**PUBLIC VERSION**

**STATE OF MINNESOTA**
**BEFORE THE PUBLIC UTILITIES COMMISSION**

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| John Tuma | Commissioner |

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| In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Utility Service in Minnesota | DOCKET NO. E-015/GR-16-664<br>**ANSWER TO PETITION FOR RECONSIDERATION OF THE OFFICE OF THE ATTORNEY GENERAL** |

## INTRODUCTION

The Office of the Attorney General – Residential Utilities and Antitrust Division ("OAG") respectfully submits this Answer to the Petitions for Reconsideration ("Answer") filed by Minnesota Power ("MP" or "the Company"), the Large Power Intervenors ("LPI"), and the Department of Commerce ("Department").

This Answer will first describe the legal standard for reconsideration, and then address, in order, the Petitions filed by MP, LPI, and the Department.

## LEGAL STANDARD

Any party to a proceeding, or any person who is "aggrieved" and directly "affected" by a Commission order, may file a petition for rehearing or reconsideration within 20 days of the order.[1] 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."[2] In determining whether to take up reconsideration, the Commission traditionally considers whether

[1] Minn. Stat. § 216B.27; Minn. Rules part 7829.3000, subp. 1.
[2] Minn. Stat. § 216B.27, subd. 2.

the requests "raise new issues," "point to new and relevant evidence," or "expose errors or ambiguities" in the Commission's decisions.[3]

## RESPONSE TO MINNESOTA POWER

Minnesota Power asks the Commission to reconsider broad swathes of the case, including most of the largest financial issues. With its Petition, MP is essentially asking for a do-over. In order to justify reconsideration, though, MP must identify new issues, point to new evidence, or identify errors or ambiguities in the Commission's Order. MP has not done so, and the Commission should reject its Petition and order the Company to calculate final rates consistent with its Order.

## I. MP'S TALE OF FINANCIAL DISTRESS IS OVERSTATED.

The primary theme running throughout MP's lengthy Petition is that the Company feels that it was not awarded enough money, and that it would like to get more. The Company suggests that this rate case had led to negative credit ratings action, layoffs, and no opportunity to earn its authorized ROE. These concerns are overstated and unpersuasive, and do not provide sufficient justification for reconsideration.

### A. MP'S CONCERNS ABOUT THE OUTCOME OF THIS CASE CANNOT BE TAKEN SERIOUSLY WHEN THE COMPANY PROPOSED $22 MILLION OF RATE MITIGATION.

In its Initial Filing for this case, MP asked the Commission to extend the depreciation remaining lives of the Boswell Energy Center to 2050, for reasons that MP has still not entirely made clear. MP's proposal reduced the revenue requirement by $22 million. In its Brief, the

[3] *See, e.g., In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Gas Utility Infrastructure Cost Rider*, Docket No. 14-336, ORDER DENYING RECONSIDERATION (Apr. 10, 2015); *In the Matter of the Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. 13-617, ORDER DENYING RECONSIDERATION (Dec. 22, 2014).

Company characterized the proposal as one of "rate mitigation."[4] MP has never backed away from its proposal, even though it was opposed by the OAG and the CEOs. MP continued also to ask for this rate mitigation even when it became clear, during deliberations, that the Commission would be authorizing a rate increase far less than what the Company requested.

MP's Petition for Reconsideration is baffling in light of the fact that it *asked* the Commission to reduce rates by $22 million. The issue of "rate mitigation" for Boswell is conspicuously absent from the Company's request, given the tone of its Petition. That is a point that bears repeating. MP has come to the Commission complaining of "real and significant financial injury" and suggesting that "the core of its operations" could be in jeopardy—*but is entirely fine with $22 million dollars in rate mitigation that it asked for*. If MP really thought it was in financial difficulty, then, surely, it would request that the Commission reverse its decision on rate mitigation. The fact that it has not calls the validity of its entire Petition into question.

### B. CONCERNS ABOUT FINANCES AND CREDIT RATINGS ARE NOT A "NEW" FACT OR ISSUE, BECAUSE MP RAISED THEM REPEATEDLY DURING THE CASE.

Beyond the issue of the rate mitigation that MP requested, its arguments about finances and credit ratings also fail to justify reconsideration because they are not new. In order to justify reconsideration, MP must point to new facts or issues, or errors or ambiguities. The only "new" information MP points to in its Petition is the action taken by credit rating agencies since the Commission's decision was announced.[5] Sub-section C, below, will explain why those arguments are overstated, but it is first important to recognize that they are not "new." MP has argued about its credit rating, the FFO to debt ratio, its level of risk compared to other utilities,

[4] MP Brief at 10.
[5] *See* MP Petition at 4.

and all of the other issues it discussed in its Petition, throughout this entire case.[6] It is true that rating agencies had not published their recent actions before the Commission made its decisions, but MP had squarely raised its concerns about credit ratings throughout the entire case. The Commission considered them, along with all of the other evidence, when it made its decisions. As such, MP has not identified any new facts or issues, or exposed any errors or ambiguities, that would justify reconsideration.

### C. MP'S ARGUMENTS ABOUT ITS CREDIT RATING AND FINANCIAL HEALTH DO NOT PROVIDE ANY GROUNDS TO RECONSIDER THE COMMISSION'S DECISIONS.

Even if MP's concerns about ALLETE's credit rating were new facts or issues, they would not provide a sufficient basis for reconsideration for two reasons. First, the Commission has the authority and responsibility to ensure that rates are just and reasonable, not to ensure that the utility's parent company maintains its credit rating. Second, even if concerns about credit ratings *could* form the basis for reconsideration, MP's arguments fail to do so because they do not provide the full context of its financial performance.

#### 1. MP's Concerns About Credit Ratings And Financial Health Are Not Relevant To The Commission's Decision.

The Commission's role in a rate case is to ensure that rates are just and reasonable based on all of the evidence provided in a proceeding[7]—not to ensure that a utility is pleased with the outcome of a rate case. In the exercise of that authority, the Commission is required to base its decisions on the evidence in the case, and its conclusions about whether the utility has met its burden of proof on specific issues. The opinions that credit rating agencies have about the proceeding do not change the evidence that was in the record, or whether MP met its burden of

