

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben
Valerie Means
Matthew Schuerger
Joseph K. Sullivan
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of the Petition by Minnesota
Power for Approval of Land Sales

ISSUE DATE: November 18, 2021

DOCKET NO. E-015/PA-20-675

ORDER ALLOWING LAND SALES
AND ESTABLISHING CONDITIONS

PROCEDURAL HISTORY

On August 31, 2020, Minnesota Power (the Company) filed a petition requesting approval to sell land holdings surrounding several of its hydropower reservoirs, worth a total of approximately \$101 million.

On May 13, 2021, the Commission met to consider the docket but tabled the matter for further consideration.

On June 18, 2021, Minnesota Power filed a letter reporting the results of a leaseholder survey and addressing the sale of owner-occupied lots and unleased lots.

On July 19, 2021, the Minnesota Department of Commerce (the Department) filed supplemental comments recommending that the Commission approve the petition with reporting requirements.

On July 27, 2021, Minnesota Power filed an order from the Federal Energy Regulatory Commission (FERC) officially amending the boundaries of the hydroelectric projects included in this docket.¹

On September 1, 2021, Minnesota Power filed a letter clarifying the amount of time it would need to negotiate the sale of the lots and the baseline Estimated Market Value (EMV) it sought to use for calculating the purchase prices.

On September 16, 2021, Minnesota Power filed supplemental information in response to an information request from Commission staff.

¹ Order Issuing License, 72 FERC ¶ 61,028 (originally issued July 13, 1995). The July 27, 2021, FERC order amended the project boundaries for the Island Lake Reservoir, Fish Lake Reservoir, and Whiteface Reservoir near St. Louis River Hydroelectric Project No. 2360.

Between September 10 and October 18, 2021, the Commission received letters and comments outside the comment period from several dozen leaseholders.

On October 6, 2021, Minnesota Power filed a letter modifying its original proposal and describing its previous communications with leaseholders.

On October 11, 2021, Minnesota Power filed an additional set of recommendations.

On October 14, 2021, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Minnesota Power's Proposal

Minnesota Power proposed to sell unneeded land holdings surrounding five of its hydropower reservoirs.² When these lease lots were created, the project boundary included the first 25 feet of land closest to the shoreline; however, FERC modified the project boundary in 2021 to include only the first three feet. The Company plans to retain ownership of the land within the project boundary and sell the land that is now outside the boundary, while providing an easement to allow the new landowners to access the lake.

Minnesota Power estimated the market value of the land at approximately \$101 million, with a book value of under \$1 million. The Company proposed to credit ratepayers the net proceeds from the sales in a future rate case or through the Renewable Resources Rider to mitigate future rate increases.

The land is currently leased to individuals for residential purposes, many of whom have built structures on the land. Minnesota Power proposed to offer each lot to the current leaseholder at a price of the lot's current finalized EMV.³ Leaseholders would have the opportunity to purchase the property until one year following lease termination. If a leaseholder chose not to purchase the lot by the end of this period, the leaseholder would be required to sell the structures on the lot, and the purchaser of the structures would be required to also purchase the lot from Minnesota Power. For the sale of unoccupied lots, Minnesota Power proposed to use a standard competitive bidding process and list the lots for sale using the EMV as the list price.

Minnesota Power also requested approval of a variance to Minn. R. 7825.1800 and 7825.1400, which require filings with detailed information on capital structure and the issuance of securities when transferring utility property. Minnesota Power argued that a variance is warranted because

² The Company proposed to sell residential lease lots surrounding Island Lake Reservoir, Fish Lake Reservoir, Whiteface Reservoir, Fall Lake, and Garden Lake.

³ For an explanation of the EMV calculation, see Minnesota Power Letter, at 3 (September 1, 2021) (“...the EMV is determined by the St. Louis County Assessors' Office on January 2nd of every year. The value is finalized on July 1st of every year after the Board of Appeal and Equalization has been closed. The finalized value is used for the taxes payable in the following year; for example, the 2021 EMV would be for the 2022 taxes payable.”)

these rules are only relevant for capital structures filings for the purpose of investigating the issuance of securities, and so are not applicable to this petition.

II. Applicable Statute

Pursuant to Minn. Stat. §216B.50, a public utility must obtain approval from the Commission before selling property worth more than \$100,000. The Commission must investigate the proposal and must consider the reasonable value of the property to determine whether the transaction would be in the public interest.

III. Comments

The Department recommended that the Commission approve Minnesota Power's petition with certain modifications and reporting requirements. The Department stated that Minnesota Power's pricing proposal was reasonable and emphasized that the Commission should allow current leaseholders sufficient time to sell their personal property in the event they do not choose to purchase the land.

The Department also recommended that the Commission require Minnesota Power to track certain data and make annual compliance filings on the status of the sales, including information such as offers made, offers accepted or rejected, lots sold, and anticipated customer benefits. Minnesota Power supported this proposal.

