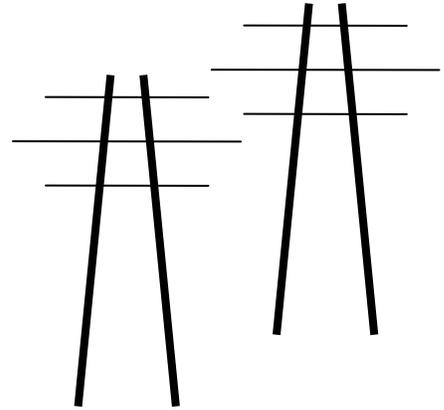


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August 24, 2009

Burl Haar
Executive Secretary
Public Utilities Commission
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Via email: burl.haar@state.mn.us

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Via email: bgerhardson@otpc.com

RE: Otter Tail Power – Petition for Approval of Standstill Agreement
PUC Docket: 09-656

Dear Dr. Haar, Mr. Gerhardson, and the Commission:

Thank you for the opportunity to comment on the Otter Tail Power Petition for Approval of Standstill Agreement. I am in Delaware and regret that I am unable to attend the meeting tomorrow.

The decision before the Commission tomorrow is unprecedented, and requires thorough investigation and analysis, which to date has not occurred. The Minnesota Business Corporations Acta (MBCA) defines “interested shareholder” and prohibits certain arrangements in corporate ownership, and prohibits them for a reason. The PUC’s regular and statutorily required approval of affiliated interest agreements is very different from one that would exempt a public service corporation from compliance with Minn. Stat. §302A.673.

Acts of the Commission having the impact of exempting public service corporations from compliance with ownership provisions of the MBCA should be taken only with analysis, caution

and deliberation. I ask that this agenda item be postponed and that OES and PUC staff undertake additional investigation and analysis and report back to the Commission.

Notice of this Docket and Commission Meeting is Insufficient – it should be renoticed.

The initial service list to which Otter Tail Corporation d/b/a Otter Tail Power Company served its Petition for Approval of Standstill Agreement, with the one exception of Pam Marshall, Energy CENTS Coalition, was comprised entirely of state regulators, utilities, and utility consultants. Notice of the PUC meeting is as bereft of interested parties and intervenors. The many intervenors and interested parties in the Big Stone II PUC proceeding were not provided notice. The “public” was not provided notice, and this is an issue where protection of the public interest is determinative.

This Standstill Agreement and the PUC’s review of it are of interest to the parties to the Big Stone proceeding, and they should be provided notice and the opportunity to comment on OTP’s Petition prior to any decision by the PUC.

Otter Tail Power petitions PUC for “special treatment” and has the burden of proof.

Otter Tail Power is asking the PUC to approve its desire to contractually remove itself from the purview of the MCBA via Minn. Stat. 302A.673. Otter Tail Power has the burden of proof, in this case that it be “reasonable and consistent with the public interest.” The Petitioner has not made any demonstration that it is reasonable and consistent with the public interest. OES Comment I, p. 4.

When asked by staff “what business combination is contemplated with Cascade that it would be respected from entering into...” OTP replied that “it wants to preserve the option of, for example, another loan from Cascade to OTC,” but staff noted that the limitations apply to “ownership” and not loans. Staff Briefing Papers, p. 5. OTP provided no rationale for its request and Petition. Despite noting and inquiring this glaring omission, Staff recommends approval?!?!?! Approval is not appropriate where OTP has not met its burden of proof and has not provided satisfactory responses to staffs’ reasonable and necessary inquiries.

Otter Tail Power has not met its burden of production in its Petition.

Otter Tail Power’s “descriptive summary of the pertinent of facts and reasons why such contract or agreement is in the public interest” is conclusory and provides no pertinent facts regarding public interest, only customer and corporate interests:

The Standstill Agreement will not have any impact on Otter Tail’s electric customers. It does not involve a purchase or sale of goods or services that will impact Otter Tail’s cost of providing electric service. The Agreement’s impact is limited to the Company’s relationship with its shareholder, and the Agreement provides reasonable restrictions on Cascade as it increases its interest in Otter Tail over 10%.

Otter Tail Power Petition, p. 6, para. 5.

What is legislative history of Minn. Stat. § 302A.673?

Nowhere in the Otter Tail Power petition or the OES Comments or Staff Briefing Papers is there any discussion of the legislative history of Minn. Stat. §302A.673 and the reasons why it was enacted.

Analysis thus far is insufficient to address public interest impacts.

This is the determinative factor in the analysis, and OES analysis is deficient, focused on ratepayer and corporate/shareholder interest. Despite this focus, “Staff has been unable to discern what effect, if any, the Agreements would have upon the public interest.” Staff Briefing Papers, p. 7. The Agreements are admittedly in the corporation’s interest. Staff Briefing Papers, p. 4.

