampton-Rochester-La Crosse 345 kV Transmission Project. In the filing, the Company committed to assess further the terms of the existing service agreements relating to the CapX2020 line, and determined that, due to the cost of anticipated capital projects falling outside existing service agreements, an additional ASA was necessary.

II. SUMMARY OF REQUEST

On February 25, 2014 Xcel requested approval from the Commission regarding this proposed ASA with NSPW. The Company anticipates capital investments with NSPW in the near future in excess of those covered under the existing agreement, including construction services provided for NSPW by the Company, for which the OpCo Service Agreement currently provides. Thus, Xcel requests Commission approval of proposed changes to the OpCo Service Agreement to accommodate this work.

The existing OpCo service agreement was used as a template for this service agreement, allowing for provision of employees, services, or goods to the affiliated companies at cost in the event that they are available and they relate to a project which has received approval from the regulatory body with jurisdiction in the project area.

The proposed ASA provides that:

- Both Operating Utilities agree to provide and assign its employees or goods² to the other Operating Utility, with determination of availability and mutual benefit at the sole discretion of the providing Operating Utility.
- Charges to be billed and paid under this ASA consist of the actual costs for goods and the actual costs for labor, transportation and employee expenses, materials, supplies, and other expenses with no profit margin.
- Upon simultaneous provision of goods or services, the costs for such goods or services shall initially be assigned based on the time or investment for each project and equitably distributed among Operating Utilities thereafter, based on one or more of the allocation ratios used by Xcel Energy.
- An invoice shall be rendered by the 25th day of each month or as mutually agreed upon for the services provided by any of the other Operating Utilities.

² Operating Utility goods are those goods that are owned or leased by the individual Operating Company.

III. DEPARTMENT ANALYSIS

A. STATUTORY REQUIREMENTS FOR AFFILIATED-INTEREST AGREEMENTS

Minnesota statutes dictate the requirements necessary to be met for affiliated service agreements at Minn. Stat. § 216B.48, subd. 3 as follows:

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, 195 between a public utility and any affiliated interested at 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 or arrangement has received the written approval of the commission. (Emphasis added)

Minnesota statute §216B.48, subd. 3 provides two tests to be applied by the Commission in cases of affiliated –interest contracts; 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 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. (Emphasis added)

The Company must provide evidence that the ASA is both reasonable and consistent with the public interest; if the information is satisfactory, the Commission shall approve the agreement once it has been deemed consistent with statutory requirements.

In Docket No. E, G-999/CI-98-651 the Commission provided minimum filing requirements that must be satisfied within 30 days of executing a contract or arrangement with an affiliate.³ These filing requirements are detailed in Minn. Rules pt. 7825.2200(B) require that the utility must provide the following information:

1. A descriptive title of each contract or agreement;
2. A copy of the contract or agreement, or modification or revisions of an existing contract or agreement;
3. A list and the past history of all contracts or agreements outstanding between the petitioner and affiliated interest, the consideration received by the affiliated interest for such contracts or agreements, and a verified summary of the relevant cost records pertaining to the same;
4. A descriptive summary of the pertinent facts and reasons why such a contract or agreement is in the public interest;
5. Competitive bidding:
 - a. if invitations for sealed written public proposals for the furnishing of the service sought under the contract or agreement have been made, a summary of the terms of the proposals received, including the name of each bidder or representative of a bidding group; and as an exhibit to the petition, a copy of each proposal received;
 - b. if invitations for sealed written proposals have not been made, an explanation of the decisions to that effect will be submitted.

The Department of Commerce (Department) concludes that the Company thoroughly addressed the statutory filing requirements and included information regarding requirement, authority, and location within the filing in Table 1, on page 4 of the petition.

B. ANALYSIS OF THE PROPOSED AGREEMENTS

In its review of an agreement between a utility and its affiliate, the Department must address the merits of the agreement, and also the ability of the Department to verify, after provision or acquisition of goods or services, that the utility's ratepayers were not subsidizing operations of the affiliate. In this evaluation, the Department considers whether:

³ In the Matter of a Commission Investigation into Procedures for Reviewing Public Utility Affiliated Interest Contracts and Arrangements, ORDER INITIATING REPEAL OF RULE, GRANTING GENERIC VARIANCE, AND CLARIFYING INTERNAL OPERATING PROCEDURES (September 14, 1998)

- the price is reasonable;
- the agreement affects operating costs and rate levels;
- the agreement affects the competitive situation; and
- the agreement impairs effective regulation.

The Department's review of Articles 2 (Services and Goods Rendered) and 3 (Charges) in the petition supports the Company's characterization of the nature and type of at-cost charges and the billing process. However, although the at-cost nature of services and goods rendered is reasonable, the amendments to the OpCo ASA that precipitated the filing of this petition concerning non-incidentals costs bring into question the Company's decision not to conduct competitive bidding as stated below.

This ASA was drafted from the service agreement approved by the Commission in Docket No. E002/AI-01-493 (OpCo ASA), in which the Company stated that competitive bidding would be impractical due to the incidental nature of the associated costs. Company personnel have generally provided all of the construction services at cost as required by NSPW under the OpCo Service Agreement, and has identified those services and goods as incidental. The substantial difference between this service agreement and the OpCo service agreement is the magnitude of anticipated costs associated with capital projects in the future for NSPW.

The Company asserts that competitive bidding was not conducted before entering into this agreement as the agreement covers only goods and services associated with projects that have already received regulatory approval in the jurisdiction of the project location. Also stated by the Company is the fact that some jurisdictions require reporting and reconciliation between budgeted costs and actual costs. The Department is concerned that not all jurisdictions may follow this model, and the assumption that competitive bidding can be supplanted by jurisdictional oversight as a means of assuring the reasonableness of project costs is questionable. As non-incidentals costs are not quantified in the filing, the Department has no way of knowing the size and circumstances of transactions that fall under this agreement, and no way to know that transactions will be at or below fair market value.

Based on the Company's assessment⁴ that increased non-incidentals costs required the filing of a new petition to amend the ASA, the Department requests that the Company explain in reply comments the nature and anticipated magnitude of non-incidentals costs, in addition to providing a summary of the assessment that determined the need for an additional ASA. The Department also requests that the Company explain the relationship between non-incidentals costs and the reasoning that a competitive bidding process is not appropriate in this case.

If the issues above can be reasonably resolved, the Department is likely to conclude that effective regulation would not be impaired by this agreement, since the Commission retains continuing authority over this contract under Minn. Stat. § 216B.48, subd.6, in addition to this agreement applying only to projects which already have Commission approval. Any detailed records

⁴ The Company stated in Docket No. E002/AI-13-1108 that it would further assess the terms of the ASA on Page 7, Footnote 9.

required by Minnesota Rules part 7825.2300 will be available for inspection at the Company's headquarters.

IV. RECOMMENDATION

The Department recommends that Company's provide the following additional information:

1. an explanation of the nature and size of non-incidentals costs;
2. the anticipated difference in magnitude between non-incidentals transaction costs and incidentals transaction costs;
3. a summary of the Company's assessment that determined the need for an additional ASA to be filed;
4. a description of the relationship between non-incidentals costs and the reasoning that a competitive bidding process is not appropriate in the case of this ASA.

The Department intends to file its final recommendations after reviewing Xcel's response.

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