



March 31, 2015

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**VIA E-FILING**

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 East Seventh Place, Suite 350  
St. Paul, MN 55101

RE: In the Matter of the Request of Minnesota Power for a Certificate of Need for the Great Northern Transmission Line  
MPUC Docket No. E-015/CN-12-1163

Dear Mr. Wolf:

Enclosed please find the Exceptions of Minnesota Power in the above-referenced docket. This document has been filed with the eDocket system and served on the attached service list. Also enclosed is our Affidavit of Service.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

*/s/ Eric F. Swanson*

Eric F. Swanson

Enclosure

10188049v1



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**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 Seventh Place East, Suite 350  
St. Paul, Minnesota 55101-2147

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

In the Matter of the Request of  
Minnesota Power for a Certificate of  
Need for the Great Northern  
Transmission Line Project

MPUC Docket No. E-015/CN-12-1163

**EXCEPTIONS OF  
MINNESOTA POWER**

Minnesota Power (“Minnesota Power” or the “Company”) supports the overwhelming majority of the March 16, 2015 Findings of Fact, Conclusions of Law and Recommendations (“ALJ Report”), issued by the Administrative Law Judge (“ALJ”) in the above-captioned matter. Specifically, Minnesota Power supports the entirety of the ALJ’s Conclusions of Law and Recommendations in this matter including the specific percentages and cost amounts recommended with respect to a “soft cap” on cost recovery. The Company also supports all but a few of the ALJ’s Findings of Fact, as being well supported by the evidentiary record. As a whole, the ALJ Report demonstrates the ALJ’s thorough review of the record, firm understanding of the parties’ positions on the disputed issues, and thoughtful consideration of those issues. The Company files these limited Exceptions for the purpose of clarifying or correcting certain Findings of Fact and to recommend deleting some unnecessary Findings of Fact, in order to ensure a clear and accurate Commission order. However, none of these Exceptions

requires any change to the ALJ's ultimate Conclusions of Law and Recommendations. These clarifications or corrections are as follows:

**Findings 15 and 35:**

Finding 15 accurately states that Minnesota Power provided Notice to landowners, stakeholders, government officials and elected representatives on August 5, 2013, as required by the Commission-approved Notice Plan, as shown in Exhibit 63. Finding 35 repeats this statement but stated that the Company provided the Notice on March 14, 2014, again citing Exhibit 63. As shown in Exhibit 63, the March 14, 2014 filing was merely a compliance filing to the Commission, documenting that Notice was provided in August of 2013, as required under the Notice Plan. As such, Finding 35 should be deleted to avoid confusion.

**Finding 76, footnote 110:**

In footnote 110, the ALJ states as follows:

Throughout this proceeding, Manitoba Hydro has referred to Manitoba Ltd. as "Manitoba Hydro." Therefore, it is difficult to decipher which entity is responsible for various obligations, including the contribution of construction payments and Must Take Fees provided for in the various agreements described in this Report.

Minnesota Power appreciates that Manitoba Hydro ("MH") and the Manitoba Hydro Subsidiary, Manitoba Ltd. ("Sub"), have both been referred to as Manitoba Hydro in various places in the record including in Minnesota Power's testimony. However, the evidentiary record makes clear which entity bears which financial responsibility, as discussed further below. For example, the 133 MW Renewable Optimization Agreements ("ROAs") are Commission-approved contracts between Minnesota Power

and MH. Thus, the monthly must take fee under the ROAs will be paid by MH, not Sub. In contrast, the Facilities Construction Agreement (“FCA”) is a FERC approved contract between MISO, Minnesota Power and Sub. Thus, the FCA obligations fall to Sub, not MH, until Sub divests itself of its interests. The Commission should therefore strike footnote 110. The remainder of Finding 76 accurately states the record evidence.

**Findings 101 and 105:**

In the context of discussing Minnesota Power’s 250 MW Power Purchase Agreement and Energy Exchange Agreement (“250 MW Agreements”) with Manitoba Hydro, the ALJ incorrectly states: “Minnesota Power did not present specific evidence of increased need for energy or capacity in this proceeding, relying instead on the Commission’s approval of its 2010 IRP.” Finding 105 uses similar language. However, Minnesota Power provided a wealth of evidence demonstrating the Company’s need for the power to be delivered under both the 250 MW Agreements and the ROAs, including the testimony of Mr. Rudeck,<sup>1</sup> the Commission Order approving the 250 MW Agreements,<sup>2</sup> its 2013 and 2014 Advanced Forecast Reports,<sup>3</sup> and its 2013 Resource Plan filing.<sup>4</sup> Minnesota Power provides further discussion on the issue of need in response to other findings, below. However, for purposes of discussing the 250 MW Agreements, no finding on this point is necessary and Findings 101 and 105 should be deleted.

