

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
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Chair
Commissioner
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Minnesota Power
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SERVICE DATE: December 10, 2012

DOCKET NO. E-015/M-12-1025

In the Matter of Minnesota Power's Petition for Approval of an Amendment to an Electric Service Agreement with NewPage Wisconsin System, Inc.

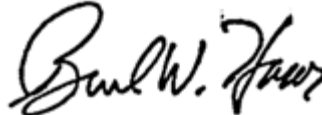
The above entitled matter has been considered by the Commission and the following disposition made:

Approved.

The Commission makes no specific findings regarding the benefits of this agreement to other customers.

The Commission agrees with and adopts the recommendations of the Department of Commerce, which are attached and hereby incorporated into the Order. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION



Burl W. Haar
Executive Secretary



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October 16, 2012

**PUBLIC DOCUMENT -
TRADE SECRET DATA HAS BEEN EXCISED**

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

RE: **PUBLIC Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/M-12-1025

Dear Dr. Haar:

Attached are the PUBLIC comments of the Minnesota Department of Commerce, Division of Energy Resources, (Department or DOC) in the following matter:

Minnesota Power's Request for Approval of an Amendment to an Electric Service Agreement between NewPage Wisconsin System, Inc. and Minnesota Power.

The petition was filed on September 25, 2012. The petitioner is:

David R. Moller
Attorney
Minnesota Power
30 West Superior Street
Duluth, MN 55802

The Department recommends **approval with conditions**, and is available to answer any questions the Commission may have.

Sincerely,

/s/ EILON AMIT
Statistical Analyst

EA/sm
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

PUBLIC COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. E015/M-12-1025

I. BACKGROUND

Below is a list of earlier electric service agreements that preceded the instant petition for approval of an amendment to the Electric Service Agreement (Amended Agreement) between Minnesota Power (MP or Company) and NewPage Wisconsin System (NewPage).

On August 1, 1997, MP and Consolidated Papers entered into a restated electric service agreement.

On November 20, 1997 the Minnesota Public Utilities Commission (Commission) issued an Order approving the above-mentioned restated electric service agreement (Docket No. E015/M-97-1305).

On September 2000, Stora Enso purchased Consolidated Papers.

On October 13, 2000, MP filed a petition for approval of amendment to the Electric Service Agreement between Stora Enso and MP (Docket No. E015/M-00-1389).

On February 8, 2001, the Commission issued an Order approving the above-mentioned Amended Electric Service Agreement.

In 2005, MP and Stora Enso amended and restated their Electric Service Agreement, and on March 7, 2006, the Commission issued an Order approving the above-mentioned Amended Agreement (Docket No. E015/M-05-1989).

In 2007, NewPage acquired Stora Enso's paper assets. As part of the acquisition agreement, the Electric Service Agreement between MP and Stora Enso was transferred to NewPage.

On September 7, 2011, NewPage filed for Chapter 11 bankruptcy and then on August 13, 2012 proceeded to file a Plan of Reorganization. The Plan of Reorganization was filed with the US Bankruptcy Court (Court) in the District of Delaware. On September 25, 2012, NewPage filed a petition with the Court to assume contracts, including the instant Amended Agreement. MP expects a Court decision on NewPage's Reorganization Petition by the end of 2012. If the Court rejects the Amended Agreement, NewPage will have to take electric service from Minnesota Power's non-contract Large Power Service Schedule, which would not require Commission approval.

Also on September 25, 2012, MP filed the instant petition (Petition) with the Commission requesting an amendment to the Electric Service Agreement with NewPage (Amendment or Amended Agreement) to extend the term through at least December 31, 2022 and incorporate other modifications.

II. SUMMARY OF MINNESOTA POWER'S PETITION

MP filed this Petition for an amendment to its Electric Service Agreement with NewPage under Minn. Stat. §216B.05, Subd. 2a, which states:

Subd. 2a. **Electric service contract.** A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval by the commission pursuant to the commission's rules of practice. Contracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes.

The key provisions of the Amendment are:

- A. NewPage's Duluth Mills must purchase its electric service requirements from MP at least until December 31, 2022.
- B. Certain provisions in the Amended Agreement would allow NewPage additional operational flexibility and potentially reduce its costs via modified nomination and maintenance provisions.

