

November 26, 2019

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, Minnesota 55101-2147

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/D-19-534

Dear Mr. Wolf:

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

Petition of Minnesota Power for Approval of the 2019 Remaining Life and Depreciation Update.

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve Minnesota Power's Petition, as modified herein**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ GEMMA MILTICH
Financial Analyst, CPA

GM/ja
Attachment



Before the Minnesota Public Utilities Commission

Response Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E015/D-19-534

I. INTRODUCTION

On August 22, 2019, Minnesota Power (the Company) filed its 2019 Remaining Life Depreciation Petition (Petition) with the Minnesota Public Utilities Commission (Commission). This update reflects the passage of one year and the 2018 plant activity impacting Minnesota Power's generation facilities and general plant Accounts 390.0 – *Structures & Improvements* (Account 390.0) and 392.8 – *Aircraft, Fixed Wing*.

The Department filed its initial Comments in the instant docket on October 22, 2019, recommending that the Commission approve Minnesota Power's Petition and require the Company to (1) include certain information in its future depreciation filings and (2) establish a regulatory liability for the unauthorized transfer of a capital asset from the Company's regulated to non-regulated operations.

On November 14, 2019, Minnesota Power submitted Reply Comments with a proposal outlining how the Company would establish the regulatory liability and under what conditions the Company would be willing to do so. As detailed in its initial Petition, Minnesota Power continues to request Commission approval to:

- Adjust the remaining lives of the Company's generation facilities and Federal Energy Regulatory Commission (FERC) Account 390.0 assets downward by one year, to reflect a one year passage of time,
- Extend or reduce, by varying lengths, the remaining lives of all Account 390.0 assets for factors other than the passage of one year's time,
- Separate and independently depreciate twelve buildings included in Account 390.0, while continuing to apply a group depreciation methodology to the remaining assets in Account 390.0,
- Continue using the previously approved salvage rates for all assets included in the instant filing, and
- Implement the proposed depreciation parameters on January 1, 2019.

II. DEPARTMENT ANALYSIS

The following discussion addresses Minnesota Power's Reply Comments in the instant docket, with an emphasis on the issues around the capital asset transfers executed between the Company's regulated and non-regulated operations.

A. CAPITAL ASSET TRANSFER FROM REGULATED TO NON-REGULATED OPERATIONS

Through the Company's response to an information request sent in the instant docket, the Department learned that Minnesota Power transferred a capital asset (a loader) from the Company's regulated operations at Laskin Energy Center (Laskin) to its non-regulated operations at Rapids Energy Center (Rapids). At the time of the transfer, the loader had an original cost of \$267,787 and depreciation reserve of \$128,170. The Department believes that by executing this transfer, Minnesota Power violated Minnesota Statutes §216B.48, which governs transactions between utilities and their affiliated interests.¹

1. Impact of Capital Asset Transfer

Through approved base rates, utility customers pay for (1) the depreciation and property tax expense associated with a utility's capital assets that are used and useful in providing service and (2) the return earned by a utility on its rate base, which includes capital assets. Absent other remedy, when a utility transfers a capital asset out of regulated operations, customers continue to pay for that asset, as if it were used and useful in providing service to them, until new rates are set in a general rate case proceeding, when the expenses and return associated with the asset can be removed from the rates charged to customers.

The practical effect of the property transfer from Laskin to Rapids is that Minnesota Power is charging its ratepayers for the cost of an asset that is included in rate base, but is no longer used and useful for regulated utility service. Ratepayers have been and are currently paying for this capital asset, which the Company is now using in non-regulatory operations at its affiliate, Rapids. This circumstance is not just and reasonable for Minnesota Power's ratepayers.

2. Applicability of Minnesota Statutes §216B.48 to the Capital Asset Transfer

In its Reply Comments in the instant docket, Minnesota Power explained that a "transfer from Laskin Energy Center to Rapids Energy Center is not an affiliate transfer because both facilities are owned by Minnesota Power and therefore no contract or other arrangement was done between the public utility (Minnesota Power) and an affiliated interest as defined by Minn. Stat. §216B.48, subd. 1."²

¹ Department's October 22, 2019 Comments in Docket No. E015/D-19-534, pages 10 and 11 and Department Attachment 5.

² Minnesota Power's November 14, 2019 Reply Comments in Docket No. E015/D-19-534, page 2.