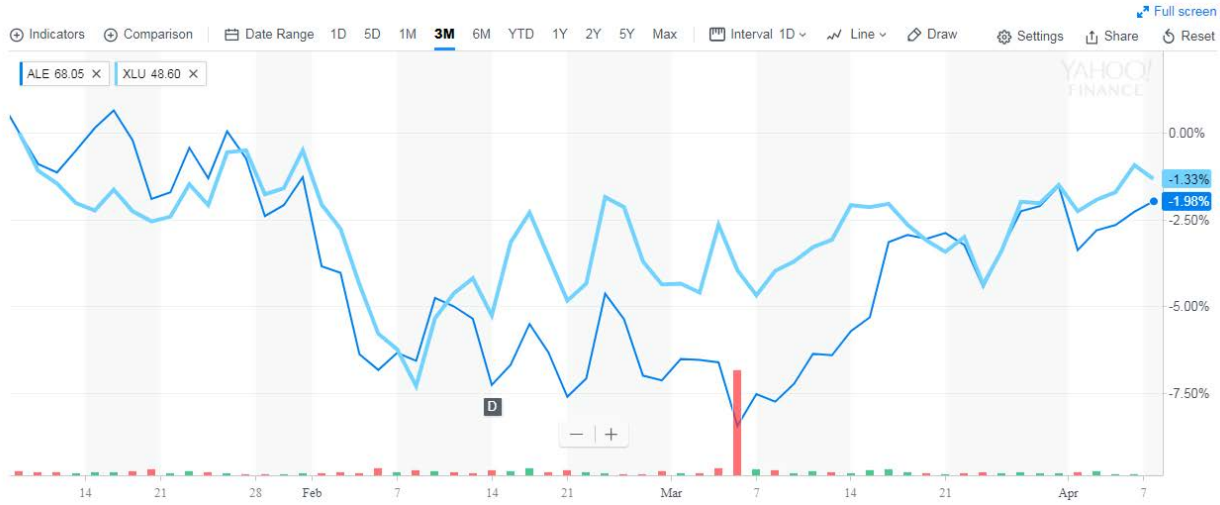
[6] *See, e.g.*, MP Brief at 3 ("The capital structure and rate of return modifications proposed by other parties . . . would almost certainly result in a downgrade of ALLETE's BBB+ credit rating, reducing the Company's financial integrity . . . ."); Cutshall Rebuttal at 23, et seq. ("[P]arties' cost of capital proposals would put the Company well below the FFO to Debt and Debt to EBITDA ratios required for the Company to retain its BBB+ rating.").
[7] Minn. Stat. § 216B.03.

proof. For that reason, they should not change the result of the case. The Commission made a decision based on the evidence before it, and the resulting rates are just and reasonable.

### 2. MP's Arguments Do Not Provide The Full Context Of Its Financial Performance.

Even if the issue of MP's credit rating were relevant to the financial issues the Commission ruled on, it would not provide a justification for reconsideration because MP has overstated its case. For example, MP argues that the Commission's decision has caused its FFO to debt ratio to "plummet."[8] While MP certainly appears to be very focused on its FFO to debt ratio, it is not clear that investors are—the "plummeting" FFO to debt ratio does not appear to have had any material impact on MP's stock price. In fact, ALLETE's share price has generally tracked the overall utility sector over the last three months.

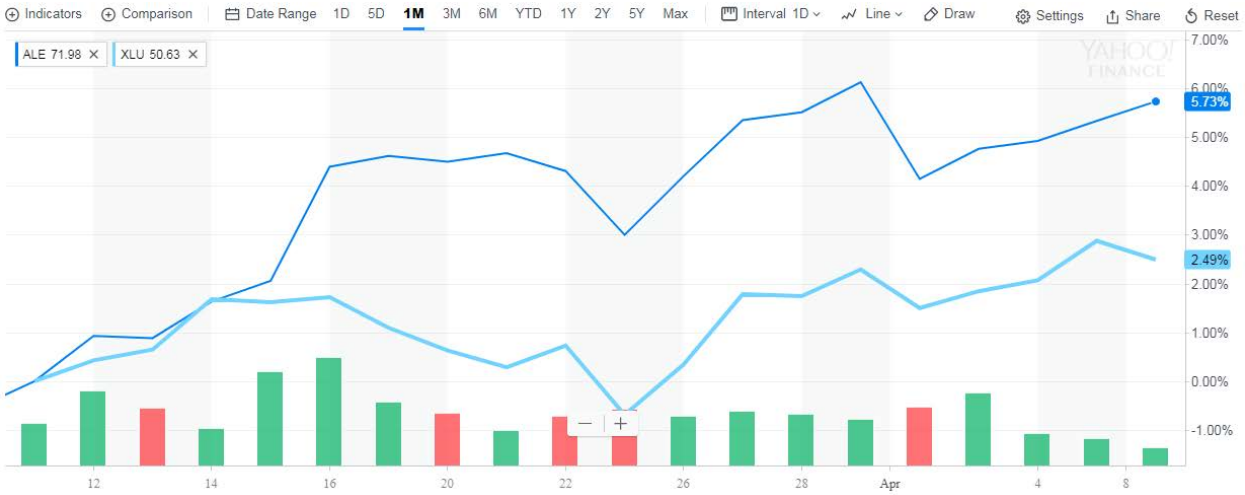
**Chart 1**
**Yahoo Finance ALLETE & XLU Share Price 3 Month Performance[9]**




[8] MP Petition at 47.
[9] This data was captured from Yahoo Finance on April 9, 2018, www.finance.yahoo.com. XLU represents the Utilities Select Sector group.

ALLETE's share price has increased by more than 5 percent in the month since the Commission's Order was issued, and has outperformed the utility sector by approximately 230 percent.

**Chart 2**
**Yahoo Finance ALLETE & XLU Share Price 1 Month Performance**[10]




Investors do not appear to view ALLETE as a company in financial distress.

Neither do ALLETE's executives. During an earnings call on February 15, 2018 (after the Commission's decision), ALLETE's CEO Bob Adams stated,

> In terms of our liquidity position, we are well-positioned to meet our needs. As of December 31, 2017, we had cash and cash equivalents of approximately $100 million, $395 million in available lines of credit and a debt to capital ratio of 42%. Our cash from operating activities for the same period was approximately $400 million, an increase of 21% over 2016.
>
> Our FFO to debt ratio, a ratio used by Standard & Poor's, as of year-end 2017 stands at 21%. We believe our strong liquidity position, significant cash flows from our regulated businesses, along with increasing cash flows from our Energy Infrastructure and Related Services businesses, support ALLETE's investment-grade ratings. Minnesota Power is committed to earning its allowed rate of return for ALLETE's shareholders and as we continue to grow our business, we will remain focused on maintaining a strong balance sheet.

[10] This data was captured from Yahoo Finance on April 9, 2018, www.finance.yahoo.com.

> All of our businesses are appropriately capitalized and are expected to generate long-term cash flows in support of ALLETE's credit ratings and dividends for shareholders. We expect our FFO to debt to be in the upper teens over the long term. [11]

Mr. Adams' statements that ALLETE is "well-positioned," has "strong liquidity" and "significant cash flows from our regulated business," is "appropriately capitalized," and will "generate long-term cash flows in support of ALLETE's credit ratings and dividends for shareholders" do not sound like the CEO of a company that is concerned about its financial position.

MP has also overstated concerns about ALLETE's credit rating. In its Petition, MP repeatedly refers to reports from Moody's and S&P suggesting that the Company's outlook has changed to "negative," and suggests that the Commission must reconsider the case to avoid this outcome. MP does not discuss some facts that should mitigate those concerns. First, there is a difference between ALLETE and MP, and the Commission's primary focus should remain on the utility rather than its parent company—whose credit rating is dragged downward by its riskier, unregulated business operations. Second, the record demonstrates that ALLETE would still have a comfortable investment grade credit rating even if it were downgraded. Third, both Moody's and S&P indicated that at least part of the reason for placing ALLETE on a negative outlook **[TRADE SECRET BEGINS] [TRADE SECRET ENDS]**.[12]

There are also additional reasons that the Commission should view the reports from Moody's and S&P with some skepticism. One thing that was surprising about the filings from Moody's and S&P was that the particular issues highlighted in their reports were very similar to

[11] *ALLETE's (ALE) CEO Alan Hodnik on Q4 2017 Results – Earnings Call Transcript*, SEEKING ALPHA (Feb. 15, 2018), available at https://seekingalpha.com/article/4147317-alletes-ale-ceo-alan-hodnik-q4-2017-results-earnings-call-transcript.

