STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

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

DOCKET NO. E-015/PA-24-198

COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL—RESIDENTIAL UTILITIES DIVISION ON THE STIPULATION BETWEEN THE MINNESOTA DEPARTMENT OF COMMERCE AND PETITIONERS

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (OAG) submits these Comments in response to the July 11, 2025 settlement stipulation between the Minnesota Department of Commerce; ALLETE, Inc. d/b/a Minnesota Power; Canada Pension Plan Investment Board; and Global Infrastructure Management, LLC (the stipulation). The stipulation was submitted following the close of the evidentiary record and just two business days before the Administrative Law Judge's report was due. The Judge was therefore unable to fully incorporate the stipulation into her findings. The Judge nonetheless reviewed the stipulation and found that it did not change her recommendation to disapprove ALLETE's acquisition.

The OAG concurs with the Judge. The weight of the evidence establishes that the proposed acquisition would harm the public interest by raising rates, jeopardizing ALLETE's financial health, threatening effective regulatory oversight of Minnesota Power, and exposing the utility and its customers to financial risks associated with the acquirers' extensive unregulated holdings. And, given the magnitude of the risks presented by the private-equity business model, the concessions contained in the stipulation do not come close to rebalancing the acquisition's risks and benefits to avoid causing net harm to the public interest. The Commission should reject the stipulation and adopt the Administrative Law Judge's recommendation not to hand private-equity fund managers the keys to a Minnesota utility that provides essential public services.

BACKGROUND

In July 2024, Minnesota Power filed a petition seeking the Commission's approval of a proposed acquisition of ALLETE, Inc. (ALLETE or the Company) by entities under the control of Global Infrastructure Partners[1] and Canada Pension Plan Investment Board (together, "the Partners," and together with ALLETE, "the Petitioners").

The Commission referred the proposed acquisition to the Court of Administrative Hearings for contested-case proceedings before Administrative Law Judge Megan McKenzie (the ALJ). Over several months, the parties litigated the risks and benefits of the acquisition, with the OAG, the Department, and several other intervenors ultimately opposing the acquisition based on their assessment of those risks and benefits.

The Department was one of the staunchest opponents of the proposed acquisition, with its chief witness concluding, in part:

- The Acquisition is unlikely to provide Minnesota Power with meaningfully improved access to capital, and there is at least some potential that the Acquisition will worsen the Company's access to capital.
- Access to the Partners' expertise resulting from the Acquisition is unlikely to provide any meaningful benefits to Minnesota Power's ratepayers or the public interest generally.
- If the Partners employ financial engineering strategies to increase the returns they earn from their investments in Alloy, the extra debt may cause

[1] "Global Infrastructure Partners" is the trading name of Global Infrastructure Management, LLC, a division of BlackRock.

Minnesota Power's cost of capital to rise, which would result in rates that are higher than they otherwise would have been absent the Acquisition;

- Ultimately, the Acquisition should not be expected to provide any meaningful benefits to ratepayers or the public interest, and poses several significant risks . . . .[2]

The ALJ held an evidentiary hearing in April 2025, and by the end of May, the parties had completed briefing. In its brief, the Department concluded:

> Petitioners' deal, as proposed, will not provide ALLETE reliable capital access. The Partners' private messages and memoranda establish that this deal presents far more risk than Petitioners publicly acknowledge. Approving this deal will jeopardize ALLETE's 2040 energy transition, the company's long-term financial health, and the quality and affordability of retail service. Given the balance of benefits and harm, the deal is not consistent with the public interest.[3]

On July 11, two business days before the ALJ's report was due, the Department filed the stipulation, abruptly dropping its opposition to the deal. The Department now claims that the proposed acquisition is suddenly consistent with the public interest because the Petitioners have agreed to "more than 70 discrete terms."[4] Yet most of these 70 terms repeat commitments that the Petitioners had already offered or slightly modified versions. And the few that are truly new do little to counter the significant risks that the Department previously identified. Instead of mitigating the transaction's risks, the stipulation continues a theme of the Partners committing to very little and avoiding personal liability by making commitments through ALLETE and intermediate holding companies.