The Department acknowledges that both Laskin and Rapids are wholly owned by the Company. However, the ownership status of these two facilities does not preclude Rapids from meeting the definition of an affiliated interest, nor does it preclude an arrangement from existing between Minnesota Power's regulated and non-regulated operations. The Department believes that Minnesota Statutes §216B.48 applies to the Company's capital asset transfer between Laskin (regulated) and Rapids (non-regulated) as follows:

- (1) Rapids meets the definition of an affiliated interest per §216B.48, subd. 1, clause (9), which states that an affiliated interest of a public utility includes "every part of a corporation in which an operating division is a public utility." Under the current circumstances, Rapids is a part of a corporation (ALLETE, Inc.) in which an operating division is a public utility (the regulated operations of Minnesota Power).
- (2) Minnesota Statutes §216B.48, subd. 3, uses the words "contracts" and "arrangements" in describing prohibited transactions between a public utility and its affiliated interests. The Department notes that the term "arrangement" is particularly broad, allowing this provision to capture transactions that may occur outside of contracts, which have a narrower, more specific definition. Minnesota Power's execution of an intentional and voluntary capital asset transfer from the Company's regulated to non-regulated operations demonstrates that an arrangement of some kind, whether formal or informal, existed between Minnesota Power (the public utility) and Rapids (the affiliated interest). The Department asserts that the intentional and voluntary transfer of this loader, an asset of significant physical size and relatively large dollar value, would not have been carried out in the absence of some sort of arrangement.
- (3) The capital asset transferred from Laskin (regulated) to Rapids (non-regulated) exceeds the \$50,000 threshold provided for in Minnesota Statutes §216B.48, subd. 5, as the asset had an original cost of \$267,787 and depreciation reserve of \$128,170 at the time of the transfer.

3. Remedy for Capital Asset Transfer

To remedy this issue, the Department recommended in its initial Comments that the Commission require Minnesota Power to establish a regulatory liability for the amount of depreciation expense charged to ratepayers for the transferred Laskin loader, from the time of the unauthorized transfer up until the Company files its next rate case. The Department also recommended that the Commission require Minnesota Power to address the resulting regulatory liability in its next rate case.³ In its Reply Comments, Minnesota Power accepted the Department's recommendation, with the condition that the Company be permitted to calculate the regulatory liability using a methodology previously approved by the Commission for the Company's sale of the Chisolm and Aurora Service Centers.⁴ The Company further proposed to create a regulatory asset, which would (1) reflect Minnesota Power's transfer of a different capital asset (again, a loader) from the unregulated operations at Rapids to the

³ Department's October 22, 2019 Comments in Docket No. E015/D-19-534, page 12.

⁴ Docket Nos. E015/PA-17-457 and E015/PA-17-459.

regulated facility at Taconite Harbor Energy Center (THEC) and (2) offset the regulatory liability recommended by the Department.⁵

The Department appreciates Minnesota Power's agreement to establish a regulatory liability for the capital asset transfer from Laskin to Rapids and continues to support its previous recommendation on this issue. The Department believes the methodology⁶ proposed by Minnesota Power to calculate the regulatory liability is reasonable, as it aligns with the 2017 test year⁷ revenue requirements associated with the capital asset in question. The Department recommends that the Commission approve the Company's proposed methodology, as detailed in Minnesota Power's November 14, 2019 Reply Comments Attachment in the instant docket.

However, for several reasons, the Department does not support Minnesota Power's proposal to create a regulatory asset for the loader transferred from Rapids (non-regulated) to THEC (regulated). Beyond the fact that the proposed regulatory asset would not meet the requirements necessary to establish a regulatory asset, such a request would result in Minnesota Power's ratepayers paying for the costs of an asset that the Commission did not have an opportunity to consider and did not approve, since the Company chose not to file for approval of the transfer.

The Department generally does not advocate for a utility's retroactive cost recovery, and the circumstances in the current docket do not compel the Department to do so here. If timely cost recovery of the loader transferred from Rapids to THEC were a priority for Minnesota Power, it would have been logical for the Company to address this issue closer to the time the transfer actually occurred (August 2018).⁸ Instead, Minnesota Power waited to disclose and address this transfer for more than a year after the transfer took place, and only then, after the Department recommended that the Company establish a regulatory liability for a different unauthorized capital asset transfer.