[12] *See* Trade Secret filings on Feb. 26, 2018, Feb. 9, 2018, and Feb. 8, 2018.

arguments that MP raised in this case.[13] To find out why that might be the case, the OAG conducted discovery. While MP has refused to answer many of the OAG's questions,[14] and provide many of the documents the OAG requested, the information it did provide suggests that the relationship between MP and the ratings agencies is much closer than may have been assumed.

The information MP provided reflects relatively frequent communication between MP and its rating agencies since the Commission's decision.[15] For example, shortly after the Commission's verbal decision on the rate case, **[TRADE SECRET BEGINS]**

[13] **[TRADE SECRET BEGINS]**

**[TRADE SECRET ENDS]**

*See* OAG IR No. 1165 ("Minnesota Power objects . . . ."), Exhibit A. The OAG recognizes that the record in this proceeding has closed. It was not possible to introduce this IR, or others attached to this Answer, before the record closed because the rating agency actions at issue took place after the Commission's decision. The Commission should consider the IRs attached to this Answer for purposes of Reconsideration because they are directly relevant to issues raised by MP

[15] MP refused to identify or describe its verbal communication with ratings agencies, but it would be reasonable to infer from the volume of email communication that MP is also speaking with the ratings agencies.

[16] OAG IR 1164.03 Attach TS, Exhibit B.

**[TRADE SECRET ENDS]** The primary conclusion to draw from is that MP is talking with both Moody's and S&P frequently about its business and this rate case, and that it has not been fully transparent about what information or opinions have been passed back and forth.[22]

One of the arguments that MP deployed in defense of its position illustrates the problems with the Company's argument. In its Petition, and in the ongoing Tax Reform proceeding in Docket No. 17-895, MP argues that "the effective ROE based on the outcome of the rate case for

[17] OAG IR No. 1165 ("Minnesota Power objects . . . ."), Exhibit A.
[18] OAG IR 1164.08 Attach TS, Exhibit C.
[19] OAG IR 1164.11 Attach TS, Exhibit D.
[20] OAG IR 1166.05 Attach TS, Exhibit E.
[21] OAG IR 1166.1, Exhibit F; OAG IR 1161.1.01 Attach TS, Exhibit G.
[22] The OAG asked MP to provide "all" of its written communications with Moody's and S&P, and to describe its verbal communications, but MP refused. OAG IR 1168.1, Exhibit H and 1168.2, Exhibit I.

the 2017 test year is only 8.14%."[23] That certainly sounds worrisome, but digging into what MP means by "effective ROE" reveals that the Company's argument is hollow. MP is arguing that it will not be allowed to earn its authorized ROE *because the Commission disallowed some expenses in the rate case*. Under MP's reasoning, a utility would be "under-earning" every time the Commission disallowed an expense—or, in other words, in every single rate case that has been filed in the last ten years. MP is complaining about the Commission's decision to exercise its core regulatory function and disallow expenses that were not proven by sufficient evidence, or not reasonable to recover from ratepayers. MP essentially argues that the Commission should stop disallowing expenses in rate cases. This is an absurd argument that should be rejected.

As described above, MP's arguments about credit ratings and its financial health have no bearing on this rate case, because the Commission's decision was properly based on the evidence in the record and whether MP carried its burden of proof on specific issues in the case. To the extent that MP's arguments are considered at all, the information described in this Answer demonstrates that MP's arguments should be given little weight. MP's dire predictions have not played out in the markets, are undercut by statements made to investors, and its concerns about credit ratings are muddled by its lack of transparency about its interactions with the rating agencies. The Commission's decision was properly based on the record and produced just and reasonable rates. MP's arguments about general financial concerns and credit ratings provide no justification to reopen the proceeding.

## II. THE COMMISSION SHOULD NOT RECONSIDER ANY OF THE FINANCIAL ISSUES RAISED BY MP.

The Commission should deny MP's requests for reconsideration because MP has not made the required showings. As discussed above, the Commission reconsiders an issue only

[23] MP Petition at 4.

where a party has identified new issues, pointed to new evidence, or identified errors or ambiguities in the Commission's Order. MP has not done so. Instead, the Company merely restates arguments that it made throughout the case—arguments that the Commission found unpersuasive. The record in this proceeding was robust, even for a rate case, and the Commission reviewed it thoroughly before making a decision. MP has not identified new issues or new facts on any of its issues that would justify reconsideration. Accordingly, the Commission should deny MP's request for reconsideration on all issues.

### A. KEETAC SALES FORECAST.

MP has not identified any new issues or new evidence that would justify reconsidering the Commission's decision to include a full year of sales to Keetac in the test year. MP's request to reduce the test year sales related to the Keetac facility is premised on its argument that test year sales should be viewed "holistically," and based on industry-wide taconite utilization rates rather than specific information about expected sales.[24] This is the exact same argument that MP made in its testimony and briefs. In fact, Table 1 from MP's Petition is the same table it produced in Rebuttal, and the same table it then reproduced in its Briefs.[25] It is surrounded by the same arguments that MP made throughout the case. Nothing has changed about these arguments—arguments that the Commission has already considered and rejected: "The Commission is not persuaded that it is reasonable in this case to reduce a known test year revenue amount for specific customers as a proxy for a proposed load-factor adjustments for an entire industry."[26] The Commission correctly decided that rate case should be updated to reflect the fact that Keetac had come online, and that the amount of that update should be the amount of

[24] MP Petition at 6–8.
[25] Perala Rebuttal at 7; MP Initial Brief at 35.
[26] *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Rates in Minnesota*, Docket No. E-015/GR-16-664, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 51 (Mar. 12, 2018).

sales that are likely to Keetac going forward. MP has not pointed to anything that could lead the Commission to change its decision.

### B. THIRD-PARTY TRANSMISSION REVENUE AND EXPENSES.

Similarly, MP restates its earlier arguments regarding Third-Party Transmission Revenue and Expenses. While the Company has tried to use new words to describe the same old facts, the reality is that nothing has changed since the Commission made its decision. To try and get around the fact that it has no new arguments, MP selectively quotes from the record. In its Petition, MP points to a fragment from the evidentiary hearing to support its argument that it provided complete information about the millions of dollars in new expenses it introduced days before the evidentiary hearing began. MP chose not to include the following passages, where the Department asked it to identify where MP had included the calculations needed to support its recommendation:

> Department: Looking at page 4 of your Surrebuttal testimony, for a full year you recommend an additional 3.38 million, is that correct?
>
> Fleege: Correct.
>
> Department: Where is your Surrebuttal testimony do you provide the calculation for that number?
>
> Fleege: All—these calculations all filtered through our Attachment O. In fact, that's how these schedules were built initially. So it really is our 2018 Attachment O calculations, which are really formula-based rates.
>
> *Department: Mr. Fleege, is that calculation provided in your Surrebuttal?*
>
> *Fleege: No.*[27]

MP conveniently left out the part of the transcript where its expert admits that the Company did not provide the calculations necessary to support its request for additional money.

[27] Tr. Evid. Hearing, Vol. 1 at 134 (emphasis added).

### C. COST OF CAPITAL AND RETURN ON EQUITY.

MP also retreads the same arguments with respect to its cost of capital. MP variously argued that (1) it required a higher ROE because MP and ALLETE are different, and riskier, than other utilities; (2) the Commission must allow it to maintain a specific FFO to debt ratio established by a credit rating agency; and (3) that the Commission must take action to preserve ALLETE's credit rating. MP raised all of these arguments early-on in this proceeding, and continued to make them up to and including final presentations before the Commission.[28] The Commission carefully considered those arguments against the balance of the evidence in the record, and established an ROE that the Commission concluded was just and reasonable. MP has not identified any facts that would lead the Commission to revisit its decision.

