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March 31, 2017

Daniel P. Wolf
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. E111/M-17-180

Dear Mr. Wolf:

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

Petition to Implement a Contract Rate Service.

The petition was filed on March 2, 2017 by:

Douglas R. Larson
Vice President of Regulatory Services
Dakota Electric Association
4300 220th Street West
Farmington, MN 55024

The Department recommends that the Commission **approve the petition**. The Department is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. E111/M-17-180

I. INTRODUCTION

On March 2, 2017 Dakota Electric Association (Dakota or the Cooperative) submitted Dakota's *Petition to Implement a Contract Rate Service* (Petition) requesting Minnesota Public Utilities Commission (Commission) approval of a Contract Rate Service (Tariff). The proposed Tariff would provide a framework for Dakota to seek Commission approval of individual contract rates for large commercial and industrial consumers under specified circumstances.

Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) regarding the Petition.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTE

Dakota filed the Petition pursuant to the Minnesota Statutes § 216B.162 (Competitive Rate Statute), which states in part:

Subd. 2. (a) Notwithstanding section 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16, the Commission shall approve a competitive rate schedule when:

- (1) the provision of service to a customer or a class of customers is subject to effective competition; and
- (2) the schedule applies only to customers requiring electric service with a connected load of at least 2,000 kilowatts.

- (b) The Commission may approve a competitive rate schedule that applies to customers subject to effective competition and requiring electric service with a connected load less than 2,000 kilowatts.
 - (c) The Commission shall make a final determination in a proceeding begun under this section within 90 days of a miscellaneous rate filing by the electric utility.
- Subd. 3. The Commission shall establish or change a competitive rate schedule through a miscellaneous or general rate filing by the utility.
- Subd. 4. When the commission authorizes a competitive rate schedule for a customer class, it shall set the terms and conditions of service for that schedule, which must include:
 - (1) that the minimum rate for the schedule recover at least the incremental cost of providing the service, including the cost of additional capacity that is to be added while the rate is in effect and any applicable on-peak or off-peak differential;
 - (2) that the maximum possible rate reduction under a competitive rate schedule does not exceed the difference between the electric utility's applicable standard tariff and the cost to the customer of the lowest cost competitive energy supply;
 - (3) that the electric utility, within a general rate case, be allowed to seek recovery of the difference between the standard tariff and the competitive rate times the usage level during the test year period;
 - (4) a determination that a rate within a competitive rate schedule meets the conditions of section 216B.03, for other customers in the same customer class;
 - (5) that the rate does not compete with district heating or cooling provided by a district heating utility as defined by section 216B.166, subdivision 2, paragraph (c); and
 - (6) that the rate may not be offered to a customer in which the utility has a financial interest greater than 50 percent.
- Subd. 5. Within its own assigned service territory, the utility, at its discretion and using its best judgment at the time, may offer a competitive rate to a customer subject to effective competition.
- Subd. 6. Notwithstanding section 216B.16, subdivision 3, a proposed competitive rate takes effect on an interim basis after filing the proposed rate with the commission and on the date established by the electric utility. While an interim

competitive rate is in effect, the difference between rates under the competitive rate and rates under the standard tariff for that class are not subject to recovery or refund. If the commission does not approve the competitive rate, the electric utility may seek to recover the difference in revenues between the interim competitive rate and the standard tariff from the customer that was offered the competitive rate.

- Subd. 7. (a) Except as provided under subdivision 6, competitive rates offered by electric utilities under this section must be filed with the commission and must be approved, modified, or rejected by the commission within 90 days. The utility's filing must include statements of fact demonstrating that the proposed rates meet the standards of this subdivision. The filing must be served on the department and the Office of the Attorney General at the same time as it is served on the commission.
- (b) In reviewing a specific rate proposal, the commission shall determine:
- (1) that the rate meets the terms and conditions in subdivision 4, unless the commission determines that waiver of one or more terms and conditions would be in the public interest;
 - (2) that the consumer can obtain its energy requirements from an energy supplier not rate-regulated by the commission under section 216B.16;
 - (3) that the customer is not likely to take service from the electric utility seeking to offer the competitive rate if the customer was charged the electric utility's standard tariffed rate; and
 - (4) that after consideration of environmental and socioeconomic impacts it is in the best interest of all other customers to offer the competitive rate to the customer subject to effective competition.
- (c) If the commission approves the competitive rate, it becomes effective as agreed to by the electric utility and the customer. If the competitive rate is modified by the commission, the commission shall issue an order modifying the competitive rate subject to the approval of the electric utility and the customer. Each party has ten days in which to reject the proposed modification. If no party rejects the proposed modification, the commissioner's order becomes final. If either party rejects the commission's proposed modification, the electric utility, on its behalf or on the behalf of the customer, may submit to the commission a modified version

of the commission's proposal. The commission shall accept or reject the modified version within 30 days. If the commission rejects the competitive rate, it shall issue an order indicating the reasons for the rejection.

