

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

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In the Matter of the Petition of Minnesota
Power for Acquisition of ALLETE by Canada
Pension Plan Investment Board and Global
Infrastructure Partners

MPUC Docket No. E-015/PA-24-198
OAH Case No. 25-2500-40339

**LARGE POWER INTERVENORS' COMMENT ON THE
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDATIONS OF
THE ADMINISTRATIVE LAW JUDGE**

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Pursuant to the notice of comment (“Notice”) issued by the Minnesota Public Utilities Commission (“Commission”) on July 18, 2025, the Large Power Intervenors (“LPI”) submit this comment on the Administrative Law Judge’s (“ALJ”) Findings of Fact, Conclusions of Law and Recommendations (“ALJ Report”) issued in this matter on July 15, 2025. As discussed herein, LPI fully supports the ALJ Report and requests the Commission adopt the ALJ Report in its entirety.

I. INTRODUCTION

The ALJ Report is thorough, well-reasoned and methodically addresses the issues noticed for hearing in this proceeding.¹ This proceeding has been lengthy and complex; over the course of more than a year, the Parties in this proceeding have engaged in extensive discovery, filed rounds of comments and motions to compel, participated in settlement discussions, engaged in three days of evidentiary hearings, and submitted two rounds of briefing.² Through this proceeding, ALLETE and Minnesota Power seek to be acquired by Canada Pension Plan

¹ Order Requiring Additional Information and Granting Intervention, and Notice of and Order for Hearing at 8 (Oct. 7, 2024) (eDocket No. 202410-210754-01) (noticing for hearing the following issues: (1) the potential harms to the public interest from the proposed transaction, including in relation to cost of risk; (2) any potential benefits to ratepayers, Minnesota, or the public interest from the proposed transaction; (3) whether the proposed transaction is in the public interest in consideration of all relevant factors and applicable law; (4) whether regulatory requirements or commitments are necessary to render the proposed transaction consistent with the public interest; (5) how relevant and related dockets pending before the Federal Energy Regulatory Commission, Public Service Commission of Wisconsin, and/or other state, federal or foreign government agencies impact the Commission’s consideration of the proposed transaction; (6) how the acquisition will impact Minnesota Power’s union and non-union workforce and do the protections included in the acquisition adequately protect that workforce, and (7) how the acquisition will impact Minnesota Power’s ability to comply with the carbon-free standard under Minn. Stat. § 216B.1691, including any modifications of plans associated with the Nemadji Trail Energy Center).

² The Parties in this proceeding include: Minnesota Power, CPP Investments and GIP, Minnesota Department of Commerce, Minnesota Office of Attorney General - Residential Utilities Division, Large Power Intervenors, CURE, Citizens Utility Board of Minnesota, Sierra Club, International Brotherhood of Electrical Workers Local Union 31, Laborers’ International Union of North America District Council of Minnesota and North Dakota, International Union of Operating Engineers Local 49 (Local 49) and North Central States Regional Council of Carpenters, Energy CENTS Coalition (hereinafter, “the Parties”).

Investment Board (“CPP”) and Global Infrastructure Partners (“GIP”) (collectively, “the Partners” or “Petitioners”). ALLETE and the Partners allege that acquisition by these two private equity conglomerates is needed to improve its access to capital to support the clean energy transition.³ The evidence in the record, however, has repeatedly demonstrated, and the ALJ has affirmed, that ALLETE’s “need” for capital is artificially inflated, and that the consummation of this Acquisition could cause serious harm to ratepayers. Put simply, there is no benefit to be gained by the proposed Acquisition, and instead, the Acquisition poses great harm. As stated in the ALJ Report, “the proposed Acquisition is not in the public interest.”⁴ LPI agrees and submits this comment to address the following questions in the Notice:

1. Are the findings of the Administrative Law Judge consistent with Minn. Stat. § 216B.50 and other Minnesota Statutes and Rules?
2. Should the Commission adopt or modify the ALJ Report, and if so, what modifications should the Commission make?
3. Are there other issues or concerns related to this matter?