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<sup>1</sup> Exhibit (“Ex.”) 43, pp. 9-13.

<sup>2</sup> Ex. 12.

<sup>3</sup> Ex. 18 and Ex. 43, Schedule 1, respectively.

<sup>4</sup> Ex. 20.

**Finding 117:**

In this finding, the ALJ Report inaccurately states that the ROAs require Manitoba Hydro to pay a monthly must take fee to Minnesota Power “because the energy provided by the ROAs is in excess of the amount needed by Minnesota Power.” No record evidence supports this statement that the ROAs provide energy “in excess of the amount needed by Minnesota Power.” Rather, the record demonstrates that the must take fee was included in the ROAs in order to ensure that Minnesota Power customers will pay only for 250 MW of transfer capability and, as stated in Finding 116, Minnesota Power customers will receive multiple benefits from the energy purchased under the ROAs. The ALJ Report accurately represents the must take fee in other findings such as Finding 131. Therefore, Finding 117 should be deleted.

**Findings 125, 131 and 132:**

As discussed regarding Finding 76, footnote 110, the FCA is a contract between MISO, Minnesota Power and Sub. Therefore, Findings 125 and 131 should be modified as follows:

125. In acknowledgement of the additional capacity associated with the Project due to the addition of the 133 MW ROAs (resulting in a total transmission capacity of 883 MW as opposed to the original estimate of 750 MW), the FCA includes provisions requiring ~~Manitoba Hydro~~ Sub to provide an additional five percent Contribution in Aid of Construction (CIAC) payment to Minnesota Power.

131. Minnesota Power reduced its financial obligation for capital costs in the Manitoba Hydro Agreements through two contractual provisions. First, under the 133 MW ROAs, Manitoba Hydro is responsible for a Must Take Fee, which Minnesota Power asserts is equal to 17.7 percent of the Project’s total capital and O&M costs. Second, in recognition of the additional transfer capacity, ~~Manitoba Hydro~~ Sub agreed to provide a five



percent CIAC payment to Minnesota Power, further reducing Minnesota Power's total financial obligation.

132. As a 51 percent owner of the Project, Minnesota Power would normally be expected to pay 51 percent of both the Project's capital costs as well as on-going O&M costs. However, as a result of ~~Manitoba Hydro Sub's~~ five percent CIAC obligation provided for in the FCA, Minnesota Power's financial responsibility for the Project's capital costs is reduced from 51 percent to 46 percent (51% - 5% CIAC = 46%).

**Finding 140:**

In this Finding, the ALJ addresses the importance of the financial arrangements set forth in the ROAs and FCA to the overall Project and benefits it can provide to Minnesota Power's customers. However, the Finding neglects the fact that Minnesota Power presented substantial justification for the Project, including financial justifications, beyond just the provisions of the ROAs and FCA. For example, the Company discussed at length the benefits for ratepayers of optimizing the Company's renewable energy resources and minimizing exposure to the risks of emissions from fossil fuel fired facilities. To accurately capture the importance of the ROAs and FCA while not minimizing the importance of other financial benefits of the Project, Finding 140 should be modified as follows:

140. For the purpose of this proceeding, it is important for the Commission to ensure that when Manitoba Ltd. divests itself of its shares, Minnesota Power ratepayers are not left liable for any more than 28.3 percent of the Project's capital costs or any more than 33.3 percent of the O&M expenses of the Project. Otherwise, ~~all of the important~~ financial justifications presented by Minnesota Power in support of the Project ~~are meaningless~~ could be lost.

**Findings 141 and 142:**

Finding 141 accurately presents the financial responsibilities for the Project in the event that Sub transfers its interests to Minnesota Power or assigns its interests to a third party. However, the ALJ Report then incorrectly states that “the testimony provided by Minnesota Power witnesses was not entirely consistent with this table.” The Company’s testimony, and the ROAs and FCA are fully consistent with the table set forth in Finding 141, as further discussed below. Therefore, Finding 142 should be deleted.