In fact, it is noteworthy that MP continues to argue that it must receive a higher ROE because it is riskier than other Minnesota utilities, because the Commission explicitly did so in its Order. The Commission stated, "[T]he approved ROE must adequately assure a fair and reasonable return in light of the Company's risk profile . . . ."[29] Based in part on that requirement, the Commission set an ROE that was much higher than the recommendations of the OAG and the Department.[30] It is unclear why MP raises the argument again in its Petition, when the Commission has already granted it a higher ROE for that specific reason. In any event, the arguments that MP raises in its Petition are all arguments that the Commission has heard before, and they were included in the voluminous record that the Commission considered to make its decision. Simply repeating old arguments does not make them any more convincing. MP has

[28] *See, e.g.*, Hevert Direct at 36–41; Cutshall Rebuttal at 2–4; MP Initial Brief at 111–117.
[29] *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Rates in Minnesota*, Docket No. E-015/GR-16-664, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 61 (Mar. 12, 2018).
[30] The OAG does not agree that MP's risk is materially greater than that of other utilities, although it did not file for reconsideration on the issue.

done nothing to justify reconsidering the issue of ROE, or any other issues raised in its Petition, at this time.

## RESPONSE TO LPI.

LPI asks the Commission to reconsider three issues. First, it asks the Commission to reconsider its decision on how to handle the EITE rate in conjunction with this rate case. Second, LPI asks the Commission to reconsider its decision on revenue apportionment. Third, LPI asks the Commission to reconsider its decision on two rate design proposals that were rejected. This Answer addresses LPI's first two requests, and takes no position on its third. LPI's request for reconsideration on EITE issues and revenue apportionment should be rejected because they restate arguments that the Commission has already heard, several times in some cases, and rejected. LPI has not pointed to any new issues or evidence, or identified any errors, that would merit reconsideration, and its requests should be rejected.

### I. LPI'S PETITION FOR RECONSIDERATION ON EITE ISSUES SHOULD BE REJECTED.

LPI first argues that the Commission should reconsider its decision to account for some revenue related to the Keetac plant in the EITE rider, rather than the rate case. It appears that the primary reason for LPI's request is that it disagrees with the Commission's interpretation of the EITE statute. The Commission should reject this decision for three reasons. First, LPI has already raised the same arguments, repeatedly, in both this proceeding and in the EITE docket. The Commission has heard these arguments, considered them carefully, and rejected them. Second, the arguments made by LPI are currently subject of an appeal with the Minnesota Court

of Appeals. Third, LPI's arguments are wrong on the merits because they render portions of the EITE Statute[31] meaningless and ignore portions of the record in the EITE docket.

### A. LPI HAS MADE THESE ARGUMENTS BEFORE, AND THE COMMISSION HAS REJECTED THEM BEFORE.

LPI has had the opportunity to argue for its interpretation of the EITE statute many times. The OAG first recommended the cost recovery mechanism that the Commission ultimately adopted on January 30, 2017.[32] The LPI replied on February 10, 2017, and argued in favor of its interpretation of the EITE statute.[33] The Commission met to consider the issue in March, 2017, and LPI argued its case before the Commission. The Commission disagreed with LPI, and found that the plain language of the EITE statute requires that refunds be provided to ratepayers, and that the most reasonable way to calculate the amount of the refunds would be to use a 2016 base year, because that was the year before the EITE rate started.[34] LPI did not file a request for reconsideration of the Commission's Order, or assert its rights to seek an appeal.

In May, 2017, MP made a compliance filing and, upon review, the OAG determined that MP had not correctly followed the Commission's Order regarding the 2016 baseline. LPI filed a response to the OAG.[35] The Commission ultimately agreed with the OAG that the plain language of the EITE statute requires that refunds be made to customers when sales exceed the level of sales before the EITE rate became effective. On November 2, 2017, LPI filed a Petition

[31] Minn. Stat. § 216B.1696 .
[32] OAG Comments, *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564 (Jan. 30, 2017).
[33] LPI Reply Comments, *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564 (Feb. 10, 2017).
[34] Order Authorizing Cost Recovery with Conditions, *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564 at 7 (Apr. 20, 2017).
[35] LPI Reply Comments, *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564 (July 12, 2017).

for Reconsideration, including 10 pages of legal argument supporting its interpretation of the EITE Statute.[36] The Commission met to consider LPI's request, and denied LPI's request in a pair of Orders issued on January 2, 2018, and February 7, 2018.[37] LPI also argued for its interpretation of the EITE statute in its Brief in this proceeding.[38] The Commission once again rejected LPI's interpretation of the EITE Statute.

The point to be taken is that LPI has had plenty of opportunities to present its argument about how the EITE statute should be interpreted. It has taken advantage of those opportunities several times. Each time, the Commission has reviewed LPI's submission, reviewed the EITE statute, and concluded that the plain language of the statute requires the Commission to establish a cost recovery mechanism that will "refund any savings, including increased revenues," to non-EITE customers.[39] The issue that LPI complains of in *this* Petition for Reconsideration is the same one that it has raised multiple times in the past: LPI disagrees with the Commission's interpretation of the EITE statute. LPI is just restating arguments that the Commission has already rejected, and there is no basis for granting reconsideration on the issue now.

In fact, it may be inappropriate to do so because the exact same questions are currently before the Minnesota Court of Appeals.

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[36] LPI Petition for Reconsideration, *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564 (Nov. 2, 2017).

[37] Initial Order Denying Reconsideration, *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564 (Jan. 2, 2018); Order Denying Reconsideration, *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564 (Feb. 7, 2018).

[38] LPI Brief at 8.

[39] Minn. Stat. § 216B.1696, subd. 2(d).

### B. LPI'S ARGUMENTS ARE CURRENTLY BEFORE THE MINNESOTA COURT OF APPEALS.

The second reason the Commission should reject the LPI's arguments is that LPI has already appealed the Commission's interpretation of the EITE statute in docket 16-564 ("EITE Docket") to the Minnesota Court of Appeals.[40] LPI's primary arguments appear to be that the Commission's interpretation of the EITE statute is unlawful because it "introduces a 'base year' not provided for in the statute, fails to appropriately use the statutorily mandated tracker although the Commission ordered the establishment of that tracker, and fails to tie cost recovery exclusively to the statutorily-mandated tracker approved by the Commission."[41] LPI also argues that the Commission impermissibly "modified the statutory cost-recovery methodology in such a manner as to diminish the credit provided for by the EITE rate schedule and expressly approved by the Commission."[42]

LPI raises the same issues in its Petition for Reconsideration that it has raised before the Court of Appeals. LPI's Petition argues that that the Commission's decision in the rate case was wrong because it "creat[ed] an unlegislated 'baseline year' in the EITE Docket" and because it did not tie MP's recovery or refund to the utility's tracker account.[43] LPI also argues that the Commission's decision in this case reduced the value of the discount provided to the EITE customers.[44] Each of these issues is explicitly raised in LPI's appeal of the Commission's rejection of MP's compliance filing in the EITE Docket.

