COMMERCE DEPARTMENT

June 30, 2017

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

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

Dear Mr. Wolf:

Attached are the Reply Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

Minnesota Power's 2015 Renewable Resources Rider and Renewable Factor.

The Department is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ CRAIG ADDONIZIO
Financial Analyst

CA/lt

COMMERCE DEPARTMENT

Before the Minnesota Public Utilities Commission

Reply Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E015/M-14-962

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On November 30, 2016, the Minnesota Public Utilities Commission (Commission) issued an Order in this Docket (the November 30 Order) requiring Minnesota Power (MP or the Company) to reflect in its revenue requirements in the rider charged to Minnesota ratepayers through MP's Renewable Resources Rider (RRR) all North Dakota Income Tax Credits (ND ITCs) actually realized in ALLETE's tax return filings, or monetized through other permissible means.[1]

On December 20, 2016, MP filed a Petition for reconsideration, arguing that "the net effect of the November 30 Order is to deprive the ALLETE companies of approximately $11.3 million, resulting in an impermissible confiscation of nonregulated ALLETE company assets from ALLETE shareholders in contravention of the basic principles of financial separation between regulated and nonregulated activities of settled regulatory principles."[2]

On February 14, 2017, the Commission issued an *Order Denying Minnesota Power's Petition for Reconsideration and Granting Reconsideration for Further Proceedings* (the February 14 Order) denying MP's petition for reconsideration, granting reconsideration on its own motion, and delegating to the Executive Secretary the task of issuing a notice requesting additional briefing and comment. The February 14 Order stated:

> Based on its review, the Commission will deny the petition for reconsideration because it finds that the petition does not raise new issues nor point to new and relevant evidence. The Commission will, however, on its own motion, grant reconsideration for the purpose of considering the merits of the November 30, 2016 order and whether any changes should be made to the order.

[1] Specifically, ordering paragraph one stated: "All Bison Wind Project North Dakota Investment Tax Credits actually realized in tax-return filings, or monetized through other permissible means, shall be reflected in the Company's revenue requirements."

[2] See MP's December 20, 2016 Petition for Reconsideration, pages 1-2.

> To assist the Commission in that task, the Commission will delegate to the Executive Secretary the authority to issue a notice in this docket requesting additional briefing and comment on the issues identified by the Commission at the Commission meeting, and on such additional issues as may be identified by Commission staff, and setting appropriate timelines.

On March 24, 2017, the Commission issued a Notice of Comment Period (March 24 Notice) which listed several topics open for comment.

On May 30, 2017, the Department, MP, the Edison Electric Institute, and the Office of the Attorney General-Residential Utilities and Antitrust Division (OAG-RUD) filed Comments responsive to the March 24 Notice.

On June 20, 2017, OAG-RUD filed Reply Comments.

In these reply comments, the Department responds to MP's May 30, 2017 Comments (May 30 Comments).

II. DEPARTMENT RESPONSE TO MP'S MAY 30 COMMENTS

A. DOES THE NOVEMBER 30, 2016 ORDER RESULT IN THE SHARING OF RISKS AND BENEFITS BETWEEN ALLETE'S REGULATED AND NON-REGULATED OPERATIONS?

In its May 30 Comments, MP stated that the November 30 Order requires the Company to credit ratepayers with the value of ND ITCs monetized against income generated by ALLETE's non-regulated operations (the "extra" ND ITCs), and that this "use" of ALLETE's non-regulated income to monetize the "extra" ND ITCs amounts to a sharing of benefits. MP stated that "Allowing Minnesota Power's customers to receive the value of the ["extra" ND ITCs], however, gives them a direct benefit from non-regulated business activities, removing the ring-fence between regulated and non-regulated business activities put in place to insulate customers from operations of the non-regulated affiliates."[3]

While the Department agrees that ALLETE's non-regulated income will be used to monetize the "extra" ND ITCs, the Department disagrees that this use of ALLETE's non-regulated income amounts to a sharing of benefits. No income earned by ALLETE's non-regulated operations is

[3] May 30 Comments, page 4.

