

Staff Briefing Papers

Meeting Date February 28, 2019 Agenda Item 1**

Company Minnesota Energy Resources Corporation (MERC)

Docket No. **G-011/GR-17-563 (MPUC)**
8-2500-34864 (OAH)

In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota

Issues Should the Commission reconsider and/or clarify its December 26, 2018 Findings of Fact, Conclusions, and Order?

Staff	Jason Bonnett	jason.bonnett@state.mn.us	651-201-2235
	Bob Brill	bob.brill@state.mn.us	651-201-2242

 **Relevant Documents**

Date

Commission Staff Briefing Papers for the November 5 & 8, 2018 Agenda Meetings (MERC Hearings) – Vol. III – Cost of Capital Commission – Findings of Fact, Conclusions, and Order	October 30, 2018
OAG – Petition for Reconsideration	December 26, 2018
MERC – Answer to OAG Petition for Reconsideration	January 15, 2019
	January 25, 2019

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

Statement of the Issues

Should the Commission reconsider and/or clarify its December 26, 2018 Findings of Fact, Conclusions, and Order?

Background

On December 26, 2018, the Commission issued its *Findings of Fact, Conclusions, and Order* which authorized an increase in Minnesota jurisdictional revenues of approximately \$3,100,635 per year to produce jurisdictional total gross revenue of approximately \$251,272,242, based on the Commission approved rate of return on common equity capital of 9.70 percent for the test-year ending December 31, 2018.

On January 15, 2019, a petition for reconsideration was filed by the Minnesota Office of Attorney General-Antitrust and Utilities Division (OAG). The OAG requested that the Commission reconsider its decision to set the return on equity (ROE) for Minnesota Energy Resources Corporation (MERC) at 9.70 percent. The OAG stated the Commission should reconsider this decision because it unlawfully and unreasonably relied on testimony that should not have been admitted into the record, and because the testimony was admitted only as a demonstrative exhibit and not for evidentiary weight. In addition, the OAG argued the Commission impermissibly considered a series of factors that are not allowed by Minnesota law.

The Commission may reverse or change its original decision if it appears that the “original decision, order, or determination is in any respect unlawful or unreasonable.”¹ In determining whether to reconsider, the OAG asserts that the Commission traditionally considers whether the requests “raise new issues,” “point to new and relevant evidence,” or “expose errors or ambiguities” in the Commission’s decisions.

Accordingly, the OAG believes the Commission should reconsider its ROE decision and grant MERC a return that is informed by the record evidence and Minnesota legal standards. However, in its reconsideration petition, the OAG did not include or advocate for a specific ROE number from the record. Staff briefing papers for the Commission’s November 5 & 8, 2018 meetings are included in the relevant documents should the Commission wish to review the ROE numbers currently in the record.

On January 25, 2019, MERC submitted its answer to the OAG’s petition for reconsideration. MERC disagreed with the OAG reconsideration request and believes that the Commission approved 9.70 percent ROE is reasonable.

¹ Minn. Stat. § 216B.27, subd. 2.

Minnesota Statutes and Commission Rules

Petitions for reconsideration are subject to Minn. Stat. § 216B.27, and Minn. Rules, part 7829.3000. Petitions for reconsideration are denied by operation of law unless the Commission takes action within sixty days of the request. If the Commission takes no action on the OAG's petition, the request would be considered denied as of March 16, 2019. Because March 16, 2019 is a Saturday, this denial would arguably not be in effect until Monday, March 18, 2019. The Commission may also take specific action to deny the petition by issuing an order denying reconsideration.

The motion to authorize a 9.70% ROE was made by Commissioner Lipschultz and was approved on a vote of 5-0. Because it was a 5-0 decision, all Commissioners that participated in the vote are eligible to make a motion to grant OAG's request for reconsideration.

If the Commission takes up a party's request for reconsideration, the Commission can: (1) reconsider, and (a) affirm, (b) modify or (c) reverse its initial decision, or (2) deny the petition for reconsideration and thereby affirm the initial decision. The Commission may also reconsider its December 26, 2018 Order on its own motion.

Because the OAG's request for reconsideration would be considered denied if not acted on, staff recommends that the Commission deliberate on the merits of the petition at its February 28, 2019 agenda meeting. If significant or substantive changes or clarifications are made to the December 26, 2018 Order, the Commission may want to toll the time period to ensure there is an adequate amount of time available to write an order.

