STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

In the Matter of a Request for Approval of the Asset Purchase & Sale Agreement Between Interstate Power and Light Company and Southern Minnesota Energy Cooperative	**Docket Nos. E-001, E-115, E-140, E-105, E-139, E-124, E-126, E-145, E-132, E-114, E-6521, E-142, E-135/PA-14-322**

REPLY COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL - RESIDENTIAL UTILITIES AND ANTITRUST DIVISION

I. INTRODUCTION

The Office of the Attorney General – Residential Utilities and Antitrust Division ("OAG") submits the following Reply Comments in response to November 10, 2014 comments of Interstate Power and Light Company ("IPL") and the Southern Minnesota Energy Cooperative ("SMEC") (together "Petitioners"), and the Department of Commerce ("Department") in the matter of IPL's proposed sale of its distribution assets to the SMEC. The comments previously filed by the OAG explain why the transaction is likely detrimental to ratepayers due to the significant gain on sale for IPL, substantial transaction costs, and increased costs of purchasing power. Petitioners and the Department argue that, despite these added costs, the transaction is in the public interest due to other, offsetting benefits. These positions, however, are grounded on incomplete and speculative analyses that assume specific rate increases if the transaction is not approved, while minimizing certain costs if the transaction is approved. For these reasons, the OAG continues to recommend that the Commission only approve the sale after appropriate modifications are made to ensure that it is fair for all stakeholders.

II. ANALYSIS

A. Response to Department of Commerce Comments

The OAG will first respond to the financial analysis included in the Department's November 10, 2014 comments.

The OAG and the Department each performed analyses related to the potential financial benefits of the transaction. Both parties' analyses concluded that the proposed transaction would be in the public interest only if it is assumed that IPL would otherwise be awarded significant rate increases each year in 2015, 2016, and 2017. For its part, the Department concluded that if IPL filed rate cases every year between 2015 and 2017, and received at least 46.5 percent of its requested rate increases, then approving the proposed transaction would be in the public interest.[1] The OAG conducted a similar analysis, which indicated that IPL would need to receive at least 60 percent of its anticipated rate increase requests between 2015 to 2017 before the proposed transaction demonstrates a potential net benefit to ratepayers.[2] In addition, the OAG determined that if IPL does not file a rate case each year between 2015 and 2017, the transaction would likely be detrimental to ratepayers.[3] A similar conclusion can likely be drawn from the Department's analysis. The OAG attempted to compare its analysis to the Department's to determine why the Department's "breakeven" point is 46.5 percent of IPL's anticipated rate cases, whereas the OAG's is 60 percent. The Department's comments, however, did not include the inputs used in its analysis, and the OAG was unable to replicate it.[4]

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[1] *See* Department's November 10, 2014 Comments at 3.
[2] *See* OAG's November 10, 2014 Comments at 3.
[3] *Id.*
[4] The Department notes in its November 10, 2014 comments that the OAG had previously determined a net benefit of $3.7 million, and that the OAG did not include the effects of the Wholesale Power Agreement in this analysis. Department's November 10, 2014 Comments at 3. While the OAG did produce an analysis that showed a net benefit of $3.7 million, this analysis was based solely on changes in costs of capital and tax obligations, and did not directly analyze revenue requirements of IPL. However, including the effects of the Wholesale Power Agreement, which the
(Footnote Continued on Next Page)

Notwithstanding the different technical analyses and the different results on the appropriate "breakeven" point, there is no reasonable basis upon which to conclude that IPL would receive 46.5 percent, 60 percent, or some other portion of three hypothetical rate cases that it has not yet filed. Without a contested case proceeding—or, in this case, three contested case proceedings—the OAG, the Department, and other interveners are not provided the opportunity to analyze all of IPL's costs submitted for recovery during the 2015-2017 time period. Moreover, IPL's claim that it has not recovered its authorized rate of return since 2010 could be wholly or partially attributable to poor operational, financial, and personnel management, and not because it has an unreasonably low rate structure. It is not a basis to conclude that any specific rate increase is warranted.

B. RESPONSE TO IPL/SMEC INITIAL COMMENTS

i. Petitioners have not demonstrated that the Transaction results in ratepayer benefits.

Petitioners continue to assert that there will be "a significant net benefit to customers during the near term following the Transaction" and that the "presence of net benefits under any reasonable combination of alternatives shows that a contested case is not needed to enable the Commission to complete its review."[5] The OAG disagrees with this assumption that any reasonable combination of alternatives shows a net benefit for ratepayers if the proposed transaction is approved. As explained in the OAG's previous comments,[6] even if base rates decrease slightly in the short term following the transaction, the costs of the Wholesale Power Agreement, which the OAG calculated at $4.3 million, will more than offset this small,

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OAG has determined will cost ratepayers $4.3 million in the first five years, would also cause this analysis to show virtually no benefit. *See* OAG's November 10, 2014 Comments at 8.

[5] IPL Comments at 7.