On July 15, the ALJ issued her report. The ALJ recommended that the Commission deny approval of the proposed acquisition, finding that ALLETE and the Partners had not met their burden to show that the acquisition was consistent with the public interest.[5] The ALJ clearly stated

[2] Addonizio Surrebuttal at 42 (Mar. 25, 2025).
[3] Department Initial Br. at 44 (May 1, 2025).
[4] Department Letter at 1 (July 11, 2025).
[5] ALJ Report at 3.

that while the timing of the stipulation filing did not allow adequate time to incorporate it into her report, she had nonetheless reviewed the stipulation and found that it did not resolve her concerns with the proposed acquisition or change her recommendation to disapprove the acquisition.[6]

ANALYSIS

The stipulation does not rebalance the scales to prevent the proposed acquisition from harming the public interest. On the "benefit" side of the scale, ALLETE claimed that the acquisition would provide it with better access to capital needed to transition to carbon-free energy. However, ALLETE failed to establish that the Partners would provide better access to capital than the public market, or even that ALLETE *needs* better access. On the "harm" side of the scale, the ALJ found that allowing the acquisition would risk serious harm to ratepayers, ALLETE's financial integrity, and the regulatory compact. Accordingly, the ALJ found that the Petitioners failed to establish that the deal's possible benefits will be realized or that they equal or outweigh the risks of harm.[7] The ALJ's findings are sound.

The new concessions extracted by the Department in the stipulation do not come remotely close to tipping the balance in favor of approval. Crucially, the stipulation does not change the fact that ALLETE does not need better access to capital, and it does not guarantee that the Partners would fund Minnesota Power's energy transition. Moreover, the stipulation fails to mitigate the many potential harms of the acquisition to ratepayers, ALLETE's financial health, and the regulatory compact, nor does it promise compliance with Minnesota's requirements for utility conflict-of-interest reporting. On this last point, the stipulation attempts to rewrite Minnesota law and bless a practice of underreporting Minnesota Power's dealings with affiliates. For these

[6] *Id.* at 67 n.549.
[7] *Id.* at 61 ¶ 16.

reasons and those explained below and in the ALJ's report, the Commission should reject the stipulation and adopt the ALJ's recommendation to deny approval of the proposed acquisition.

I. THE STIPULATION DOES NOT MITIGATE RATE-RELATED RISKS OR MATERIALLY INCREASE RATEPAYER BENEFITS.

According to documents that the Petitioners have withheld from the public, the Partners plan to seek outsized returns on their proposed investment in ALLETE.[8] The Petitioners have also claimed that the proposed acquisition will not impact retail rates, but again, their private documents suggest otherwise, with projections of future rate increases that would greatly exceed projected inflation.[9] Based on this nonpublic evidence, the ALJ concluded that the acquisition "creates an unacceptable risk of rate increase and rate shock in a critical and economically vulnerable area of Minnesota."[10] She came to this conclusion in spite of Petitioners' commitment not to seek rate recovery of the acquisition premium, transaction costs, or transition costs,[11] as well as certain other rate-related commitments.[12]

The stipulation includes four new or modified rate-related commitments. For the reasons discussed below, however, these commitments entirely fail to mitigate the significant rate-related risks presented by the proposed acquisition. At most, the commitments provide short-term benefits that do not counter the long-term rate risks that the transaction presents.

First, under the stipulation, Minnesota Power would waive its right to file a rate case before November 2026.[13] While a reprieve from rate increases is certainly welcome, it is not clear whether Minnesota Power could realistically file a rate case sooner than late 2026 given that the

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[8] *Id.* ¶¶ 214–15.
[9] *See id.* ¶¶ 218–22.
[10] *Id.* ¶ 222.
[11] *See id.* ¶ 213.
[12] *See id.* ¶¶ 153–61.
[13] Stipulation ¶ 1.43.

current proceeding will not be complete until late 2025, and an acquisition, if approved, likely would not close until several months after that. In its cover letter, the Department claims that this "stay out" commitment would save ratepayers $25 million but fails to provide any basis for this estimate.[14] In any event, this brief reprieve from rate increases is inadequate to counter the serious long-term risks that the acquisition presents to ratepayers.

Second, the stipulation provides for Minnesota Power's currently approved return on equity (ROE) to be temporarily reduced from 9.78 percent to 9.65 percent.[15] The change would take place in the first full month after the later of (a) the acquisition's closing and (b) the Commission's order becoming final.[16] The change would remain in effect only until Minnesota Power files its next rate case, likely in November 2026.[17] The Department claims this would yield a savings of $5.5 million but, again, provides no support for its calculation.[18]

Similar to the stay-out commitment, this temporary ROE reduction fails to mitigate the acquisition's significant, long-term rate-related risks. Moreover, the ROE reduction appears to duplicate Minnesota Power's commitment not to recover flotation costs.[19] Minnesota Power will no longer incur flotation costs if the acquisition is approved.[20] Therefore, it is unclear why an ROE reduction for flotation costs should end with Minnesota Power's next rate case.