Minn. Stat. § 216B.27, Subd. 2 requires that the application for rehearing set forth specifically the grounds on which the applicant contends the decision is unlawful or unreasonable. The Commission has historically reviewed petitions for reconsideration based on whether they raise new issues, new and relevant evidence, and errors or ambiguities.

Parties' Comments

Introduction

The OAG raises three arguments to support its reconsideration request:

- 1) The Commission relied on the analysis of a witness who did not appear at the July 10-11, 2018, evidentiary hearing, was not available for cross examination, and whose testimony was not offered by any party – or admitted by the ALJ – for its substantive weight;
- 2) The Commission substantially relied on Dr. Amit's testimony as the foundation for its ROE decision; and
- 3) The Commission erred by unlawfully considering several subjective non-cost factors to increase MERC's ROE.

MERC urges the Commission to reject the OAG's arguments and deny reconsideration. The OAG's and MERC's arguments are discussed below.

1. Admission of Dr. Amit's Analysis into the record

OAG Petition (pp. 5-9)

The OAG argues that the Administrative Law Judge (ALJ) should not have admitted Dr. Amit's rebuttal and surrebuttal testimonies into the record and by doing so violated the Administrative Procedures Act (APA). Specifically, the OAG stated:

The APA provides two evidentiary standards at issue in this case. First, every party or agency to a contested case proceeding "shall have the right of cross-examination of witnesses who testify" in that proceeding. Second, evidence may only be admitted if it "possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs." Both of these standards provide an independent justification for the exclusion of Dr. Amit's unsworn rebuttal and surrebuttal testimonies.

Parties did not have the opportunity to cross examine Dr. Amit or any other witness regarding his rebuttal or surrebuttal testimonies. Dr. Amit did not appear at the hearing and was not personally available for cross examination. In addition, the Department did not offer another witness who was available to defend Dr. Amit's rebuttal and surrebuttal testimonies on cross examination. In its letter notifying parties that this testimony would not be offered, the Department stated that Mr. Addonizio "will adopt and be able to answer questions about Dr. Amit's direct testimony at the evidentiary hearing." Accordingly, the decision to admit Dr. Amit's rebuttal and surrebuttal testimonies, despite the Department's attempt to withdraw them, violated the APA's requirement that all parties have the right of cross-examination of witnesses who testify in that proceeding.

[Footnotes omitted]

In addition, the OAG argues that the ALJ violated his own prehearing order by admitting Dr. Amit's withdrawn rebuttal and surrebuttal testimonies. The OAG argued:

The ALJ's prehearing order stated unambiguously that a party could withdraw any prefiled testimony before the evidentiary hearing: "[p]re-filed testimony that is not offered into the record, or stricken portions of pre-filed testimony, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony." This order made several points clear. First, parties were given the right to admit or not admit their own pre-filed testimony. The prehearing order made no suggestion that ALJ would overrule a party's decision to not offer pre-filed testimony, or that one party could force the admission of testimony that another party chose to withdraw—but this is precisely what happened when the ALJ "allowed" MERC to file Dr. Amit's testimony as an exhibit after the Department said it would be withdrawn. Second, parties were informed that they could

withdraw a witness's entire testimony or portions of pre-filed testimony. There was no suggestion that withdrawing a witness's entire testimony would be scrutinized any more or less closely than withdrawing only a portion of a witness's testimony. It was also not suggested that withdrawing testimony on one topic would be treated differently than withdrawing testimony on another, or that the ALJ might decide that a party's decision to withdraw pre-filed testimony was too "disruptive" to the process. Regardless, the ALJ effectively prohibited the Department from withdrawing this testimony when Dr. Amit was not available to testify and the Department could not defend it.

[Footnotes omitted]

MERC Answer (pp. 3-10)

MERC noted that the Commission has broad authority to consider and weigh evidence and that the Commission acted well within its authority with respect to the consideration of Dr. Amit's analyses and models in this case. First, MERC cited to the APA arguing:

Pursuant to Minnesota law, "[a]ll evidence . . . in the possession of the agency of which it desires to avail itself or which is offered into evidence by a party to a contested case proceeding shall be made a part of the hearing record of the case." The Commission has authority to "give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs." Further, the Commission may utilize its "experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record." The appropriate weight to be given to a particular piece of evidence admitted into the record is for the judgment of the Commission. In contrast, evidence may be excluded if it is found to be incompetent, irrelevant, immaterial, or repetitious.

No party, including the OAG, has asserted that the testimony, modeling, or analyses of Dr. Amit is incompetent, irrelevant, immaterial, or repetitious. Nor can they, as Department ROE testimony is central to virtually all Minnesota rate cases.