- Subd. 8. If the commission approves a competitive rate or the parties agree to a modified rate, the commission may require the electric utility to provide the customer with an energy audit and assist in implementing cost-effective energy efficiency improvements to assure that the customer's use of electricity is efficient. An investment in cost-effective energy conservation improvements required under this section must be treated as an energy conservation improvement program and included in the department's determination of significant investments under section 216B.241. The utility shall recover energy conservation improvement expenses in a rate proceeding under section 216B.16 or 216B.17 in the same manner as the commission authorizes for the recovery of conservation expenditures made under section 216B.241.

In summary, subdivisions 2(a) and 2 (b) allow utilities to offer special rate options to certain members. Subdivision 2(c) creates a deadline for Commission action. Subdivision 3 allows use of the Commission's miscellaneous tariff process or a rate case. Subdivisions 4 through 8 establish the required terms and conditions for offering a competitive rate schedule. Other parts of the Competitive Rate Statute, not discussed here, address issues such as interim competitive rates and reviewing a specific rate proposal.

B. BACKGROUND

Dakota is a distribution-only cooperative. Dakota purchases power requirements from Great River Energy (GRE) under an "All-Requirements Distribution Member" contract. This wholesale power contract includes charges for transmission, capacity, and energy services. GRE also has special rate riders to facilitate programs such as load management, green pricing, distributed generation, and qualifying facilities. In particular, GRE offers Customer Specific Rates for use by Dakota that apply to specific retail customers. The Petition describes GRE's Customer Specific Rates as follows:

GRE may offer a Customer Specific Rate (CSR) to any All-Requirements Distribution Member ("AR Member") as a *mechanism to compete for new, and retain existing, large retail loads*. This rate rider provides a general description of eligibility and structure for CSRs applicable to large commercial, industrial and agricultural loads. The specific terms and conditions applicable to each qualifying load shall be set forth in a separate Agreement for Customer Specific Rate for Electric Service executed by the AR Member and GRE. However, *nothing in this rate rider*

shall restrict the ability of the GRE board to offer unique CSR's to any Member on a case-by-case basis. (emphasis added)

The other utilities with Commission-regulated rates have similar tariffs:

- Otter Tail Power Company—competitive rate rider for large general service customers (Section 13.03);
- Minnesota Power—competitive rate schedule for large light and power customers (rate code 73) and competitive rate schedule for large power customers (rate code 79); and
- Northern States Power Company d/b/a Xcel Energy—competitive response rider (Sheet No. 122).

C. *REQUIRED TESTS*

The Competitive Rate Statute establishes numerous tests that must be applied to the Petition. The Competitive Rate Statute's tests are addressed below.

1. *Subdivision 2 Requirements*

The Petition indicates that the proposed Tariff's:

- availability clause restricts the Tariff to members that are subject to effective competition [addressing subdivision 2 (a) (1)];
- terms and conditions of service clause requires a minimum load of 10 MW [subdivision 2 (a) (2) and subdivision 2 (b)]; and
- regulatory review clause states that the Commission will approve, modify, or reject the contract rate filing under the Tariff within 90 days [subdivision 2 (c)].

The Department agrees with Dakota's conclusion that the proposed Tariff meets the Competitive Rate Statute's requirements in subdivision 2.

2. *Subdivision 3 Requirements*

The Petition indicates that the proposed Tariff's regulatory review clause states that Dakota must file customer-specific agreements with the Commission as a Miscellaneous Filing. The Department agrees with Dakota's conclusion that the proposed Tariff meets the Competitive Rate Statute's requirements in subdivision 3.

3. *Subdivision 4 Requirements*

Subdivision 4 of the Competitive Rate Statute establishes several requirements for the proposed Tariff. First, the proposed Tariff's Regulatory Review clause requires

documentation of incremental cost recovery for service to the contract rate consumer and evaluation of the impact on other Cooperative members. This clause is designed to ensure that recovery of incremental costs is considered at the time a specific rate for a particular customer is proposed by Dakota [addressing subdivision 4 (1).