"shared" with or transferred to ratepayers in any meaningful sense. ALLETE's non-regulated operations (ultimately, shareholders) keep any and all income that they earn. Further, per the November 30 Order, ALLETE's non-regulated operations bear no costs associated with the provision of utility service, and do not subsidize ratepayers in any way. Ratepayers are held responsible for the costs of providing utility service, and shareholders do not lose any tax benefits they would not have but for ratepayers' investments in the Bison Wind Projects.

B. IS THE SHARING OF RISK JUSTIFIED IN LIGHT OF THE COMMISSION'S PREVIOUSLY STATED COST-AND-BENEFIT ALLOCATION PRINCIPLES?

In its May 30 Comments, MP stated that the sharing of benefits that it asserts results from the November 30 Order is not justified in light of the Commission's cost and-benefit-allocation principles as set forth at pages 22-24 of the Commission's September 1, 2006 Order (the 2006 Order) in *In the Matter of the Application of N. States Power Co. d/b/a Xcel Energy for Auth. To Increase Rates for Elec. Serv. In Minn*., Docket No. E-002/GR-05-1428 (the 2005 NSP-MN Rate Case).

MP stated that the cost-and-benefit allocation principles described in the Commission's 2006 Order summarize principles established by the Commission in prior proceedings in which the Commission decided to impose and enforce strict ring-fencing, or "walling off of certain assets or liabilities," around the non-regulated business activities of companies with regulated utility operations in order to insulate utilities and ratepayers from risks to non-regulated businesses.[4] MP stated that in order to "achieve this protection, ratepayers must not only be insulated from non-regulated business activity disappointments but must also be insulated from receiving non-regulated business activity windfalls" and that "if there are returns to be made from a non-regulated investment, only shareholders should reap that reward because structures had been implemented to ensure ratepayers have been insulated from the non-regulated investment."[5]

By contrast, the OAG-RUD's May 30, 2017 Comments on page 4 point out that an appropriate reading of that order would result in the conclusion that MP's ratepayers should not receive any benefit from the ND ITCs, as an affiliate must not receive a tax benefit stemming from investments simply because they share a consolidated tax return:

> The Commission addressed a related issue in the 2005 Xcel Energy Electric Rate Case. In that proceeding, the Commission was faced with a situation where Xcel Energy's ("Xcel") tax liability was "offset by tax deductions for an approximately $3 billion loss sustained by

[4] MP's May 30 Comments, page 3.
[5] MP's May 30 Comments, page 7.

> an unregulated affiliate." In that case, the Commission found that the tax benefit from the loss sustained by the unregulated affiliate should remain with that affiliate. Ratepayers were not allowed to reap the benefit of a tax deduction that "they had nothing to do with creating." The Commission's Order in the instant proceeding reaches precisely the same outcome: an affiliated entity should not receive a windfall from tax benefits stemming from investments made by a different affiliate simply because they share a consolidated tax return. (Cites omitted).

The Department agrees with the OAG-RUD's reasoning and disagrees with MP's reasoning. First, it is clear that the returns at issue here are the result of regulated investment, not non-regulated investment as MP implies. MP made this fact clear in its May 30 Comments, stating "Minnesota Power acknowledges that the tax credits utilized on the unitary North Dakota State tax return exist because of the Bison Wind Projects, the cost of development for which is currently included in the Renewable Resources Rider."[6] Thus, any "windfall" obviously results from *regulated* investment, and therefore should be credited to ratepayers.

Second, as the Department explained in its December 16, 2015 Comments in this Docket, 2006 Order in the 2005 NSP-MN Rate Case explicitly concluded that it was appropriate and reasonable to use NSP-MN's regulated revenues to monetize tax benefits generated by NSP-MN's non-regulated affiliate for the benefit shareholders.[7] Thus, MP's assertion that the uncompensated use of one party's income to monetize tax benefits generated by a second party for the benefit of the second party amounts to an inappropriate sharing of benefits directly contradict the Commission's 2006 Order.

