



AN ALLETE COMPANY

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June 30, 2017

VIA ELECTRONIC FILING

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
350 Metro Square Building
121 Seventh Place East
St. Paul, MN 55101

Re: Minnesota Power's Reply Comments in Response to the Commission's March 24, 2017 Notice
In the Matter of Minnesota Power's Renewable Resources Rider and 2015 Renewable Factors
MPUC Docket No. E015/M-14-962

Dear Mr. Wolf:

Enclosed for filing with the Minnesota Public Utilities Commission ("Commission"), please find Minnesota Power's Reply Comments in Response to the Commission's March 24, 2017 Notice.

By copy of this letter, I am providing service to those listed on the service list on file with the Commission.

If you have any questions, please feel free to contact me.

Yours truly,

A handwritten signature in black ink that reads 'David R. Moeller'.

David R. Moeller

DRM:kjv
Enclosure
cc: Service List

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

In the Matter of Minnesota Power’s Renewable
Resources Rider and 2015 Renewable Factor

Docket No. E015/M-14-962

**Minnesota Power’s Reply
Comments in Response to the
Commission’s March 24, 2017
Notice**

I. INTRODUCTION

Minnesota Power (or “the Company”) provides these comments in reply to other comments received concerning the Minnesota Public Utilities Commission’s (“Commission”) March 24, 2017 Notice (“Notice”) regarding the November 30, 2016 Order (“November 30 Order”) in the above-referenced Docket. Comments have been filed by the Department of Commerce, Division of Energy Resources (“Department”), the Edison Electric Institute (“EEI”), and the Office of the Attorney General-Residential Utilities and Antitrust Division (“OAG”) in response to the Notice. The Comments of the Department and the OAG do nothing but further confuse the record and misconstrue the facts in the present case. The comments of EEI confirm the appropriateness of the Company’s proposal for treatment of the North Dakota Investment Tax Credits (“ND ITCs”) utilized by income of the non-regulated ALLETE affiliates.

II. COMMENTS

A. The Department

In its comments, the Department provides a confusing line of logic to conclude both that the “November 30 Order will achieve a reasonable result” and “November 30 Order imposes an unreasonable sharing of risks from ALLETE’s non-regulated operations onto [Minnesota Power]

and its ratepayers.”¹ Specifically, the Department confuses the record by resting on the claim that ALLETE’s non-regulated operations will use Minnesota Power’s “taxable income to monetize their own tax benefits at the expense of ratepayers.”² The Department concludes that the Commission should proceed with asymmetrical treatment of the ND ITCs.

As outlined in Minnesota Power’s May 30, 2017 Comments, the issue before the Commission is the appropriate treatment of the ND ITCs and whether the Commission’s November 30 Order results in asymmetrical treatment of the ND ITCs that are only utilized because of income by the non-regulated affiliates (the “Credits at Issue”). This is not an issue of ALLETE and its subsidiaries making use of Minnesota Powers “taxable income” and it is certainly not doing so “at the expense of ratepayers” as claimed by the Department. As explained previously, the issue is that the Commission’s November 30 Order takes the monetary value of the Credits at Issue that are utilized *only* because of non-regulated income of the ALLETE affiliates. Requiring the Company to apply the Credits at Issue to the regulated utility revenue requirements results in Minnesota Power’s regulated customers receiving a direct benefit of negative tax expense that exists only because of the non-regulated utility income. These Credits at Issue do not “amount[] to the use of [Minnesota Power’s] taxable income” for the benefit of shareholders, or a “subsidy” as the Department claims. They amount to the use of the non-regulated affiliate taxable income for the benefit of customers, if the Commission’s November 30 Order stands.

The Department does object to a result of the November 30 Order if the unitary ALLETE tax return uses fewer ND ITCs than Minnesota Power would use on a separate return basis. Specifically, the Department states that this is inappropriate because it “potentially exposes

¹ Department Comments at 12.

