

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: April 23, 2015 **Agenda Item #3**

Company: Greater Minnesota Transmission, LLC (GMT)

Docket No. **PL-6580/M-14-1056**

In the Matter of a Petition by Greater Minnesota Transmission, LLC’s Petition for Approval of a Firm Gas Transportation Agreement with Community Co-ops of Lake Park

Issue: Should the Commission approve Greater Minnesota Transmission, LLC’s petition for a Firm Gas Transportation Agreement providing intrastate pipeline services to Community Co-ops of Lake Park?

Staff: Bob Brill 651-201-2242
Sundra Bender 651-201-2247
Bob Harding 651-201-2237

Relevant Documents

Greater Minnesota Transmission, LLC (GMT) - Petition (Non-Public) Dec. 22, 2014
City of Twin Valley - Letter Jan. 12, 2015
Shooting Star Casino - Letter Jan. 14, 2015
White Earth Reservation Tribal Council - Letter Jan. 16, 2015
Department of Commerce (Department) – Comments (Non-Public) Feb. 20, 2015
Greater Minnesota Transmission, LLC - Letter Feb. 23, 2015
Greater Minnesota transmission, LLC - Letter Mar. 16, 2015

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

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Statement of the Issue

Should the Commission approve Greater Minnesota Transmission, LLC's petition for a Firm Gas Transportation Agreement providing intrastate pipeline services to Community Co-ops of Lake Park?

Introduction

Greater Minnesota Transmission, LLC (GMT) is seeking Commission approval for its December 18, 2014 Firm Transportation Agreement (Agreement) with Community Co-ops of Lake Park (the Co-op); where GMT proposed to provide intrastate pipeline service. GMT's asset portfolio includes several other intrastate pipelines throughout Minnesota (MN) that deliver natural gas to MN Local Distribution Companies (LDC). The GMT and Co-op proposed Agreement will provide natural gas to customers that currently do not have access to natural gas. The Agreement's negotiated rates are based on an arm's length transaction between the parties.

The Department recommended the Commission approve the GMT/Co-op Agreement. The Department believes the Agreement is in the public interest for those requesting natural gas services and the Agreement provides GMT with additional financial security for its MN facilities.

The City of Twin Valley, the Shooting Star Casino, and the White Earth Reservation Tribal Council have also submitted letters supporting the proposed Agreement.

Pursuant to Minn. Stat. § 216B.045, Subd. 4, the Agreement may not become effective until it is approved by the Commission.

PUC staff generally agrees with the Department's recommendation, but offers additional comment, please see below.

PUC staff also understands the Co-op plans to file a petition in the second quarter of this year asking the Commission to confirm its eligibility, under Minn. Stat. § 216B.16, Subd. 12, for an exemption from state-level rate regulation based on its status as a small gas utility.

Minn. Stat. § 216B.045. Regulation of Intrastate Natural Gas Pipeline

Subd. 1 Definition of intrastate pipeline

....."intrastate pipeline" means a pipeline wholly within the state of Minnesota which transports or delivers natural gas received from another person at a point inside or at the border of the state, which is delivered at a point within the state to another, provided that all the natural gas is consumed within the state.¹

¹ Further, an intrastate pipeline does not include a pipeline owned or operated by a public utility, unless a public utility files a petition requesting that a pipeline or a portion of a pipeline be classified as an intrastate pipeline and the commission approves the petition.

Subd. 2 Reasonable rate

Every rate and contract relating to the sale or transportation of natural gas through an intrastate pipeline shall be just and reasonable. No owner or operator of an intrastate pipeline shall provide intrastate pipeline services in a manner which unreasonably discriminates among customers receiving like or contemporaneous services.