By contrast, the 2006 Order indicates that, if any change were made to the Commission's November 30 Order, it should be not only to require that all monetized ND ITCs must be assigned to MP's ratepayers, but also to protect MP's ratepayers from the loss of ND ITCs due to any losses incurred by ALLETE's affiliates, given the example provided in the Department's May 30, 2017 Comments on pages 4-6.

Third, MP's notion of "ring-fencing" does not neatly apply to taxes. The Department agrees that the intent of the Commission's cost and-benefit-allocation principles as set forth in the 2006 Order is to separate as much as possible a company's regulated and non-regulated operations. The point of a consolidated and unitary tax returns, however, is to blend the calculation of tax expense of multiple entities within a single company. As was made clear in the 2005 NSP-MN Rate case and as has been made clear in this case, a company's total tax

[6] MP's May 30 Comments, page 3.
[7] Department's December 16, 2015 Comments, pages 6-7.

expense on a consolidated or unitary tax return can be less than the sum of the tax expense of each member of the consolidated return as calculated on a separate-return basis if filing a consolidated or unitary return allows the use of tax benefits that would otherwise expire unused. MP's notion of ring-fencing ignores this complexity. If ALLETE's non-regulated operations were completely "ring-fenced" as though the non-regulated and regulated operations were owned by different, unrelated companies, then MP's non-regulated affiliates would not have access to the ND ITCs. MP has not explained how allowing tax benefits generated by ratepayer-funded investments to accrue to shareholders is consistent with the idea of ring-fencing.

Similarly, if the total amount of ND ITCs generated was $15 million instead of $113 million, it would be unreasonable to simply give the "extra" $4.3 million to shareholders, because it is easy to imagine scenarios in which MP's separate-return taxable income would increase such that it would be able to use all $15 million, rather than the current expectation of $10.7 million. If those "extras" were given to shareholders, and MP's North Dakota taxable income increases in the future, ratepayers would have to pay taxes that they would not have had to pay if MP had no unregulated affiliates. A decision to simply give these ND ITCs away to shareholders without compensation is to inappropriately predict that they will never have any value to ratepayers. Whether MP will be able to use them in the future is simply not knowable right now. However, these tax benefits were paid for by ratepayers, and therefore any benefits realized from them should accrue to ratepayers.

C. DOES THE NOVEMBER 30 ORDER'S ASSIGNMENT OF ND ITCS RESULT IN A SYMMETRICAL SHARING OF BENEFITS AND RISKS BETWEEN MINNESOTA POWER RATEPAYERS AND ALLETE SHAREHOLDERS, AND DOES IT MATTER THAT THE BENEFITS AND RISKS ARE SHARED SYMMETRICALLY?

MP's May 30 Comments make clear that MP's notion of "symmetrical treatment" is different from the Department's. As explained in the Department's May 30 Comments, the Department assessed the symmetry of the November 30 Order through the lens of the allocation of tax expense between regulated and non-regulated operations.[8] The Department considered the allocation of tax expense in two scenarios: first, when the use of consolidated or unitary tax return results in the consumption of "extra" tax benefits; and second, when the use of a consolidated or unitary return prevents the consumption of some tax benefits.

MP, on the other hand, approached the idea of symmetry from the perspective of risks and benefits to ratepayers. Specifically, MP's position is that there should be symmetry between (a)

[8] Department's May 30 Comments, pages 10-11.

ratepayers' exposure to risks associated with non-regulated operations and (b) ratepayers' exposure to benefits associated with non-regulated operations. MP stated that the Commission's principles of financial separation require that ratepayers be insulated from risks associated with ALLETE's non-regulated operations, and symmetry therefore requires that ratepayers also be insulated from any possible benefits associated with non-regulated operations. MP stated that the November 30 Order does not result in a symmetrical treatment of the ND ITCs:

> The November 30 Order results in asymmetrical treatment of the ND ITCs. Symmetry indicates balance, and the application of correct proportions, or appropriate sharing. Symmetrical treatment, for tax purposes, requires application of the matching principle to achieve this balance. The benefits and the risks should be shared symmetrically. This principle dictates that costs and revenues must be matched such that ratepayers receiving the benefit of service should also pay for the service. This principle also ensures that utility operations are properly insulated from the company's non-regulated operations. Utility regulation is properly concerned with insulting [sic] utility ratepayers from the business risks that may be undertaken by the Company's non-regulated operations, as described in the NRG Docket.[9]

First, the Department disagrees with MP's interpretation of the matching principle. The matching principle dictates that tax benefits must be matched with the expenses that give rise to them. In the 2005 NSP-MN Rate Case, the Administrative Law Judge (ALJ) found that if tax deductions resulting from disallowed expenses were to be included in the cost of service, the matching principle would require that the expenses themselves must also be included in the cost of service.[10] The Commission agreed in its 2006 Order, stating:

> It is far more important to protect ratepayers from loss than to give them opportunities for windfalls. While ratepayers will not be harmed by missing a chance for a tax break they had nothing to do with creating, they would be harmed by paying higher rates to cover losses from unregulated investments they had nothing to do with making.[11]

[9] MP's May 30 Comments, at 9.
[10] July 6, 2006 Report of the ALJ in the 2005 NSP-MN Rate Case, finding 158, page 38.
[11] 2006 Order at 23.

The "losses from unregulated investments" referenced by the Commission are the expenses that gave rise to the tax benefits. The Commission found that if it were to share the tax break generated by non-regulated affiliates with ratepayers, it would, per the matching principle, also have to allocate to ratepayers a portion of the expenses that gave rise to tax break. The Commission concluded that exposing ratepayers to that risk was unreasonable. In this Docket, MP's position is directly contrary to the Commission's 2006 Order. MP wants to include costs in its revenue requirements without including the matching tax benefits. If shareholders are permitted to consume tax benefits generated by ratepayers, they should also be allocated a portion of the costs that gave rise to the benefits.

Second, and more generally, the Department disagrees with MP's position that symmetry between the risks and benefits to ratepayers is necessary. As noted above, if any change were made to the Commission's November 30 Order, it should be not only to require that all monetized ND ITCs must be assigned to MP's ratepayers, but also to protect MP's ratepayers from the loss of ND ITCs due to any losses incurred by ALLETE's affiliates, given the example provided in the Department's May 30, 2017 Comments on pages 4-6.

Crediting ratepayers with the greater of (a) the amount of ND ITCs MP would consume on a separate-return basis and (b) the amount of ND ITCs ALLETE uses on its unitary tax return, would be asymmetric with respect to the risks and benefits to ratepayers. However, that asymmetry would be reasonable. Under either possibility (if tax consolidation results in more or fewer ND ITCs being realized), MP's rates would be sufficient to cover the costs of providing utility service. If ALLETE's non-regulated operations prevent the use of ND ITCs that would have otherwise been used, costs incurred in providing utility service will not have been the cause, and MP's ratepayers should not be required to pay higher rates as a result. Further, as the Department described in its December 16, 2015 Comments, ALLETE has options available to it to prevent that scenario from occurring.[12]

1. *Hypothetical ALLETE Clean Energy Example*

During its deliberations in February 2017, the Commission presented a hypothetical example in which one of MP's non-regulated affiliates built the Bison Wind facility and entered into a contract to sell the power, not to Minnesota Power, but to Xcel and Otter Tail. The Commission asked how ND ITCs would be allocated in that situation, and whether MP would get any allocation of the credit.

In its May 30 Comments, MP addressed this hypothetical situation. While the Company muddied the example by assuming that Bison's output is sold to Minnesota Power, rather than

[12] Department's December 16, 2015 Comments, page 7.