**Findings 146 and 148:**

Finding 146 states that the record does not clearly delineate what happens to Sub’s share of the operations and maintenance expenses associated with the Project if Sub transfers its shares. However, as Minnesota Power witness Mr. Donahue testified, the FCA requires the full consent of Minnesota Power and Minnesota Power will not consent to any transfer that negatively impacts the agreed upon financial responsibility of the Company and its ratepayers.<sup>5</sup> Mr. Donahue also provided a table substantially similar to the Table in Finding 141 and demonstrated the financial responsibilities of the various parties, depending on whether Sub transfers its interests to Minnesota Power or an Assignee.<sup>6</sup> In no event will Minnesota Power customers assume more than a 33.3 percent share of the operations and maintenance revenue responsibility.<sup>7</sup> Moreover, Minnesota Power does not object to the Department of Commerce, Division of Energy Resources (“DOC-DER”) recommendation that prior Commission approval be required for

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<sup>5</sup> Ex. 40, pp. 3-5.

<sup>6</sup> Ex. 40, p. 8.

<sup>7</sup> *Id.*

Minnesota Power to charge customers more than 33.3 percent of the operations and maintenance costs associated with the Project, as set forth in Finding 147.

For these reasons, Finding 146 should be replaced with the following:

146. Regarding operations and maintenance expenses, the record demonstrates that whether Sub transfers its shares to Minnesota Power or assigns its shares to a third party, Minnesota Power will continue to be responsible for only 33.3 percent of the operations and maintenance costs associated with the Project. (Ex. 40, p. 8.)

Similarly, Finding 148 should be modified as follows:

148. The Administrative Law Judge adopts this recommendation as a reasonable one, given the representations made by Minnesota Power in this proceeding ~~and the ambiguity in the witnesses' testimony.~~

**Finding 152:**

Finding 152 hypothesizes what may happen if Sub transfers all or a part of its shares to an entity other than Minnesota Power. No testimony addressed how Sub may structure such a transaction and whether or not MH would assume any responsibility as a result of such a transaction. However, the record does make clear that after any such transaction, Minnesota Power and its ratepayers will only bear 28.3 percent of the capital cost revenue requirements and only 33.3 percent of the operations and maintenance revenue requirements. Finding 152 is unnecessary, is unsupported by the record and should be deleted.

**Finding 155:**

Similar to Finding 142, this finding suggests that the only justification for the Project relates to the financial responsibility provisions of the ROAs and FCA. To more

accurately reflect the record, the final sentence of Finding 155 should be modified as follows:

Such a change in financial circumstances would negate ~~the important financial justifications for the Project~~ articulated by Minnesota Power ~~for the Project itself~~.

**Findings 169 and 170:**

As discussed regarding Findings 101 and 105, above, the ALJ Report mischaracterizes the record evidence on the need for the energy and capacity to be delivered by the Project. To accurately reflect the record of this proceeding, Finding 169 should be deleted and replaced with the following:

The record demonstrates the Company's need for the power to be delivered under both the 250 MW Agreements and the ROAs, and made possible by the Project, including the testimony of Mr. Rudeck,<sup>8</sup> the Commission Order approving the 250 MW Agreements,<sup>9</sup> Minnesota Power's 2013 Advanced Forecast Report ("AFR"),<sup>10</sup> the Company's 2014 AFR,<sup>11</sup> and its 2013 Resource Plan filing.<sup>12</sup>

In addition, Finding 170 should be modified as follows:

No evidence was presented by the other Parties to this proceeding to negate the accuracy of ~~the~~ Minnesota Power's forecasts for demand or its testimony regarding the need for the energy and capacity provided for in the 250 MW Agreements and ROAs and to be delivered by the Project ~~presented by Minnesota Power in the other dockets~~.

**Findings 182 - 184:**

Perhaps due to the history related to the 250 MW Agreements, which followed the 2010 Resource Plan and were specifically mentioned in that proceeding, the ALJ Report

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<sup>8</sup> Ex. 43, pp. 9-13.

<sup>9</sup> Ex. 12.

<sup>10</sup> Ex. 18.

<sup>11</sup> Ex. 43, Schedule 1.

<sup>12</sup> Ex. 20.

attempts to directly tie the ROAs to Minnesota Power's 2013 Resource Plan. However, the ROAs respond not just to the general needs identified in the Resource Plan but to the needs identified in the 2014 AFR as well. The ROAs also responded to the increased transfer capability from 750 MW to 883 MW as set forth in the FCA and Minnesota Power's effort to ensure its customers only pay its proportional share for transmission. Therefore, Findings 182 and 183 can be deleted and Finding 184 should be modified to delete the introductory word "nonetheless."

