

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendraye  
Marshall Johnson  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Joint Petition for Approval  
of Transfer of Transmission Assets of Interstate  
Power and Light Company and ITC Midwest  
LLC

ISSUE DATE: June 19, 2007

DOCKET NO. E-001/PA-07-540

NOTICE AND ORDER FOR HEARING

**PROCEDURAL HISTORY**

On April 27, 2007, Interstate Power and Light Company (Interstate), a public utility, and ITC Midwest LLC (ITC), an independent transmission company, filed a joint petition seeking Commission approval for Interstate to sell all of its Minnesota transmission facilities to ITC. On May 7, 2007, the Commission issued a notice to potentially interested persons setting comment periods for the filing.

On May 14, 2007, the Residential and Small Business Utilities Division of the Office of the Attorney General filed comments recommending that the petition be decided in a general rate case or a contested case proceeding. On May 16, 2007, the Commission issued a notice requesting comments on the proper procedural vehicle for deciding the case.

On May 29, 2007, the Minnesota Department of Commerce filed comments recommending a contested case proceeding. On the same date, the Joint Petitioners filed comments stating that the case could be decided using either informal, notice-and-comment proceedings, as set forth in Minnesota Rules 7829.1200, or using contested case proceedings under the Administrative Procedure Act.<sup>1</sup>

On June 14, 2007, the case came before the Commission.

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<sup>1</sup> Minn. Stat. §§ 14.57 *et seq.*

## FINDINGS AND CONCLUSIONS

### **I. Jurisdiction and Referral for Contested Case Proceedings**

The Commission has general jurisdiction over Interstate under Minn. Stat. Chapter 216B and specific jurisdiction over the proposed sale of Interstate's transmission assets under Minn. Stat. §§ 216B.16, subd. 7c and 216B.50.

The Commission finds that it cannot resolve the issues raised in the Joint Petition on the basis of the record before it. Those issues turn on numerous, specific facts that are best developed in formal evidentiary hearings. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

### **II. Issues to be Addressed**

The ultimate issue in this case is whether the proposed sale of Interstate's transmission assets is consistent with the public interest under Minn. Stat. §§ 216B.16, subd. 7c and 216B.50. The resolution of this issue turns on numerous sub-issues, including, but not necessarily limited to, those listed in the two cited statutes.

The parties shall address the above issues in the course of contested case proceedings. They may also raise and address other issues relevant to the Joint Petition.

### **III. Procedural Outline**

#### **A. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Beverly Jones Heydinger. Her address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7606.

#### **B. Hearing Procedure**

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Louis Sickmann, Public Utilities Financial Analyst, Minnesota Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201-2243; or Kari Zipko, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and the parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

### **C. Parties and Intervention**

The current parties to this case are Interstate Power and Light Company, ITC Midwest LLC, the Minnesota Department of Commerce (the Department), and the Residential and Small Business Division of the Office of the Attorney General (RUD-OAG). Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

### **D. Prehearing Conference**

A prehearing conference will be held on Monday, July 2, 2007 at 9:00 a.m. in the Large Hearing Room at the offices of the Public Utilities Commission, 121 Seventh Place East, Suite 350, St. Paul, Minnesota 55101-2147.

Parties and persons intending to intervene in the matter should attend the conference, prepared to discuss time frames and scheduling. Other matters which may be discussed include the locations and dates of hearings, discovery procedures, settlement prospects, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

### **E. Time Constraints**

The Joint Petitioners state that closing the proposed sale on or before December 31, 2007 will result in favorable tax treatment that will be unavailable thereafter due to changes in federal tax law. They originally requested a final Order by November 15 and subsequently requested a final Order in time to permit a closing in calendar year 2007.

The Department and the RUD-OAG expressed their willingness to expedite these proceedings, but both agencies emphasized that it was more important to ensure proper record development and careful decision-making than to meet the December 31 target date.

The Commission asks the Administrative Law Judge to conduct contested case proceedings in light of these time constraints and requests that she submit her final report no later than November 1, 2007, if possible.

The parties have agreed that it would be helpful to have Joint Petitioners' witness list and initial testimony as soon as possible, and the Joint Petitioners have agreed to comply. The Commission will require that the information be filed and served within twenty days, hoping this will expedite proceedings without complicating the task of the Administrative Law Judge.

At the same time, the Commission concurs with the parties that a complete, reliable record and an adequate opportunity for thorough consideration of this case remain the top priorities.

Prompt action on this petition will clearly require the full cooperation of the Joint Petitioners, including full and immediate compliance with all requests for documents and other information.

#### **F. Customer Notice**

Interstate's sale of its transmission infrastructure would affect its ratepayers in ways foreseen and unforeseen, and it is important that they be notified and offered the chance to comment on the Company's proposal. The Commission will require Interstate to notify its customers of this proposal, its potential impacts, the pendency of this proceeding, and how customers may file written comments on this proposal.

#### **G. Notice of Comment Period Rescinded**

This referral for contested case proceedings clearly supersedes the comment periods established in the Commission's May 7 *Notice of Comment Period*, and that notice will be rescinded.

#### **IV. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, may apply to this case. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

#### **V. Ex Parte Communications**

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

**ORDER**

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. Within 20 days of the date of this Order, the Joint Petitioners shall file and serve on all parties to this proceeding their initial testimony, in question/answer form, together with a list identifying the witnesses they intend to call and the topic(s) each witness will address.
3. Interstate shall promptly notify its customers of its proposal to sell its transmission assets, the potential impacts of this proposal, the pendency of this proceeding, and how customers may file written comments on the proposal.
4. The May 7, 2007 Notice of Comment Period issued in this case is hereby rescinded.
5. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 201-2202 (voice) or 1-800-627-3529 (MN relay service).

ATTACHMENT A

BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 Seventh Place East Suite 350  
St. Paul, Minnesota 55101-2147

In the Matter of the Joint Petition for Approval of Transfer of Transmission Assets of Interstate Power and Light Company and ITC Midwest LLC      MPUC Docket No. E-001/PA-07-540  
OAH Docket No.

**NOTICE OF APPEARANCE**

Name, Address and Telephone Number of Administrative Law Judge:

Beverly Jones Heydinger, Office of Administrative Hearings, Suite, 1700, 100 Washington Square, Minneapolis, Minnesota 55401; (612) 341-7606

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER AND E-MAIL ADDRESS:

SIGNATURE OF PARTY OR ATTORNEY: \_\_\_\_\_

DATE: \_\_\_\_\_