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July 7, 2014

VIA E-FILING

Burl W. Haar
Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

Re: In the Matter of Minnesota Power's Petition for Approval of an Amended and Restated Electric Service Agreement between Mesabi Nugget and Minnesota Power
PUC Docket No. E-015/M-14-155

In the Matter of Minnesota Power's Petition for Approval of Modifications to Erie Mine Site Service Schedule
PUC Docket No. E-015/M-14-166

Dear Dr. Haar:

Enclosed for filing please find the reply comment submitted on behalf of Mesabi Nugget Delaware LLC and Mesabi Mining LLC, in the above-referenced dockets.

Please contact me with any questions or concerns.

Very truly yours,

Stoel Rives LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka

APM:kap
Enclosures
cc: Service List
76522622.2 0048933-00001

STATE OF MINNESOTA
BEFORE THE
PUBLIC UTILITIES COMMISSION

In the Matter of Minnesota Power's Petition for Approval of an Electric Service Agreement between Mesabi Nugget Delaware LLC, Mesabi Mining LLC, and Minnesota Power	PUC Docket No. E015/14-155
In the Matter of Minnesota Power's Petition for Approval of Modifications to Erie Mine Site Service Schedule	PUC Docket No. E015/14-166

REPLY COMMENT

Mesabi Nugget Delaware LLC ("MN"), and Mesabi Mining LLC ("MM" together with MN, "Mesabi") submit the following reply comment in the above referenced dockets.

I. INTRODUCTION

On February 20, 2014, Minnesota Power filed a petition ("ESA Petition") with the Minnesota Public Utilities Commission (the "Commission") for approval of an amended and restated electric service agreement between Minnesota Power, MN, and MM (the "Amended ESA"). On February 24, 2014, Minnesota Power filed a petition ("Tariff Petition") with the Commission for approval of modifications to its Erie Mine Site Service tariff ("EMSS Tariff"). The ESA Petition and Tariff Petition are related because Minnesota Power and Mesabi (which are both parties to the Amended ESA) request Mesabi's continued ability to take service under the EMSS. On April 15, 2014, MN submitted a letter comment (the "MN Letter") in response to the ESA Petition and Tariff Petition providing historical background for its operations and setting forth economic justifications for continuing under the EMSS Tariff's economic development rate. On June 18, 2014, the Minnesota Department of Commerce - Division of Energy Resources (the "Department") submitted a reply comment (the "Department's June Comment") opposing the EMSS Tariff and Amended ESA as drafted. Mesabi submits the following response to the Department's June Comment.

II. ANALYSIS

The Department proposes to modify the EMSS Tariff and Amended ESA to limit the availability of the EMSS Tariff until the earlier of the term of the Amended ESA and elimination of 25 MW of Taconite Harbor Energy Center ("THEC") generating capacity that is allegedly trapped because of transmission constraints. The Department's rationale appears to presuppose that if 25 MW of generating capacity is no longer trapped, then the EMSS Tariff rate is unreasonably preferential, prejudicial, or discriminatory. We appreciate the Department's concern and efforts to ensure rates are not unreasonably preferential or discriminatory. But Mesabi respectfully disagrees with the Department's conclusions. Regardless of the future of Minnesota Power's generation makeup, there is no evidence that the EMSS Tariff will create or facilitate unreasonably preferential or discriminatory rates. To the contrary, the EMSS Tariff is for economic development, which the Amended ESA was drafted to reflect. Mesabi therefore urges the Commission to approve the EMSS Tariff and Amended ESA as drafted.