[6] OAG Initial Comments at 4.

temporary benefit.[7] On the other hand, IPL receives a substantial benefit in the form of a premium on sale and increased return on its generating units. Further, current SMEC members also benefit should rates fall for the Legacy Areas following the acquisition.

The Petitioners argue that the transaction will benefit ratepayers in the short term due, in part, to "[t]he far lower cost of capital . . . available to SMEC."[8] To make this argument, Petitioners compare the rate that SMEC will receive on a bridge loan to finance the transaction—1.57%—with the overall cost of capital submitted in IPL's 2010 rate case.[9] SMEC attempts to justify this apples-to-oranges comparison by stating that "SMEC and all of the SMEC Member Cooperatives are using 100% debt financing for the acquisition."[10] But the fact that this particular transaction may be financed by debt does not mean that SMEC Members can ignore their overall, blended cost of capital in analyzing the transaction's impact on ratepayers.

While the SMEC member cooperatives are using debt to purchase the IPL assets, that debt must be secured by parties involved in the transaction, which includes all of the SMEC Member Cooperatives. The Member Cooperatives have equity holders, who are also members, who hold capital allocations and patronage capital representative of their equity claims to the respective cooperative utilities. When considering additional projects to invest in, a firm must consider that its current equity holders will ultimately bear the risk of that investment. While the Petitioners may finance a specific transaction with debt, the equity holders, or cooperative members, will bear the risk for this investment, as debt claimants will be compensated before equity claimants in the event of any liquidation of assets. In other words, the current equity

[7] OAG Initial Comments at 8.
[8] IPL Comments at 9.
[9] DOC IR #57.
[10] Petitioners' November 10, 2014 Comments at 37. In addition, Petitioners argue that "SMEC and all of the SMEC Member Cooperatives will establish their rates to achieve an interest or debt service coverage ratio for their 100% debt financing." *Id.* This commitment, however, would only last for the duration of Petitioners' three-year rate mitigation plan.

holders stand to lose and bear additional risk regardless of whether the Transaction is financed with debt or equity. For that reason, a full, blended cost of capital must be used when determining the true costs of the Transaction for ratepayers.

In order to provide an analysis that comes as close as possible to comparing the full cost of capital for SMEC's Member Cooperatives to the full cost of capital for IPL, the OAG incorporated reasonable inputs that were available. This included using an assumed capital structure of 50 percent equity and 50 percent debt, and a presumed return on equity of 6.26 percent derived from Dakota Electric's most recent rate case. The results of that analysis showed a benefit of $3.7 million over the first five years. This does not account for the costs of the Wholesale Power Agreement, which are $4.3 million over the first 5 years.

The Petitioners, however, seem to misconstrue the OAG's position on the appropriate cost of capital with an assumption that the OAG expects interest rates on debt to increase during the period of the transaction.[11] Nowhere in any of its comments or information requests did the OAG assert that the interest rate on the debt used to finance the transaction would rise above the rates included in Petitioners' analysis, nor does the OAG's analysis rely on this assumption. The Petitioners further argue that the OAG's use of a presumed capital structure with 50 percent equity and 50 percent debt and an return on equity of 6.26 percent is inappropriate because it "has substituted speculation for known facts."[12] These supposed "known facts," however, are simply Petitioners' assertion that this particular transaction is financed by debt at a rate of 1.57 percent. For the reasons set forth above, the simple interest rate of debt financing is not an

[11] Petitioners' November 10, 2014 Comments at 38 (arguing that the OAG's assumed cost of capital is inappropriate because "there is no economic indication that 30-year U.S. Treasuries (the basis of RUS funding) will reach the 5.25% specified by the OAG when long-term financing for SMEC Member Cooperatives is finalized after the three-year Initial Period.")

[12] Petitioners' November 10, 2014 Comments at 38.

appropriate or comprehensive input into a cost/benefit analysis that should be designed to compare the full cost of capital for the SMEC Member Cooperatives with IPL's. Petitioners' assertion does not address the problem that the rate of the bridge loan obtained by SMEC does not incorporate the effect of the transaction on the cooperative equity holders. This effect must be included in the analysis to ensure that all aspects of the transaction have been captured.

Because the cost of capital for the various SMEC Member Cooperatives is not known, the OAG had no option but to incorporate reasonable estimates for the cost of equity and capital structure. Requiring the various cooperatives to calculate their respective costs of capital would presumably be a laborious process for these entities not familiar with the regulatory process. Since Dakota Electric Association is the only rate-regulated cooperative in Minnesota, it provides the best proxy for comparison with this Transaction. While a 50% equity capital structure may not be precisely what the eventual structure will look like for each cooperative in this case, the Petitioners have offered no information as to what the real structure would be. Petitioners' claim that the Commission should ignore the cost of capital for the various SMEC Cooperatives and apply the cost of financing this specific project results in a skewed and incorrect benefit analysis.

ii. IPL should not receive a premium on the sale.