[Footnotes omitted]

In response to the OAG's argument that "parties did not have the opportunity to cross examine Dr. Amit or any other witness regarding his rebuttal or surrebuttal testimonies", MERC stated that its witness:

Ms. Bulkley was available to be cross-examined on her calculations and the methodology of Dr. Amit's Rebuttal and Surrebuttal modeling and results. She has recreated his analyses many times and demonstrated her ability to discuss Dr. Amit's ROE analyses in detail.

The OAG raised its objection regarding the unavailability of Dr. Amit for cross-examination to the ALJ and was overruled after all parties were provided an

opportunity to be heard. Moreover, the OAG did not object to the admission of MERC's Exhibit 43, which was Ms. Bulkley's recreation of Dr. Amit's Rebuttal and Surrebuttal ROE modeling.

[Footnotes Omitted]

As to the OAG's argument that "Dr. Amit's unsworn testimony should also have been excluded because it does not possess probative value commonly accepted by reasonable prudent persons in the conduct of their affairs", MERC responded as follows:

The Commission, in the exercise of its "experience, technical competence, and specialized knowledge in the evaluation of the evidence in the hearing record," concluded that the "documentation of Dr. Amit's professional opinion, and in particular, the analytical method and calculations that gave rise to his ROE recommendation—whether or not the Department's witness adopted his testimony—to have at least some probative value as it pertains to the analysis of an appropriate cost of equity for the Company." In reaching that determination, the Commission reasonably and appropriately considered the unique and unprecedented circumstances and facts presented in this proceeding, including the Department's decision to withdraw support for the Rebuttal and Surrebuttal Testimonies of Dr. Amit but to continue to support Dr. Amit's Direct Testimony; the Department's replacement witness's inability to recreate Dr. Amit's calculations and unwillingness to support those calculations; and MERC's witness's recreation of Dr. Amit's calculations and testimony in support of the reasonableness of those calculations.

While Ms. Bulkley did not agree with all aspects of Dr. Amit's models, she was able to recreate his analyses and answer questions regarding the reasonableness of those analyses. Further, it is standard practice for ROE experts in Minnesota rate cases to update their analyses and recommendations during the course of a proceeding to reflect the most current data available. However, earlier testimony is always admitted into the record, regardless of whether an expert's model or recommendations are subsequently updated. Ultimately, disagreements between the parties regarding the appropriate inputs and model assumptions or the correct ROE within a range do not undermine the admissibility of Dr. Amit's analyses, but rather go to the weight the Commission may choose to give it. The Commission's determinations regarding the weight to be given to evidence and inferences to be drawn from that evidence are fully articulated and supported in the Order and are entitled to deference. As the ALJ recognized in admitting Dr. Amit's Rebuttal and Surrebuttal Testimonies, those documents possess strong indicia of reliability, despite the unavailability at the evidentiary hearing of the witness who prepared them. The Department filed the Direct, Rebuttal, and Surrebuttal Testimonies of Dr. Amit in the normal course of this rate case proceeding, consistent with normal practice, and acknowledged that, indeed, that testimony was prepared by Dr. Amit. Presumably, "had not the sudden unavailability [of Dr. Amit] occurred, he would have raised his right hand [at the evidentiary hearing] and sworn and

adopted that testimony.” Similarly, in determining the weight to give the evidence, the Commission reasonably considered the fact that Dr. Amit is a respected expert who has testified on rate of return issues in cases for over 30 years, a fact reflected in the exhibits sponsored and supported by the Department.

The record clearly reflects that the Rebuttal and Surrebuttal Testimonies of Dr. Amit and the exhibit prepared by Ms. Bulkley showing the calculation of Dr. Amit’s model results are the type of evidence on which reasonable, prudent people are accustomed to rely in the conduct of their serious affairs.

Additionally, in response to the OAG’s argument stating the Department was entitled to withdraw the testimony from the record under the terms of the First Prehearing Order, MERC argued that the ALJ’s decision to admit the Rebuttal and Surrebuttal Testimonies of Dr. Amit was reasonable under the circumstances. MERC stated:

The ALJ reasonably concluded that allowing MERC to introduce the Rebuttal and Surrebuttal Testimonies of Dr. Amit did provide the Department the full benefit of the provisions of the prehearing order, while also complying with the provisions of the Administrative Procedure Act and Minnesota Rules regarding the admission of evidence. In particular, as summarized on page 3 of MERC’s July 9, 2018, letter:

Minn. R. 1400.7300, subp. 1, . . . provides that “[t]he judge may admit all evidence which possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs.” Testimony that the Department acknowledges was prepared specifically for this case, by a respected and longstanding Department ROE analyst in Minnesota ratemaking proceedings, possesses “probative value” in addition to context for the remainder of the case.