² Department Comments at 11.

ratepayers to an ‘adverse consequence of utility diversification into unregulated enterprises.’”³ It is clear that the Department’s overall position in its comments can be summarized as *Minnesota Power customers should receive any benefits if non-regulated affiliate operations result in profits but Minnesota Power customers should not be harmed if non-regulated affiliate operations result in losses*. This “heads I win, tails you lose” approach violates the longstanding policy of ring-fencing and is directly in conflict with the Commission’s two decades of decisions summarized in 2006 as being “far more important to protect ratepayers from loss than to give them opportunities for windfalls.”⁴

The Company’s proposal for accounting for the Credits at Issue is the only way to ensure that the longstanding ring-fence between regulated and non-regulated operations remain in place and Minnesota Power customers are shielded from non-regulated business operations.

B. The OAG

Contrary to the Department’s comments that the November 30 Order results in “a degree of asymmetry [that] is reasonable and appropriate,”⁵ the OAG’s position is that the Commission’s November 30 Order “results in symmetrical treatment of tax benefits.”⁶ Given that the OAG and the Department cannot agree on whether the treatment in the November 30 Order is symmetrical or asymmetrical, it is clear that the Commission’s November Order must be reassessed. Further, the OAG also misrepresents the facts in stating that the position of the Company allows ALLETE “to reap such benefits while ratepayers see the value of their

³ Department Comments at 8 (quoting *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. E002/GR-05-1428, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER; ORDER OPENING INVESTIGATION at 22-23 (Sept. 1, 2006) [hereinafter 2006 NSP Order].

⁴ 2006 NSP Order at 23.

⁵ Department Comments at 10.

⁶ OAG Comments at 1.

investment diminish.”⁷ The Company’s position regarding the Credits at Issue does not take away any of the Minnesota Power’s customer’s investments in the Bison Wind Projects. Minnesota Power’s customers will receive the full value of the ND ITCs that its income utilizes. Instead, the Credits at Issue are only those that are utilized due to income generated by the non-regulated ALLETE affiliates – absent this income, these Credits at Issue would go unused and expire.⁸ Thus there is no “taking away” of any Minnesota Power customer investment in the Bison Wind Projects.

Finally, the OAG recommends that the Commission not determine at this time what would happen if less credits are utilized as a result of a unitary tax return. The OAG is specifically recommending that the Commission not set any policy regarding this possibility, asserting that Minnesota Power may try to abuse this type of situation. This reasoning is precisely why Minnesota Power advocates for the continued ring-fencing of utility operations, to shield customers from the business operations of non-regulated affiliates. Further, it is unfair for the OAG to just assume that Minnesota Power will purposefully act in contravention of our customers’ interests where no such evidence exists in this record. In fact, Minnesota Power has actively worked to maximize the amount of ND ITCs that can be utilized by Minnesota Power North Dakota income and, thus, for the benefit of Company customers.

C. EEI Comments

EEI provided comments on the overall policy impacts of the Commission’s November 30 Order. As stated by EEI, regulated utilities and their customers benefit from regulatory policies

⁷ OAG Comments at 3.

⁸ As discussed in earlier comments, Minnesota Power sought to monetize its ND ITCs but was not successful in efforts with the North Dakota legislature and tax commission.

“that are well-defined, transparent, and consistently applied.”⁹ Additionally, when regulated utility “customers are protected from non-regulated affiliate operations, they cannot benefit from these affiliates’ gains and related tax benefits.”¹⁰ EEI continues that the Commission’s November 30 Order “represents the kind of deterioration in the regulatory environment that Moody’s Investors Service noted could shift ALLETE’s ratings because it undermines the financial separation between the regulated and non-regulated subsidiaries.”¹¹ While this would have impacts to shareholders, it would also have detrimental impacts on the regulated utility customers of Minnesota Power in that the overall ALLETE rating would be impacted and the cost of capital, and thereby rates, for utility customers would also be negatively impacted. The OAG’s recommendation to specifically avoid setting policy results in exactly the type the regulatory uncertainty that would be harmful to the Company and its customers. The Company agrees with the comments and concerns of EEI and they further support the Company’s proposal for the treatment of the Credits at Issue.