The Petitioners also filed comments regarding the reasonableness of the premium that IPL will receive under the proposed transaction. Parties have filed comments on this issue previously, with both the Department and the Petitioners concluding that the terms are reasonable with certain conditions imposed by the Department. The OAG disagrees with the Petitioners, however, because the evidence in this record does not demonstrate the Asset Sale is reasonable for ratepayers, particularly if IPL is allowed a premium on the sale.

The Petitioners argue, in part, that the premium is reasonable because the Asset Sale will also create benefits for ratepayers. According to the Petitioners, "no matter how customer benefits are estimated, there is a demonstrable net benefit of reduced customer costs *after* recovery in rates of all estimated ongoing costs and the entire SMEC purchase price."[13] The Petitioners statement, however, does not account for all the moving pieces of this transaction. As explained in earlier comments, the last benefit analysis performed by the OAG demonstrated that any short term benefits to ratepayers are based on several significant assumptions. For example, if purchased power costs are increased, or if IPL does not file three consecutive rate cases and receive at least 60 percent of the requested rate increases, the benefits that Petitioners claim ratepayers enjoy will never materialize. Neither of these examples of potential changes to IPL's assumptions are unreasonable.

Furthermore, even assuming that the transaction produces short-term benefits, they could be outweighed by long-term costs. For example, the Petitioners have not given and cannot give any assurance that after five years, the rates will not increase substantially to the point that they would offset previous benefits accrued in the short term. Because the transaction would move the IPL customers beyond the regulatory authority of the Commission after five years, following the phase-in period the IPL ratepayers could be subjected to major rate increases without regulatory oversight. In fact, it would be to the SMEC Cooperatives' benefit to structure the terms in such a way that would create the appearance of a ratepayer benefit in the short term. These later increases could outweigh any short-term benefits of the transaction. Therefore, for the Asset Sale to be reasonable and in the public interest, there must be adjustments made to the acquisition price, including adjustments to the transaction premium and acquisition costs.

[13] IPL Comments at 37.

The Petitioners cite to cases—*Midwest Gas* and *Minnegasco*[14]—in an attempt to give further credence to their claim that transaction costs above the book value are reasonable, and that the Commission should not make an adjustment for the increased future power costs. These cases, however, demonstrate that Petitioners' claimed ratepayer benefits are highly speculative and that the Commission should not allow them to be used to justify an inflated purchase price. In *Midwest Gas*, the Commission considered a utility's request to recover the unamortized portion of a previous asset purchase in which the purchase price exceeded the book value of the assets.[15] After noting that "[t]he prudence of an acquisition is best measured by quantifiable benefits to ratepayers," the Commission limited the recovery of the asset purchase price to "only that amount which the Company can prove equals savings ratepayers have experienced" from the transaction.[16] The Commission then considered four areas in which the utility claimed ratepayers had experienced tangible savings during the test year and rejected or modified the utility's claimed savings with respect to three of these areas—cost of capital, general and administrative expenses, and gas cost savings.[17] The Commission reduced Midwest Gas's requested recovery accordingly.

In *Minnegasco*, the Commission considered whether to include an adjustment in rates related to an exchange of properties between two utilities.[18] In that case, Minnegasco had received the Minnesota service territory for Midwest Gas and associated property valued at $46.5 million in exchange for a combination of South Dakota properties, cash, and assuming liabilities totaling more than $60 million. Minnegasco attempted to recover the "overpayment" through an

[14] IPL Comments at 29.
[15] *Re Midwest Gas*, Docket No. G-010/GR-90-678, 1991 WL 635914, at 7 (Minn. P.U.C. July 12, 1991).
[16] *Id.*
[17] *Id.*
[18] *Re Minnegasco, a Division of Nor Am Energy Corp.*, Docket No. G-008/GR-95-700, 170 P.U.R.4th 193, 1996 WL 361224 (Minn. P.U.C. June 10, 1996).

acquisition adjustment, arguing that ratepayers would receive greater benefits due to the transaction. The Commission rejected Minnegasco's request, noting that Minnegasco's purported justification for receiving the premium—that, without the transaction, Midwest Gas would have filed a rate case resulting in even higher rates—was speculative:

> The Commission finds that the Company depended heavily on the assumption that Midwest would have requested a rate change in 1994. This assumes that Midwest would have sought a rate increase, that Minnegasco can identify what that rate request would have been, and that Minnegasco could predict what amount of that increase request would have been awarded by the Commission. It must be recognized that rate proceedings have resulted in zero increases, and in at least one instance, a rate decrease. To assume a given level of rate increase in 1994 is highly speculative.[19]

Based on this precedent, Petitioners claim that the costs above the value of the assets being received by SMEC—the transaction costs and gain on sale—is a comparable benefit to the savings ratepayers will realize, which justifies recovery of the full purchase price. But IPL's argument is unsound, and it misses the point of the Commission's analysis in these cases. *Midwest Gas* held that sale premiums are *only* permissible when the benefits for ratepayers are equal to the premium and that the utility must prove that these benefits are tangible and identifiable. *Minnegasco* established that the "benefits" of the transaction cannot be presumed by speculating as to the outcomes of a potential and hypothetical rate case that has not been filed. Presumably, that reasoning would also find Petitioners' three successive and hypothetical rate cases in this matter to be unconvincing. Rather than supporting IPL's argument, these cases make clear that the transaction premium in this case is unreasonable because any claimed "benefits" of the transaction are highly speculative and based on hypothetical, contrived, and disputed assertions.