In allowing MERC to introduce the Rebuttal and Surrebuttal Testimonies of Dr. Amit, the ALJ very clearly gave effect to the prehearing order, contrary to the assertions made by the OAG.

2. Substantial reliance on Dr. Amit’s testimony as the foundation for the ROE decision

OAG Petition (pp. 9-11)

The OAG argued the Commission gave excessive weight to Dr. Amit’s unsworn testimony. While the ALJ should not have admitted Dr. Amit’s rebuttal and surrebuttal at all, the Commission compounded the error by relying primarily on Dr. Amit’s rebuttal and surrebuttal testimonies rather than the rest of the record. Specifically, the OAG stated:

Not only did the Commission consider Dr. Amit’s testimony for substantive purposes, but it used modeling results included in Dr. Amit’s surrebuttal testimony as the starting point for its discussions. This is reflected in a handout published by the Commission after the evidentiary hearing, and reviewed during its

deliberations, that shows “Dr. Amit’s 2- Growth DCF [Surrebuttal] Range.” The handout provides Dr. Amit’s Low, Mean, Midpoint Mean/High, and High outputs from the 2-Growth DCF model included in his surrebuttal testimony. The handout does not include any modeling outputs from the other witnesses whose testimony was actually in the record for substantive purposes or their ROE recommendations. The document further states that “[t]he Commission set Otter Tail Power’s ROE at 9.41% at this midpoint between the Department’s DCF Mean and High.” This statement suggests that the Commission would set MERC’s ROE between the DCF Mean of 9.62 percent and High of 10.69 percent from Dr. Amit’s surrebuttal testimony. This turned out to be accurate. The Commission’s oral deliberations reflect that it did, in fact, use the Mean and High DCF outputs from Dr. Amit’s surrebuttal testimony to set a range of ROE options. The Commission did not discuss the analysis of the ROE witnesses who testified or the results of their models.

The Commission’s Order confirms that it relied heavily, if not exclusively, on the surrebuttal testimony of Dr. Amit to set MERC’s ROE at 9.7 percent. The Commission’s Order states that its authorized ROE of 9.7 percent “is within a few basis points of Dr. Amit’s updated mean-growth-rate two-growth DCF calculations and ROE recommendation.” The Commission also noted that its ROE finding was “appropriate based on the two-growth modeling done by the parties and by Dr. Amit.” Since Dr. Amit’s surrebuttal testimony was not admitted for substantive purposes—and should not have been admitted at all—the Commission’s decision to consider his modeling outputs was unlawful.

[Footnotes omitted]

MERC Answer (pp. 10-11)

MERC argued that the OAG’s assertion does not accurately reflect the Commission’s written Order. MERC argues that the Order reflects a thorough analysis of the record with multiple independent bases in support of the approved ROE. MERC claims that the OAG ignores the additional support provided in the Commission’s Order. Specifically, MERC stated:

[t]he Commission’s ROE decision in this case was also supported by “the two-growth DCF modeling done by the parties,” and “by the other analytical approaches and contextual data in the record, which could support ROEs in a range from near 8% to near 11%.”

As reflected in the Order,

The Commission ... considered and weighed the relevant factors, which include, but are not limited to the relative objectivity, transparency, reliability, rigor, and timelessness of the analytical models in the record, and their inputs; the composition and representative nature of the proxy groups

proposed in each analysis; the ROEs that the parties recommended based on their modeling results; and the Company's approved capital structure and costs of obtaining equity investment.

And while the OAG attempts to brush aside the additional support provided in the Commission's Order, doing so ignores that the Commission's Order reflects a thorough analysis of the record evidence and multiple independent bases in support of the ROE determination.