Xcel and Otter tail, and by including other extraneous information, the end result is the same. MP and its ratepayers would have no access to any ND ITCs associated with wind facilities paid for by a non-regulated affiliate, even if some of those ND ITCs were monetized against MP's income. MP stated:

> Any difference between the credits utilized by ALLETE Clean Energy on their separate North Dakota State tax return and the credits utilized on the ALLETE unitary return would be recorded on the consolidation company.

In prior Comments, MP described the "consolidation company" as "clearinghouse for calculation purposes to account for differences" between separate return calculations and consolidated return calculations.[13] The consolidation company resides in ALLETE's non-regulated operations, and therefore any such difference, positive or negative, ultimately accrue to shareholders. Likewise, all ND ITCs must accrue to MP's ratepayers.

D. IS THE COMMISSION'S NOVEMBER 30, 2016 ORDER'S ASSIGNMENT OF ALL BISON ND ITCS TO ALLETE'S REGULATED OPERATIONS PROHIBITED BY CONTRACT OR STATE TAX LAW?

MP has not shown that the assignment is prohibited by contract or state tax law. In the Department's May 30, 2017 Comments, the Department stated that it is not aware of any contract or state tax law that prohibits the assignment of ND ITCs in the manner required by the Commission's November 30 Order. While MP did not agree that it would be good policy to assign ND ITCs in the manner required by the Commission's November 30 Order, MP did not argue that it would be a violation of any contract or state tax law to do so.

E. IS THE RESULT OF THE COMMISSION'S NOVEMBER 30 ORDER CONFISCATORY OR IN ANY OTHER WAY A VIOLATION OF STATE OR FEDERAL LAW?

MP has not shown that the Commission's Order is either confiscatory or that it is illegal. The Commission should be confident that its November 30 Order results in just and reasonable rates for MP ratepayers. If anything, as noted above, MP's ratepayers should be protected from losing ND ITCs due to MP's affiliates. Certainly, MP has not demonstrated that the Commission's November 30 Order, by reflecting the value of the ND ITCs in MP's revenue requirement, would result in confiscatory rates or violates any other state or federal law. Rather, the Commission has reasonably exercised its authority over retail ratemaking.

[13] MP's April 8, 2016 Comments, page 4.

1. The Commission's November 30, 2016 Order Represents a Reasonable Exercise of the Commission's Authority Over Retail Ratemaking

MP's quibble with the Commission's November 30 Order boils down to its disagreement with how the Commission has exercised its ratemaking authority. The Commission must ensure that overall retail rates are reasonable and, specifically regarding MP's proposed recovery of the Bison Wind Facilities in Minnesota rates, it must ensure that rates reflect reasonable decision making. MP alone bears the burden of demonstrating that the rates set by the Commission are not reasonable, and Minnesota law requires that any doubt as to the reasonableness must be resolved of ratepayers.[14] MP did not demonstrate that rates are unreasonable.

Here, the Commission appropriately noted that assigning the ND ITCs along with the cost responsibility—to the ratepayers—reflects the stand-alone method as described by FERC.[15] Thus, the Commission reasonably exercised its authority over retail ratemaking when it stated: "The Commission is persuaded by the Department's analysis that to the extent there is a benefit generated by the credits, that the full benefit should flow back to the ratepayers who paid for it, to help offset the cost of the Bison Wind investment."[16] MP, to its credit, agrees that its ratepayers paid for the investment in Bison Wind Facilities that qualified MP for the ND ITC in the first place, which the Commission found to be undisputed by the parties.[17] But MP's argument essentially goes to issues of retail ratemaking: who should be afforded rates that reflect the value of the ND ITCs, its shareholders or ratepayers? The Commission determined that the value of the ND ITCs, actually used on tax returns, should be reflected in rates that recover MP's revenue requirements and MP did not show that determination to be unreasonable.[18]

MP also claims that assigning the value of ND ITCs to ratepayers rather than shareholders creates a situation where its shareholders somehow subsidize ratepayers at their expense.[19] But MP has it wrong, as indicated in the discussion above regarding the appropriate reading of the 2006 Order. The Commission determined under its retail ratemaking authority that the rates ratepayers must pay should be offset by the value of the ND ITCs, actually used on tax returns, and MP did not show that determination to be unreasonable.

