Laborers' International Union of North America

LiUNA! MINNESOTA & NORTH DAKOTA

Feel the Power

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

PUC Docket No. E-015/PA-24-198

LIUNA Minnesota and North Dakota ("LIUNA") appreciates the opportunity to offer reply comments in the matter of the petition filed by Minnesota Power concerning the planned acquisition of parent company ALLETE, Inc. by Global Infrastructure Partners ("GIP") and the Canada Pension Plan Investment Board ("CPP") (jointly "The Partners").

We want to begin by expressing appreciation for the comments and exceptions filed by members of a growing coalition of supporters for the transaction, including not only multiple labor organizations and Energy Cents Coalition which previously endorsed the deal, but also Minnesota's leading clean energy organizations – Fresh Energy, Clean Grid Alliance, Center for Energy and Environment, and Clean Energy Economy Minnesota. The clean energy organizations, in particular, provided thoughtful analysis of the proposed settlement and the significant weaknesses in the Administrative Law Judge's report.

The comments filed by various parties help crystalize the key questions before the Commission, which are, in our view:

- Does the change in ownership structure from a publicly-traded to a privately-held company fundamentally change Minnesota Power's regulatory obligations or the Commission's power to enforce those obligations?

- Do the commitments incorporated into the settlement agreement between ALLETE, the Partners and the Department of Commerce adequately address potential risks associated with the proposed change in ownership structure?

- What are the likelihood and potential consequences of ALLETE struggling as a stand-alone company to secure sufficient capital to meet its regulatory obligations on reasonable terms, in a timely manner, in today's turbulent economic and policy environment?

- Is ALLETE more likely to have access to sufficient capital under reasonable terms, in a timely manner, in the current economic and policy environment as a stand-alone company in the public market, or as an asset owned by the Partners under the terms of the settlement?

- What are the potential consequences if ALLETE is forced to rely on capital mitigation measures proposed by opponents to the deal?

As many commenters observe, the record is clear with respect to the change in ownership structure. Nothing about the proposed transaction would change the obligations of Minnesota Power or its owners, or lessen the authority and control of the Commission over the utility. Comments by Energy Cents Coalition ("ECC") may put it best:

> *While there are statutory differences between the requirements imposed on investor-owned utilities and other ownership models, such as cooperatively and municipally owned utilities, requirements for investor-owned utilities under state law remain in effect whether the company is traded publicly or privately. To our knowledge, no party in this matter has demonstrated that the acquisition would diminish the extent to which MP is subject to the requirements for investor-owned utilities in Minnesota Statutes Chapter 216B.*
>
> *ECC does not deny nor discount that the profit expectations of the Partners exist in cross-purposes with the statutory mandate to provide affordable and reliable utility service to low-income customers. Nonetheless, it would appear from examining the historical record that such crosscurrents exist in every ownership type. To the extent that utilities have delivered affordable, equitable and reliable service to Minnesotans of every income, it is in large part because advocates have leveraged the enforcement mechanisms of the regulatory compact to ensure those outcomes.*
>
> *ECC's support of the Settlement – and the acquisition as a whole – is not rooted in blind faith in the intentions of the Partners. Rather, we see a perennial need for vigilance on behalf of low-income customers within the guardrails and protections of the regulatory compact. While there is nothing inherent within the transfer to ownership by private equity that will place the Company outside the Commission's watchful eye, the stipulations of the Settlement will further assure meaningful guardrails for MP customers under new ownership.*

IBEW Local 31 also makes this case, point out that the ALJ's findings related to post-acquisition employment declines "do not reflect the distinct regulatory structure", and that the case of SunPower is a stronger argument for not relying on unregulated third parties than to deny the transaction.

While there is no intrinsic conflict between private fund ownership and the public interest, commenters explain in detail how the proposed settlement not only addresses concerns with private ownership but actually provide stronger protections for ratepayers, workers and Minnesotans than exist under Minnesota Power's current ownership structure. From reduced ROE and a rate case stayout, to debt controls, to a ring-fencing commitment, to increased transparency for affiliate transactions, to service quality penalties, the proposed agreement is not only equivalent to but better than the status quo for customers and Minnesotans generally.

The clean energy organizations commenting in the docket strongly underscore the case made by ALLETE, the Partners, LIUNA and other parties that it will be difficult if not impossible to ALLETE to raise the capital necessary to meet carbon-free and other regulatory obligations reliably and affordably in its current form, especially in the face of new economic and policy headwinds. Further, commenters including the Minnesota Building Trades argue persuasively that there are substantial risks associated with efforts to mitigate capital needs through reliance

on third parties that may not be able to meet the need, almost certainly will not be willing to do so at favorable prices and in accordance with Minnesota's values, including our commitment to use of local union labor, based on past and recent experience.

On the other hand, we are disappointed to see opposing parties fail to engage in a serious manner with the flaws in the Administrative Law Judge's report (including calling it "thorough" which no party should be able to say with a straight face), or with the terms of the settlement. It is not surprising that, apart from the Department of Commerce, none of the parties opposed to the transaction feel that the settlement adequately addresses their concerns. As we have observed previously, the remaining concerned parties have generally have made clear during the proceedings that they were either unalterably opposed to the deal, or that price for their support would have involved extraordinary concessions that were infeasible, often contrary to the public interest, and in some cases diametrically opposed to one another (e.g. Large Power Intervenors and Sierra Club).