**Finding 185:**

Finding 185 mischaracterizes the forecast related testimony of DOC-DER witness Shah. In his testimony, Mr. Shah reviews the analysis and conclusions drawn by the DOC-DER and Commission in the dockets approving the 250 MW Agreements and accepting Minnesota Power's 2010 and 2013 Resource Plans.<sup>13</sup> Additionally, Mr. Shah provides the Regional Energy Information System (REIS) data Minnesota Power filed with the Department for reporting years 2009 through 2013 and specifically discusses the Company's 2013 AFR, noting that the Department's specific analysis with respect to Minnesota Power's needs has already been conducted in the 2013 Resource Plan docket and in its review of the AFR.<sup>14</sup> Mr. Shah further notes that even after approving the 250 MW Agreements, the Commission found a need for additional capacity on the Minnesota Power system.<sup>15</sup> Finally, he noted that other regional utilities have also indicated a need for transmission services with Manitoba Hydro, indicating a broader regional need for the

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<sup>13</sup> Ex. 52, pp. 4-11.

<sup>14</sup> *Id.*, pp. 8-11 and Schedule SS-2.

<sup>15</sup> *Id.*, p. 11.

Project.<sup>16</sup> Based on this testimony, Minnesota Power recommends that Finding 185 be replaced with the following finding, to more accurately reflect the record:

185. In examining the need for the Project, the DOC-DER reviewed the analysis and conclusions drawn by the DOC-DER and Commission in the dockets approving the 250 MW Agreements and accepting Minnesota Power's 2010 and 2013 Resource Plans.<sup>17</sup> Additionally, the DOC-DER provided the Regional Energy Information System (REIS) data Minnesota Power filed with the Department for reporting years 2009 through 2013 and specifically discussed the Company's 2013 AFR. DOC-DER witness Mr. Shah noted that the Department's specific analysis with respect to Minnesota Power's needs had already been conducted in the 2013 Resource Plan docket and in its review of the AFR.<sup>18</sup> Mr. Shah further noted that even after approving the 250 MW Agreements, the Commission found a need for additional capacity on the Minnesota Power system.<sup>19</sup> Finally, he noted that other regional utilities have also indicated a need for transmission services with Manitoba Hydro, indicating a broader regional need for the Project.<sup>20</sup>

**Finding 300:**

Minnesota Power concurs with the ALJ's findings regarding imposition of a "cost cap" in this proceeding. Those recommendations are consistent with the record of this proceeding, with Minnesota Statutes and Rules and with Commission precedent. As the ALJ noted in Finding 297, the total cost of the Project may increase beyond the Company's current cost projections due to selection of a final route in the Route Permit proceeding, due to other aspects of any final routing decision or due to unforeseen factors. For example, final decisions regarding the Presidential Permit or other required

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<sup>16</sup> *Id.*, p. 12.

<sup>17</sup> Ex. 52, pp. 4-11.

<sup>18</sup> *Id.*, pp. 8-11 and Schedule SS-2.

<sup>19</sup> *Id.*, p. 11.

<sup>20</sup> *Id.*, p. 12.

permits could add costs to the Project. However, such costs still may be prudent and the Company should have the ability to make its case for cost recovery.

Minnesota Power also concurs with Finding 300, regarding how a “soft cap” should be implemented. Specifically, the Company agrees to the ALJ’s recommendation that “the Commission cap Minnesota Power’s rider requests at the lesser of: (1) 28.3 percent of the Project’s total capital costs; or (2) \$201 million (in 2013 dollars), the high end of Minnesota Power’s current estimate of the amount customers will pay for the Project.”<sup>21</sup> To the extent that the Commission has concerns regarding potential costs above the Company’s current cost estimates, Minnesota Power would further agree to proactively report any significant changes to the projected total Project cost, both in its annual transmission rider filings and as a compliance filing in this docket. In this manner, the Commission and parties would remain fully informed on any potential new cost drivers, while the Company would retain the ability to later request recovery for any such prudently incurred costs.

## **CONCLUSION**

For the reasons set forth above, Minnesota Power respectfully requests that the Commission adopt the ALJ Report with modifications consistent with these Exceptions. The ALJ Report correctly concludes that Minnesota Power has demonstrated by a preponderance of the evidence that it has met each of the criteria for the granting of a Certificate of Need for the Great Northern Transmission Line. Further, the ALJ Report correctly concludes that the Commission need not address certain rate recovery or cost

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<sup>21</sup> *Id.*, Finding 300 (emphasis added).

allocation issues raised by the Large Power Intervenors. Finally, the ALJ Report correctly concludes that if the Commission does address the Large Power Intervenors issues, the Commission should reject the Large Power Intervenors recommendations as inconsistent with Minnesota Statutes and Commission precedent and as potentially imposing additional costs on ratepayers.

Dated: March 31, 2015

WINTHROP & WEINSTINE, P.A.

By: /s/ Eric F. Swanson

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