[14] Department Letter at 2 (July 11, 2025).
[15] Stipulation ¶ 1.14.
[16] *Id.*
[17] *Id.* While the reduced ROE would continue to apply during the pendency of the next rate case, there is no limit on the overall size of the interim-rate increase Minnesota Power may propose. Other cost increases in interim rates could easily swamp the impact of the ROE reduction.
[18] Department Letter at 2 (July 11, 2025).
[19] *See* Stipulation at 4 n.5 (stating that ROE reduction "includes Minnesota Power's commitment not to seek recovery of flotation costs").
[20] ALJ Report ¶ 157.

Third, the stipulation provides that, if Minnesota Power's cost of debt were to increase above current levels within five years after the close of the acquisition, Minnesota ratepayers "will be held harmless from any rate impact unless Minnesota Power can demonstrate that its increased cost of debt was not caused by the Acquisition."[21] This commitment is a modification of the Petitioners' previous commitment to hold ratepayers harmless from cost-of-debt increases for three years. The ALJ found that a three-year hold-harmless commitment was a weak concession because any impact to Minnesota Power's cost of debt from the acquisition would be unlikely to materialize in a significant way within three years.[22] It is unclear whether extending the term by two years would capture significant cost-of-debt increases from the acquisition, which are likely to materialize in a more significant way over the long term as the Partners take on more debt. The five-year commitment would still allow Minnesota Power to burden ratepayers with cost-of-debt increases that the acquisition causes in later years. Forcing ratepayers to bear debt costs caused by the acquisition five, six, or any number of years after closing is unreasonable.

Finally, the stipulation provides for Minnesota Power to submit a plan to credit ratepayers with existing and future proceeds from the sale of land surrounding its hydroelectric reservoirs, as identified in Docket No. E-015/PA-20-675.[23] But this commitment simply promises to do what the Commission has already ordered Minnesota Power to do—sell unneeded land and credit the proceeds back to ratepayers.[24] The stipulation also contemplates that Minnesota Power will credit ratepayers with the proceeds from the sale of other lands that have been in utility rate base.[25] This commitment similarly lacks value: when Minnesota Power sells land that was part of its ratepayer-

[21] Stipulation ¶ 1.12.
[22] ALJ Report ¶ 145.
[23] Stipulation ¶ 1.45.
[24] *See* Order Allowing Land Sales and Establishing Conditions at 5 (Nov. 18, 2021).
[25] Stipulation ¶ 1.46.

funded utility plant, the only reasonable course of action is to credit ratepayers with the proceeds. Moreover, there is nothing in this commitment to guarantee that the price obtained will be reasonable—particularly for sales of high-value land near utility infrastructure that is ideally suited for siting data centers or other large industrial uses. The lack of commitment on the price of land sales is particularly troubling given the stipulation's failure to include provisions that effectively disclose affiliated interest arrangements, discussed further below. Like the other rate-related commitments, the land-sale commitments are of little value and utterly inadequate to counter the risk that rates will become unaffordable under the Partners' ownership.

II. THE STIPULATION DOES NOT ENSURE THAT THE PARTNERS WOULD FUND MINNESOTA POWER'S ENERGY TRANSITION.

ALLETE has framed the proposed acquisition as a way to access the capital it needs for the energy transition. But the record establishes that ALLETE's alleged capital need can be mitigated and is likely overstated.[26] The record also reflects no previous instances where ALLETE was unable to obtain capital from the public market, and no credible evidence that the public market cannot meet ALLETE's legitimate capital needs in the future.[27] Moreover, despite touting the acquisition as the solution to its capital needs, ALLETE did not even ask the Partners for a capital-funding commitment until intervenor testimony made it appear that such a commitment would help secure approval.[28] This capital commitment, however, has significant shortcomings, identified by the ALJ, that undermine its value.[29] The stipulation attempts to shore up this deficient commitment to no avail.