[19] *Id.* at 27.

The benefit analyses for the Department, the Petitioners, and the OAG have all shown differing benefits from the transaction. It is far from clear what the actual benefit to ratepayers will be in even the Initial Five Year Period, to say nothing of the long term effects. As the OAG and Department have previously pointed out, the assumptions used in these analyses are highly favorable to IPL, particularly as to the likelihood of IPL receiving its full rate requests. The Petitioners have based their analysis on the hypothetical rates ordered in multiple future rate cases that may not even be filed. Even if those cases are filed annually from 2015 to 2017, it is highly unlikely that IPL would receive the full amount of its requested rate increases. No party has had the opportunity to fully review the revenue requirements proposed by both SMEC and IPL or the supportive information that would accompany such a request if actually made, and would not have this opportunity absent a full contested case proceeding. Petitioners claim that the rates are not speculative is simply false. A cursory review of these assumptions reveals that they are unreasonable; and without those assumptions, the Petitioners' entire benefit analysis crumbles.

Based on the Commission's decisions in *Midwest Gas* and *Minnegasco*, SMEC's member cooperatives should be denied rate recovery of the acquisition premium. However, since the Commission will not have power to regulate rates for SMEC and its Member Cooperatives, the only reasonable alternative is for IPL to be denied a premium on the acquisition over net book value, which would avert a situation where IPL benefits in an outsized manner as compared to ratepayers, or the even more egregious situation where ratepayers incur a detriment as a result of the transaction while IPL receives its $8.85 million gain on sale as well as an increased level of recovery on its generation assets as result of the Wholesale Power Agreement.

III. CONCLUSION

If the proposed transaction is approved, IPL will see a gain on sale of $8.85 million and projected increases of over $4.3 million over the first five years in increased revenues from generation assets. In addition, ratepayers will also be required to pay $16.9 million in closing costs. On the other hand, the benefits for ratepayers are uncertain. Petitioners have attempted to justify this transaction by using a contrived analysis that compares inflated and speculative future costs for IPL to hypothetical costs for SMEC that are artificially reduced by not including the member cooperatives' full cost of capital. The OAG's analysis demonstrates that, when a more reasonable cost/benefit analysis is conducted, the transaction, as currently structured, will not benefit IPL's current ratepayers. For these reasons, the OAG recommends that, should the Commission approve the transaction, it require that IPL forego any gain on sale of its distribution assets, order that the transaction costs be paid by IPL, and order that the sale price paid by SMEC to IPL be reduced by the amount of the gain that IPL will receive in the form of increased return on equity on generation assets in Iowa used to serve Minnesota customers.

Dated: December 8, 2014

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

s/ Ian M. Dobson
IAN M. DOBSON
Assistant Attorney General
Atty. Reg. No. 0386644

445 Minnesota Street, Suite 1400
St. Paul, Minnesota 55101-2131
(651) 757-1432 (Voice)
(651) 297-7206 (TTY)

ATTORNEYS FOR OFFICE OF THE ATTORNEY GENERAL-RESIDENTIAL UTILITIES AND ANTITRUST DIVISION

LORI SWANSON
ATTORNEY GENERAL

STATE OF MINNESOTA

OFFICE OF THE ATTORNEY GENERAL

SUITE 1400
445 MINNESOTA STREET
ST. PAUL, MN 55101-2131
TELEPHONE: (651) 296-7575

December 8, 2014

Dr. Burl Haar, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Re: ***In the Matter of a Request for Approval of the Asset Purchase & Sale Agreement Between Interstate Power and Light Company and Southern Minnesota Energy Cooperative***
MPUC Docket Nos. E-001, E-115, E-140, E-105, E-139, E-124, E-126, E-145, E-132, E-114, E-6521, E-142, E-135/PA-14-322

Dear Dr. Haar:

Enclosed and e-filed in the above-referenced matter please find *Reply Comments of the Office of the Attorney General – Residential Utilities and Antitrust Division*.

By copy of this letter, all parties have been served. An Affidavit of Service is also enclosed.

Sincerely,

s/Ian Dobson

IAN M. DOBSON
Assistant Attorney General

(651) 757-1432 (Voice)
(651) 296-9663 (Fax)

Enclosures

cc: Affidavit of Service

AFFIDAVIT OF SERVICE

Re: ***In the Matter of a Request for Approval of the Asset Purchase & Sale Agreement Between Interstate Power and Light Company and Southern Minnesota Energy Cooperative***
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STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I hereby state that on December 8, 2014, I filed with eDockets *Reply Comments of the Office of the Attorney General - Residential Utilities and Antitrust Division* and served the same upon all parties listed on the attached service list by email, and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

s/ Judy Sigal
Judy Sigal

Subscribed and sworn to before me
this 8th day of December, 2014.

s/ Patricia Jotblad
Notary Public

My Commission expires: January 31, 2015.