A. There is no Evidence That the EMSS Would Result in Rates that Are Unreasonably Preferential, Unreasonably Prejudicial or Discriminatory

The Department submits the following recommendation:

> [T]he Department recommends approval of the proposed EMSS and the Amended ESA until the earlier of the following two events: 1) the end date of the proposed ESA and 2) any circumstance that would eliminate the current Taconite Harbor excess capacity of 25 MW that is available for local load only, including but not limited to MP's proposed closure of Taconite Harbor Unit 3 by the end of 2015.[1]

The Department's conclusion appears to be based upon Section 216B.03 of the Minnesota Statutes, which states: "Every rate made, demanded, or received by any public utility…shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers." In its 2003 comments on the EMSS, the Department applied this statute and concluded that rates were not unreasonably preferential or discriminatory to customers located

[1] *The Department's June Comment*, at 3.

outside of the EMSS service area because of a claimed 25 MW of trapped capacity.[2] The Department's June Comment makes the jump that the elimination of the alleged 25 MW of trapped capacity results in unreasonably preferential or discriminatory rates to customers located outside of the EMSS Tariff service area. Indeed, the Department States that:

> the proposed EMSS and the Amended ESA would not result in rates that are unreasonably preferential or discriminatory to customers located outside of the applicable area *until the elimination of the current Taconite Harbor excess capacity of 25 MW that is available for local load only*, including by not limited to MP's proposed closure of Taconite Harbor Unit 3 by the end of 2015.[3]

The Department introduces uncertainty to the Amended ESA by concluding it will be necessary to assess whether Minnesota Power's rates are unreasonably preferential or discriminatory upon the closure of THEC Unit 3.[4] Mesabi believes this unprecedented review structure unfairly elevates a benefit of initially approving the EMSS Tariff to a requirement for approval of the revised EMSS Tariff. The Department's proposal should be rejected for four reasons.

First and foremost, the fundamental purpose of the EMSS Tariff was (and remains) to stimulate economic development on the former LTV Steel Mining Company mining site, not to find a taker for claimed stranded capacity. In the 2003 EMSS Petition, Minnesota Power states:

> The IRRRA, along with other state agencies and the City of Hoyt Lakes, Minnesota, requested that Minnesota Power and Cleveland-Cliffs work cooperatively to facilitate redevelopment of the former LTVSMC taconite mine plant site in Hoyt Lakes after they acquired ownership of their respective facilities…At the state agencies' request (led primarily by the IRRRA), Minnesota Power agreed to dedicate electric service to the former Erie Mine Site…*at a special rate in order to facilitate future development in the Hoyt Lakes area*.[5]

In other words, the EMSS Tariff was originally designed to incent and enable economic development. That some level of stranded capacity could be taken by one or more customers

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[2] *In the Matter of the Petition by Minnesota Power for Approval of Erie Mine Site Service Schedule*, Docket No. E015/M-03-717, COMMENTS OF THE MINNESOTA DEPARTMENT OF COMMERCE, at 2 (June 9, 2003) (the "Department's 2003 Comment").
[3] *The Department's June Comment*, at 3 (emphasis added).
[4] *Id*. at 4.
[5] *2003 EMSS Petition*, at 1 emphasis added.

was simply an added benefit. The EMSS Tariff and Amended ESA, which continue the focus on economic development, reflect this interpretation. As the Department concedes, Minnesota Power's and Mesabi's interpretation was recently supported by the State parties to the State Master Agreement. On June 2, 2014, the Minnesota Department of Revenue, Minnesota Pollution Control Agency, Minnesota Department of Natural Resources, and IRRRB filed with the Commission a letter stating that the amended EMSS Tariff and Amended ESA "are consistent with the original intent of the EMSS provision of the State Master Agreement."[6] Therefore, the Department's attempt to add a requirement that the EMSS should only be available under certain operational characteristics of Minnesota Power's system should be rejected.

Second, the notion of 25 MW of trapped capacity is a regulatory fiction created by the State Master Agreement.[7] 25 MW was chosen because it reflected the gap between the accredited capacity for THEC, which consists of three units, each with 75 MW of accredited capacity, and the amount of available transmission from THEC.[8] Minnesota Power's recent resource plan demonstrates that not all units operate at 75 MW all of the time. In fact, the five year average for all three THEC units during the summers of 2006-2010 was 214 MW.[9] To nonetheless assume that THEC operates at a constant 225 MW for purposes of evaluating the EMSS Tariff would be inappropriate.