[26] ALJ Report ¶¶ 122–28.
[27] *Id.* ¶¶ 131–35.
[28] *Id.* at 66.
[29] *See id.* ¶¶ 140–41.

Under the stipulation, as in prior iterations, the capital-funding commitment would last only five years—insufficient time to fully see Minnesota Power through the energy transition.[30] Moreover, the commitment continues to be made not by the Partners but by Alloy Parent (the entity that would directly own ALLETE), and there is no requirement that Alloy Parent provide any new equity at all—it may simply reinvest ALLETE's earnings or take on additional debt, secured by its interest in ALLETE, to meet the commitment.[31] These are things that ALLETE can already do without being acquired by private equity.

In an attempt to give teeth to the commitment, the stipulation adds a new mechanism by which the Commission could prevent ALLETE from paying dividends if Minnesota Power has not "been provided sufficient equity capital needed up to that point in time to fund the 5-year capital investment plan."[32] This mechanism, however, contains vague language that undermines its efficacy. For example, the Partners can avoid its application through undefined "reasonable and prudent plan reductions."[33] More importantly, increasing the enforceability of a commitment that has little value in the first place does not make the commitment any more valuable, nor does it alter the public-interest balance found by the ALJ.

Finally, the stipulation provides for a "Clean Firm Technology Fund," under which Alloy Parent would contribute $50 million over a period of years to a fund earmarked for investments in "clean firm technology."[34] "Clean firm technology" means "a carbon-free resource, as defined by Minn. Stat. § 216B.1691, subd. 1(b), that can be dispatched and provide energy continuously for

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[30] *Id.* ¶ 141

[31] *See* Stipulation ¶ 1.3.

[32] *Id.* ¶ 1.4; *see also id.* ¶ 1.5.

[33] *Id.* ¶ 1.4.

[34] *Id.* ¶ 1.63.

a duration of 50 hours or more."[35] While contributions to the fund would not themselves be rate-recoverable, any other portion of a project to which these funds are applied could be recovered from ratepayers.[36] And, similar to the above-discussed capital commitment, there are no restrictions on Alloy Parent paying for contributions to the fund using ALLETE's earnings or additional debt secured by ALLETE's shares.

While the stipulation characterizes the "Clean Firm Energy Fund" as an environmental commitment, it may be better understood as a rate-related commitment. But, however the commitment is characterized, its benefits are limited.

Whether or not a Clean Firm Energy Fund is created, ALLETE must comply with the carbon-free standard, and its method of compliance, including the use of clean firm energy, will be overseen by the Department and the Commission. Moreover, while $50 million is a substantial sum, it is unlikely to have a large impact in the context of Minnesota Power's overall investments, which ALLETE projects to be more than $4 billion over the next five years.[37] Even if that projection is overstated, $50 million is a relative drop in the bucket. For these reasons, it is unclear how much environmental benefit this commitment provides.

Moreover, while a "free" $50 million investment in clean energy could benefit ratepayers, it could also harm them by creating headroom for ALLETE to make larger, more expensive investments than it otherwise would have. Moreover, the fact that the fund contributions are not rate-recoverable could incentivize ALLETE to make up for them elsewhere, through more frequent or larger rate-increase requests. Finally, the Partners are likely to fund the $50 million by taking

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[35] *Id.* ¶ 1.63(c).
[36] *Id.* ¶ 1.63(d).
[37] ALJ Report ¶ 123.

on additional debt, which could have detrimental impacts on ALLETE's financial health, as discussed in the ALJ's report and Section III below, and drive up Minnesota Power's debt costs.

III. THE STIPULATION DOES NOT MITIGATE RISKS TO MINNESOTA POWER'S FINANCIAL HEALTH.

Today, ALLETE's overall financial health is strong.[38] If the Partners are allowed to acquire ALLETE, however, their plans to pursue aggressive rates of return and take on increasing debt could adversely affect ALLETE's long-term financial health.[39] Moreover, if the Partners were unable to extract their desired returns, there is a risk that they would seek to unload their investment in ALLETE in the near term, leading to an inefficient sale of the company.[40] The stipulation does not mitigate these risks, which are a product of the private-equity investment model and thus unavoidable if the Partners are allowed to acquire ALLETE.