- C. MP would be able to recover from NewPage pre-petition debt owed to it and would establish a weekly prepayment requirement.

III. DEPARTMENT ANALYSIS

A. INTRODUCTION

The Amended Agreement should be approved only if it is in the public interest. For the Amended Agreement to be in the public interest it must meet the following conditions:

1. Under the Amended Agreement, the variable cost to MP of providing the electric service to NewPage must be less than the revenue received by MP from providing the service.
2. MP's other ratepayers must not be negatively affected by the Amended Agreement.
3. The rates under the Amended Agreement must not be discriminatory, namely the rate would be available to any other large power customer of MP facing similar circumstances to those of NewPage.

B. ANALYSIS

First, the Department will analyze each of the amendments proposed in the Amended Agreement. Second, based on the analysis the Department will assess whether the Amended Agreement meets the conditions stated by the Department as necessary conditions for its approval. Finally, the Department will provide its conclusions and recommendations.

1. The Proposed Amendments

All the amendments are with respect to the Electric Service Agreement of November 15, 2005 between MP and Stora Enso, which was transferred "as is" to NewPage in 2007.

a. Terms of Agreement (Paragraph 2)

The amendment to the Terms of Agreement extends the duration of the Electric Service Agreement to December 31, 2022. The original term was to expire in August 31, 2013.

Such an extension would be beneficial to both MP and its ratepayers. Since NewPage's rates include contribution to MP's fixed costs, MP's ratepayers benefit from such contribution that would otherwise have to be collected from them. The extension of the contract would benefit MP by providing it with an additional stable source of revenues over the period of September 1, 2013 through December 31, 2022.

b. Allowance for Scheduled Maintenance (Paragraph 3.G)

Paragraph 3.G includes two amendments:

First, NewPage may choose to be billed at the Measured Demand instead of the Service Requirement not only during periods of scheduled maintenance (as in the pre-Amended Agreement), but also during periods of scheduled production shutdown. Second, the reduction in kW-Days resulting from NewPage's decision to be billed under Measured Demand may not exceed [TRADE SECRET DATA HAS BEEN EXCISED] kW-Days during any calendar year instead of [TRADE SECRET DATA HAS BEEN EXCISED] kW-Days under the pre-Amended Agreement.

This amendment provides NewPage with an opportunity to lower its production cost by allowing it to pay a lower rate when its production levels are scaled down due to maintenance or scheduled production shutdown.

The Department notes that if NewPage exceeds the pre-amendment level of scheduled maintenance, MP may not be able to fully recover its fixed costs of providing electric service to NewPage. However, any resultant revenue shortfall would be fully born by MP, not MP's ratepayers. Nevertheless, in its next rate case, such a potential revenue shortfall would have to be addressed by MP and the Department. To summarize, since this amendment benefits NewPage and does not negatively impact MP's other ratepayers the Department concludes that it is reasonable.

c. Large Power Incremental Production Service (Paragraph 3.J)

MP's Rider for Large Power Incremental Production Service (IPS) allows a Large Power customer to purchase incremental energy at MP's marginal energy cost (plus a small energy surcharge and incremental transmission costs) when the customer's demand exceeds a predetermined demand level. Due to production efficiencies implemented by NewPage, NewPage can now maintain the same level of energy usage using less demand than before. The Amended Agreement recognizes this increased efficiency by lowering the pre-determined demand level (the IPS threshold, or IPST) from [TRADE SECRET DATA HAS BEEN EXCISED] kW to [TRADE SECRET DATA HAS BEEN EXCISED] kW until 2014 and to [TRADE SECRET DATA HAS BEEN EXCISED] kW from 2014 and onward. This change allows NewPage to lower its energy cost while at the same time allowing MP to recover its incremental energy and transmission cost without negatively impacting MP's other ratepayers.

Paragraph 3.J is further amended to recognize the changing environment of the paper industry. First, if [TRADE SECRET DATA HAS BEEN EXCISED], then NewPage may notify MP of such an event in writing at least six months prior to the event taking place. Upon such a notification the Parties will negotiate a new IPST. Second, if as a result of major capital

investment or increased production efficiency [**TRADE SECRET DATA HAS BEEN EXCISED**] NewPage may notify the Company of such events and the Parties will meet to discuss potential applicable future Agreement modifications.