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[40] *See In the Matter of Minnesota Power's Revised Petition for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Minn. Ct. App. Case No. A18-0382. The OAG does not admit that LPI's appeal was proper, or that the Court of Appeals has jurisdiction over the issues raised on appeal.
[41] *Id.*
[42] *In the Matter of Minnesota Power's Revised Petition for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Minn. Ct. App. Case No. A18-0382, RELATOR'S STATEMENT OF THE CASE (Mar. 8, 2018).
[43] *Id.* at 5-6.
[44] *Id.* at 5.

The only other argument LPI has raised in its Petition is that the Commission should not have "shifted" revenue from the rate case to the EITE docket—but that argument is fully premised on its argument that the Commission's interpretation of the EITE statute is incorrect. In other words, the only argument in support of LPI's position is that it believes that the EITE statute should be interpreted differently.

All of the arguments LPI makes about the EITE rate in its petition are, even at face value, arguments about whether the Commission correctly interpreted the EITE statute—a question that is squarely in front of the Court of Appeals, and that must now be resolved by that Court.

### C. LPI'S INTERPRETATION OF THE EITE STATUTE IS WRONG ON THE MERITS.

LPI's Petition for Reconsideration on EITE issues should also be rejected because it is wrong on the merits. LPI selectively ignores some of the language in the EITE statute and portions of the record in the EITE Docket.

#### 1. LPI Selectively Ignores Some Of The Language In The EITE Statute.

The EITE Statute provides that "the commission shall allow the utility to recover any costs, including reduced revenues, *or refund any savings, including increased revenues*, associated with providing service to a customer under an EITE rate schedule."[45] Minnesota law instructs that "the legislature intends the entire statute to be effective and certain,"[46] even those parts of the statute that are inconvenient for LPI. To give effect to all of the words in this provision, and in particular the provision requiring the Commission to "refund any savings, including increased revenues," the Commission established a pre-EITE baseline year to allow MP to measure any increase in sales to EITE customers after the rate was implemented. The

[45] Minn. Stat. § 216B.1696 Subd. 2(d) (emphasis added).
[46] Minn. Stat. § 645.17(2).

Commission's decision in the rate case simply ensured that MP was not unfairly harmed by the overlap of the rate case test year and the EITE docket. If the Commission had not taken the action it did in the rate case, it is possible that the increased revenue from Keetac would have been counted against MP twice.

LPI's interpretation would give no effect to the requirement that MP must "refund any savings, including increased revenues," because LPI proposes a true-up mechanism that would *never* result in refunds under any circumstances. Specifically, LPI argues that the EITE Statute requires that any true-up mechanism is limited to the difference in *rates* paid by the EITE customers, rather than the difference in *revenue* received by the utility.[47] Since the EITE rate approved by the Commission is a discount, LPI's proposal would always result in a surcharge, and could never result in a refund. LPI's interpretation would effectively excise the "refund any savings, including increased revenues" language form the statute, an outcome that is clearly impermissible.

Moreover, since the discount applies to each MWh sold to EITE customers, the surcharge proposed by LPI would *grow* as MP benefits from increased sales. In other words, the more the EITE rate led to increased sales, the more the surcharge would grow. This result would be inconsistent with the plain language of the EITE Statute. Nothing in the EITE Statute contemplates allowing the utility to true-up the *rates* paid by EITE customers. Rather, the EITE Statute explicitly states that the utility can "recover any costs, including reduced *revenues*, or refund any savings, including increased *revenues*."

Perhaps recognizing this problem, LPI disguises its proposal to true-up the difference in *rates* by arguing that "[t]he language used by the Legislature demonstrates that it intended a

[47] LPI's Petition at 5-6.

comparison of *revenue based on actual consumption*, not historical usage."[48] While this argument uses the word "revenue," what LPI actually proposes is a comparison of rates, since it proposes that the sales to EITE customers be held constant in any comparison. If sales are held constant, than any comparison of revenue is simply a comparison of rates. This is not contemplated—much less required—by the EITE Statute. And LPI's only attempt to support this tortured interpretation of the EITE Statute is a single-minded focus on the language requiring the utility to "track the difference in revenues between what *would have been collected"* under the applicable standard tariff and the EITE rate.[49] LPI somehow concludes that the phrase "would have been collected" proves that the Legislature required the utility's sales to be held constant in any comparison of the utility's revenue. There is no reasonable basis for this conclusion. The better interpretation is that the Legislature meant what the Legislature said: the utility must compare the difference in *revenue* that results from implementing the EITE rate.

**2. LPI Ignores Facts In The Record.**

LPI's argument also ignores the record in the EITE Docket by overlooking U.S. Steel's own admission that the EITE Rate contributed to higher sales for MP. Specifically, LPI states that "[i]t is not possible to calculate the amount that 'would have been collected' in 2017 by ignoring Keetac's operations and simply repeating 2016 revenue."[50] This argument presumes, of course, that Keetac "would have been" operating in 2017 even without implementation of the EITE rate. The problem with this presumption is that it conflicts directly with the statements U.S. Steel made in the EITE Docket: "[M]easures such as the September 2016 Commission approval of the EITE Customers Rider were crucial ingredients in our ability to realize the

[48] *Id.*
[49] LPI's Petition at 6; *See also* Minn. Stat. § 216B.1696 subd. 2(d) (emphasis added).
[50] LPI's Petition at 6.

startup of Keetac this month."[51] This statement is consistent with the comments filed by the LPI-EITE customers that "the [EITE rate] creates positive incentives for LPI-EITE customers to maintain and, in some instances, resume full production" and that it represented "a solid first step in moving towards more competitive electric rates and giving EITE customers an incentive to operate as close to full production as possible."[52] The purpose of the EITE rate was to incent increased production. The LPI-EITE customers supported the utility's proposal by claiming it would increase sales. LPI cannot now ignore those increased sales in setting a true-up mechanism. The Commission's decision in the EITE Docket was correct, and LPI's challenge to it in this case is meritless.

For these reasons, the Commission should reject LPI's request that it reconsider its decision to shift some of the higher Keetac sales revenues from the rate case to the EITE docket.

## II. LPI'S PETITION FOR RECONSIDERATION ON REVENUE APPORTIONMENT SHOULD BE REJECTED.

The Commission should also reject LPI's request to reconsider its approved revenue apportionment. LPI makes two arguments to support its request. First, LPI argues that the Commission ignored cost-based principles when it apportioned the rate increase.[53] Second, LPI argues that its own proposed revenue apportionment should be adopted because LPI considered non-cost factors.[54] The OAG's Initial Brief in this case already addressed LPI's second argument, and explained that the "non-cost" factors cited by other parties are, in fact, arguments for cost-based rates.[55] The OAG will not repeat that discussion here. With respect to LPI's first

[51] *See In the Matter of Minnesota Power's Revised Petition for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-16-564, UNITED STATES STEEL CORPORATION LETTER TO EXECUTIVE SECRETARY (Mar. 10, 2017).
[52] June 30, 2016 comments of the LPI-EITE customers at 16, 20.
[53] LPI's Petition for Reconsideration at 6.
[54] *Id.* at 10-14.
[55] *See* OAG's Initial Brief at 123.

argument, the record is clear that, contrary to LPI's claim, the Commission heavily considered cost-of-service when it apportioned Minnesota Power's rates.

LPI's claim that the Commission did not consider cost-of-service rests on two grounds. First, LPI argues that cost-of-service is a particularly important factor, and that the Commission is strictly limited in deviating from cost-based-rates. Second, LPI claims that the Commission did not consider cost at all when it apportioned rates, because the Commission did not adopt a particular cost of service study. These arguments should be rejected.