As noted earlier, the stipulation contains a mechanism by which the Commission could prevent ALLETE from paying dividends to Alloy Parent unless "Minnesota Power has been provided sufficient equity capital needed up to that point in time to fund the 5-year capital investment plan in the February 2025 10-K."[41] This does nothing, however, to prevent the "Alloy" entities from taking on additional debt that could impair ALLETE's creditworthiness, nor does it lessen the risk of an untimely exit. If anything, exercising the mechanism would increase the risk of an early exit by making it more difficult for the Partners to extract returns from their investment.

ALLETE and the Partners have also proposed a number of "ring fencing" conditions that would allegedly insulate ALLETE and Minnesota Power from Partner-related financial risks. These conditions include, for example, prohibitions on using utility property to guarantee Alloy

[38] *Id.* ¶ 66.
[39] *Id.* ¶¶ 188–99.
[40] *Id.* ¶ 211.
[41] Stipulation ¶ 1.4; *see also id.* ¶ 1.5.

Parent debt and loans between Minnesota Power and Alloy Parent.[42] The ALJ, however, found that these and other proposed ring-fencing conditions were inadequate to insulate Minnesota Power's ratepayers for higher debt costs resulting from exposure to the risks of debt held at Alloy Parent.[43]

The stipulation reiterates the previous ring-fencing conditions without material change.[44] To the extent that these conditions were already in the record and considered by the ALJ, they do not alter her public-interest determination. Moreover, even as phrased in the stipulation, the proposed ring-fencing conditions continue to leave many risks unaddressed, as shown in Table 1, below. Table 1 is provided for illustrative purposes and does not reflect every proposed ring-fencing provision or every potential risk.

Table 1 –
Acquisition Ringfencing Matrix

Risk that Petitioners Have Proposed One or More Conditions to Address	**Entity Condition Applies To**				
	ALLETE, Inc.	Alloy Parent, LLC	Other Alloy Entities	Partners[45]	Other Partner Subsidiaries or Affiliates[46]
This entity can pledge ALLETE's assets to secure its own debt	Yes	Yes[47]	No[48]	No[49]	N/A

[42] *See* ALJ Report ¶ 148.
[43] *Id.* ¶¶ 147–48.
[44] *Compare* Stipulation ¶¶ 1.15–.22 *with* Cady Rebuttal sched. 1 *and* Lapson Direct, sched. 3.
[45] CPP Investment Board Private Holdings (5) Inc.; GIP Fund V; and Tower Bridge. *See* Stipulation n.4.
[46] The stipulation references Partner "subsidiaries or affiliates" without defining either term. *See* Stipulation ¶ 1.21. Partner "subsidiaries" presumably refers to portfolio companies held by Fund V, Tower Bridge, and CPP Investment Board Private Holdings (5) Inc. *See id.* n.4. It is unclear whether "affiliate" is intended to refer to Fund V's limited partners; the portfolio companies or limited partners of other GIP funds; Global Infrastructure Management, LLC; and/or other entities in BlackRock's corporate hierarchy.
[47] Stipulation ¶ 1.16. Alloy Parent may not use "utility assets" to secure its own debt. It is not, however, prohibited under paragraph 1.16 from using ALLETE's nonutility assets for this purpose.
[48] *Id.* ¶ 1.18(b).
[49] *Id.* ¶ 1.17.

Risk that Petitioners Have Proposed One or More Conditions to Address	Entity Condition Applies To				
	ALLETE, Inc.	Alloy Parent, LLC	Other Alloy Entities	Partners [45]	Other Partner Subsidiaries or Affiliates[46]
This entity can pledge *shares of* ALLETE to secure its own debt	N/A	Yes[50]	Yes[51]	?	N/A
ALLETE can loan funds to or borrow funds from this entity	N/A	No[52]	No[53]	No[54]	No[55]
This entity can provide "direct credit support" to Alloy Parent Entities through a guarantee	No[56]	N/A	N/A	?	?
This entity must hold ALLETE harmless from Alloy Parent entity risks	N/A	Yes[57]	Yes[58]	?	?
This entity can pay dividend with two or more senior unsecured credit ratings below investment grade	No[59]	?	?	?	N/A
This entity can pay dividend with one senior unsecured credit rating below investment grade	Yes[60]	?	?	?	N/A

As Table 1 illustrates, many affiliate-related financial risks are left unaddressed by the stipulation. Additional affiliate-related risks left unaddressed by the stipulation are discussed further in Section V below.