Based on the analysis below, and in response to the questions above, LPI respectfully requests the Commission deny the Proposed Acquisition and require Minnesota Power to “provide the full accounting of costs that were incurred in negotiating the proposed acquisition and seeking its regulatory approvals, including the employee time spent in pursuing the acquisition.”⁵

³ Initial Filing – Petition for Approval at 1 (Jul. 19, 2024) (eDocket No.20247-208768-01) (“Petition”).

⁴ ALJ Report at 72.

⁵ ALJ Report at 68, P 2.

II. ANALYSIS

A. The ALJ's Findings Are Well-Founded, Consistent with the Relevant Minnesota Rules and Statutes, and Warrant Deference.

1. Overview of Applicable Law

This proceeding came before the Office of Administrative Hearings (“OAH”) for a contested case proceeding pursuant to Minn. Stat. § 216B.50 (2024). Minn. Stat. § 216B.50 requires that:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$1,000,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission, the commission shall investigate, with or without public hearing. The commission shall hold a public hearing, upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

In conformance with Minn. Stat. § 216B.50, the ALJ has investigated the application for the acquisition of a public utility and determined the Proposed Acquisition is not in the public interest. Pursuant to the directive in Minn Stat. § 216B.50 for the Commission to, when considering approval of the acquisition, merger, or consolidation of a public utility in Minnesota, find that “the proposed action is consistent with the public interest” before giving “its consent and approval,” the Commission has discretion in what public interest standard to apply when determining whether the Proposed Acquisition comports with the public interest. However, the Commission has historically looked for meaningful commitments and benefits to ratepayers that closely mirror those needed to satisfy the “net benefits” test (i.e., that a transaction leaves ratepayers better off as

a result).⁶ While the Partners advocate for a lower standard, the ALJ correctly concludes, in recommending rejection of the Proposed Acquisition:

The parties have argued that the public interest requires the Commission find that the deal either produces net benefits or, alternatively, avoids net harm. **The proposed deal is inconsistent with the public interest under either standard because it results in net harm to the public interest.**⁷

The ALJ Report fastidiously examined each facet of the Proposed Acquisition to determine whether it would bestow on ratepayers any benefit. In doing so, the ALJ fully considered all of the relevant record evidence before her, made critical credibility determinations, described her findings and analysis in great detail, and concluded that the Commission should deny the Proposed Acquisition.

2. The ALJ Report Is Consistent with Minn. Stat. § 216B.50 and Other Minnesota Statutes and Rules.

The findings, conclusions and recommendations of the ALJ derive from an extensive and thorough review of the fulsome record, and merit “considerable deference.”⁸ Based on her rigorous fact-finding and extensive familiarity with the record in this case, the ALJ made several

⁶ E.g., Ex. MP-59 at P 29 (Hydro One Ltd. And Avista Corp. Washington Utilities and Transportation Commission Docket No. U-170970 – 12/5/2018 Order 07); *In the Matter of The Joint Application of Iberdrola, S.A., et al., for Approval of the Merger of NM Green Holdings with PNM Resources Inc.*, Case No. 20-00222-UT, Certification of Stipulation at 31 (N.M. P. R. C., Nov. 1, 2021) (finding that when applying the statutory public interest standard to a merger transaction, “the complexities of mergers should require a positive benefit to ratepayers if they are to be approved,” ultimately finding the Proposed Transaction’s potential harms outweighed its potential benefits).

⁷ ALJ Report at 61, P 15 (citing Minn. Stat. § 216B.50 subd. 1) (emphasis added).