### A. THE COMMISSION HAS BROAD AUTHORITY TO DEVIATE FROM COST-BASED-RATES.

When it apportions revenue across the classes, the Commission acts in a quasi-legislative capacity. The Supreme Court has explained that this means the Commission must balance a variety of cost and non-cost factors:

> As our previous discussion makes clear, however, rate allocation is not a judicial or quasi-judicial function. Once revenue requirements have been determined it remains to decide how, and from whom, the additional revenue is to be obtained. It is at this point that many countervailing considerations come into play. The commission may then balance factors such as cost of service, ability to pay, tax consequences, and ability to pass on increases in order to achieve a fair and reasonable allocation of the increase among customer classes.[56]

Since cost and non-cost factors must be considered, it is axiomatic that an apportionment set by the Commission cannot be unreasonable simply because it does not place each customer class at their cost of service.

It appears that LPI agrees that the Commission should consider non-cost factors, but the LPI argues that the Commission is strictly limited in how the Commission can deviate from cost when using non-cost factors. According to LPI, the Commission is required to make cost the

[56] *St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission*, 251 N.W.2d 350, 357 (Minn. 1977).

primary factor, select a specific cost of service study in order to do so, and specifically explain how each non-cost factor was used to deviate from that cost of service study. LPI's only legal support for this proposition is a single sentence from *St. Paul Area Chambers of Commerce v. Minnesota Public Service Commission*.[57] LPI focuses on the Minnesota Supreme Court's holding that if a party introduced evidence "to establish that a difference in rates based on factors other than the cost of furnishing the service would be unfair," then "[t]he commission would [] be required to evaluate the evidence so offered together with the facts commonly known."[58] According to LPI, this single sentence means that the Commission give primacy to cost factors, and "must evaluate and incorporate all of the evidence when it decides to deviate from cost."[59] LPI then claims that the Commission erred because it apportioned revenue based on non-cost factors "for which there was little to no evidence in the record to support."[60] The problem with LPI's argument is that it selectively quotes the *St. Paul Area Chambers of Commerce* case to support an argument that is very different from the Supreme Court's decision in that case. In fact, the Supreme Court's holding actually leads to the conclusion that the Commission has broad discretion to balance any factors—cost or non-cost—that it believes will lead to just and reasonable rates.

Before the *St. Paul Area Chambers of Commerce* case reached the Supreme Court, the Commission had set a revenue apportionment for Northern States Power relying in part on non-cost factors.[61] A district court reversed, questioning the Commission's authority to consider non-cost factors when it apportioned rates for customers. The Supreme Court then reversed *that* decision, holding that the Commission has broad authority to consider the evidence and its own

[57] LPI Petition at 9–10.
[58] *Id.* at 355.
[59] LPI Petition for Reconsideration at 9.
[60] *Id.*
[61] *St. Paul Area Chamber of Commerce v. Minnesota Public Service Commission*, 251 N.W.2d 350 (Minn. 1977)

expertise, including non-cost factors.[62] The Court further held that the Commission acts in a "legislative capacity" when it decides on revenue apportionment, and that courts should give the Commission "wide latitude to . . . consider many factors which might not ordinarily be considered by a court."[63] It further concluded that the Commission should be given this "wide latitude" because "the court . . . is not so qualified to review legislative judgments when social policies must be weighed in the balance."[64] LPI's suggestion that this case strictly limits what factors the Commission can consider, or how they can be applied, is a dramatic misreading of the case.

The *St. Paul Area Chambers of Commerce* Court also held that the Commission is not limited to the facts in evidence when deciding revenue apportionment, but can also rely on its own experience and expertise:

> We believe it to be in the public interest, which the legislature was surely intending to serve in the broadest sense by establishing the Public Service Commission, that the commission be allowed within the bounds of reasonableness to consider both facts within its expertise and facts of common knowledge in arriving at its decisions in the ratemaking area.
>
> . . .
>
> The commission, in order to carry out its mandate from the legislature to establish "just and reasonable" rates, must be able to draw on its own internal sources of knowledge and experience.[65]

As an example of the Commission's broad authority to consider the entire record and its own experience, the Court explained that the Commission could use its own expertise and common knowledge to increase rates for large commercial customers above their cost of service:

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[62] *Id.* at 354, 357 ("The commission may then balance factors such as cost of service, ability to pay, tax consequences, and ability to pass on increases . . . .").
[63] *Id.* at 357.
[64] *Id.*
[65] *Id.* at 354.

> In the present case, for example, it is a matter of common knowledge that the custom of the commercial users is to employ electrical energy profitably, deduct the expense of such energy as a cost of doing business for income tax purposes, and add the residual cost to the price of the service or product which they produce, while it is similarly known that private consumers of electricity cannot so deduct or pass on electrical costs. Such facts allow the inference that in the majority of cases a rate increase must be fully paid for in cash by residential consumers, who may also end up paying for a portion of the commercial rate increase due to the pass-on effect just described. It is not a leap of logic to then say that for the most part commercial users of electricity are more "able to pay" a rate increase than residential users. While such assumptive reasoning would not ordinarily be employed by a court, which must in most cases confine itself to the evidence, it may be legitimately employed by a legislative agency attempting to serve the public interest at large in a way that courts cannot.[66]

The Supreme Court did not limit the Commission's authority to consider non-cost factors; it confirmed the Commission's authority to consider any factors that would lead to just and reasonable rates.

Despite these holdings, LPI argues that the *St. Paul Area Chambers of Commerce* case limited the Commission's authority deviate from cost-of-service. To make this claim, LPI cites to a single sentence from the case that states "[e]vidence could be introduced, for example, to establish that a difference in rates based on factors other than the cost of furnishing the service to the user would be unfair, inequitable, and unreasonable in a particular situation."[67] According to LPI, this sentence explains what the Commission must consider when it decides to deviate from cost.

The problem with LPI's argument is that LPI selectively quoted the passage from the case, and, when presented in full context, it is clear that the Supreme Court was re-affirming the Commission's broad authority to consider all of the facts in evidence and its experience when making a decision:

[66] *Id.* at 354–55.
[67] *Id.* at 355.

> *Interested parties adversely affected by a rate structure which discriminates between commercial and noncommercial users should have, and in this case did have, an opportunity to present evidence before the commission in support of a claim that discrimination in rates between commercial and noncommercial users is unreasonable, or that any discrimination exceeding a fixed level of difference would be unreasonable.* Evidence could be introduced, for example, to establish that a difference in rates based on factors other than the cost of furnishing the service to the user would be unfair, inequitable, and unreasonable in a particular situation. *The commission would then be required to evaluate the evidence so offered together with facts commonly known.*[68]

By picking out only the second sentence, LPI attempts to recast the thrust of the Court's decision to support its argument that the Commission must give primacy to cost, and specifically explain when or how it deviates. Presented in its full context, the Court's holding makes clear that, if a party (like LPI) argued that it would be unreasonable to deviate from cost, the Commission would have to consider that argument along with the other evidence in the case, and the Commission's expertise. That is what happened in this case.

The Commission has broad authority to consider the evidence, common knowledge, and apply its own expertise to determine an appropriate revenue apportionment. And the Supreme Court has made clear that the Commission can deviate from cost when, in the reasonable exercise of its judgment, doing so would result in just and reasonable rates. LPI's arguments to the contrary are incorrect, and should be rejected.

### B. THE COMMISSION CONSIDERED COST-BASED PRINCIPLES IN ITS FINAL APPORTIONMENT.

LPI's argument is also wrong because the Commission *did* consider cost-based principles in establishing its final revenue apportionment.