The Department notes that the amendments proposed in Paragraph 3.J in their totality would result in:

- (i) No impact for other MP's ratepayers;
- (ii) Potential benefits to NewPage; and
- (iii) Potentially lower revenues for MP.

As a result of (iii) above MP may face a revenue shortfall. Such revenue shortfall would be fully borne by MP until it files a new rate case. Such potential revenue shortfall would have to be addressed by MP and the Department in MP's next rate case.

d. Decrease In Services Requirement for Permanent Facility Shutdown (New Paragraph 3.N)

To recognize the economic environment of the paper industry, Paragraph 3.N would allow for the possibility of a complete shutdown of NewPage's Duluth Paper Mill and Duluth Recycled Pulp Mill. Upon at least two years advance notice, in a case of a permanent cessation of operations NewPage would have the right to reduce its Minimum Firm Demand to 0 kW.

Paragraph 3.N simply states that if NewPage anticipates a permanent shutdown of its Duluth operation, then upon two-year advanced notice, at the end of such two year period NewPage would terminate its electric service from MP. The Department concludes that the two-year advance notice is a sufficient time period to allow MP to take any necessary steps to mitigate the impact of losing significant load on its system.

e. Precedent Conditions (New Paragraph 5)

Paragraph 5 is a new Paragraph that accounts for NewPage being under Chapter 11 bankruptcy protection.

NewPage filed for Chapter 11 bankruptcy protection in U.S. Bankruptcy Court (Court) on September 7, 2011. As part of its Plan of Reorganization filing made on August 13, 2012, NewPage has proposed to the Bankruptcy Court to assume the Minnesota Power Electric Service Agreement as amended. This new Paragraph establishes a number of conditions which must be met by NewPage, including Court authorization of full payment to MP of \$2.19 million to cure monetary defaults arising under this Agreement. Within 30 days of the Court approval of the reorganization, NewPage must establish an escrow account and deposit the full cure amount mentioned above. Upon Commission approval, MP can withdraw the full amount from the escrow account. If either the Court or Commission approval of this Amendment is not obtained,

this Amendment will be of no force and effect. In that situation, NewPage would be required to obtain service under the Non-Contract Large Power Service tariff.

f. Weekly Payments (New Paragraph 6)

Early in the Chapter 11 process, NewPage agreed to make voluntary weekly prepayments to Minnesota Power in response to the Company's concerns about incurring additional electric service debts. This new Paragraph formalizes that commitment for the life of the Agreement, specifies the weekly payment calculation, establishes a credit for time value of money, and sets financial performance criteria for NewPage to terminate or reinstate the weekly prepayment process.

The prepayments requirement simply accounts for the fact that NewPage is somewhat financially vulnerable. MP does have an Expedited Billing Rider that allows for a prepayment process. However, this Rider is only applicable to taconite-producing customers and can not be used for billing NewPage.

2. Necessary Conditions for Commission Approval

- a. Under the Amended Agreement, would the revenues received by MP from NewPage exceed MP's variable costs of providing the electric service to NewPage?*

The only provisions of the Amended Agreement that impact MP's variable cost recovery are the amendments to Paragraph 3.J (Incremental Production Service).

These provisions, potentially, increase the amount of energy that NewPage could purchase at a discount rate. However, the discount rate is set at a level higher than MP's incremental energy costs. Therefore, under the provisions of Paragraph 3.J, MP's revenues would still be higher than MP's variable costs. Based on the above analysis, the Department concludes that under the Amended Agreement, MP's revenues from NewPage would remain higher than MP's variable costs of serving NewPage.

- b. Does the Amended Agreement negatively affect MP's other ratepayers?*

Based on its analysis of each of the proposed changes contained in the Amended Agreement, the Department concludes that none of the newly proposed provisions would negatively impact MP's other ratepayers.

