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**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS  
600 North Robert Street  
St. Paul, Minnesota 55101**

**FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION  
121 7th Place East  
Suite 350  
St. Paul, Minnesota 55101-2147**

**MPUC Docket No. E-111/GR-14-482  
OAH Docket No. 80-2500-31796**

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*In the Matter of the Application of Dakota Electric Association for Authority  
to Increase Rates for Electric Service in Minnesota*

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**EXCEPTIONS OF THE OFFICE OF THE MINNESOTA ATTORNEY GENERAL-  
RESIDENTIAL UTILITIES AND ANTITRUST DIVISION TO THE FINDINGS OF  
FACT, CONCLUSIONS OF LAW, AND RECOMMENDATIONS OF THE  
ADMINISTRATIVE LAW JUDGE**

**March 12, 2015**

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**TABLE OF CONTENTS**

EXCEPTIONS OF THE OFFICE OF THE ATTORNEY GENERAL .....1

I. INTRODUCTION .....1

II. DAKOTA’S ADJUSTMENT FOR STAFFING CHANGES .....2

    A. THE ALJ’S RECOMMENDED DISALLOWANCE INCLUDES TWO TECHNICAL  
    ERRORS.....2

    B. THE ALJ SHOULD HAVE DISALLOWED THE COSTS OF DAKOTA’S NEW  
    POSITION.....4

III. ADDITIONAL LABOR CAPACITY .....6

IV. TRAVEL AND MISCELLANEOUS EXPENSES .....7

V. REVENUE APPORTIONMENT .....9

    A. DAKOTA’S CCOSS RELIES ON AN INACCURATE MINIMUM SYSTEM. ....9

    B. THE ALJ’S RECOMMENDED REVENUE APPORTIONMENT IS FLAWED.....11

VI. CUSTOMER CHARGE .....12

VII. CONCLUSION.....16

**STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE  
PUBLIC UTILITIES COMMISSION**

In the Matter of the Application of Dakota  
Electric Association for Authority to Increase  
Rates for Electric Service in Minnesota

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**EXCEPTIONS OF THE OFFICE OF THE ATTORNEY GENERAL**

**I. INTRODUCTION**

Pursuant to Minnesota Statutes section 14.61 and Minnesota Rules, part 7829.2700, the Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG”) hereby files Exceptions to the Findings of Fact, Conclusions of Law, and Recommendations (“Report”) of the Administrative Law Judge (“ALJ”) dated March 2, 2015.<sup>1</sup> The OAG appreciates the effort of the ALJ to complete the Report in the limited timeframe available given the rate case schedule. The OAG disagrees, however, with several of the ALJ’s conclusions and recommendations. On one issue, the OAG agrees with the ALJ’s recommendation, but notes two technical errors that resulted in an incorrect adjustment. The OAG offers these Exceptions in order to correct these errors and develop reasonable rates. The OAG’s testimony and briefing has already provided robust argument on its positions. The OAG will not restate the arguments it has already made in those documents. Rather, the OAG’s Exceptions are limited to those areas in which the ALJ’s Findings require additional comments, but the failure to identify an issue or Finding in these Exceptions does not indicate a waiver of the issue on the part of the OAG.

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<sup>1</sup> Findings of Fact, Conclusions of Law, and Recommendations, *In the Matter of the Application of the Application of Dakota Electric Association for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E-111/GR-14-482; OAH Docket No. 80-2500-31796 (March 2, 2015).

## **II. DAKOTA'S ADJUSTMENT FOR STAFFING CHANGES**

The ALJ agreed with the OAG's finding that Dakota's requested revenue included labor costs that were inflated beyond what the company actually pays. Specifically, the ALJ correctly found that Dakota should not recover the full-year cost of positions that were filled for only part of the year.<sup>2</sup> The ALJ, however, appears to have made two technical errors in calculating the specific disallowance resulting from this Finding. In addition, the ALJ did not agree with the OAG's recommendation to disallow Dakota's adjustment for a new position added in 2014. The OAG takes exception to these technical errors in the ALJ's report, and to the ALJ's Finding that the test-year expenses should be adjusted upward for a newly added position.

### **A. THE ALJ'S RECOMMENDED DISALLOWANCE INCLUDES TWO TECHNICAL ERRORS.**

The ALJ agreed with the OAG's recommendation to disallow the full-year costs of positions that were filled for only part of the year, but the ALJ made two errors in calculating the impact of the OAG's recommendation. In its compliance filing on March 9, 2015, Dakota acknowledged the errors and agreed that they should be corrected in order to accomplish the ALJ's intended adjustment. Because Dakota's compliance filing does not provide a description of the errors, the OAG provides the following explanation of the ALJ's recommended disallowance in order to provide the Commission with a complete record.