One of LPI's primary complaints is that the Commission did not select a specific cost study. LPI's argument ignores the fact that the Commission considered *several* cost studies.

[68] *Id.* (emphasis added).

When it reviewed the various parties' CCOSS results, the Commission explicitly stated that it "finds the [OAG's] proposal reasonable *and will consider all of the models proposed in this case.*"[69] The Commission further explained that this allowed it to "consider a range of economic theories to develop a better outcome."[70] By doing so, the Commission followed its recent pattern of considering multiple, competing theories of how to define "cost." The argument that the Commission did not consider cost because it considered many types of cost is unpersuasive.

On top of that, the Commission's final decision makes clear that it *did* consider cost factors, because it gave the largest increase by far to the classes who were below cost in the range of cost studies. The Commission stated that it "concurs" with the LPI and Chamber of Commerce "that the record supports bringing the classes closer to cost by apportioning an increase to the Residential class that is at least as high as any other class's increase."[71] As a result, the Commission gave the Residential class the highest increase in the case, since the Residential class was the furthest under cost according to all of the studies provided.[72] The Commission also apportioned increases to the remaining classes "consistent with the Company's cost study."[73] This resulted in the customers represented by LPI receiving the smallest increase, since the studies provided indicates that those customers are already over their cost of service.[74] In other words, customers who were under cost received the largest increase, and customers who were over cost received the smallest increase, because the Commission partially based its decision on cost factors.

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[69] *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Rates in Minnesota*, Docket No. E-015/GR-16-664, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 71 (Mar. 12, 2018) (emphasis added).
[70] *Id.*
[71] *Id.* at 75.
[72] *Id.*
[73] *Id.*
[74] *Id.*

It seems that LPI's argument is really that the Commission should have placed more weight upon cost. But the Commission clearly acted within its legislative authority to consider cost, along with many other factors, in producing just and reasonable rates. There is no basis to claim that the Commission ignored cost when it apportioned the largest increases to classes that were the furthest under cost, and the largest increases to the classes that were farthest over cost. LPI's argument that the Commission did not consider cost-based factors ignores the record and should be rejected.

## RESPONSE TO THE DEPARTMENT

The Department's Petition requests that the Commission reconsider its decision in this rate case and make three changes. First, the Department recommends that the Commission reverse its decision to extend the remaining lives of Boswell Energy Center ("BEC") 3 and 4, and the Common Facilities, until 2050 for ratemaking purposes. Instead, the Department recommends that all three components have a depreciation remaining life of 2035, which increase the revenue requirement in this case by approximately $17.0 million. Second, the Department recommends that the Commission incorporate the effects of federal tax reform into the rate case. The Department calculates that the first-year impact of this decision would reduce the revenue requirements in the rate case by $18.7 million. The net impact would be a $1.7 million reduction to the revenue requirements set in the Commission's Order. Third, the Department recommends that the Commission reverse the order point requiring MP to provide a securitization proposal for BEC within two years.

### I. THE COMMISSION SHOULD RECONSIDER ITS DECISION ON DEPRECIATION REMAINING LIVES AT BEC AND TAX REFORM.

The Commission should reconsider its decision regarding the depreciation remaining life of BEC because the Department has identified new facts that merit reconsideration—namely, the

Department has provided a specific calculation for the impact of federal tax reform. While the Department testified during the case, and argued in its Brief, that reason it supported a BEC extension was that it believed "the facilitates would operate until 2050,"[75] the Department now acknowledges that its purpose was one of rate mitigation.[76] According to the Department's reasoning, that rate mitigation is no longer necessary because federal tax reform can provide similar rate mitigation without the additional side effects caused by changing depreciation rates.

The Department's recommendation to reverse the decision on BEC, and incorporate tax reform, essentially adopts two positions that were recommended by the OAG. In this proceeding, the OAG recommended that the Commission deny MP's request to extend BEC; in Docket 17-895, the OAG recommended that the Commission require utilities to return the proceeds of reduced federal taxes to ratepayers. The Department's recommendation would effectively adopt the OAG's position on these two issues, and for that reason the OAG recommends that the Commission reconsider its decisions on BEC and tax reform. At the time the Commission made its decision in this rate case, the Department had not yet calculated the precise amount of the rate reduction related to tax reform. Those figures are now available, and they are a new fact that justifies reconsideration on a limited set of issues.

There is one technical difference between the Department's Petition and the OAG's prior position on BEC. In its testimony and briefing, the OAG recommended that the Commission leave the remaining lives of BEC as they are currently set—2034 for BEC 3, 2035 for BEC 4, and 2030 for the Common Facilities. The Department proposes to set them all at 2035. This

[75] Department Initial Brief at 19.
[76] Department Petition at 3.

would primarily add one year to BEC 3.[77] Returning the lives to their current positions would be more consistent with the Commission's Rules, but the Commission has already varied those rules in its Order. Setting the lives at 2035 would be simpler, in some ways, and, as the Department has noted, would reduce rates slightly compared to the revenue requirement set in the Order. Based on all of the facts, the OAG does not object to setting BEC 3, 4, and the Common Facilities all at 2035.

## II. THE COMMISSION SHOULD DENY THE DEPARTMENT'S REQUEST TO RECONSIDER THE SECURITIZATION REQUIREMENT.

The Department also suggests that the Commission should reconsider the requirement that MP bring a securitization proposal in the near future for BEC. There is no reason to do so. In fact, there are good reasons that the securitization proposal should go forward.

It should be clear to all that BEC will be a source of disputes in the future. The Company seeks certainty about its cost recovery; the CEOs seek to reduce MP's carbon emissions; in addition to other objectives, the OAG seeks to protect ratepayers from unreasonable rate increases (including rates tied to stranded costs from power plants that were not fully depreciated at the time they are retired). Securitization is a creative proposal that *may* provide a workable solution for these varied interests. Whether or not the OAG supports securitization will depend on the specific details of any proposal, but in order to get that far a proposal needs to be put on the table. The Commission's decision to order MP to do so is an important first step, and it would not be reasonable to go backwards when there is an opportunity for progress on the issue.

That said, the Commission may want to consider the incentives that MP has to provide a reasonable securitization proposal. To the extent that securitization would reduce the returns MP

[77] The Common Facilities are already calculated on an average basis and it would likely make sense for them to be based on the units that will still be operating in a few years.

earns from BEC, or that the effort needed to produce a proposal prevents work on projects with greater earning potential, the Company may have some conflicts of interest. During the Commission's deliberation, there was significant discussion about reversing the BEC depreciation extension if MP does not provide a workable securitization proposal. That possibility would have provided a very significant financial incentive for MP to do a good job on securitization. If BEC is returned to a normal depreciation schedule, though, that tool will not be available. For that reason, the Commission may want to consider other tools to give MP an incentive to bring a strong proposal. For example, the Commission could reduce the ROE earned on BEC, or a portion of BEC, or disallow a portion of depreciation expense, if MP fails to bring a workable proposal. In order to provide a strong incentive to MP, the Commission may want to put the Company on notice about what will happen if the securitization proposal is not acceptable.

Finally, the need to revisit the BEC issue once again only serves to further demonstrate that depreciation schedules should not be used as a tool to produce certain rate effects. The Commission's Rules suggest that depreciation schedules are a technical decision, tied to the engineering and mechanical reality of a physical asset. There are good reasons for that, which are described in more detail in the OAG's Initial Brief. In the future, the Commission should require modifications to depreciation schedules to be supported by specific information demonstrating how long the asset is likely to be in operation.