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Ross	Abbey	abbey@fresh-energy.org	Fresh Energy	408 Saint Peter St Ste 220 St. Paul, MN 55102-1125	Electronic Service	No	OFF_SL_14-322_Official
Bobby	Adam	bobby.adam@conagrafoods.com	ConAgra	Suite 5022 11 ConAgra Drive Omaha, NE 68102	Electronic Service	No	OFF_SL_14-322_Official
Michael	Allen	michael.allen@allenergysolar.com	All Energy Solar	721 W 26th st Suite 211 Minneapolis, Minnesota 55405	Electronic Service	No	OFF_SL_14-322_Official
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_14-322_Official
Christopher	Anderson	canderson@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022191	Electronic Service	No	OFF_SL_14-322_Official
John	Aune	johna@bluehorizonsolar.com	Blue Horizon Energy	171 Cheshire Ln Ste 500 Plymouth, MN 55441	Electronic Service	No	OFF_SL_14-322_Official
Rebecca J.	Baldwin		Spiegel & McDiarmid	1333 New Hampshire Avenue NW Washington, DC 20036	Paper Service	No	OFF_SL_14-322_Official
Rick	Bartz	rbartz@ibewlocal949.org	IBEW Local Union 949	12908 Nicollet Avenue South Burnsville, MN 55337	Electronic Service	No	OFF_SL_14-322_Official
Peter	Beithon	pbeithon@otpco.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_14-322_Official
Sara	Bergan	sebergan@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
James J.	Bertrand	james.bertrand@leonard.com	Leonard Street & Deinard	150 South Fifth Street, Suite 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
William	Black	bblack@mmua.org	MMUA	Suite 400 3025 Harbor Lane North Plymouth, MN 554475142	Electronic Service	No	OFF_SL_14-322_Official
William A.	Blazar	bblazar@mnchamber.com	Minnesota Chamber Of Commerce	Suite 1500 400 Robert Street North St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
Michael	Bradley	mike.bradley@lawmoss.com	Moss & Barnett	150 S. 5th Street, #1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
B. Andrew	Brown	brown.andrew@dorsey.com	Dorsey & Whitney LLP	Suite 1500 50 South Sixth Street Minneapolis, MN 554021498	Electronic Service	No	OFF_SL_14-322_Official
Michael J.	Bull	mbull@mncee.org	Center for Energy and Environment	212 Third Ave N Ste 560 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_14-322_Official
Joel	Cannon	jcannon@tenksolar.com	Tenk Solar, Inc.	9549 Penn Avenue S Bloomington, MN 55431	Electronic Service	No	OFF_SL_14-322_Official
John J.	Carroll	jcarroll@newportpartners.com	Newport Partners, LLC	9 Cushing, Suite 200 Irvine, California 92618	Electronic Service	No	OFF_SL_14-322_Official
Steve W.	Chriss	Stephen.chriss@wal-mart.com	Wal-Mart	2001 SE 10th St. Bentonville, AZ 72716-5530	Electronic Service	No	OFF_SL_14-322_Official
City	Clerk	sschulte@ci.albertlea.mn.us	City of Albert Lea	221 E Clark St Albert Lea, MN 56007	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Steve	Coleman	scoleman@appliedenergyinnovations.org	Applied Energy Innovations	4000 Minnehaha Ave S Minneapolis, MN 55406	Electronic Service	No	OFF_SL_14-322_Official
Joan	Conrad	N/A	Iowa Utilities Board	1375 E. Court Avenue, Room 69 Des Moines, IA 50319-0069	Paper Service	No	OFF_SL_14-322_Official
Lisa	Crum	lisa.crum@ag.state.mn.us	Office of the Attorney General-PUC	445 Minnesota Street, 1100 BRM Saint Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
Lisa	Daniels	lisadaniels@windustry.org	Windustry	201 Ridgewood Ave Minneapolis, MN 55403	Electronic Service	No	OFF_SL_14-322_Official
Dustin	Denison	dustin@appliedenergyinnovations.org	Applied Energy Innovations	4000 Minnehaha Ave S Minneapolis, MN 55406	Electronic Service	No	OFF_SL_14-322_Official
Executive	Director		League Of MN Cities	145 University Avenue West St Paul, MN 551032044	Paper Service	No	OFF_SL_14-322_Official
Ian	Dobson	ian.dobson@ag.state.mn.us	Office of the Attorney General-RUD	Antitrust and Utilities Division 445 Minnesota Street, 1400 BRM Tower St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
Steve	Downer	sdowner@mmua.org	MMUA	3025 Harbor Ln N Ste 400 Plymouth, MN 554475142	Electronic Service	No	OFF_SL_14-322_Official