[Footnote omitted]

3. Commission erred by unlawfully considering several non-cost factors

OAG Petition (pp. 11-13)

The OAG argued that the Commission "unlawfully considered a series of factors during its deliberations related to MERC's past performance and customer service." The OAG cited the Minnesota Supreme Court, which held that the task in setting an appropriate return is to "establish a fair rate of return which will provide earnings to investors comparable to those realized in other businesses which are attended by similar risks, will allow the company to attract new capital as required, and will maintain the company's financial integrity."²

In addition, OAG also referenced two U.S. Supreme Court cases: *Bluefield Water Works* and *Hope Natural Gas Co.* The OAG stated:

In *Bluefield*, the Supreme Court established a lower bound for utility returns, holding that "[t]he return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise money necessary for the proper discharge of its public duties." In *Hope*, the Court established an upper bound, holding that the return "should be commensurate with returns on investments in other enterprises having corresponding risks."

[Footnotes Omitted]

The OAG argued that the Commission deviated from the standards outlined by the Minnesota Supreme Court and U.S. Supreme Court decisions for establishing an appropriate ROE.

In addition, the OAG referenced a handout during the agenda meeting noting that the Commission had previously considered several non-cost factors in another utility's rate case. In response the OAG stated:

² OAG Petition at 12; *Northwestern Bell Telephone Co. v. State of Minn.*, 216 N.W.2d 841, 846 (1974).

The decisions that were made in another rate case, including decisions made by parties about whether to challenge the Commission's Order, do not change what the law says. Minnesota law and the Minnesota Supreme Court have provided that the utility returns should be based on the utility's financial soundness, need to raise money to discharge its services, and whether an ROE is commensurate with returns on similar investments. The performance-related factors that the Commission considered during this case, which are reflected on the handout circulated during deliberation, are not permissible. Nonetheless, during deliberations in this case the Commission again considered these factors in raising MERC's ROE above the mean of Dr. Amit's Two-growth DCF analysis. The Commission's decision to consider these non-cost factors was unlawful, and should be reconsidered.

MERC Answer (pp. 11-12)

MERC disputes the OAG's contention that the Commission "relied on a series of factors that are not allowed by Minnesota law" in reaching its ROE determination.³ MERC argues:

First, nothing in the Commission's Order indicates reliance on the non-cost factors contested by the OAG. Rather than citing to the Commission's Order, the OAG cites to a handout and general discussions at the Commission's deliberations. But "the commission does not speak through deliberations of the commissioners; it speaks only through written orders." Nothing in the Commission's written Order establishes the Commission's reliance on the factors specified by the OAG.

Second, even if the Commission's Order had considered and relied upon factors such as MERC's operational performance, customer satisfaction, and cost-management, as the OAG alleged, the Commission would be acting within its authority. The Commission is afforded wide latitude in making utility rate decisions and is statutorily permitted to analyze the facts presented in the record using its "experience, technical competence, and specialized knowledge." With respect to the ROE, the Minnesota Supreme Court has found that "the fixing of a fair rate of return cannot be determined with precision, since it is not derived from a formula, but must be reached through the exercise of a reasonable judgment."

Determining a financially sound and lawful ROE for a utility is, therefore, not formulaic, as the Commission acknowledged in its Order; rather, a just and reasonable ROE determination requires the Commission to exercise its institutional judgment when considering the range of reasonable results presented in the record. Certainly the deliberations in this proceeding could have resulted in a higher ROE than the Commission ultimately adopted—not just a lower ROE as the OAG seems to imply.

Here, the Commission exercised rational judgment and thoroughly explained its reasoning in its written Order. More specifically, the Commission detailed the

³ OAG Petition at 11.

analytical models and methods it evaluated in reaching its ROE decision, and supported the reasonableness of its decision by addressing the contextual data included in the record that supported a range of reasonable outcomes. The Commission reasonably determined that a 9.70 percent ROE, which lies within the range of the DCF-based recommendations of the parties (with or without Dr. Amit's testimony), is supported by the record in this proceeding.

[Footnotes omitted]

Staff Analysis

The Commission's December 26, 2018, *Findings of Fact, Conclusions, and Order* discusses the Commission's action of the cost of equity at pages 26-28. In this Order, the Commission explained its decision in two parts.

First, the Commission explained that the record reflected a diversity of factors and analytical approaches that can be reasonably considered when setting an ROE.

Setting the cost of equity is a fact-intensive and record-specific judgment. The Commission must ultimately establish a reasonable rate of return that is supported by the evidence in the record considered in its entirety. The diversity of analytical methods in the record in this case do not lead to wildly disparate conclusions or recommendations. The Commission believes that the record evidence in this case, including the broad diversity of modeling and expert testimony, establishes a range of reasonable costs of equity, within which the Commission must identify one value.