Third, the EMSS Tariff contemplates that not all THEC units will run all of the time. The EMSS Tariff rate consists of a generation capacity charge, energy charge, transmission service charge, and billing customer charge.[10] The energy charge varies depending on the number of THEC units in operation. The EMSS Tariff provides that when at least two of three THEC units are available, the energy charge is equal to the average monthly THEC energy cost; but when fewer than two units are available, then the energy charge is equal to 50% of the average monthly THEC energy cost plus 50% of Minnesota Power's hourly incremental energy

[6] *The Department's June Comment* at 3.
[7] October 2001 State Master Agreement, at 6, ¶ 8 (b).
[8] *In the Matter of the Petition by Minnesota Power for Approval of Erie Mine Site Service Schedule*, Docket No. E015/M-03-717, PETITION OF MINNESOTA POWER, at 1 (May 9, 2003) ("2003 EMSS Petition").
[9] *In the Matter of the Petition by Minnesota Power for Approval of its 2013 Integrated Resource Plan*, PETITION OF MINNESOTA POWER, Appendix A, at 8 (March 1, 2013).
[10] Minnesota Power Rate Book, Vol. I, Sec. V, Pg. 38.1.

cost.[11] Although the purpose of the energy charge structure was to protect Minnesota Power customers,[12] it is also clear that Minnesota Power, the Department, and other stakeholders were aware that not all THEC units would be running all of the time.

Finally, termination of the EMSS Tariff is tied to retirement or refueling of THEC in its entirety, not the retirement of one unit. The EMSS Tariff states

> If, at any time after this Rate Schedule becomes effective, Company chooses to retire the *Taconite Harbor generating station* or convert the *Taconite Harbor generating station* to a fuel source other than coal, new service under this schedule shall immediately cease to be available, and commencing on January 1 of the next calendar year after the date of retirement or conversion, any existing service under this rate schedule shall terminate.[13]

Mesabi acknowledges that Minnesota Power's recent resource plan proposed to retire THEC Unit 3 at the end of 2015 and that the Commission accepted that proposal. But retirement of one unit does not result in retirement of THEC for purposes of termination of the EMSS Tariff. And the Department does not cite to any provision in the EMSS Tariff that would support its position. In light of the energy charge calculation set forth above, it is clear the EMSS Tariff can still function with only two THEC units in operation.

B. <u>The Commission Should Approve the EMSS Tariff</u>

Given the stated intent of State agencies (as well as the inherent difficulties referenced above associated with measuring stranded capacity at any given point in time), the EMSS Tariff is an economic development tariff for a very specific region and should be reviewed as such.[14] The issue for the Commission in assessing the amended EMSS Tariff should be whether it provides a platform for economic development in and around Hoyt Lakes. Minnesota Power aptly states "The purpose of extending the EMSS Schedule is to help keep the electric costs affordable as necessary for the long term viability of the Mesabi Nugget facility, which in turn

[11] *Id*.
[12] *2003 EMSS Petition*, at 3 ("When fewer than two Taconite Harbor units are operating, the incremental pricing mechanism protects other Minnesota Power customers from any negative impacts by directing the higher-cost incremental energy to the new load.")
[13] Minnesota Power Rate Book, Vol. I, Sec. V, Pg. 38.
[14] Notably, the 2003 EMSS Petition was not filed under the Special Rate sections of Chapter 216B of the Minnesota Statutes.

benefits the regional economy and Minnesota Power's other customers."[15] The MN Letter provides additional background and support for Minnesota Power's statement, setting forth the overall planning process, investment levels, tax payments, and operating challenges of MN's operations. The MN Letter ultimately concludes "The Commission's support in this matter is one of the key components toward ensuring that Mesabi Nugget reaches a sustainable economic state."[16] Based on these statements, which were not disputed or refuted by the Department, Mesabi believes the EMSS Tariff is both in the public interest and consistent with the State agencies' intent, and should be approved.