Finally, the stipulation would require ALLETE to propose the creation of a separate holding company for Minnesota Power, which is currently a business unit of ALLETE without separate legal existence.[61] The fact that Minnesota Power is a division of ALLETE, rather than a

[50] *See* ALJ Report ¶ 148 & n.253.
[51] *See id.*
[52] Stipulation ¶ 1.21
[53] *Id.*
[54] *Id.*
[55] *Id.* The stipulation leaves "subsidiaries or affiliates" undefined. *See supra* note 46.
[56] Stipulation ¶ 1.19(a)
[57] *Id.* ¶ 1.18(c).
[58] *Id.*
[59] *Id.* ¶ 1.6
[60] *See id.*; *see also* ALJ Report ¶ 14.
[61] *See* Stipulation ¶¶ 1.27–.28; Vavro Direct at 20.

legally separate subsidiary, is an obstacle to effective ring fencing.[62] This is true even absent the proposed acquisition, and the Department recommended that ALLETE pursue a separate holding company for Minnesota Power regardless of the whether the acquisition is approved.[63]

The Commission should not approve an acquisition simply because the proponents are offering to do something that ALLETE should be doing regardless. And, even if Minnesota Power becomes a separate entity from ALLETE, this would do nothing to address underlying risks to Minnesota Power's financial health—increased debt at the parent level and the risk that the Partners could abandon their investment prematurely.

IV. THE STIPULATION DOES NOT MITIGATE RISKS TO THE REGULATORY COMPACT.

The ALJ found that the proposed acquisition threatens the regulatory compact—i.e., effective oversight of Minnesota Power—because it would result in less transparency and because the Partners' behavior in this proceeding suggests that they would be less cooperative owners.[64] On the last point, the ALJ found: "The Partners' lack of cooperation in this proceeding further establishes a material risk that ALLETE's transparency may suffer under their ownership. Any reduction in cooperation by the utility would harm the public interest by increasing the burden on regulators and the likelihood of worse regulatory outcomes for ratepayers."[65] The ALJ also determined that the contrast between "the Petitioners' agreements and private discussions" and "their public statements" was an important consideration.[66] The ALJ determined that it was "at best unclear how the Commission would enforce any of the commitments made by the Petitioners that are not already required by law," and noted the only $1,000 per violation available under

[62] *See* Vavro Direct at 20.
[63] *Id.* at 21.
[64] ALJ Report ¶¶ 235–49.
[65] *Id.* ¶ 249.
[66] *Id.* at 66.

Minnesota statute and the difficulty with forcing Partners to take certain actions.[67] Last, the ALJ noted the vast resources that would be required to monitor compliance with commitments.[68]

The stipulation, however, appears to contain no new commitments to improve post-closing transparency, such as continuing the financial reporting that is required of ALLETE as a public company. Nor does the stipulation effectively mitigate the Partners' potential lack of cooperation identified by the ALJ. The stipulation contains two types of conditions, discussed below, that could potentially mitigate some of the risks posed by the Partners' motivations as private-equity investors, but these conditions fall short of protecting the public interest on this record. While no conditions can completely mitigate these risks, the ones proposed are likely to be wholly ineffective.

The first set of conditions that could, in theory, help protect the regulatory compact relate to board control. But they fall short because the Partners will appoint every single board member either directly or, in the case of the CEO, indirectly through the other appointed board members. If the Partners did not control ALLETE's board, they would be unable to influence its actions, including its regulatory advocacy. The Partners, however, have insisted on having full control over ALLETE,[69] consistent with private-equity investment strategies generally.[70] The stipulation does not change the essential power dynamic of the board from what the Partners previously proposed. It adds one additional board member (14 instead of 13) but does not change the fact that all members would be directly or indirectly chosen by the Partners.[71] On top of that, only 6 out of the 14, a minority, would be required to meet the New York Stock Exchange's definition of

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[67] *Id.* at 66–67.
[68] *Id.* at 67.
[69] *See* Vavro Direct at 26.
[70] ALJ Report ¶ 251.
[71] Stipulation ¶ 1.23(b).

"independent."[72] In addition to fully controlling the board, the Partners would have consent rights (essentially, veto rights) over certain material actions of ALLETE and could override the board's decisions.[73] Given the Partners' control of the board and their consent rights, the ALJ found a material risk that the interests of Minnesota Power and its ratepayers might receive short shrift following an acquisition.[74] The stipulation does not change this situation.