Subd. 3 Transportation rate; discrimination

Every owner or operator of an intrastate pipeline shall offer intrastate pipeline transportation services by contract on an open access, nondiscriminatory basis.²

Subd. 4 Contract; commission approval

No contract establishing the rates, terms, and conditions of service and facilities to be provided by intrastate pipelines is effective until it is filed with and approved by the commission. The commission has the authority to approve the contracts and to regulate the types and quality of services to be provided through intrastate pipelines.³

GMT

On December 22, 2014, Greater Minnesota Transmission, LLC (GMT) filed a Petition for approval of a Firm Gas Transportation Agreement (Agreement) to provide intrastate pipeline services to the Community Co-ops of Lake Park, MN (Co-op). The Agreement sets forth the terms and conditions of service including rate design and rates between GMT and the Co-op.

GMT will construct 31 miles of new transmission line from a proposed Town Border Station (TBS) located on the Viking Gas Transmission interstate pipeline, near Ada, MN and will transport natural gas to two Co-op interconnections at the communities of Twin Valley and Mahanomen, MN. GMT and the Co-op have entered into a 15-year agreement. The Co-op will procure its own natural gas supply and will construct the necessary distribution facilities to make deliveries of natural gas to its customers.

GMT's petition stated that it believes the proposed facilities (i.e. the 31 mile intrastate pipeline) should not be classified as a retail public utility, thus, should not fall within the scope of the Commission's jurisdiction governing retail gas distribution companies; GMT provides intrastate pipeline services. GMT's petition provided the negotiated demand and commodity rates that the Co-op will pay for an hourly delivery commitment of natural gas to the Co-op's city gates.⁴ GMT believes the Agreement's stated rates were negotiated based on market conditions and as an arm's-length transaction between the two parties and, therefore, are reasonable.

² To the extent the intrastate pipeline has available capacity, the owner or operator of the intrastate pipeline must provide firm and interruptible transportation on behalf of any customer. If physical facilities are needed to establish service to a customer, the customer may provide those facilities or the owner or operator of the intrastate pipeline may provide the facilities for a reasonable and compensatory charge.

³ The approval of a contract for an intrastate pipeline to provide service to a public utility does not constitute a determination by the commission that the prices actually paid by the public utility under that contract are reasonable or prudent nor does approval constitute a determination that purchases of gas made or deliveries of gas taken by the public utility under that contract are reasonable or prudent.

⁴ See GMT's initial petition dated December 22, 2014 marked as "**Trade Secret**," p. 4.

GMT further justified its intrastate pipeline proposal by stating:

- GMT would willingly enter into negotiations with other similarly situated distribution entities to discuss similar cooperative arrangements that would serve the public interest in other respective communities, thus there is no discriminatory element to the Agreement and GMT has complied with its statutory obligation to offer its terms on an open-access basis; and
- The negotiated Agreement reflects a positive partnership between companies working together to serve the public interest. It benefits the Co-op and its customers, the Twin Valley and Mahnomen communities, and the local economy; and
- The Agreement will benefit GMT and its customers by contributing to GMT's economic viability and ability to continue to aid in serving historically unserved and underserved populations.

Department

The Department reviewed GMT's petition and the Agreement to determine if GMT's proposed facilities should be classified as an "intrastate pipeline"⁵ and further to determine if the Agreement was entered into as part of an arm's length negotiation.

In its review, the Department noted that most utility rates are based on cost of service. However, a reasonable rate may be negotiated as part of an arm's length transaction. In simple terms, the reasonableness of the rate could be determined because all parties involved have agreed to the negotiated rate.

The Department's primary concern was to determine if the proposed GMT project would be financially viable and will not have a negative impact on GMT's overall financial health. The Department believes that its review of the proposed negotiated rates helps ensure that the rates provide reasonable benefit to the Co-op's customers and allows GMT an opportunity to earn an acceptable return.

The Department developed several financial impact scenarios⁶ to test the economic viability of GMT's proposal. The Department concluded that if GMT's project is constructed and operated in accordance with GMT's assumptions, GMT will earn a reasonable return over the term of the contract.

⁵ To determine if Minn. Stat. § 216B.045, Subd. 2 is applicable.

⁶ See the Department February 20, 2015 Comments, pp. 4-5.

The Department believes its concerns are relieved by Minn. Stat. § 216B.045, subd. 5,⁷ which provides for a Commission complaint process that could be used to resolve any rate disputes that may arise between GMT and its customers.

