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March 24, 2014

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

RE: **Reply Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E001/M-14-105

Dear Dr. Haar:

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

Interstate Power and Light Company's (IPL or the Company) Filing to the Minnesota Public Utilities Commission (Commission) to Update the Company's Electric Tariff Charges.

The *Reply Comments* were filed on March 14, 2014 by:

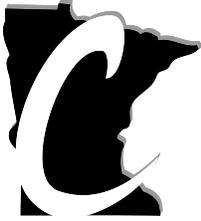
Paula N. Johnson
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As discussed in greater detail in the attached Comments, the Department would not oppose IPL listing regularly updated LSUTs in its tariff, but finds no statutory requirement that the Company must do so. Thus, if the Commission would like IPL to list the LSUT in its tariff, the Commission could approve IPL's proposal or decide that such charges would simply be filed as an informational filing with the Commission whenever such charges occur.

Sincerely,

/s/ MICHAEL N. ZAJICEK
Rates Analyst

MNZ/lt
Attachment



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

DOCKET NO. E001/M-14-105

I. BACKGROUND

On February 3, 2014, Interstate Power and Light Company (IPL or the Company) filed a request with the Minnesota Public Utilities Commission (Commission) for approval to update the Company's electric tariff. Specifically, IPL requested to update its Tax Adjustment Rider tariff to address new local sales taxes in the City of Medford and Olmsted County. IPL requested that this adjustment be effective April 4, 2014. IPL noted that an existing local sales tax for the City of Albert Lea is included in their tariff.

During its analysis, the Minnesota Department of Commerce (Department) noticed that these two new taxes were charged to ratepayers prior to IPL's filing and without Commission approval, as would be required in a franchise fee filing. The Department noted, however, that IPL's proposal regards a municipal sales tax rather than a franchise fee assessed on the utility.

On March 4, 2014, the Department requested that IPL provide in reply comments its legal basis or analysis for the Company's apparent claim that the Company is not required to seek and obtain the Commission's approval prior to imposing local taxes on customers and prior to including such taxes in its utility tariff book.

On March 14, 2014, IPL filed Reply Comments in response to the Department's request.

II. SUMMARY OF IPL'S LEGAL ANALYSIS

A. RELEVANT MINNESOTA STATUTES

IPL begins its legal analysis by reviewing Minnesota Statutes that are related to the issues of rates, franchise fees, and local taxes. As noted in the Department's initial comments, Minnesota Statutes § 216B.05, subd. 1 states:

Every public utility shall file with the commission schedules showing all rates, tolls, tariffs, and charges which it has established and which are in force at the time for any service performed by it within the state, or for any service in connection therewith or performed by any public utility controlled or operated by it.

Further, Minnesota Statutes §216B.16, subd. 1 states, in part:

Unless the commission otherwise orders, no public utility shall change a rate which has been duly established under this chapter, except upon 60 days' notice to the commission. The notice shall include statements of facts, expert opinions, substantiating documents, and exhibits, supporting the change requested, and state the change proposed to be made in the rates then in force and the time when the modified rates will go into effect.

IPL continues to note that Minn. Stat. §216B.36, which allows municipalities to assess franchise fees for operation in the community on utilities, states, in part:

Under the license, permit, right, or franchise, the utility may be obligated by any municipality to pay to the municipality to raise revenue or defray increased municipal costs accruing as a result of utility operations.

The Company also notes that pursuant to Minn. Stat. §297A.99 a local government may assess a Local Sales and Use Tax (LSUT) as voted on by its residents. Pursuant to Minn. Stat. §297A.99, subd. 9, this LSUT is collected by the Commissioner of Revenue on the behalf of the cities and counties using it. Therefore IPL is assessed by, and pays each LSUT directly to, the Minnesota Department of Revenue which then forwards the funds to the City of Medford and Olmsted County. IPL notes that it has no choice but to pay the LSUT once it becomes effective and that the local citizens have already been made aware of the tax through their local governing body.

B. IPL'S ANALYSIS

IPL presented several arguments as to whether or not a LSUT required Commission approval to be assessed to customers in their bills and as to the reasoning IPL submitted the filing to include the new LSUT's from the City of Medford and Olmsted County in the Company's tariff. These arguments are presented below with analysis by the Department following in the next section.