Bill	Droessler	N/A	Izaak Walton League of America-MWO	1619 Dayton Ave Ste 202 Saint Paul, MN 55104	Paper Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Betsy	Engelking	betsy@geronimoenergy.com	Geronimo Energy	7650 Edinborough Way Suite 725 Edina, MN 55435	Electronic Service	No	OFF_SL_14-322_Official
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_14-322_Official
Nathan	Franzen	nathan@geronimoenergy.com	Geronimo Energy	7650 Edinborough Way Suite 725 Edina, MN 55435	Electronic Service	No	OFF_SL_14-322_Official
Doug	Franzen	djf@franzen-mn.com	Franzen & Associates, LLC	1675 Highland Pkwy St. Paul, MN 55116	Paper Service	No	OFF_SL_14-322_Official
Benjamin	Gerber	bgerber@mnchamber.com	Minnesota Chamber of Commerce	400 Robert Street North Suite 1500 St. Paul, Minnesota 55101	Electronic Service	No	OFF_SL_14-322_Official
Bruce	Gerhardson	bgerhardson@otpco.com	Otter Tail Power Company	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_14-322_Official
Bill	Grant	Bill.Grant@state.mn.us	Minnesota Department of Commerce	85 7th Place East, Suite 500 St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
David	Grover	dgrover@itctransco.com	ITC Midwest	901 Marquette Avenue Suite 1950 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Burl W.	Haar	burl.haar@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_14-322_Official
Tony	Hainault	anthony.hainault@co.hennepin.mn.us	Hennepin County DES	701 4th Ave S Ste 700 Minneapolis, MN 55415-1842	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
J Drake	Hamilton	hamilton@fresh-energy.org	Fresh Energy	408 St Peter St Saint Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
Samuel	Hanson	N/A	Briggs And Morgan, P.A.	2200 IDS Center E 80 South Eighth Street Minneapolis, MN 55402	Paper Service	No	OFF_SL_14-322_Official
Jack	Hays	jack.hays@westwoodps.com	Westwood Professional Services	7699 Anagram Drive Eden Prairie, MN 55344	Electronic Service	No	OFF_SL_14-322_Official
Brandon	Heath	bheath@misoenergy.org	MISO Energy	1125 Energy Park Drive St. Paul, MN 55108-5001	Electronic Service	No	OFF_SL_14-322_Official
Annete	Henkel	mui@mnutilityinvestors.org	Minnesota Utility Investors	413 Wacouta Street #230 St.Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
Richard J.	Hettwer	rj.hettwer@smmpa.org	SMMPA	500 First Avenue, SW Rochester, MN 559023303	Electronic Service	No	OFF_SL_14-322_Official
Lynn	Hinkle	lhinkle@mnseia.org	Minnesota Solar Energy Industries Association	2512 33rd Ave South #2 Minneapolis, MN 55406	Electronic Service	No	OFF_SL_14-322_Official
Holly	Hinman	holly.r.hinman@xcelenergy.com	Xcel Energy	414 Nicollet Mall, 7th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_14-322_Official
Margaret	Hodnik	mhodnik@mnpower.com	Minnesota Power	30 West Superior Street Duluth, MN 55802	Electronic Service	No	OFF_SL_14-322_Official
Tiffany	Hughes	Regulatory.Records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Anne	Hunt	anne.hunt@ci.stpaul.mn.us	City of Saint Paul	390 City Hall 15 West Kellogg Boulevard Saint Paul, MN 55102	Electronic Service	No	OFF_SL_14-322_Official
Dwight	Jelle	dkjelle@gmail.com	Best Power International, LLC	P.O. 5126 Hopkins, MN 55343	Electronic Service	No	OFF_SL_14-322_Official
Alan	Jenkins	aj@jenkinsatlaw.com	Jenkins at Law	2265 Roswell Road Suite 100 Marietta, GA 30062	Electronic Service	No	OFF_SL_14-322_Official
Linda	Jensen	linda.s.jensen@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota Street St. Paul, MN 551012134	Electronic Service	No	OFF_SL_14-322_Official
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Paula	Johnson	paulajohnson@alliantenergy.com	Alliant Energy-Interstate Power and Light Company	P.O. Box 351 200 First Street, SE Cedar Rapids, IA 524060351	Electronic Service	No	OFF_SL_14-322_Official
Elizabeth M.	Jones	elizabeth.jones@ag.state.mn.us	Office of the Attorney General-PUC	445 Minnesota Street Suite 1100 Bremer Tower St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
Mara	Koeller	mara.n.koeller@xcelenergy.com	Xcel Energy	414 Nicollet Mall 5th Floor Minneapolis, MN 55401	Electronic Service	No	OFF_SL_14-322_Official