GMT is required to offer services on an open access, non-discriminatory basis.⁸ GMT's petition indicated that it would willingly enter into negotiations with other similarly situated private entities to discuss similar cooperative agreements that would serve the public interest in other respective communities. The Agreement's terms and conditions are similar to those approved by the Commission in previous GMT and affiliate petitions.⁹ The Department concluded that GMT is offering its services by contract on an open-access, non-discriminatory basis.

Department Recommendation

The Department recommended the Commission approve the GMT/Co-op Agreement reflected in GMT's petition, where GMT will provide intrastate pipeline services to the Co-op.

PUC Staff Comment

PUC staff reviewed GMT's Petition and appreciates the parties' comments. PUC staff believes that the Department's analysis addressed the relevant issues and will not repeat those comments.

PUC staff further appreciates the efforts of GMT, the Cities of Twin Valley and Mahnomen, Mahnomen County, the White Earth Nation, and Community Coops of Lake Park who have worked together to develop a plan to bring natural gas into an area not previously served. With concern growing about the availability of propane over the last two winter heating seasons, PUC staff believes that the distribution of natural gas to those that currently do not have that option will provide additional stability to not only the Co-op's customers, but also to the communities where these customers are located.

⁷ Minn. Stat. § 216B.045, Subd. 5. Complaint - Any customer of an intrastate pipeline, any person seeking to become a customer of an intrastate pipeline, the department, or the commission on its own motion, may bring a complaint regarding the rates, contracts, terms, conditions, and types of service provided or proposed to be provided through an intrastate pipeline, including a complaint that a service which can reasonably be demanded is not offered by the owner or operator of the intrastate pipeline. If a complaint involves the question of whether or not an intrastate pipeline has capacity available, the commission shall after hearing make a determination of the available capacity but shall not impair the owner or operator of the intrastate pipeline contractual obligation to provide firm transportation service. If a complaint concerns the use of available capacity by one or more customers of an intrastate pipeline, the commission shall after hearing determine the reasonable use of the available capacity by the customers. The commission shall not require an owner or operator of an intrastate pipeline to expand its available capacity but may require the owner or operator to maintain a reasonable quality of service. The commission may dismiss any complaint without a hearing if in its opinion a hearing is not in the public interest. Complaints brought under this subdivision shall be governed by section 216B.17.

⁸ Minn. Stat. § 216B.045, Subd. 3.

⁹ Docket Nos. PL-6580/M-06-1063; PL-6580/M-13-91; PL-6580/M-13-94; PL-6580/M-14-386; and Docket No. G-022/M-14-342.

PUC staff believes that the GMT/Co-op project serves the public interest and generally agrees with the Department's recommendation to the Commission to approve the Agreement between GMT and the Co-op.

However, PUC staff does have a few additional comments and possible concerns about the proposed Agreement.

Community Co-op, a retail natural gas provider

The Community Co-op was established in 1907 and has provided a variety of services to the area at various times such as a creamery, propane distribution, convenience stores, HVAC, automotive, and other services. This Agreement will provide MN with its first cooperatively-owned natural gas utility. Staff is not aware of any Minn. Statute or Rule that would prohibit the Co-op from distributing natural gas to retail customers.

PUC staff understands the Co-op plans to file a petition to confirm its status as an exempt small gas utility under Minn. Stat. § 216B.16, Subd. 12. It is also staff's understanding that the Co-op intends to pattern its petition after a similar filing made by Dooley Gas, in Docket No. G-6915/M-13-672, when Dooley Gas was in a similar situation.

Staff believes this is the best alternative for Community Co-op. The exemption for cooperatives in the definition of public utility, in Minn. Stat. § 216B.02, Subd. 4, is for cooperative electric associations rather than cooperative natural gas associations. Community Co-op fits within the definition of a small gas utility in Minn. Stat. § 216B.16, Subd. 12. Community Co-op will be providing service mainly within the municipal boundaries of the communities it plans to serve with only incidental load occurring outside of those municipal boundaries.