OES analysis consists of one misfocused paragraph based on ratepayer and corporate impacts:

The OES’s analysis focuses on the impact of the contract on OTP’s ratepayers. The contract deals with the relationship between the Company and its shareholders and has no direct impact on OTP’s ratepayers. The contract does not impose any additional cost on OTP’s ratepayers and does not have any impact on the regulated operations of OTP. Therefore, the OES concludes that the contract is not counter to the interest of OTP’s ratepayers. The other affected parties are OTP (and their shareholders) and Cascade (and their shareholders). Since the contract is a voluntary contract between two willing parties (OTP and Cascade), it is clear that this contract is beneficial to both parties. In particular, the contract allows OTP and Cascade to enter into beneficial transactions which, absent the contract, would not be permitted under Minn. Stat. §302A.673. The contract also limits Cascade’s ownership share of OTP to no more than 20 percent. This provision limits Cascade power to influence OTP’s decisions. This limiting provision further benefits OTP’s ratepayers, because Cascade’s main focus, unlike OTP, is not likely to be OTP’s ratepayers. Based on the analysis above, the OES concludes that the contract is both reasonable and not counter to the public interest.

OES Comment 1, p. 4-5.

PUC staff interprets OES Comments:

The OES continued, saying that because the contracts are voluntary, they are clearly beneficial to both OTC and Cascade. In particular, the contracts allow OTC and Cascade to enter into beneficial transactions which would not be permitted under Minn. Stat. §302A.673, and limit Cascade’s ownership to less than 20%. This limiting provision further benefits OTP’s ratepayers, because Cascade’s main focus, unlike OTP, is not likely to be OTP’s ratepayers.

Staff Briefing Papers, p. 7.

Otter Tail Power's "descriptive summary of the pertinent of facts and reasons why such contract or agreement is in the public interest" is conclusory and provides no pertinent facts regarding public interest, only customer and corporate interests:

The Standstill Agreement will not have any impact on Otter Tail's electric customers. It does not involve a purchase or sale of goods or services that will impact Otter Tail's cost of providing electric service. The Agreement's impact is limited to the Company's relationship with its shareholder, and the Agreement provides reasonable restrictions on Cascade as it increases its interest in Otter Tail over 10%.

Otter Tail Power Petition, p. 6, para. 5, specifically cited in Staff Briefing Papers, p. 5.

OES "analysis" addresses only OTP ratepayers and OTP and Cascade and their shareholders. **There is no public analysis whatsoever.** Reasonableness and consistency with the public interest has not been established.

The state's enactment of Minn. State. §302.673 is an effort to balance corporate/shareholder interests with the public interest, and there was sufficient concern of an imbalance without this statute that it was enacted. Where it is not possible to discern impact of Agreements upon the public interest, approval of the Agreements is premature.

There is no precedent for PUC approval of a "Standstill Agreement."

This issue has not been before the Commission before, and "[s]taff admits to being completely unfamiliar with the MBCA..." Staff Briefing Papers, p. 5.

Under what authority would PUC exempt OTP from Minnesota law?

State law provides for Commission approval of contracts between utilities and affiliated interests. Minn. Stat. 216B.48, Subd. 3. Minn. Stat. §320A.673 provides for a mechanism by which a company may exempt itself from the limitations of the MBCA. However, there is another layer in this transaction that is not being directly addressed – that of a Public Service Corporation and its responsibilities and obligations to ratepayers and the public. Nothing in Minnesota statute addresses PUC authority, and certainly there is no requirement, to bless agreements that would allow corporate activities that, but for the "Standstill Agreement" would be contrary to Minnesota law. This issue has not been before the Commission before, and "[s]taff admits to being completely unfamiliar with the MBCA..."

Under Minn. Stat. §216B.48, the contract must be "reasonable and consistent with the public interest," but there is a strong restriction on PUC approval, that:

[t]he commission shall approve the contact or arrangement... **ONLY** if it **CLEARLY** appears and **IS ESTABLISHED UPON INVESTIGATION THAT IT IS REASONABLE AND CONSISTENT WITH THE PUBLIC INTEREST...**

Minn. Stat. §216B.48, Subd. 3 (**EMPHASIS** added).

The PUC is not mandated to approve every affiliated interest agreement. It instead shall approve such agreements only where it clear is established that it is reasonable and consistent with the public interest. That standard has not been met.

I ask that this agenda item be postponed and that OES and PUC staff undertake additional investigation and analysis and report back to the Commission.

Thank you for the opportunity to submit this Comment. I regret that I cannot attend tomorrow's meeting!

Very truly yours,

A handwritten signature in cursive script that reads "Carol A. Overland".

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cc: Service List via email to the extent possible