- c. Are the Rates and Conditions of Service, under the Amended Service Contract, available to other MP Large Customers facing similar circumstances to those of NewPage?*

Utility rates are controlled by several Minnesota Statutes. The fundamental Minnesota Statute that regulates rates is Minn. Stat. §216B.03 which states, among other things:

Rates should not be unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable and consistent in application to a class of customers.

Minn. Stat. §216B.05, subd. 2a explains the regulatory treatment of electric service contracts. It states:

Subd. 2a. **Electric service contract.** A contract for electric service entered into between a public utility and one of its customers, in which the public utility and the customer agree to customer-specific rates, terms, or service conditions not already contained in the approved schedules, tariffs, or rules of the utility, must be filed for approval of the commission pursuant to the commission's rules of practice. Contracts between public utilities and customers that are necessitated by specific statutes in this chapter must be filed for approval under those statutes and any rules adopted by the commission pursuant to those statutes.

Reading Minn. Stat. §216B.03 together with Minn. Stat. §216B.05, Subd. 2a, the Department concludes that Minnesota Statutes allow MP to enter into an electric service agreement with NewPage consisting of terms and conditions that are unique to this agreement as long as similar terms and conditions are available to other MP customers. In its petition, MP states:

In accordance with the requirements of Minn. Stat. §216B.03, .06, and .07, Minnesota Power has always applied the Large Power Service Schedule and the service agreements it enters into thereunder in a fair and equitable manner between and among its LP customers. Minnesota Power intends to continue this practice by making similar terms and conditions available to other LP customers who are similarly situated.

The Department agrees with MP that the Amended Service Agreement meets the requirements of Minn. Stat. §216B.03, .06 and .07. However, in its February 26, 2009 Order in Docket No. E015/M-08-1344, the Commission supported MP's commitment to provide the following information in future ESA petitions:

- Minnesota Power will clearly identify any terms of a proposed ESA that may be in conflict with the applicable tariff. Where the ESA has a service condition or term different from the LP Service Schedule, the Company will identify the difference and clarify whether specific Commission approval is required.
- Minnesota Power will describe any potential conflicts between ESA contracts and tariffs, and provide a justification as to why the ESA should control, including relevant commission precedent. In cases of unreconcilable conflict between the

applicable tariff and an ESA, Minnesota Power will take action to resolve the conflict through changes to the ESA or the tariff.

Therefore, the Department expects MP to provide this information in reply comments.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. CONCLUSIONS

Based on its review and analysis of MP's petition the Department concludes that:

1. The Amended Agreement is in the public interest because:
 - a. For each year of the Agreement, the revenues received from NewPage would remain higher than MP's variable costs of serving NewPage; and.
 - b. The extension of the Agreement through, at least, December 31, 2022, would benefit MP's other ratepayers by lowering their share of MP's total fixed costs.
2. The terms and conditions of service under the Amended Electric Service Agreement satisfy the requirements of Minn. Stat. §216B.03 and Minn. Stat. §216B.05.

B. RECOMMENDATIONS

Based on its review and analysis of MP's petition and based on its conclusions, the Department recommends that:

1. In its reply comments MP provide the following information:
 - a. Clearly identify any terms of the proposed Amended Electric Service Agreement which may be in conflict with the applicable tariff. Where the proposed Amended Agreement has service conditions or terms different from the LP Service Schedule, MP should identify the difference and clarify whether specific Commission approval is required.
 - b. MP must describe any potential conflict between its proposed Amended Agreement and its tariff. and provide a justification as to why the Agreement should control, including relevant Commission precedent. In the cases of unreconcilable conflict between the applicable tariff and the proposed Amended Agreement, MP must resolve the conflict by either changing the proposed Amended Agreement or the tariff.
2. The Commission approve the proposed Amended Agreement provided that MP provides the information specified in 1.a and 1.b. above.



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November 7, 2012

Burl W. Haar
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121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E015/M-12-1025

Dear Dr. Haar:

Attached are the response comments of the Minnesota Department of Commerce, Division of Energy Resources (Department or DOC), in the following matter:

Minnesota Power's Request for Approval of an Amendment to an Electric Service Agreement between NewPage Wisconsin System, Inc. and Minnesota Power.