## REQUEST FOR VARIANCE

The Commission's Rules provide that Answers to Petitions for Reconsideration are due "ten days after service of the petition."[78] LPI filed its Petition two days before the deadline, and

[78] Minn. Rules part 7829.3000, subp. 4.

MP and the Department filed their Petitions on the deadline. According to the Commission's Rules, Answers to LPI's Petition are due on April 10, 2018, and Answers to MP and the Department are due on April 12, 2018. Because it would be inefficient to file multiple Answers to Petitions for Reconsideration on different days, the OAG contacted LPI regarding the schedule. The LPI indicated that it would not object if Answers to its Petition were included in a single filing on April 12, 2018. The Commission's Rules provide that a variance shall be granted where (A) enforcement of the rule would impose an excessive burden upon the applicant; (B) granting the variance would not adversely affect the public interest, and (C) granting the variance would not conflict with standards imposed by law. These standards are satisfied, and the Commission should grant a variance to accept Answers LPI's Petition on April 12, 2018, in the interests of regulatory efficiency.

## CONCLUSION

The Commission should deny the Petitions for Reconsideration of MP and the LPI. The Commission should accept, or move on its own authority, the Department's recommendation to reverse the extension of depreciation remaining lives for BEC, and incorporate the effects of federal tax reform, and deny the Department's proposal to cancel the requirement for a securitization proposal. These changes would have a net impact of reducing the revenue requirement by $1.7 million, which should be incorporated into MP's calculation of final rates. If the Commission does reconsider issues related to BEC, it should also consider whether it is

appropriate to use some form of incentive to ensure that MP brings a workable securitization proposal.

Dated: April 12, 2018

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

s/ **Ryan P. Barlow**

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ATTORNEYS FOR OFFICE OF THE ATTORNEY GENERAL – RESIDENTIAL UTILITIES AND ANTITRUST DIVISION

**OAG No. 1165**

**State Of Minnesota**
**Office Of The Attorney General**
**Utility Information Request**

| | | | |
|---|---|---|---|
| In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Utility Service in Minnesota | **MPUC Docket No.** | E015/GR-16-664 | |

**Requested from: Minnesota Power**

| | | | |
|---|---|---|---|
| **By:** | Ryan Barlow | **Date of Request:** | February 27, 2018 |
| **Telephone:** | (651) 757-1473 | **Due Date:** | March 9, 2018 |

For all responses show amounts for Total Company and the Minnesota retail jurisdiction unless indicated otherwise. Total Company is meant to include costs incurred for both regulated and non-regulated operations.

Reference: Compliance Filing dated February 26, 2018

Identify each instance in which MP communicated with Moody's since the deliberation of this rate case concluded. For each instance, identify the MP representatives that participated in the communication, and describe with particularity the substance of the communication

**RESPONSE:**
Minnesota Power objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, please see Minnesota Power's response to OAG IR 1164.

| | |
|---|---|
| Witness: | Patrick L. Cutshall |
| Response by: | Patrick L. Cutshall |
| Title: | ALLETE Vice President & Corporate Treasurer |
| Department: | Investments & Analysis |
| Telephone: | 218-355-3529 |

Exhibit A

# OAG IR 1164.03 ATTACH IS TRADE SECRET IN ITS ENTIRETY

Exhibit B

# OAG IR 1164.08 ATTACH IS TRADE SECRET IN ITS ENTIRETY

# OAG IR 1164.11 ATTACH IS TRADE SECRET IN ITS ENTIRETY

Exhibit D

# OAG IR 1166.05 Attach is trade secret in its entirety

**PUBLIC DOCUMENT**

**OAG No. 1166.1**

**State Of Minnesota**
**Office Of The Attorney General**
**Utility Information Request**

| | | | |
|---|---|---|---|
| In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Utility Service in Minnesota. | | **MPUC Docket No.** | E015/GR-16-664 |

**Requested from: Minnesota Power**

| | | | |
|---|---|---|---|
| **By:** | Ryan Barlow | **Date of Request:** | March 16, 2018 |
| **Telephone:** | (651) 757-1473 | **Due Date:** | March 28, 2018 |

For all responses show amounts for Total Company and the Minnesota retail jurisdiction unless indicated otherwise. Total Company is meant to include costs incurred for both regulated and non-regulated operations.

[TRADE SECRET]

Exhibit F

| | |
|---|---|
| Witness: | Patrick L. Cutshall |
| Response by: | Patrick L. Cutshall |
| Title: | ALLETE Vice President & Corporate Treasurer |
| Department: | Investments & Analysis |
| Telephone: | 218-355-3529 |

# OAG IR 1166.1.01 Attach is Trade Secret in its Entirety

Exhibit G

**OAG No. 1168.1**

**State Of Minnesota**
**Office Of The Attorney General**
**Utility Information Request**

| | | | |
|---|---|---|---|
| In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Utility Service in Minnesota | | **MPUC Docket No.** | E015/GR-16-664 |

**Requested from: Minnesota Power**

| | | | |
|---|---|---|---|
| **By:** | Ryan Barlow | **Date of Request:** | March 16, 2018 |
| **Telephone:** | (651) 757-1473 | **Due Date:** | March 28, 2018 |

For all responses show amounts for Total Company and the Minnesota retail jurisdiction unless indicated otherwise. Total Company is meant to include costs incurred for both regulated and non-regulated operations.

Reference: OAG Information Request 1168.

Provide all written communication, including emails and other forms of electronic communication, exchanged between MP and (1) Moody's or (2) S&P between March 13 and March 27, 208.

**RESPONSE:**
Minnesota Power objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, please see Minnesota Power's response to OAG IR 1166.1.

| | |
|---|---|
| Witness: | Patrick L. Cutshall |
| Response by: | Patrick L. Cutshall |
| Title: | ALLETE Vice President & Corporate Treasurer |
| Department: | Investments & Analysis |
| Telephone: | 218-355-3529 |

Exhibit H

**OAG No. 1168.2**

**State Of Minnesota**
**Office Of The Attorney General**
**Utility Information Request**

| | | | |
|---|---|---|---|
| In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Utility Service in Minnesota | | **MPUC Docket No.** | E015/GR-16-664 |

**Requested from: Minnesota Power**

| | | | |
|---|---|---|---|
| **By:** | Ryan Barlow | **Date of Request:** | March 16, 2018 |
| **Telephone:** | (651) 757-1473 | **Due Date:** | March 28, 2018 |

For all responses show amounts for Total Company and the Minnesota retail jurisdiction unless indicated otherwise. Total Company is meant to include costs incurred for both regulated and non-regulated operations.

Reference: OAG Information Request 1168.

Identify all meetings between MP and (1) Moody's or (2) S&P since the Commission's deliberation concluded. For each meeting, state (1) the individuals who were at the meeting, (2) the date, (3) the location, and (4) the topics discussed at the meeting. In addition, produce any power points, handouts or other materials discussed during the meeting.

**RESPONSE:**
Minnesota Power objects to this request as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, please see Minnesota Power's response to OAG IR 1166.1.

| | |
|---|---|
| Witness: | Patrick L. Cutshall |
| Response by: | Patrick L. Cutshall |
| Title: | ALLETE Vice President & Corporate Treasurer |
| Department: | Investments & Analysis |
| Telephone: | 218-355-3529 |

Exhibit I