In this case, the Department does not believe that establishing a regulatory asset would be reasonable or fair to the Company's ratepayers, since Minnesota Power's proposal would result in charging ratepayers for costs of an asset that the Commission was never allowed to consider, let alone approve. Minnesota Power's proposal would also appear to be another violation of §216B.48.

Moreover, assuming that Minnesota Power generally acts in its own best business interest, the Department concludes that the Company would not have made an intentional and voluntary transfer of a loader from Rapids to THEC if it was either a detriment or a sacrifice for the Company. However, if Minnesota Power wants cost recovery of the loader transferred from Rapids to THEC on a going-forward basis, the Department recommends that Minnesota Power seek that recovery through its general rate case proceeding, Docket No. E015/GR-19-442.

⁵ Minnesota Power's November 14, 2019 Reply Comments in Docket No. E015/D-19-534, page 1.

⁶ With its November 14, 2019 Reply Comments in Docket No. E015/D-19-534, Minnesota Power submitted a supplemental attachment in MS Excel format, showing the Company's proposed calculation for the Department-recommended regulatory liability.

⁷ Minnesota Power used a 2017 Test Year in its prior rate case, Docket No. E015/GR-16-664.

⁸ Minnesota Power's November 14, 2019 Reply Comments in Docket No. E015/D-19-534, page 1.

B. INITIAL PETITION PROPOSALS

In its initial Comments in the instant docket, the Department recommended that the Commission approve the Company's Petition and continue to require Minnesota Power to provide certain information in its depreciation filings.⁹ In its Reply Comments, the Company did not raise any objections to these Department recommendations. The Department continues to support its initial recommendations for Minnesota Power's Petition.

III. CONCLUSION AND RECOMMENDATIONS

The Department recommends that the Commission:

- Require Minnesota Power to continue to provide in future depreciation filings a comparison of the remaining depreciable lives proposed in its depreciation filing and the remaining operating lives approved in the Company's most recent integrated resource plan, with an explanation of any differences.
- Approve Minnesota Power's proposed salvage rates for all assets included in the instant filing, as outlined in Petition Appendix A-1 and A-5.
- Approve Minnesota Power's proposal to adjust the remaining lives of the Company's generation facilities and the assets in Account 390.0 – *Structures & Improvements* downward by one year, to reflect a one year passage of time.
- Approve Minnesota Power's proposals to extend or reduce, by varying lengths, the remaining lives of all Account 390.0 assets for factors other than the passage of one year's time, as outlined in Petition Appendix B.
- Approve Minnesota Power's proposal to separate and independently depreciate twelve buildings in Account 390.0, while continuing to apply a group depreciation methodology to the remaining assets in Account 390.0, as outlined in Petition Appendix B.
- Approve Minnesota Power's proposed effective date of January 1, 2019 for the Company's proposed depreciation parameters.
- For the capital asset transferred from the Laskin Energy Center (regulated operations) to the Rapids Energy Center (non-regulated operations), require Minnesota Power to (1) establish a regulatory liability, using the calculation methodology submitted by the Company in its Reply

⁹ Department's October 22, 2019 Comments in Docket No. E015/D-19-534, page 12.

- Comments Attachment on November 14, 2019 and (2) address the resulting regulatory liability in its current rate case, Docket No. E015/GR-19-442.
- If the Commission directs Minnesota Power to establish the Department-recommended regulatory liability, require Minnesota Power to submit a compliance filing, within 10 days of the Commission's order in this matter, showing the Company's finalized calculation of and journal entries for the relevant regulatory liability.
- Deny Minnesota Power's proposal to establish a regulatory asset for the capital asset transfer from the Rapids Energy Center (non-regulated operations) to the Taconite Harbor Energy Center (regulated operations).

/ja

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

MINNESOTA DEPARTMENT OF COMMERCE – RESPONSE COMMENTS

Docket Nos. **E015/D-19-534**

Dated this **26th** day of **November, 2019**.

/s/Linda Chavez

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-534_D-19-534
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James D.	Larson	james.larson@avantenergy.com	Avant Energy Services	220 S 6th St Ste 1300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-534_D-19-534

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_19-534_D-19-534
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Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_19-534_D-19-534
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_19-534_D-19-534