Brian	Krambeer	bkrambeer@tec.coop	Tri-County Electric Cooperative	PO Box 626 31110 Cooperative Way Rushford, MN 55971	Electronic Service	No	OFF_SL_14-322_Official
Jon	Kramer	jk2surf@aol.com	Sundial Solar	4708 york ave. S Minneapolis, MN 55410	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Jim	Krueger	jkrueger@fmcs.coop	Freeborn-Mower Cooperative Services	Box 611 Albert Lea, MN 56007	Electronic Service	No	OFF_SL_14-322_Official
Allen	Krug	allen.krug@xcelenergy.com	Xcel Energy	414 Nicollet Mall-7th fl Minneapolis, MN 55401	Electronic Service	No	OFF_SL_14-322_Official
Jeffrey L.	Landsman	jlandsman@wheelerlaw.com	Wheeler, Van Sickle & Anderson, S.C.	Suite 801 25 West Main Street Madison, WI 537033398	Electronic Service	No	OFF_SL_14-322_Official
Harold	LeVander, Jr.	hlevander@felhaber.com	Felhaber, Larson, Fenton & Vogt, P.A.	Suite 2100 444 Cedar Street St. Paul, MN 551012136	Electronic Service	No	OFF_SL_14-322_Official
John	Lindell	agorud.ecf@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_14-322_Official
Bob	Long	rlong@larkinhoffman.com	Larkin Hoffman (Silicon Energy)	1500 Wells Fargo Plaza 7900 Xerxes Ave S Bloomington, MN 55431	Electronic Service	No	OFF_SL_14-322_Official
Rebecca	Lundberg	rebecca.lundberg@powerfullygreen.com	Powerfully Green	11451 Oregon Ave N Champlin, MN 55316	Electronic Service	No	OFF_SL_14-322_Official
Casey	MacCallum	casey@appliedenergyinnovations.org	Applied Energy Innovations	4000 Minnehaha Ave S Minneapolis, MN 55406	Electronic Service	No	OFF_SL_14-322_Official
Paula	Maccabee	Pmaccabee@justchangelaw.com	Just Change Law Offices	1961 Selby Ave Saint Paul, MN 55104	Electronic Service	No	OFF_SL_14-322_Official
Erik	Madsen	ErikMadsen@alliantenergy.com	Alliant Energy	200 First St SE Cedar Rapid, IA 52401	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Kavita	Maini	kmaini@wi.rr.com	KM Energy Consulting LLC	961 N Lost Woods Rd Oconomowoc, WI 53066	Electronic Service	No	OFF_SL_14-322_Official
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Electronic Service	No	OFF_SL_14-322_Official
Natalie	McIntire	natalie.mcintire@gmail.com	Wind on the Wires	570 Asbury St Ste 201 Saint Paul, MN 55104-1850	Electronic Service	No	OFF_SL_14-322_Official
Valerie	Means	valerie.means@lawmoss.com	Moss & Barnett	150 S. 5th Street, #1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Brian	Meloy	brian.meloy@stinsonleonard.com	Stinson,Leonard, Street LLP	150 S 5th St Ste 2300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Gregory R.	Merz	gregory.merz@gpmlaw.com	Gray, Plant, Mooty	80 S 8th St Ste 500 Minneapolis, MN 55402-5383	Electronic Service	No	OFF_SL_14-322_Official
Steve	Mihalchick	steve.mihalchick@state.mn.us	Office of Administrative Hearings	PO Box 64620 St. Paul, MN 551640620	Electronic Service	No	OFF_SL_14-322_Official
David	Moeller	dmoeller@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022093	Electronic Service	No	OFF_SL_14-322_Official
Andrew	Moratzka	apmoratzka@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Martin	Morud	mmorud@trunorthsolar.com	Tru North Solar	5115 45th Ave S Minneapolis, MN 55417	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Carl	Nelson	cnelson@mncee.org	Center for Energy and Environment	212 3rd Ave N Ste 560 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_14-322_Official
Michael	Noble	noble@fresh-energy.org	Fresh Energy	Hamm Bldg., Suite 220 408 St. Peter Street St. Paul, MN 55102	Electronic Service	No	OFF_SL_14-322_Official
Rolf	Nordstrom	rnordstrom@gpisd.net	Great Plains Institute	2801 21ST AVE S STE 220 Minneapolis, MN 55407-1229	Electronic Service	No	OFF_SL_14-322_Official
Samantha	Norris	samanthanorris@alliantenergy.com	Alliant Energy	200 1st Street SE PO Box 351 Cedar Rapids, IA 52406-0351	Electronic Service	No	OFF_SL_14-322_Official
Steven	Nyhus	swnyhus@flaherty-hood.com	Flaherty & Hood PA	525 Park St Ste 470 Saint Paul, MN 55103	Electronic Service	No	OFF_SL_14-322_Official
Priti R.	Patel	priti.r.patel@xcelenergy.com	Xcel Energy	414 Nicollet Mall MP 800 Minneapolis, MN 55401	Electronic Service	No	OFF_SL_14-322_Official