C. <u>The Commission Should Approve the Amended ESA</u>

For similar reasons, Mesabi believes the Commission should approve the Amended ESA. In the ESA Petition, Minnesota Power notes:

> The positive impacts that this Agreement will bring to all interested parties are significant and far reaching. Minnesota Power and its ratepayers stand to benefit from the long-term commitments that Mesabi Nugget has provided regarding is electric service needs. Mesabi Nugget stands to gain from continuing to receive electric service at competitive rates as well as maintaining operational flexibility. In addition to the parties directly affected, this Amendment is support of the regional economy in that it is beneficial to a major regional industrial operation and employer, especially in St. Louis county…In accordance with the requirements of Minn. Stat. §§ 216B.03, .06., and .07, Minnesota Power has always applied the LP Service Schedule and other applicable tariffs and the service agreements it enters into thereunder in a fair and equitable manner between and among its LP customers. Minnesota Power intends to continue this practice by ensuring similar terms and conditions are available to all LP customers who make similar commitments to Minnesota Power. Accordingly, the Amendment meets the public interest requirements of the Minnesota Public Utilities Act.[17]

Again, the Department did not refute these statements via its claimed stranded capacity argument.

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[15] *The Tariff Petition*, at 9.
[16] *The MN Letter*, at 3.
[17] *The ESA Petition*, at 15-16.

Nor could it. As noted above, the State parties to the State Master Agreement support approving the Amended ESA via Minnesota Power's and Mesabi's proposed continued operation of the EMSS Tariff. These parties recognize that approval of the Amended ESA is critical component for the potential success of Mesabi's operations. It is no secret that these operations are under intense scrutiny to control costs and become profitable. Additional pressure created by the Department's proposed conditions to the Amended ESA could put at risk the benefits cited by Minnesota Power in the ESA Petition. Paragraph 9(F) of the Amended ESA states:

> In the event this Agreement is not approved by the Commission, is approved subject to terms or conditions to which either Party objects or is revised or modified in any material respect by the Commission, Company and Customer agree to immediately make a good-faith effort to renegotiate the terms of this Agreement to accommodate regulatory requirements. In the event that the Parties are unable to reach agreement on such modifications or revisions resulting from a regulatory denial, conditioned regulatory approval or material regulatory modification, this Agreement shall be null and void, except for Company's obligation to reimburse Customer for monies pursuant to Paragraph 7(A).

Conditioning approval of the Amended ESA on a revaluation of circumstances after the retirement of THEC Unit 3 would be a material modification and would force Mesabi to evaluate whether to exercise its right to demand renegotiation with Minnesota Power. If such right were exercised, it is possible that the parties would be unable to reach a satisfactory resolution, which could lead to diminished economic development on the Iron Range and a reduction in commitments from Mesabi to Minnesota Power's costs. And any such renegotiation would tax the resources of Minnesota Power, Mesabi, and the Department, all of whom have expended a significant amount of time negotiating and reviewing the terms contained in the Amended ESA.

III. CONCLUSION

We sincerely appreciate the Department's efforts to ensure rates are not unreasonably preferential or discriminatory. But Mesabi believes the Department's analysis fails to reflect the focus on economic development in the EMSS Tariff. Mesabi respectfully requests the Commission to approve the amended EMSS Tariff as providing a platform for economic development in and around Hoyt Lakes. Mesabi further requests approval of the Amended ESA because its terms are consistent with the public interest.

Date: July 7, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kathy Prestidge, hereby certify that I have this day served a true and correct copy of the following document to all persons at the addresses indicated below or on the attached list by electronic filing, electronic mail, courier, interoffice mail or by depositing the same enveloped with postage paid in the United States Mail at Minneapolis, Minnesota.

REPLY COMMENT OF MESABI NUGGET DELAWARE LLC AND MESABI MINING LLC

In the Matter of Minnesota Power's Petition for Approval of an Amended and Restated Electric Service Agreement between Mesabi Nugget and Minnesota Power
Docket No. E-015/M-14-155

In the Matter of Minnesota Power's Petition for Approval of Modifications to Erie Mine Site Service Schedule
PUC Docket No. E-015/M-14-166

Dated this 7th day of July, 2014.

/s/ Kathy Prestidge
Kathy Prestidge

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