Dozens of leaseholders also submitted comments. Some leaseholders expressed concern that offer prices may be unaffordable and variously raised questions about the valuation of lot improvements, maintenance of access roads, use of surrounding lots for mining or logging, and other issues. Minnesota Power provided answers to many of these questions in response to information requests. In comments, a number of leaseholders stated their intention to purchase the land at the Company's proposed price.

Some leaseholders also stated that they had made a payment to Minnesota Power at the beginning of their lease and raised questions about whether that amount would be accounted for in the offers. At the Commission meeting, the Company explained that the leases have been in high demand and certain leaseholders have paid money upfront for the privilege of signing a lease. The Company noted that this was not a pre-payment of rent, but a one-time payment made in order to secure a lease. It was unclear whether these payments were addressed in any lease language.

IV. Commission Action

First, the Commission will grant the requested variance to Minn. Rules, part 7825.1400, that requires filing certain information on capital structure and the issuance of securities when transferring utility property. The information is not relevant in this docket because the transactions will not affect Minnesota Power's capital structure and the Company will not issue securities; therefore, the public interest will not be adversely affected if the information is not filed, and no other applicable law or statute would be violated by granting the variance.

The Commission will authorize Minnesota Power to sell the residential lots surrounding its hydropower reservoirs to current leaseholders, using the procedure outlined in the ordering paragraphs and described in detail below. The Company no longer needs to own the land for

business purposes, and selling the land will benefit ratepayers as they will receive the proceeds from the sales.

The procedure the Commission is approving for the sales is intended to simplify the transactions as much as possible, while providing an incentive for leaseholders to buy the property early if they choose to do so. Although leaseholders will be able to purchase the land at any time during the remainder of the lease, it is preferable for all ratepayers if leaseholders do so as soon as practicable, and therefore reasonable to provide an incentive for early action. At the Commission meeting, both the Company and the Department agreed with this procedure.

In the first phase of sales (the “early time frame”), Minnesota Power will, by December 31, 2024, offer to sell lots of existing leaseholders at a price equal to the 2021 payable EMV plus 4%, to account for the passage of time since the land was assessed. Any leaseholder that accepts the offer and closes the sale within one year of the offer date is entitled to receive a refund of a proportional share of any upfront payments the leaseholder paid to Minnesota Power, capped at 5% of the total EMV. The Commission is not aware of any contractual obligation to return a larger portion of the upfront payment to any leaseholders, but if such an obligation exists, the Company must honor it.

If an offer is not executed within the early time frame, Minnesota Power will offer the land for sale at the price of the county's most recent finalized EMV. The leaseholder may accept this price at any time during the remainder of the existing lease term, using the most recent finalized EMV at the time the offer is accepted. However, during this time frame, Minnesota Power will not offer refunds for any upfront payments made by the leaseholder unless there are extraordinary circumstances or a contractual obligation to refund the payments.

The sale of occupied lots must be negotiated no later than one year following lease termination. If the land is not sold in this timeframe, Minnesota Power will assume ownership of the property, including any remaining buildings and personal property. The Company will sell the land, buildings, and personal property on the open market and will return the fair market value of buildings and personal property to the former leaseholder after the sale. Fair market value will be determined based on the current EMV for the buildings and personal property, as appraised by the county. The remaining proceeds will be returned to utility customers in the form of a regulatory liability that would be credited to customers in either a future rate case or through the Company's Renewable Resource Rider.

The earliest a lease will be terminated is 2028. For leases currently scheduled to end before this time, the Company indicated that it will extend those leases under their present terms until 2028 or until the land is sold, whichever comes first. Minnesota Power will not extend any lease agreements that are currently scheduled to terminate after 2028.

If a leaseholder decides not to purchase the land, the leaseholder may arrange for the sale of their property at any time during the remainder of the current lease, on the condition that the buyer must also purchase the land from Minnesota Power at the then-current EMV.

For lots that are not currently subject to a lease, the Company may sell this land on the open real estate market for the best possible price, but no less than the current EMV.

Minnesota Power may return to the Commission and request variances to this procedure if specific, extraordinary circumstances make the procedure unworkable.

Understandably, leaseholders have had questions about Minnesota Power's plans to sell the land and how their own leases and personal property will be affected. Before making any offers under this program, Minnesota Power must hold public meetings for leaseholders to provide additional details and answer any remaining questions.

Finally, the Commission will direct Minnesota Power to track and report certain information, both in a short-term compliance filing and on an ongoing basis. First, within 30 days, the Company must file specific information about access roads and details on the upfront lease payments, as detailed in the ordering paragraphs. These are issues that may affect leaseholders' decisions to purchase the land and must therefore be addressed quickly. Going forward, Minnesota Power must track and report additional data as described below so that the Commission can oversee the sale process, ensuring that it proceeds smoothly and continues to benefit ratepayers as anticipated.