⁸ *General Dynamics v. Occupational Safety & Health Review Comm’n*, 599 F.2d 453, 463 (1st Cir. 1979) (“The amount of deference to which the ALJ’s credibility determination is entitled is “considerable.””).

important findings to support a fact that has become abundantly clear throughout this proceeding: “the proposed Acquisition is not in the public interest.”⁹

The ALJ Report rejects many of the Petitioners’ offered commitments and claimed benefits of the Proposed Acquisition. In rejecting them, the ALJ found many of the commitments to be insufficient (e.g., the commitment to not “make any dividend or distributions unless at least one senior unsecured credit rating is investment grade or above,” which the ALJ found to be “at best,” a “weak protection against cost-of-debt increases”),¹⁰ already required by law (e.g., Minnesota Power would make compliance filings on equity infusions from and dividends to Alloy Parent (Commitment 2), which the ALJ stated “is required by law” through capital-structure filings),¹¹ or offering no benefit to ratepayers (e.g., the commitment to “not any dividend or distribution that would cause the actual equity ratio of Minnesota Power to be outside the range approved by the Commission,” which the ALJ stated provides no benefit to ratepayers because ALLETE and Minnesota Power are required to maintain the Commission-approved equity ratio range regardless of Acquisition approval).¹² These examples make up just the first four commitments – the remaining commitments fare no better under the ALJ’s scrutiny.

The ALJ Report describes the Partners’ contention that public markets cannot meet its claimed need for capital as “likely overstated,” leaving the ALJ unpersuaded as to the Partners’

⁹ ALJ Report at 72.

¹⁰ ALJ Report at 32, P 144.

¹¹ ALJ Report at 31-32, P 142.

¹² ALJ Report at 32, P 143.

foundational claim that it must seek capital outside the public market.¹³ Further, the ALJ expresses concerns about:

1. the strategies through which the Partners propose to increase returns,¹⁴
2. the potential for an early exit if expected returns cannot be met,¹⁵
3. the potential for reduction in cooperation by the utility,¹⁶ and
4. the level of control the Partners seek over decision-making of ALLETE’s business plans and operating and capital budgets.¹⁷

Generally, the ALJ explains the Acquisition would likely carry significant risks of ratepayer harm, in the form of projected rate increases (driven by ALLETE’s share price being a “premium of \$1.5 billion over ALLETE’s book value”),¹⁸ the Partners exorbitant expected returns,¹⁹ and the “credible risk” of service quality deteriorations.²⁰ The ALJ Report undermines each and every aspect of the Proposed Acquisition in great detail, with record citation and analysis, thus leaving it irredeemable. To be abundantly clear, the ALJ did not make her findings in a vacuum – each paragraph is informed by her position as the trier of fact, her thorough inspection of the record, and her careful balancing of arguments.

¹³ ALJ Report at 24, P 128 (stating also that “ALLETE has consistently overestimated its capital needs each year since 2019.”)

¹⁴ ALJ Report at 48, P 211.

¹⁵ ALJ Report at 47-48, PP 200-11.

¹⁶ ALJ Report at 47-48, PP 203-11.

¹⁷ ALJ Report at 57-61, PP 251-66.

¹⁸ ALJ Report at 49, P 212.

¹⁹ E.g., ALJ Report at 49, P 215.

²⁰ ALJ Report at 52, P 228.

a. The ALJ’s Credibility Determinations Warrant Deference.

The ALJ made specific credibility determinations as to the Partners, their intentions, and the Proposed Acquisition’s impact on the public interest that warrant Commission attention and deference. The ALJ’s findings of fact, after presiding over three days of evidentiary hearings, review of the fulsome record, and thorough engagement with the parties and their arguments, require substantial deference.²¹

Where the opinions of expert witnesses conflict, the conflict should be resolved by the trier of fact.²² The trier of fact is well-poised to “determine the comparative weight to be given to the respective opinions and consider the qualifications of each expert and the source of his information.”²³ Specifically “[t]he credibility findings of the person who sees and hears the witnesses be he ALJ, jury, or judge is entitled to considerable deference.”²⁴ As stated in George A. Beck, Larry A. Bakken, and Thomas Much, Minnesota Administrative Procedure § 9.1 at 226 (1987):

In a case where the ALJ’s findings rest on the credibility of witnesses, the agency still had final responsibility to determine the findings of fact. However, the credibility determinations of the ALJ, who actually saw the witnesses, are entitled to some weight. The agency may need to show a sufficient basis to reverse the credibility findings of the ALJ. On judicial review, the findings of the ALJ may bear on the determination of whether substantial evidence supports the final agency decision.²⁵

²¹ *General Dynamics*, 599 F.2d at 463 (“The amount of deference to which the ALJ’s credibility determination is entitled is “considerable.”).