1. LSUT as a Franchise Fee

IPL begins its analysis by noting that the LSUT provision, Minn. Stat. §297A.99, subd. 3(b), states:

The proceeds of the tax must be dedicated exclusively to payment of the cost of a specific capital improvement which is designated at least 90 days before the referendum on imposition of the tax is conducted.

The Company states that since the franchise fee provision, Minn. Stat. §216B.36, states that franchise fees are created “to raise revenue or defray increased municipal costs accruing as a result of utility operations,” these Statutes combined could imply that a LSUT could qualify as a franchise fee. IPL notes that in both cases the local governmental entity is aiming for cost recovery though a tax assessment on the customer’s purchases from the utility. IPL noted that the Company filed the tariff changes for the LSUTs for the City of Medford and Olmsted County since IPL believes that LSUTs could qualify as franchise fees and the March 23, 2011 Commission Order Establishing Franchise Fee Filing Requirements in Docket No. E,G999/CI-09-970 required utilities to “give the Commission 60 days’ notice prior to implementing a franchise fee.” IPL stated that they filed these tariff changes for the LSUTs out of an abundance of caution.

2. Previous Inclusion of a LSUT Assessed by the City of Albert Lea

IPL also stated that the Company was previously required by the Commission to include a LSUT assessed by the City of Albert Lea in its tariff. According to the Company, the June 6, 2008 Order in Docket No. E,G001/M-08-200 (June 6, 2008 Order) required IPL to include a LSUT, which IPL believes is very similar to those implemented by the City of Medford and Olmsted County. IPL stated that this understanding, coupled with the possibility that LSUTs could be considered franchise fees, led the Company to file for tariff changes to include the new LSUTs.

3. LSUTs for Capital Improvement Projects

IPL notes that LSUTs might be distinguished from franchise fees, and therefore not necessarily qualify for inclusion in its tariff due to the fact that LSUTs can be used for capital improvements other than those arising from utility operations. A typical franchise fee must, according to Minn. Stat. §216B.36, be intended to “raise revenue or defray increased municipal costs accruing as a result of utility operations.” Meanwhile, as previously stated in Minn. Stat. §297A.99, subd. 3(b), it is stated that LSUTs are assessed by a community when it requires funding exclusively to pay “the cost of a specific capital improvement...” which does not require that it be related to cost accrued as a result of utility operations.

4. Public Notice

IPL notes that Minn. Stat. §216B.16 requires notice to be issued to customers in the case of a new franchise fee, but in the case of LSUTs, this notice has already been served as they had the opportunity to participate in the local election in which the LSUT was adopted. Thus, IPL notes another difference between LSUTs and franchise fees.

5. Statutory Tax Burden for the Customer Rather than the Utility

Finally, IPL states that LSUTs are required to be collected by Minn. Stat. §297A.77, subd. 1, which states that the LSUT "...must be collected by the seller from the purchaser." As stated earlier, IPL is required to pay these remittances directly to the Minnesota Department of Revenue and has no choice but to collect these taxes from its customers in the local communities. IPL states that the Company is merely a conduit for the LSUT proceeds between its customers, the Minnesota Department of Revenue, and the local governing body.

C. IPL'S CONCLUSION

IPL concludes by stating it's possible that this filing was not required, but that the Company submitted it to show an abundance of caution and now asks for guidance as to what is the proper course of action. IPL believes there are legitimate policy reasons to consider either requiring city-specific LSUTs to be filed in its tariffs or excluding them.

III. DEPARTMENT ANALYSIS

A. ANALYSIS OF IPL'S ARGUMENTS

The Department analyzed IPL's legal analysis and addresses these points below. The Department believes that the distinction between franchise fees and LSUTs needs to be stressed and that while they appear to cover similar areas, they are, in fact, quite different and have different regulatory requirements.