ORDER

1. The Commission grants a variance to Minn. Rules, part 7825.1400, that requires filing certain information on capital structure and the issuance of securities when transferring utility property.
2. Minnesota Power is authorized to sell residential land lots surrounding its hydropower reservoirs, with conditions.
3. Minnesota Power is authorized to defer all proceeds from the land sales into a regulatory liability that would be refunded (credited) to customers in either a future rate case or through the Renewable Resources Rider.
4. For each lot occupied by a leaseholder, Minnesota Power is authorized to offer the lot for sale at a price of 2021 payable Estimated Market Value (EMV) methodology plus four percent (4%) during the early time frame and the most current finalized EMV after the early time frame.
 - a. For the early time frame, Minnesota Power shall focus on making offers to all existing leaseholders by no later than December 31, 2024. The leaseholder will have one year from the date of the offers are made to accept and close the sale.
 - b. If a leaseholder closes in this early time frame, they are entitled to receive a refund of a proportional share of their upfront lease payments negotiated with Minnesota Power as proposed by the company, capped at 5% of the total EMV unless the Company has a contractual obligation to return all of the upfront payment.
5. Leaseholders are required to continue to pay a prorated portion of their lease rents through the date of closing.
6. Minnesota Power is authorized to set the value for each lot for sale on the county's most current finalized EMV throughout the leaseholder's existing lease term.

7. For sales offers after December 31, 2024, Minnesota Power may not offer refunds for any upfront payments made by the leaseholder unless there are extraordinary circumstances or a contractual obligation to refund the payments.
8. The sale of occupied lots must be negotiated no later than one year following lease termination. The earliest a lease will be terminated is 2028. If the sale does not happen in this timeframe, Minnesota Power will assume ownership of the property, including any remaining buildings and personal property, and will then sell the lot, buildings, and personal property on the open market. A fair market value for the buildings and personal property will be determined based on current EMV, and the funds for buildings and personal property delivered to the former leaseholder. Minnesota Power will retain the remaining proceeds and the proceeds will be returned to utility customers.
9. For an occupied lot that is not sold to its current leaseholder within the permitted time frame, the leaseholder may arrange the sale of their personal property at any time during the remainder of the current lease, with the sale of the personal property conditioned on the buyer also purchasing the lot from Minnesota Power at a price equal to the then-current Estimated Market Value.
10. Minnesota Power may seek variances to these requirements for specific, extraordinary circumstances.
11. Minnesota Power is authorized to sell the lots without leaseholds on the open real estate market for best possible price, but no less than the current finalized EMV.
12. Starting October 15, 2022, Minnesota Power shall provide annual compliance filings with the following information:
 - a. verifiable data regarding lot sale transactions, including:
 - i. the number of offers to current leaseholders made to date as of the time of the compliance filing;
 - ii. the number of offers accepted by current leaseholders;
 - iii. the number of offers rejected by current leaseholders;
 - iv. the number of lots listed on the open real estate market; and
 - v. the number of lots sold via the open real estate market;
 - b. its land sales tracker balance, including all additions to the tracker and all deductions to the tracker; and
 - c. an estimate of anticipated amount of customer benefits.
13. Minnesota Power must track, at the most granular level possible, information on the costs and revenues associated with the lot sales, including, for individual lot sales:
 - a. Sale price;
 - b. List price, if different from sale price;
 - c. Estimated Market Value (EMV) of the land at the time of sale;
 - d. EMV of buildings/structures at the time of sale;
 - e. All fees and expenses, (e.g., title fees) and itemized by type; and
 - f. Whether lot was purchased by current leaseholder.

14. Within 30 days of the issuance of this Order, Minnesota Power must provide the following information:
 - a. a thorough description of their access road plan for the lease lots. This description should include a discussion of:
 - i. how ratepayer interests are protected in any transfer of ownership or impairment of the underlying fee title; and
 - ii. the anticipated impacts, either positive or negative, to Minnesota Power's operation and maintenance costs; and
 - b. a thorough description of leaseholder's "upfront payment to the Company for the right to lease their lot" provisions. This description should include:
 - i. the process for calculating these upfront payments for any particular lot;
 - ii. when the Company collected the upfront payments;
 - iii. whether there was a separate contract other than the lease signed by leaseholders at the time of the upfront payment, and if so, what is the relationship to the lease; and
 - iv. specific amounts paid for upfront payments for each of the lots that would be eligible for the early time frame and what percentage it is of that lot's EMV.
15. Minnesota Power must disclose all costs deducted from the tracker that are not attributable to individual lots sales, in sufficient detail to determine whether they are internal costs included in base rates or external costs.
16. Prior to any offers being issued under this program, Minnesota Power must hold public meetings for leaseholders detailing the sales program.
17. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Will Seuffert
Executive Secretary



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CERTIFICATE OF SERVICE

I, Chrishna Beard, hereby certify that I have this day, served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States mail at St. Paul, Minnesota.

Minnesota Public Utilities Commission ORDER ALLOWING LAND SALES AND ESTABLISHING CONDITIONS

Docket Number **E-015/PA-20-675**
Dated this 18th day of November, 2021

/s/ Chrishna Beard

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-675_PA-20-675
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_20-675_PA-20-675
David	Moeller	dmoeller@galete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	Yes	OFF_SL_20-675_PA-20-675
Jennifer	Peterson	jjpeterson@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_20-675_PA-20-675
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_20-675_PA-20-675
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 330 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-675_PA-20-675