---

[14] *See* Minn. Stat.§ 216B.03 (2016).
[15] *In re Minn. Power's 2015 Renewable Res. Rider and Renewable Factor*, Order Determining Treatment of North Dakota Investment Tax Credits for Bison Wind Projects at 8 (MPUC Nov. 30, 2016) [hereinafter Order].
[16] Order at 8.
[17] MP's May 30, 2017 Comments at 4; Order at 8 ("There is no dispute that Minnesota Power's regulated operations bear all the costs and expenses of the Projects.").
[18] Order at 8.
[19] MP's May 30, 2017 Comments at 17–18.

2. MP Has Not Demonstrated That Assigning the Value of the ND ITCs, Actually Used on Tax Returns, to MP's Revenue Requirement Constitutes a Confiscatory Rate.

MP provides no constitutional analysis, beyond conclusory statements about transferring the value of the ND ITCs from shareholders to ratepayers, that supports its argument that the Commission's Order results in confiscatory rates in violation of the fourteenth amendment to the United States Constitution.[20] MP does, however, address at a high level the constitutional principles applicable to whether a commission's rate order constitutes confiscatory rates. Nevertheless, as addressed above, the Commission should be confident that its Order results in just and reasonable rates for MP ratepayers, and that MP did not show otherwise.

When evaluating whether a rate is unconstitutionally confiscatory, the U.S. Supreme Court has stated that "[t]he guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory."[21] Stated differently, and applying the principles in *Hope Natural Gas*, "[i]f the total effect of the rate order cannot be said to be unreasonable, judicial inquiry . . . is at an end."[22] Thus, if an overall rate affords sufficient compensation, there is no violation of the Takings Clause.[23] Rate proceedings generally involve competing complex economic judgments, and the Constitution "is not designed to arbitrate" the differing opinions:

> The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect.[24]

In other words, piecemeal examination of ratemaking, without evaluation of the overall ratemaking impact, is not the proper constitutional inquiry.[25]

MP did not show that the overall rate impact of the Commission's Order results in insufficient compensation to the Company. In its May 30, 2017 Comments, nowhere does MP evaluate whether assignment of ND ITCs to MP's revenue requirement, rather than to its shareholders, provides MP with sufficient revenues such that the impact of its rate, set by the Commission, is

---

[20] *See* MP's May 30, 2017 Comments at 17.
[21] *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989) (citing *Covington & Lexington Turnpike Rd. Co. v. Sandford*, 164 U.S. 578, 597 (1896).
[22] *Id.* at 310 (quoting *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).
[23] *See id.* at 308.
[24] *Id.* at 314.
[25] *See id.* at 313–14.

confiscatory. Even then, countervailing impacts of other revenues and expenses may offset the financial impact of the ND ITCs. Regardless, MP provides no such analysis and the Commission need not reconsider its authorized rates in this respect.

Finally, MP argues that the Commission's assignment of the value of ND ITCs, actually used on tax returns, to MP's revenue requirement may constitute an unconstitutional "regulatory taking."[26] In other words, according to MP, taking money (the value of the ND ITCs) from shareholders and transferring it to ratepayers, without payment to shareholders, constitutes an unconstitutional taking of private property for public use without payment of just compensation.[27] Again, MP's argument is unsupported and insufficient.

Although it claimed the Commission's Order resulted in an unconstitutional "taking" of private property, MP did not claim or demonstrate that its shareholders have a protectable property interest in the ND ITCs. As far as the Department can see, they do not.[28] Property interests generally "denote the group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it."[29] Depending on the circumstances, government benefits, such as the ND ITCs, may in fact not be "private property," but may merely reflect federal or state policy decisions that may be modified or ended by Congress or a state at any time.[30] The Department does not further address matters that MP did not assert. Here, despite having the opportunity to do so, MP simply has not demonstrated that its shareholders have a protectable property interest in the ND ITCs.