²² *Robertson v. Park Brick Finishers*, 300 Minn. 561, 562, 220 N.W.2d 489, 490 (1974).

²³ *Petter v. K. W. McKee*, 20 Minn. 362, 367, 133 N.W.2d 638, 642 (1965).

²⁴ *General Dynamics*, 599 F.2d at 463.

²⁵ George A. Beck, Larry A. Bakken, and Thomas Much, MINNESOTA ADMINISTRATIVE PROCEDURE § 9.1 at 226 (1987)

As the trier of fact in this proceeding, having conducted three days of evidentiary hearings, the ALJ's credibility determinations in this proceeding are entitled to "considerable" deference.²⁶ The ALJ made several credibility determinations in the ALJ Report that warrant deference and support denial of the Proposed Acquisition.

(1) Credibility Concerns Regarding ALLETE's Access to Public Markets

Regarding the ability of ALLETE to access capital in the public market, the ALJ found "more credible" the intervenors' evidence disputing ALLETE's claims that "the public market will not provide the necessary capital," and "accessing capital via the equity markets means the company is "vulnerable to economic cycles, geopolitical events, interest rate volatility, and other influencing factors."²⁷ In making that determination, the ALJ cited (1) ALLETE's acknowledgement that it has never previously been unable to access capital from the public market, (2) ALLETE's conflicting statements both doubting the adequacy of the public market and statements to its investors in its annual SEC filings, (3) "ALLETE's assertion that its size – exceeding \$3.5 billion in market capitalization – reduces its access to capital conflicts with market research establishing that company size plays little role in investor decisions once a company reaches a market capitalization of \$250 million to \$500 million," and that (4) ALLETE's purported concern about mispricing events lacks support.²⁸ Overall, the ALJ remained unconvinced as to

²⁶ *General Dynamics*, 599 F.2d at 463.

²⁷ ALJ Report at 27-28, PP 130-31 (Ex. MP-11 at 14 (Taran Direct)).

²⁸ ALJ Report at 38, P 131 ("In its 2023 annual report, ALLETE told investors that it had adequate access to capital markets.")

the credibility of ALLETE’s argument, determining ALLETE failed to establish a significant risk existed that the public markets would be unable to meet ALLETE’s probable capital needs.²⁹

(2) Credibility Concerns Regarding Financial Engineering and Expected Returns

Generally, the ALJ found that the annual returns the Partners’ seek to extract from ALLETE “exceed credible cost of equity estimates for average-risk publicly traded companies.”³⁰ In discussing the Partners’ expectation to earn [NOT PUBLIC HCTS DATA BEGINS . . . ██████████ . . . NOT PUBLIC HCTS DATA ENDS] on their investment in ALLETE, the ALJ found such returns to “exceed credible estimates from respectable cost of equity sources for average risk publicly traded companies...,” finding most to be below 8 percent.³¹ Further, the ALJ found the “Partners’ disavowal of “stereotypical” private equity tactics such as “debt leveraging, cost-cutting operational changes, and asset sales” to achieve their desired returns lack credibility.”³²

(3) Credibility of Partners and Behavior Throughout Proceeding

The ALJ also detailed several evidentiary mishaps that occurred during the proceeding that raised concerns regarding the Partners’ behaviors. First, the ALJ noted the Partners’ redaction of “highly relevant” information, which was “improperly redacted” and only produced after a motion to compel and an *in-camera* inspection.³³ Second, the ALJ described the Partners’ attempt to improperly introduce a new agreement during the course of hearing, “**drafted the night before,**

²⁹ ALJ Report at 30, P 135.

³⁰ ALJ Report at 44, P 189.

³¹ ALJ Report at 49, P 215.