It is more difficult to understand, however, why opposing parties are so quick in their comments to dismiss or minimize the very substantial concessions extracted by the Department, including concessions that specifically and substantially address concerns they raised in the proceeding. For example, in their initial brief, Large Power Intervenors ("LPI") argue that Partners cannot be counted upon to provide promised capital because they may find better and more profitable uses for their funds, suggesting that commitments to do so were unenforceable and meaningless.

> *If, a few years in the future, the capital needs of its portfolio companies exceed its initial expectations, or its internally generated cash flows fall short of expectations, there are no guarantees that GIP Fund V will be willing or able to provide enough equity for Minnesota Power to make its needed investment. (P. 67)*

LPI takes the exact opposite position in their initial comments, however, where they argue that settlement provisions designed to enforce capital commitments are unnecessary and provide no incremental benefit because the Partners had already committed to provide the capital — a commitment that LPI disdained in May but firmly believes three months later.

> *Alloy Parent has already committed to provide this type of equity financing as part of the Proposed Acquisition. Adding that dividends will not be paid out until such equity financing materializes does not change the fundamental commitment and offers nothing new to ratepayers. (P. 6)*

LPI's dismissive attitude toward Minnesota Power's acceptance of a lower Return on Equity ("ROE") — a literal reduction in capital costs that will directly benefit all rate classes including large industrial customers — is similarly difficult to square with the organization's previous position. For example, in their initial brief, LPI contends albeit without actual supporting evidence that the transaction would "increase rates through means such as a higher return on equity ("ROE")" among other factors. (P. 18)

Given the opportunity to respond to a settlement that lowers ROE, however, LPI concludes that Minnesota Power's current ROE doesn't actually matter because it can always change in the next rate case. "Considering a final Commission order is not expected until the first quarter of 2026,

and Minnesota Power will become eligible for a rate case in November 2026 (per term 1.43), this commitment offers at most 10 months of benefits to ratepayers." (P. 7)

Of course, LPI's comments willfully ignores the fact that the tug-of-war that will take place over ROE in Minnesota Power's next rate case will start at the lower settlement rate, and likely end that much lower than it would have absent the settlement. A party as well-resourced and sophisticated as LPI knows perfectly well that every inch conceded by a utility on ROE is an inch that could be lost forever, but since the Department already won it for them, they feel no need to acknowledge that reality.

LPI is not alone in trying to have it both ways. The Office of the Attorney General Residential Utilities Division ("OAG") raises concerns about speculative rate impacts that are not based on actual decisions the Commission has made or is likely to make regarding rates, but instead on speculative financial scenarios developed by the Partners as part of their consideration of a potential acquisition. When it comes to concrete settlement terms that will lower costs and forestall rate increases in the near future, OAG is entirely dismissive.

Like LPI, the OAG's comments minimize the importance of a lower ROE by suggesting that the utility can always ask for a higher one in the next rate case — as if the lower rate will not become the anchor point and be used by the OAG in litigation and negotiations. The OAG also attempts to diminish the value of the rate case stayout with the speculative and highly improbably suggestion that Minnesota Power, which is likely facing a serious revenue deficiency due to the idling of large plants, might not file a rate case sooner even if the sale is rejected — apparently forgetting that it is the obligation of the utility to have a Plan B and do its best to execute.

On the issue of potential impacts to ratepayers from the issuance of debt, OAG likewise shifts the goalposts. Where OAG previously argues that three years was insufficient to identify potential impacts of growing indebtedness (which will be separately constrained by other conditions in any case), the OAG now argues that five years is hardly any better than three.

The same is true for settlement provisions that address commitments to provide capital. Unable to dispute that the settlement provides much stronger incentive and assurance that the Partners will provide capital, the OAG's comments largely rehearse old arguments that ALLETE allegedly did not fight hard enough in initial negotiations over a deal whose entire premise from the Partners' point of view was the opportunity to deploy capital.

The OAG also rehearses claims that Minnesota Power likely needs less capital than projected, at the Partners will have an undue incentive to boost capital spending — capital spending that is ultimately approved by the Commission not ALLETE. Within a page, however, the OAG is taking the exact opposite position, criticizing the settlement for allowing the financial commitment to be adjusted based on downward adjustments to the capital plan that the OAG just argued were likely necessary. "For example, the Partners can avoid its application through undefined "reasonable and prudent plan reductions." (P. 9)

While we understand that each side is motivated to win its desired outcome, in our view comments filed by the OAG, LPI and Citizens Utility Board show little serious effort to grapple with the real efforts to address concerns or the real consequences of denial. We urge the

Commission to take its own look at the record and give weight to the contributions of a growing coalition that recognizes the deal before it is not only a good one for customers, workers and our climate, but also essential for Minnesota Power to meet state goals and regulatory obligations.

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Respectfully Submitted,
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