

December 30, 2016

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101-2147

RE: **Letter of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E015/M-14-962

Dear Mr. Wolf:

On November 10, 2014, Minnesota Power filed a petition requesting approval of its 2015 Renewable Resources Rider.

On November 30, 2016, the Minnesota Public Utilities Commission (Commission) issued its Order in Docket No. E015/M-14-962 (November Order). In the November Order, the Commission required Minnesota Power (MP or the Company), an operating division of ALLETE, Inc. (ALLETE), to reflect in revenue requirements the full value of all North Dakota Investment Tax Credits (ND ITCs) used on ALLETE's unitary North Dakota tax returns.

On December 20, 2016, MP filed a Petition for Reconsideration (Petition) of the November Order, claiming that the November Order results in the income of nonregulated ALLETE companies, for which neither MP nor its customers bear any risk in operations, being used for the benefit of MP's customers, creating an unlawful asymmetrical allocation of risks and benefits between ALLETE's regulated and nonregulated operations.<sup>1</sup>

In this letter, the Department offers the Commission a brief response to some of the issues raised in MP's Petition.

In its Petition, MP stated:

The fundamental problem with the Commission's November Order is that it creates asymmetrical treatment in that ratepayers are simultaneously protected from the risks of nonregulated activities and given the benefit of those same activities.<sup>2</sup>

The Department disagrees with the Company's characterization of the November Order, for several reasons. First, Ratepayers are not unreasonably protected from the risks of nonregulated activities, nor are they given any benefits of those same activities. Per the November Order, only ND ITCs actually realized on ALLETE's unitary North Dakota state tax

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<sup>1</sup> Petition, page 2.

<sup>2</sup> Petition, page 6.

return will be reflected in revenue requirements. If losses from ALLETE's nonregulated operations result in fewer ND ITCs being used than MP would have used on a separate-return basis, then ratepayers will pay higher rates than they would have had the Commission ordered the use of a separate-return tax allocation method. Therefore, MP assertion that ratepayers are protected from the risks of ALLETE's nonregulated activities is simply wrong.

Second, the November Order does not take any benefits away from ALLETE's nonregulated businesses. Per the November Order, ALLETE's nonregulated businesses will keep any and all income they earn, and will be credited with the full value of any and all tax benefits they generate and are able to monetize. MP's assertion that ratepayers are given any benefits generated by ALLETE's nonregulated activities is also wrong.

MP's request for reconsideration also stated that:

The November Order, however, fails to account for the undisputed notion that the ND ITC could not be accounted for the benefit of Minnesota Power because there is no tax appetite to absorb the full \$22 million in utilized ND ITCs by Minnesota Power. Rather, \$11.3 million of this \$22 million in ND ITCs are only available for use because of the income of ALLETE's North Dakota nonregulated companies. Only the North Dakota nonregulated ALLETE companies have taken the risk and created the income necessary to realize those \$11.3 million in ND ITCs. As a result, under acceptable standard principles of tax accounting and financial separation of regulated and nonregulated activities, those tax credits must be allowed to be realized by the ALLETE companies that utilized the credits.<sup>3</sup>

Again, the Department disagrees with the Company characterization for several reasons.

First, the \$11.3 million of ND ITCs to which MP refers are not "only available for use because of the income of ALLETE's North Dakota nonregulated companies." Those \$11.3 million in ND ITCs are available and realizable primarily because *they exist in the first place as a result of MP's investments in the Bison wind projects.*

All of MP's petitions for the Bison facilities were clear that the Bison wind resources were being acquired for retail customers, not for MP's affiliates. On March 23, 2009, in Docket No. E015/M-09-285, MP stated regarding Bison I:

Bison I Wind Project is a 75.9MW project located in the Center, North Dakota area. This project, with its excellent wind resources, close proximity to a transmission grid interconnection point, and good land use compatibility and

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<sup>3</sup> Petition, page 6.

accessibility, **makes environmental and economic sense for Minnesota Power customers.** (Emphasis added)

On March 24, 2011, in Docket E015/M-11-234, MP similarly stated regarding Bison 2:

The Bison 2 Wind Project is a 105MW project located in the New Salem, North Dakota area. **This project takes advantage of the current opportunity to utilize available tax incentives coupled with current reduced construction costs to build a wind project beneficial to Minnesota Power customers.** This current opportunity leverages excellent wind resources and accesses close proximity to a transmission grid interconnection point and the Minnesota Power Direct Current transmission line that runs from Center, North Dakota to the Minnesota Power service territory. The site has good land use compatibility and has the accessibility needed for construction and effective operations. **This project makes environmental and economic sense for Minnesota Power customers.** (Emphasis added)

On June 21, 2011, in Docket E015/M-11-626, MP provided even more information to be clear that the Bison 3 resource was being acquired for MP's ratepayers:

Minnesota Power is pleased to present this Petition to the Minnesota Public Utilities Commission ("Commission") for **approval to construct a cost effective, high quality wind energy resource for its customers,** as part of its Renewable Energy Plan, pursuant to Minn. Stat. § 216B.1645. Minnesota Power is seeking Commission approval of this Petition for the investments and expenditures related to the development of the Bison 3 Wind Project.