Donna	Pickard	dpickard@aladdinsolar.com	Aladdin Solar	1215 Lilac Lane Excelsior, MN 55331	Electronic Service	No	OFF_SL_14-322_Official
Charlie	Pickard	cpickard@aladdinsolar.com	Aladdin Solar	1215 Lilac Lane Excelsior, MN 55331	Electronic Service	No	OFF_SL_14-322_Official
David E.	Pomper		Spiegel & McDiarmid	1333 New Hampshire Avenue NW Washington, DC 20036	Paper Service	No	OFF_SL_14-322_Official
Benjamin L.	Porath		Dairyland Power Cooperative	3200 East Avenue South PO Box 817 La Crosse, WI 546020817	Paper Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Gayle	Prest	gayle.prest@minneapolismn.gov	City of Mpls Sustainability	350 South 5th St, #315 Minneapolis, MN 55415	Electronic Service	No	OFF_SL_14-322_Official
Enio	Ricci	ericci@invenergyllc.com	Invenergy LLC	17830 New Hampshire Ave Ste 300 Ashton, MD 20861	Electronic Service	No	OFF_SL_14-322_Official
Michelle	Rosier	michelle.rosier@sierraclub.org	Sierra Club	2327 E. Franklin Avenue Minneapolis, MN 554061024	Electronic Service	No	OFF_SL_14-322_Official
Dan L.	Sanford	N/A	American Transmission Company LLC	W234 N2000 Ridgeview Pkwy Court Waukesha, WI 53188-1022	Paper Service	No	OFF_SL_14-322_Official
Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	332 Minnesota Street Ste W2750 St. Paul, MN 55101	Electronic Service	No	OFF_SL_14-322_Official
Kevin	Saville	kevin.saville@ftr.com	Citizens/Frontier Communications	2378 Wilshire Blvd. Mound, MN 55364	Electronic Service	No	OFF_SL_14-322_Official
Larry L.	Schedin	Larry@LLSResources.com	LLS Resources, LLC	12 S 6th St Ste 1137 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Matthew J.	Schuerger P.E.	mjsreg@earthlink.net	Energy Systems Consulting Services, LLC	PO Box 16129 St. Paul, MN 55116	Electronic Service	No	OFF_SL_14-322_Official
Janet	Shaddix Elling	jshaddix@janetshaddix.com	Shaddix And Associates	Ste 122 9100 W Bloomington Frwy Bloomington, MN 55431	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Gary	Shaver	N/A	Silicon Energy	3506 124th St NE Marysville, WA 98271	Paper Service	No	OFF_SL_14-322_Official
Erin	Shea	eshea@silicon-energy.com	Silicon Energy	PO Box 376 8787 Silicon Way Mt Iron, MN 55768	Electronic Service	No	OFF_SL_14-322_Official
Doug	Shoemaker	dougs@mnRenewables.org	MRES	2928 5th Ave S Minneapolis, MN 55408	Electronic Service	No	OFF_SL_14-322_Official
Ron	Spangler, Jr.	rlspangler@otpco.com	Otter Tail Power Company	215 So. Cascade St. PO Box 496 Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_14-322_Official
Kristin	Stastny	stastny.kristin@dorsey.com	Dorsey & Whitney LLP	50 South 6th Street Suite 1500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Donna	Stephenson	dstephenson@grenergy.com	Great River Energy	12300 Elm Creek Boulevard Maple Grove, MN 55369	Electronic Service	No	OFF_SL_14-322_Official
Erin	Stojan Ruccolo	ruccolo@fresh-energy.org	Fresh Energy	408 Saint Peter St Ste 220 Saint Paul, MN 55102-1125	Electronic Service	No	OFF_SL_14-322_Official
James M.	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	470 U.S. Bank Plaza 200 South Sixth Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_14-322_Official
Deb	Sundin	deb.sundin@xcelenergy.com	Xcel Energy	414 Nicollet Mall Minneapolis, MN 55401	Electronic Service	No	OFF_SL_14-322_Official
JoAnn	Thompson	jthompson@otpco.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_14-322_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Stephen J.	Videto		ITC Holding Corp.	27175 Energy Way, Fifth Floor Novi, MI 48377	Paper Service	No	OFF_SL_14-322_Official
Denis R.	Vogel	vmele@wheelerlaw.com	Wheeler, Van Sickle & Anderson, S.C.	25 W. Main Street Suite 801 Madison, WI 53703	Electronic Service	No	OFF_SL_14-322_Official
Marya	White	mwhite@misoenergy.org	MISO	1125 Energy Park Dr St. Paul, MN 55108	Electronic Service	No	OFF_SL_14-322_Official
Daniel	Williams	DanWilliams.mg@gmail.com	Powerfully Green	11451 Oregon Avenue N Champlin, MN 55316	Electronic Service	No	OFF_SL_14-322_Official
Robyn	Woeste	robynwoeste@alliantenergy.com	Interstate Power and Light Company	200 First St SE Cedar Rapids, IA 52401	Electronic Service	No	OFF_SL_14-322_Official