The petition was filed on September 25, 2012 by:

David R. Moeller
Attorney
Minnesota Power
30 West Superior Street
Duluth, MN 55802

The Department recommends **approval** and is available to answer any questions the Commission may have.

Sincerely,

/s/ EILON AMIT
Statistical Analyst

EA/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

RESPONSE COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. E015/M-12-1025

I. BACKGROUND

On September 25, 2012, Minnesota Power (MP or the Company) filed a petition with the Minnesota Public Utilities Commission (Commission) for Approval of an Amendment to an Electric Service Agreement between NewPage Wisconsin System, Inc. (NewPage) and MP.

On October 16, 2012, the Department filed comments recommending approval of MP's petition contingent on MP providing certain information. The required information is specified in Section IV. A (Conclusion) of the Department's Initial Comments.

On October 30, 2012, MP filed reply comments.

II. ANALYSIS

In its comments the Department recommended approval of MP's petition provided that MP provides the following information:

- A. Clearly identify any terms of the proposed amended Electric Service Agreement (Amended Agreement) which may be in conflict with the applicable tariff. Where the proposed Amended Agreement has service conditions or terms different from the LP Service Schedule, MP should identify the difference and clarify whether specific Commission approval is required.

- B. MP must describe any potential conflict between its proposed Amended Agreement and its tariff and provide a justification as to why the Agreement should control, including relevant Commission precedent. In the cases of unreconcilable conflict between the applicable tariff and the proposed Amended Agreement, MP must resolve the conflict by either changing the proposed Amended Agreement or the tariff.

MP provided the above requested information in its reply comments. Regarding item A above, the only term which may be in conflict with the applicable tariff is the ten-year minimum contract period required by the standard language in MP's Large Power Service Schedule (LP tariff). Regarding this issue, MP noted that conflict between the tariff and the proposed Amended Agreement may only arise if the Commission fails to approve the contract prior to January 1, 2013. MP further noted that the Commission previously waived the ten-year contract requirement for many other MP large industrial customers (MP's reply comments, page 3, footnote 2). Therefore, MP requested that, if necessary, the Commission waive the minimum ten-year contract terms as it has previously done.

Regarding item B above, MP explained that none of the provisions in the proposed Amended Agreement is in conflict with the terms of the tariff for Large Power customers. The Department discusses each of the amended provisions in the proposed Amended Agreement as related to the tariff for Large Power (LP) customers below.

1. *Allowance For Scheduled Maintenance (Paragraph 3(G))*

Allowance for Schedule Maintenance is not included in the LP tariff. However, such a provision has been previously approved by the Commission for NewPage as well as other LP customers. Therefore, as explained in the Department's initial comments, the Department continues to conclude that this provision is reasonable.

2. *LP Incremental Production Service (Paragraph 3(J))*

This provision already exists as a Rider for the LP customers.

3. *Decrease In Service Requirement (New Paragraph 3(N))*

The LP tariff does not include any provision addressing the possibility that the customer's operation would shut down prior to the expiration of the life of an Electric Service Agreement. Paragraph 3(N) recognizes the possibility of such an event for NewPage.

Due to the somewhat fragile financial situation of NewPage, the Department continues to conclude that this provision is reasonable.

4. *Precedent Conditions (New Paragraph 5)*

Such a provision does not exist in the LP tariff. This provision simply recognizes the unique situation of NewPage being under Chapter 11 bankruptcy protection. The Department continues to conclude that this provision is reasonable.

5. *Weekly Prepayments (New Paragraph 6)*

The LP tariff includes an Expedited Billing Rider that would allow MP to collect weekly prepayments. However, this Rider is only applicable to taconite-producing customers. Including this provision in the Amended Agreement is reasonable as it recognizes the financial vulnerability of NewPage.

Based on its discussion above, the Department concludes that MP provided the information requested by the Department in its initial comments (Department's Recommendations 1.a and 1.b). Moreover, none of the provisions in the Amended Agreement between MP and NewPage is in conflict with existing terms of the LP tariff and all the new terms of the Amended Agreement are reasonable.

III. RECOMMENDATION

Based on its review and analysis of MP's petition and MP's Reply Comments, the Department recommends that the Commission approve the proposed Amended Agreement between MP and NewPage.

/ja