The record does not formulaically dictate a particular ROE to be approved. Instead, the record presents a range of reasonable returns on equity that the Commission has carefully evaluated based on the analyses and arguments in the record. As such, the Commission will set the Company's authorized ROE in light of the record as a whole.

Second, the Commission explained that the record, as a whole, supported establishing a return on equity of 9.70 percent:

Not all models are equally probative, and not every application of the same model is equally probative. The Commission examines the results of every model introduced into the record in every case. In this case, the Commission agrees with the ALJ that the DCF model is the best in the record for determining return on equity. The Commission finds that the transparency and objectivity of the DCF model make it the strongest, most credible model, and that the most reasonable way to proceed is to use its results as a baseline and to use the results of other models to check, inform, and refine those results.

The DCF model calls for fewer subjective judgments than the CAPM and Risk Premium models—in fact, two of its three inputs, dividends and market equity

prices, are uncontested, publicly reported facts, and the third input, projected growth rates, generally come from a limited number of recognized professional resources.

The CAPM and Risk Premium methods, on the other hand, require expert judgment at nearly every turn—determining the term of the risk-free, interest-bearing investment used as a benchmark, determining the time frame for calculating growth rates, determining the beta that represents market volatility, determining the historical periods over which to measure returns. Almost none of these inputs are simple matters of fact and public record.

The Commission has considered and weighed the relevant factors, which include, but are not limited to the relative objectivity, transparency, reliability, rigor, and timeliness of the analytical models in the record, and their inputs; the composition and representative nature of the proxy groups proposed in each analysis; the ROEs that the parties recommended based on their modeling results; and the Company's approved capital structure and costs of obtaining equity investment.

Most importantly, the approved ROE must adequately assure a fair and reasonable return in light of the Company's risk profile and costs of obtaining equity investment. In light of the relevant factors, the Commission will approve a cost of equity of 9.70%.

The Commission finds a 9.70% ROE to be reasonable and appropriate based on the two-growth DCF modeling done by the parties and by Dr. Amit. The value lies virtually at the midpoint of the DCF-based recommendations of the OAG and MERC, and comfortably between the mean-growth-rate and high-growth-rate two-growth DCF results calculated by both MERC and the OAG in surrebuttal testimony.

The reasonableness of 9.70% is amply supported by the other analytical approaches and contextual data in the record, which could support ROEs in a range from near 8% to near 11%, in the context of an equity-cost "directional trend line" that the ALJ recognized. And, 9.70% is within a few basis points of Dr. Amit's updated mean-growth-rate two-growth DCF calculations and ROE recommendation.

Black's Law Dictionary defines the term evidence as "Testimony, writings, material objects or other things presented to the senses that are offered to prove the existence or nonexistence of a fact."⁴ The Commission has both legislative and quasi-judicial functions⁵ and has broad discretion in accepting evidence and determining its probative value in terms of a Commission decision on a particular issue.

⁴ Black's Law Dictionary 6th ed. at 555.

⁵ Minn. Stat. § 216A.05.

In its December 26, 2018 Order, on pages 24 – 25, the Commission discussed accepting Dr. Amit’s rebuttal and surrebuttal testimony into the record as well the probative value of this testimony. The Commission determined that Dr. Amit’s testimony was properly entered into the record and that it contained “evidence of calculations and analytical methods that other parties, and the ALJ, considered credible enough to regard seriously.”⁶

The other portion of the OAG’s petition for reconsideration contain questions regarding the facts of the proceeding and the amount of reliance the Commission placed on those facts to makes its decision. In regards to those questions, the issue to be decided is whether the Commission agrees with the OAG’s argument that the information in the record justifies a lower return on equity or thinks the OAG’s argument should be given additional consideration.

Staff has reviewed the OAG’s petition and believes that the OAG’s request does not raise any new issues, new and relevant evidence, Commission errors or ambiguities in the Commission’s Order for the Commission to consider (Minn. Stat. § 216B.27, Subd. 2). The Commission may wish to consider this when making its reconsideration decision.

In conclusion, the Commission needs to decide whether the OAG’s petition for reconsideration satisfies the requirements of Minn. Stat. § 216B.27, Subd. 2, when determining whether to reconsider its previous Order.

Decision Options

1. Grant OAG’s request for reconsideration, and
 - a. Determine a new cost of equity, (OAG), or
 - b. Determine that a new cost of equity should be established at a future Commission meeting, or
 - c. Make no modifications
2. Deny OAG’s request for reconsideration. (MERC)
3. Take no action and allow the petition for reconsideration to be denied by operation of law.

⁶ Order at 24.