Arm's Length Transaction

An Arm's Length Transaction can be defined as a transaction in which the buyers and sellers of a product act independently and have no relationship to each other. The concept of an arm's length transaction is to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

After reviewing GMT's Petition and the Department's comments, PUC staff believes that all parties have acted independently of each other and in each parties' best interest, thus, the Agreement seems to be fairly negotiated. The jointly signed Agreement itself may be considered proof that the parties have negotiated in good faith. PUC staff believes the GMT/Co-op Agreement serves the public interest and represents an arm's length transaction.

Negotiated Rates Concerns

GMT's demand and commodity rates reflected in the Agreement *are not* based on an underlying cost of service calculation, but have been negotiated based on an arm's length transaction with the Co-op and will be in effect for a 15 year period. The Department stated that it believes the rates were negotiated fairly based on the information in the record, PUC staff agrees.

However, staff cautions that the financial data in the record is somewhat limited. Staff believes GMT could earn undue profits under certain circumstances, for example:

1. If GMT were to add a large, new customer after the date of Commission approval of the contract, or
2. If the Co-op customer's system utilization factor were to significantly increase.

If these circumstances were to happen and the Co-ops rates are not adjusted, GMT could be in a position to earn excessive or undue returns or profit on its initial facilities and that would potentially be unfair to GMT's initial customer (Community Co-ops).

Subsequent New Contracts

PUC staff realizes that any new contract negotiated by GMT requires Commission approval. The general assumption in this docket assumes that the Co-op customers are paying sufficient rates for GMT to earn a reasonable return that justifies the facility investment.

But, if a new customer is added and the Commission does not have the ability to review the rates in the GMT/Co-op Agreement at that time, the Co-op customers could be harmed by paying excessive rates or could even subsidize the new customer.

While there is no indication in the record that would suggest an additional customer outside the Co-op Agreement exists, the Commission may wish to use caution in approving the proposed Agreement's rate structure by incorporating language in its Order that would guard against GMT earning excessive profits because of a new customer and/or subsidizing a new customer from revenue collected from Co-op customers.

PUC staff believes that GMT should be appropriately compensated, but it does not believe GMT should be authorized to earn excessive returns on this project. If a new customer is added, the Commission may wish to require GMT to submit the rates in the Co-op Agreement for review at the time of its new customer Petition to determine if the rates in the Co-op Agreement are still justified or if adjustment is necessary.

Load Utilization Factor¹⁰

As previously mentioned, this docket's record contains limited financial information. PUC staff believes GMT's proposed revenue calculation assumes a certain load utilization factor. However, if GMT's system utilization factor increases, GMT would potentially earn significantly higher profits. The higher utilization factor would be an indication that the Agreement's rates are too high and need an adjustment. PUC staff believes the Commission may want to require GMT to file a letter each year stating the Co-ops annual load utilization factor and to include a provision in the Order that would allow the Commission to revise GMT proposed rates, if necessary.

¹⁰ An approximate load utilization factor can be calculated, but that information has been marked as "*Trade Secret*."

Decision Alternatives

1. Approve the GMT/Co-op Agreement as recommended by the Department. or
2. Do not approve the GMT/Co-op Agreement as recommended by the Department.

Additional decision alternatives if the Agreement is approved

3. If a new customer is added, require GMT to submit the rates in the Co-op Agreement for review at the time of its new customer Petition (for approval of the new customer contract) to determine if the rates in the Co-op Agreement are still justified or if an adjustment is necessary. or
4. If a new customer is added, do not require GMT to submit the Co-op Agreement's rates for review at the time of its new customer Petition.
5. Require GMT to file an annual letter stating the Co-op's annual load utilization factor and state in this Order that the Commission may adjust GMT's rates based on changes in the Co-ops load utilization factors, if necessary. or
6. Do not require GMT to file an annual letter stating the Co-ops annual load utilization factor or include in the Order a provision that would allow the Commission to revise GMT proposed rates, if necessary.