Second, meaningful enforceability provisions could theoretically help mitigate risks to the regulatory compact by making violations of Minnesota law or Commission order easier to punish. The ALJ, however, was skeptical of the enforceability of the Petitioners' commitments and noted that "[t]he Partners themselves have carefully committed to do very little, instead largely making commitments through expected holding companies or Minnesota Power itself."[75]

The lack of commitments by the Partners—that is, by Global Infrastructure Management or the Canada Pension Plan Investment Board—is a theme that continues in the stipulation. In footnote four, the stipulation carefully qualifies that, "[w]ith respect to the commitments herein, . . . 'Partners' refers to (i) the funds managed by GIP participating in this transaction, namely GIP Fund V and Tower Bridge and (ii) CPP Investment Board Private Holdings (5) Inc."[76] In other words, references in the stipulation to "Partners" refer only to the funds that would hold an interest in ALLETE, not to the entities that would actually control those funds. While a rational private-equity firm might want to limit its liability, it is equally reasonable for the Commission to find that the private-equity model simply poses too many risks when applied to a Minnesota utility.

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[72] *Id.* ¶ 1.23(b)(1).
[73] *See* ALJ Report ¶¶ 260–66.
[74] *See id.* ¶¶ 150, 256–66.
[75] *Id.* at 66–67
[76] Stipulation at 2 n.4.

The stipulation adds two new enforcement conditions that the Partners had not previously proposed. These conditions fail, however, to provide any assurance that if a condition of approval were violated, the violation would be easily remedied.

The stipulation provides that (1) "any failure to achieve any commitment in this Settlement, or to comply with any other condition the Commission places on approval of the Acquisition, is a violation of the Commission's order under Minn. Stat. § 216B.54" and (2) "ALLETE and Partners submit to the jurisdiction of the Commission, and then of the courts of the State of Minnesota with respect to any action brought to enforce or resolve a dispute arising from an applicable commitment."[77] Item (1) merely states the obvious—"a violation is a violation." Item (2) is also a no-brainer, but it is worth less than its face value because "Partners" as used in the stipulation refers only to the funds that will own ALLETE, not to Global Infrastructure Management or Canada Pension Plan Investment Board. Thus, once again, the Partners have carefully avoided having any skin in the game.

Finally, even with these commitments, the Commission's enforcement options under 216B would be limited—a penalty of up to $1,000 per "knowing[] and intentional[] violation" of a Commission order or provision of chapter 216B.[78] Thus, even if regulators were able to detect a violation, the maximum statutory penalty is only $1,000—peanuts for a typical private-equity investor—and obtaining even that modest penalty would require proof that the violation was committed knowingly *and* intentionally. For these reasons, the stipulation's enforcement provisions are unlikely to have a deterrent effect or make ratepayers whole for any violation.

[77] Stipulation ¶¶ 1.73–.74.
[78] Minn. Stat. § 216B.57.

V. THE STIPULATION DOES NOT ENVISION COMPLIANCE WITH THE AFFILIATED-INTEREST STATUTE OR OTHERWISE MITIGATE SELF-DEALING RISKS.

Minnesota's affiliated-interest statute, Minn. Stat. § 216B.48, is intended to prevent conflicts of interest and cross subsidies between public utilities and their affiliates.[79] By requiring Commission approval of a utility's contracts with affiliated entities, the statute helps ensure that ratepayers are protected from paying too much for "sweetheart deals."[80] If the acquisition were approved, ALLETE will become affiliated with the vast network of companies contained in the Partners' portfolios, creating many opportunities for self-dealing transactions.[81]

The Petitioners originally proposed submitting for approval only affiliate contracts worth $1 million or more,[82] even though the statute requires that any affiliate contract worth more than $50,000 be submitted to the Commission.[83] The Petitioners have also used a working definition of "affiliated interest" that is different than the statute's definition.[84] For example, Petitioners propose to report affiliate contracts with "suppliers, and any industrial customers with contracted rates."[85] But "suppliers" is left undefined and does not clearly include affiliated entities that contract with ALLETE for purposes other than to "supply" goods.