³² ALJ Report at 50, P 216 (citing Ex. MP-32 at 9 (Alley Rebuttal); Ex. MP-33 at 5 (Bram Rebuttal).

³³ ALJ Report at 73, n.605.

after extensive cross-examination about the existing document and the Partners’ control over the future ALLETE board of directors.”³⁴ Regarding that document, the ALJ found “**absolutely no credibility** in the assertion that the existing document contained a “drafting error” and instead finds that the admitted exhibit³⁵ reflected the “intent of the parties,” noting the Partners “are the definition of sophisticated parties” and engaged numerous national law firms and dozens of attorneys throughout the course of the proceeding.”³⁶

Additionally, and equally troubling, the ALJ raised concerns about [NOT PUBLIC HCTS DATA BEGINS . . . [REDACTED]

[REDACTED]

[REDACTED] [REDACTED]

[REDACTED]

[REDACTED] . . . NOT PUBLIC HCTS DATA ENDS]. The glaring lack of awareness of ALLETE’s top officers to the impacts of the Proposed Acquisition on governance and control post-Acquisition deeply concerned the ALJ, as characterized by her finding that “ALLETE does not fully appreciate how much control the Partners will have over its post-transaction affairs.”³⁹

³⁴ ALJ Report at 73, n.605 (emphasis added).

³⁵ Ex. LPI-1005 (DOC IR 0011 Supp 2 HCTS); *see also* Tr. Vol. 1 at 256:4-261:18 (emphasis added).

³⁶ ALJ Report at 73, n.605.

³⁷ Tr. Vol. 1 at 260:13-21 (Scissons).

³⁸ ALJ Report at 60, P 263.

³⁹ ALJ Report at 60, P 263.

B. The Commission Should Adopt the ALJ Report in Full, Without Modification.

The ALJ Report is shaped by her rigorous engagement with Parties throughout this proceeding, and extensive knowledge of the record – as such, it warrants “considerable” deference.⁴⁰ There is no reason for the Commission to deviate from these findings. For each fact and conclusion the ALJ made, she provided support and reasoned explanations. Ultimately, her findings support that “the proposed Acquisition is not in the public interest.”⁴¹ The Commission should adopt the ALJ Report in full without modification.

Additionally, the ALJ’s recommendation that the Commission require Minnesota Power to provide a full account of costs incurred to negotiate the Proposed Acquisition and seek regulatory approvals is informed by her attentive participation in this docket.⁴² As such, her perspective on this issue should not be taken lightly. Ratepayers should not be made to bear the costs Minnesota Power and ALLETE have incurred to put forth a proposal that poses significant harm to their interests and provides no meaningful benefits. Therefore, LPI fully supports the ALJ’s recommendation for a full accounting of costs by Minnesota Power.

C. Other Issues and Concerns to Raise

LPI is deeply concerned with the proposed settlement offered by the Department of Commerce and Petitioners. Rather than address those concerns in this document, LPI has, consistent with the Commission’s direction, provided its concerns separately.⁴³

⁴⁰ *General Dynamics*, 599 F.2d at 463.

⁴¹ ALJ Report at 72.

⁴² ALJ Report at 68.

⁴³ Notice of Comment Period on the Proposed Settlement, Docket No. E-015/PA-24-198, OAH Docket Number 25-2500-40339 (Jul. 18, 2025) (eDocket No. 20257-221154-01).

III. CONCLUSION

For the reasons described herein above, LPI respectfully requests the Commission approve the ALJ Report. Rigorous analysis and thorough review of the fulsome record underlie the ALJ Report, which, in conjunction with the deference required, should guide the Commission’s denial of the acquisition of ALLETE, Inc.⁴⁴ Additionally, Minnesota Power should “provide the full accounting of costs that were incurred in negotiating the proposed acquisition and seeking its regulatory approvals, including the employee time spent in pursuing the acquisition.”⁴⁵

Dated: August 4, 2025

Respectfully submitted,

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⁴⁴ ALJ Report at 72.

⁴⁵ ALJ Report at 68.