During Minnesota Power's 2010 Integrated Resource Plan proceeding, the Commission strongly encouraged the Company to consider adding an additional 100MW of wind, in addition to the Company's Bison 2 Wind Project, during the course of the current federal production tax credit cycle. The Department of Commerce – Division of Energy Resources also advocated for an additional 200MW of wind generation additions by 2013 to be included in the Company's 2010 Integrated Resource Plan. Based on the Commission's Resource Plan Order, the Department's encouragement and Minnesota Power's on-going evaluation of its Renewable Energy Plan, the Company accelerated its pursuit of the additional 100MW of wind via the Bison 3 Project. (Emphasis added)

On September 27, 2013, in Docket E015/M-13-907 MP stated regarding Bison 4:

Minnesota Power is pleased to present this Petition to the Minnesota Public Utilities Commission (“Commission”) for **approval to construct a cost effective, high quality wind energy resource for its customers**, as part of its Renewable Energy Plan, pursuant to Minn. Stat. §216B.1645. Minnesota Power is seeking Commission approval of this Petition for the investments and expenditures related to the development of the Bison 4 Wind Project. (Emphasis added)

The Commission has never approved a transfer of the Bison facilities to ALLETE Clean Energy.

As a result, all of the costs of the Bison wind projects are being charged to MP’s ratepayers, fully compensating MP’s shareholders and providing them with an opportunity to earn MP’s Commission-approved return on equity. These additional earnings would not be available to MP’s shareholders but for the acquisition of the Bison resources for MP’s ratepayers. To give to shareholder the benefits of the \$11.3 million in ND ITCs, over and above an opportunity to earn the Commission-approved return on equity, would be an inappropriate jurisdictional assignment and is precisely the type of subsidization MP purports to wish to prevent.

Second, the Commission did not fail to account for the fact that a portion of the ND ITCs will be monetized using income from nonregulated operations. Rather the Commission correctly applied the standard set in the 2005 Rate Case of Northern States Power, d/b/a Xcel Energy, Docket No. E002/GR-05-1428 (the 2005 NSP-MN Rate Case). The Department has previously filed comments that included a detailed explanation of the Commission’s finding in the 2005 NSP-MN Rate Case, and will not repeat that explanation here.<sup>4</sup> In summary, however, the Commission found that tax benefits should accrue to the party that bore the expenses that gave rise to the tax benefits, not the party that happens to provide the taxable income against which the tax benefits are monetized. In the November Order, the Commission stated:

The Bison Wind Projects are generating the tax credits. There is no dispute that Minnesota Power’s regulated operations bear all the costs and expenses of the Projects. The Commission is persuaded by the Department’s analysis that to the extent there is a benefit generated by the credits, that full benefit should flow back to the ratepayers who paid for it, to help offset the cost of the Bison Wind investment.

Thus, the Commission will align the tax credits with the cost responsibility. The Commission agrees that the stand-alone method as described by FERC should be used, and that Minnesota Power’s ratepayers should receive the full \$22

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<sup>4</sup> See, for example, the Department’s December 16, 2015 Comments, pages 3-8.

million in tax-credit benefits in the Company's renewable resource rider revenue requirements. This method of tax-credit assignment is also consistent with other Minnesota utilities' treatment of North Dakota tax credits.<sup>5</sup> (footnote omitted)

MP's argument, that it is unreasonable and unlawful to use income from nonregulated operations to monetize tax benefits produced by regulated operations, is not only an incorrect reading of the Commission's Order in the 2005 NSP-MN Rate Case, but is in fact *nearly the exact opposite of the Commission's finding in that Docket.*

The November Order fully considered the facts of this Docket, and the relevance of prior Commission Orders, and the Company's assertions otherwise are without merit. MP's request for reconsideration should not be granted.

Sincerely,

/s/ CRAIG ADDONIZIO  
Financial Analyst

CA/lt

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<sup>5</sup> November Order at 8.

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Letter**

**Docket No. E015/M-14-962**

**Dated this 30<sup>th</sup> day of December 2016**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_14-962_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_14-962_Official
John	Lindell	john.lindell@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_14-962_Official
Susan	Ludwig	sludwig@mnpower.com	Minnesota Power	30 West Superior Street  Duluth, MN 55802	Electronic Service	No	OFF_SL_14-962_Official
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St  Duluth, MN 558022093	Electronic Service	No	OFF_SL_14-962_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_14-962_Official