The ALJ found Petitioners' affiliated-interest commitments inadequate and out of step with other recent take-private transactions where acquirers agreed to fully comply with the jurisdiction's affiliated-interest statutes, rules, and regulations.[86] She further found that the Partners' extensive holdings, coupled with their planned control over ALLETE, heighten the very

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[79] ALJ Report ¶ 267.
[80] *Id.*; *see* Minn. Stat. § 216B.48, subds. 1, 3.
[81] *See* Ex. DOC-301 at 14 (Vavro Direct).
[82] ALJ Report ¶ 269.
[83] *Id.* ¶ 270.
[84] *Id.* ¶ 271.
[85] Stipulation ¶ 1.29(a).
[86] ALJ Report ¶¶ 152, 271, 275.

risks that the statute is intended to address and recommended requiring full compliance with the statute.[87]

The stipulation continues to propose a cutoff much higher than the statute's—$500,000—and to use the Petitioners' working definition of an "affiliated interest."[88] While the stipulation states that its affiliated-interest proposals are "[i]n addition to, and not in abrogation of, any obligations" under the statute,[89] proposing that certain things *will* be reported implies that other things will not. Simply put, the Commission should not sanction self-dealing-related conditions that are inconsistent with Minnesota law.

Moreover, the Petitioners' definition of "affiliated interest" appears to leave out important entities that should be reported whether or not they come within the statutory definition. Under the stipulation, ALLETE commits to report contracts with suppliers and industrial customers who are "more than 5 percent owned by CPP Investments, GIP, or BlackRock, Inc."[90] But entities that are "more than 5 percent owned by CPP Investments, GIP, or BlackRock, Inc." does not cover the full panoply of business relationships that could result in self-dealing or harm to ratepayers, since it does not include assets that the Partners manage or control but do not actually *own*.

For example, it is unclear whether the stipulation is intended to cover Fund V portfolio companies or portfolio companies of other GIP funds when those companies contract with ALLETE. Global Infrastructure Management does not, to the OAG's knowledge, invest significant amounts of its own capital in Fund V or its other funds. Instead, most of the ownership interest in a private-equity fund rests with the fund's limited partners.[91] Therefore, if "GIP" is

[87] *Id.* ¶ 275.
[88] Stipulation ¶ 1.29.
[89] *Id.*
[90] *Id.*
[91] Lebens Direct at 10.

intended to refer to Global Infrastructure Management, consistent with paragraph (D) of the stipulation, it is unlikely that ALLETE would have to report any contracts with Fund V assets or other GIP fund assets. On the other hand, if "GIP" is intended to refer to GIP Fund V and Tower Bridge, consistent with footnote four, then ALLETE would have to report any contracts with Fund V and Tower Bridge portfolio companies (assuming they met the five-percent ownership threshold) but *not* contracts with companies in any other GIP-managed funds, even if a company represented more than five percent of the fund and the contract were worth more than $500,000.

This lack of clarity further erodes the stipulation's already inadequate affiliated-interest conditions. And the significant blind spots in the stipulation's affiliated-interest commitments are not a theoretical concern. For example, the record contains evidence Canada Pension Plan Investment Board may intend to facilitate an introduction between Minnesota Power and Octopus Energy, a company in which CPPIB owns a large stake.[92] It is unclear whether the stipulation would require ALLETE to disclose any contracts it may enter into with Octopus, potentially leaving the Commission and ratepayers in the dark as to the existence and reasonableness of those contracts.

CONCLUSION

In general, the stipulation proposes conditions that are (1) already in the record, (2) illusory and ineffective, or (3) of marginal value. Handing private-equity fund managers the keys to a Minnesota utility company under these conditions still carries far too many risks to justify any marginal potential benefit. Were the Commission to approve an acquisition, the agency would stand as the last line of defense against harms to Minnesota Power and its customers from the private-equity investment model. Yet the Commission would lack transparency into the Partners'

[92] Addonizio Surrebuttal at 25.

plans, relationships, and activities or any ability to control their behavior beyond punishing Minnesota Power. For these reasons and all the reasons set forth in the ALJ's report, the Commission should reject the stipulation and deny approval of the proposed acquisition.

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Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ **Peter G. Scholtz**

PETER G. SCHOLTZ
Assistant Attorney General
Atty. Reg. No. 0389936

445 Minnesota Street, Suite 600
St. Paul, Minnesota 55101
(651) 757-1473 (Voice)
(651) 296-9663 (Fax)
peter.scholtz@ag.state.mn.us

ATTORNEYS FOR MINNESOTA
OFFICE OF THE ATTORNEY GENERAL—
RESIDENTIAL UTILITIES DIVISION