Even if one were to assume that MP's shareholders have a constitutionally protected property interest in the ND ITCs, for which no showing has been made, in determining whether a state's regulatory conduct constitutes an unconstitutional "taking" of private property the U.S. Supreme Court has not outlined a specific formula, but it has enunciated important factors: 1) "the economic impact of the regulation on the claimant," 2) "the extent to which the regulation has interfered with distinct investment-backed expectations," and 3) "the character

[26] MP's May 30, 2017 Comments at 16–17.
[27] *Id.*
[28] While MP did state that it would have a protectable property interest in shareholder money, MP has not claimed that it has a protectable property interest in the ND ITCs themselves. The Commission has never ordered shareholders to transfer money to ratepayers.
[29] *U.S. v. General Motors Corp.*, 323 U.S. 373, 378 (1945).
[30] *See Bowen v. Gilliard*, 483 U.S. 587, 604–05 (1987) (welfare benefits) ("Congress is not, by virtue of having instituted a social welfare program, bound to continue it at all, much less at the same benefit level. . . . It would be quite strange indeed if, by virtue of an offer to *provide* benefits to needy families through the entirely voluntary AFDC program, Congress or the States were deemed to have *taken* some of those very family members' property.").

of the governmental action."[31] MP has not conducted this constitutional analysis or evaluated whether the Commission's November 30 Order has an overall unconstitutional impact to rates as required by *Duquesne Light Co.*, discussed above, in order for the Commission to determine whether MP's rates are just and reasonable.

Given MP's lack of proof, and in light of the above analysis, the Commission should be confident that its Order results in just and reasonable rates for MP ratepayers and it need not amend its November 30 Order on these grounds.

III. CONCLUSION

The Department's position remains unchanged from its May 30 Comments; however, the Department would not object to providing further protection to MP's ratepayers due to activity by MP's affiliates or ALLETE. Given that MP currently expects ALLETE to use more ND ITCs than MP would be able to use on a separate return basis, the Department concludes that the November 30 Order will achieve a reasonable result. Because MP's non-regulated affiliates will bear none of the costs of Bison Wind Facilities giving rise to the ND ITCs in question, they should be allocated none of the benefits. Similarly, because MP's ratepayers will bear their jurisdictional share of the full cost of the Bison Wind Facilities, all of the ND ITCs should be reflected in MP's revenue requirements.

If ALLETE uses fewer ND ITCs than MP would use on a separate return basis, the Department concludes that the November 30 Order imposes an unreasonable sharing of risks from ALLETE's non-regulated operations onto MP and its ratepayers. The cost-and-benefit allocation principles described by the Commission in its 2006 Order in the 2005 NSP-MN Rate Case are in part intended to protect ratepayers from adverse consequence of utility diversification into unregulated enterprises. Thus, the Department concludes that it would be consistent with the Commission's 2006 Order to protect MP's ratepayers from activity by ALLETE or MP's affiliates.

MP has stated that the Commission's November 30 Order does not violate any contracts or laws, and the Company has not demonstrated that the November 30 Order confiscatory.

/lt

[31] *Connolly v. Pension Benefit Guaranty Corp.*, 475 U.S. 211, 224–25 (1986) (quoting *Penn Cent. Transp. Co. v. N.Y. City*, 438 U.S. 104, 124 (1978).

CERTIFICATE OF SERVICE

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

Minnesota Department of Commerce
Reply Comments

Docket No. E015/M-14-962

Dated this 30th day of June 2017

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_14-962_Official
Ian	Dobson	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	Yes	OFF_SL_14-962_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_14-962_Official
Susan	Ludwig	sludwig@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_14-962_Official
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_14-962_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_14-962_Official