1. LSUT as a Franchise Fee

The Department concludes that there is no statutory basis to consider a LSUT to be franchise fee. While both charges are methods for local municipalities to collect revenue for projects, a franchise fee is limited for use to raise revenue or defray increased municipal costs accruing as a result of utility operations, as stated above in IPL point 3. Further, as stated in IPL point 5, a LSUT is assessed on the customer of the utility, not on the utility itself, while a franchise fee is assessed on the utility, and only by Commission approval can it be charged to customers. It would be acceptable for a utility to choose not to pass a franchise fee on to its customers and instead to pay the fee to the local governing body through shareholder profits. By contrast, it is not legal, according Minn. Stat. §297A.77, subd. 1, for the utility not to assess the LSUT to its customers. Thus, the Department concludes there is no statutory basis for a LSUT to be considered a franchise fee.

2. Previous Inclusion of a LSUT Assessed by the City of Albert Lea

IPL's second point was that the Company was previously required by the Commission to include a LSUT assessed by the City of Albert Lea in its tariff due to the June 6, 2008. The June 6, 2008 Order, however, does not address a LSUT; part of the issue in that case was that IPL erroneously labeled the franchise fee as a "municipal sales tax." Further the June 6, 2008 Order simply required the Company to include the City of Albert Lea's franchise fee in its tariff, rather than the LSUT that IPL added in addition to the franchise fee to the Company's tariff. All mentions of sales tax in the June 6, 2008 Order were related to the calculation of the City of Albert Lea's franchise fee (4.5 percent of gross receipts) or the administrative fee (0.15 percent of gross receipts) that IPL had assessed to customers without Commission approval. IPL did not show and the Department does not find support for IPL's claim that the fee at issue in the June 6, 2008 Order was a LSUT under Minn. Stat. §297A. The Department also finds no evidence that the June 6, 2008 Order required IPL to include the City of Albert Lea's LSUT in the Company's tariff; the June 6, 2008 Order allowed IPL to include only the franchise fee of 4.5 percent in IPL's tariff.

3. LSUTs for Capital Improvement Projects

The Department agrees with IPL that the different requirements regarding these fees and as to how the collected money is spent are key differences between LSUTs and franchise fees. As stated above, the Department concludes that LSUTs are not franchise fees.

4. Public Notice

The Department agrees with IPL that the requirements for public notice for LSUTs differ from those for franchise fees and that this is further evidence that LSUTs are not franchise fees.

5. Statutory Tax Burden for the Customer Rather than the Utility

As stated above, the Department agrees with the Company that the tax burden for LSUTs is on the customer, rather than the utility, and that Minn. Stat. §297A.77, subd. 1 requires the utility to collect the tax from the customer and pass it on to the Minnesota Department of Revenue, thus acting as a conduit for the tax. By contrast, since it would be acceptable for a utility to choose not to pass a franchise fee on to its customers and instead pay the fee to the local governing body through shareholder profits, there is a clear distinction between franchise fees and LSUTs. The Department once again concludes there is no basis for a LSUT to be considered a franchise fee.

B. DEPARTMENT CONCLUSIONS

The Department appreciates that IPL brought this matter to the attention of the Commission to allow for clarity on these issues. As previously stated the Department concludes that there is a clear difference between LSUTs and franchise fees and thus requirements for franchise fees need not apply to LSUTs. Further, since Minn. Stat. §297A.77, subd. 1 states that the Company must collect LSUTs from customers, IPL does not need Commission approval to charge LSUTs to its customers as it would need to charge its customers to recover franchise fees.

The Department concludes that it has already been determined by the appropriate authorities that IPL must collect the LSUT from its customers, so there is no need for the Commission to make any determination on that issue. However, if the Commission would like IPL to list the LSUT in its tariff, the Commission could approve IPL's proposal or decide that such charges would simply be filed as an informational filing with the Commission whenever such charges occur.

IV. DEPARTMENT RECOMMENDATIONS

The Department would not oppose IPL listing regularly updated LSUTs in its tariff, but finds no statutory requirement that the Company must do so. Thus, if the Commission would like IPL to list the LSUT in its tariff, the Commission could approve IPL's proposal or decide that such charges would simply be filed as an informational filing with the Commission whenever such charges occur.

/lt

CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, 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
Reply Comments**

Docket No. E001/M-14-105

Dated this 24th day of **March 2014**

/s/Sharon Ferguson

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