Second, the Competitive Rate Statute's subdivision 4 (2) requires that "the maximum possible rate reduction under a competitive rate schedule does not exceed the difference between the electric utility's applicable standard tariff and the cost to the customer of the lowest cost competitive energy supply." In other words, the price offered to the member cannot be less than the price of the competitive energy supplies available to the member. The Petition states that "Contract rates will be based on costs of providing service." Thus, the Department notes that, when specific rates are reviewed, Dakota will have to provide information demonstrating that the contract rates are not less than the price of the competitive energy supplies available to the member.

Third, the Competitive Rate Statute's subdivision 4 (3) requires that "the electric utility, within a general rate case, be allowed to seek recovery of the difference between the standard tariff and the competitive rate times the usage level during the test year period." This issue can be addressed during Dakota's next rate case and need not be addressed at this time.

Fourth, the Competitive Rate Statute's subdivision 4 (4) requires a "determination that a rate within a competitive rate schedule meets the conditions of section 216B.03, for other customers in the same customer class." The proposed Tariff's Terms and Conditions of Service clause (at point 6) requires that the rate "meet the conditions of Minnesota Statutes, Section 216B.03, Reasonable Rate, for other members in this same member class."

Fifth, the Competitive Rate Statute's subdivision 4 (5) requires that the "rate does not compete with district heating or cooling provided by a district heating utility." The proposed Tariff's Terms and Conditions of Service clause (at point 7) requires that this criterion be met.

Sixth, the Competitive Rate Statute's subdivision 4 (6) requires that "rate may not be offered to a customer in which the utility has a financial interest greater than 50 percent." The proposed Tariff's Terms and Conditions of Service clause (at point 8) requires this criterion be met.

4. Subdivision 5 Requirements

Subdivision 5 allows "the utility, at its discretion and using its best judgment at the time, may offer a competitive rate to a customer subject to effective competition." The proposed Tariff's Availability clause clarifies that the proposed Tariff is "Available at Association's discretion ..."

5. *Subdivision 7 Requirements*

Subdivision 7 of the Competitive Rate Statute establishes several requirements for the proposed Tariff. First, the Regulatory Review clause requires a 90-day Commission process [addressing subdivision 7 (a)]. Second, as discussed above the proposed Tariff contains several clauses that address the requirements of the Competitive Rate Statute's subdivision 4 [subdivision 7 (b) (1)]. Third, the proposed Tariff's Availability clause requires that "the member has the ability to obtain its energy requirements from an energy supplier not rate-regulated by" the Commission [subdivision 7 (b) (2)]. Fourth, the proposed Tariff's Terms and Conditions of Service clause, at point 4, requires an affirmation that the member is not likely to take service from Dakota if the consumer was charged the Dakota's standard tariffed rate [subdivision 7 (b) (3)]. Fifth, the Competitive Rate Statute [at subdivision 7 (b) (4)] requires consideration of environmental and socioeconomic impacts. The Department notes that, when specific rates are reviewed, Dakota will have to provide information demonstrating the consideration of environmental and socioeconomic impacts.

Finally, the Competitive Rate Statute [subdivision 7 (c)] requires a post-Commission order process which allows 10 days to reject a Commission-ordered modification. If either party rejects the Commission's modification, Dakota, on its behalf or on the behalf of the member, may submit a modified version of the Commission's modification. The Competitive Rate Statute requires the Commission to accept or reject the modified version within 30 days. The proposed Tariff's Regulatory Review clause outlines the statutory process.

6. *Subdivision 8 Requirements*

The Competitive Rate Statute [subdivision 8] allows the Commission to require Dakota to provide the member with an energy audit and assist in implementing cost-effective energy efficiency improvements to assure that the customer's use of electricity is efficient. The proposed Tariff's Terms and Conditions of Service clause (at point 4g) requires that any electric service agreement under the Tariff include verification that the member has been informed of the availability of an energy review and, if no review is performed, an explanation of why a review was not necessary. This information will inform the Commission's determination regarding an energy audit.

III. **DEPARTMENT RECOMMENDATION**

The Department recommends that Commission approve the Petition. For clarity the Department notes that when specific rates are reviewed, to comply with the Competitive Rate Statute Dakota will have to provide information demonstrating:

- that the contract rates are not less than the price of the competitive energy supplies available to the member; and
- Dakota's consideration of environmental and socioeconomic impacts.

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