III. THE OAG JUNE 20 REPLY COMMENTS

On June 20, the OAG filed reply comments focusing solely on the Company’s comments that the Commission’s November 30 Order is confiscatory. The OAG declares that the legal authority cited by the Company demonstrates the November 30 Order is not confiscatory.

Examination of the Company’s comments, however, debunks the OAG’s faulty conclusions and makes clear that the November 30 Order amounts to a taking of the ALLETE shareholder financial interests because these private citizens have a legally-cognizable property

⁹ EEI Comments at 2.

¹⁰ EEI Comments at 2.

¹¹ EEI Comments at 3.

interest in money for purposes of takings.¹² As stated in the Company’s comments, “[a]n assessment, fee, or tax may be a taking if ‘the exaction is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of particular property.’”¹³

There is no question that the “existing rules or understandings” of how well-settled tax principles are to be applied create a property right that may not be confiscated without compensation.¹⁴ Under the November 30 Order, the Credits at Issue will be applied to the rates of Minnesota Power customers, resulting in the rate paid by Minnesota Power being less as a result of compelled shareholder subsidization and depriving shareholders of income properly belonging to them – a clear case of unlawful confiscation.

The Commission’s November 30 Order is a sudden change in longstanding policy of separating regulated and non-regulated business operations for the protection of ratepayers.¹⁵ Further, such change is being done in a single-issue and single-utility docket, without the detailed and contested proceeding previously recognized by the Commission as important in developing or changing the policy.¹⁶ These two actions, taken together, constitute confiscation of shareholder interests.

¹² See *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980); see also *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989) (explaining that although a public utility shall serve the public, they are owned and operated by private investors. “This partly public, partly private status of utility property creates its own set of questions under the Takings Clause of the Fifth Amendment.”).

¹³ *Houck v. Little River Drainage Dist.*, 239 U.S. 254 (1915).

¹⁴ *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1030 (1992); *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564 (1972).

¹⁵ *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. E002/GR-05-1428, ADMINISTRATIVE LAW JUDGE’S FINDINGS OF FACT, CONCLUSIONS, AND RECOMMENDATION at Finding 140 (July 6, 2006) (citing *In the Matter of an Investigation into the Competitive Impact of Appliance Sales and Serv. Practices of Minn. Gas and Elec Utils.*, Docket No. G,E999/CI-99-1008, ORDER SETTING FILING REQUIREMENTS (Sept. 28, 1994)).

¹⁶ 2006 NSP Order at 23.

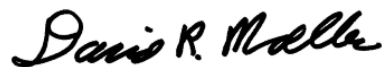
The OAG's Reply Comments try to deflect away from the extraordinary departure in the Commission's November 30 Order by declaring that shareholders "are not being deprived of anything that it would have in the first place." This is fundamentally incorrect and is beside the point. Under the Commission's long-standing policy,¹⁷ strict separation of regulated and non-regulated operations has always been the paramount concern to shield customers from the business operations of non-regulated affiliates.¹⁸ The November 30 Order, however, reverses that policy and takes the property allocated to shareholders when it is convenient to do so. This reversal of course is plainly confiscatory and contrary to well-developed, vetted, and settled Commission precedent and procedure that is followed by all Minnesota public utilities.

IV. CONCLUSION

Minnesota Power continues to request that the Commission modify its November 30 Order and hold to well-established and well-reasoned accounting principles providing for the separation of regulated utility operations from non-regulated affiliate operations and symmetrical sharing of risks and benefits between these entities.

Dated: June 30, 2017

Respectfully submitted,



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¹⁷ 2006 NSP Order at 23.

¹⁸ 2006 NSP Order at 22.

CERTIFICATE OF SERVICE

Jill N. Yeaman certifies that on the 30th day of June, 2017, she filed a true and correct copy of **MINNESOTA POWER'S REPLY COMMENTS IN RESPONSE TO THE COMMISSION'S MARCH 24, 2017 NOTICE** by posting the same on www.edockets.state.mn.us. Said document is also served via U.S. Mail or email as designated on the attached Service List on file with the Minnesota Public Utilities Commission in the above-referenced docket.

/s/ Jill N. Yeaman _____

Jill N. Yeaman

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