Dakota requested a \$690,427 upward adjustment from its base year costs for staffing changes. This request consisted of two parts: \$465,435 for payroll costs, and \$224,992 in associated benefits.<sup>3</sup> Moreover, the \$465,435 in additional payroll costs includes \$397,225 in annual costs for 16 positions that were filled for only part of the year and \$68,210 in costs for a

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<sup>2</sup> ALJ Report, Findings 67-68.

<sup>3</sup> Ex. 102 at 2 (Larson Direct Attachments).

new position.<sup>4</sup> The OAG recommended that Dakota's entire upward adjustment be disallowed. The ALJ, however, concluded that the costs associated with annualizing the wages of 16 positions that were filled for only part of the year should be disallowed, but that the costs of adding the new position should be allowed.<sup>5</sup> The corresponding disallowance for this Finding should have been \$589,244; the payroll costs of \$397,225 plus associated benefits.<sup>6</sup> The ALJ, however, calculated a disallowance of only \$329,015.<sup>7</sup> This calculation contains two technical errors.

First, the ALJ found that Dakota's requested adjustment only included payroll expenses, and did not include the \$224,992 in associated benefits.<sup>8</sup> Accordingly, in calculating her recommended adjustment, the ALJ did not disallow benefit costs that Dakota had supposedly not requested. As indicated above, however, Dakota did include these benefit costs in its request, and the ALJ should therefore have disallowed them. The ALJ, however, appears to have reviewed the wrong schedule in concluding that Dakota did not request benefit costs. Specifically, in explaining Dakota's proposed adjustment for staffing changes, the ALJ refers to page five of Exhibit 1 of Dakota witness Mr. Larson's Direct Testimony,<sup>9</sup> which provides the "Test Year Adjustments, Adjustments to Payroll." This schedule does not include benefit costs. The associated benefit costs, however, are included on page 2 of the same exhibit, which provides the full "Test year Adjustments to Operating Expenses." By referring to page 5 of the exhibit, the ALJ appears to have reviewed only a portion of the adjustment sought by Dakota, and mistakenly concluded that Dakota's adjustment did not include benefit costs. Accordingly,

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<sup>4</sup> *Id.* at 5.

<sup>5</sup> ALJ Report, Finding 68.

<sup>6</sup> \$397,225 multiplied by the payroll benefit rate of 48.34%. *See* Ex. 203 at 6 n. 16 (Lee Direct).

<sup>7</sup> ALJ Report, Finding 68.

<sup>8</sup> *See* ALJ Report, Findings 63, 68.

<sup>9</sup> Ex. 102.

the ALJ's disallowance of the costs to annualize partially filled positions should have incorporated the benefit costs associated with her recommendation.

Second, the ALJ appears to have "double counted" the costs of Dakota's new position that she recommended allowing. Specifically, to calculate her recommended disallowance of \$329,015, the ALJ subtracted the payroll cost of the new position (\$68,210) from the \$397,225 in annual payroll costs for 16 positions that were filled for only part of the year.<sup>10</sup> But the costs of annualizing these positions already excluded the costs of Dakota's new position. Dakota's initial request was for a payroll adjustment of \$465,435, including \$68,210 for a new position and \$397,225 for partially filled positions. Therefore, the \$397,225 figure *already excludes* the new position that the ALJ intended to exclude. By subtracting the cost of the new position again, the ALJ subtracted the cost of the new position twice. A correct calculation would subtract the cost of Dakota's new position only once from the full \$465,435 in payroll costs included in Dakota's adjustment, and would result in a disallowance of \$397,225, plus the benefit costs discussed above.<sup>11</sup>

**B. THE ALJ SHOULD HAVE DISALLOWED THE COSTS OF DAKOTA'S NEW POSITION.**

The ALJ provides no basis for the decision to allow Dakota to adjust its staffing costs upwards for the costs of its new position.<sup>12</sup> Moreover, the ALJ noted that Dakota's 2013 base year payroll expenses were already higher than any of the previous three years.<sup>13</sup> As the OAG pointed out, Dakota's 2013 base year payroll expense included the costs of 195 full time

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<sup>10</sup> ALJ Report, Finding 68.

<sup>11</sup> The \$465,435 does not include benefit costs, since this error was explained above.

<sup>12</sup> See ALJ Report, Finding 68.

<sup>13</sup> ALJ Report, Finding 64.

employees.<sup>14</sup> In 2011, however, when Dakota's payroll expense was more than \$25,000 less than its 2013 base year, the company had 196 full time employees.<sup>15</sup> Accordingly, there is no basis to conclude that Dakota's addition of one position will cause its payroll expense to increase above its highest level during the past four years. In other words, Dakota has not demonstrated that its 2013 base year costs are not representative. For this reason, Dakota's adjustment for the addition of one position should be rejected.

For these reasons, the OAG recommends the following modifications to the ALJ's Report:

63. . . . Based on the new additional position and the total wages necessary to fully fund the 16 positions for an entire year, DEA requested an increased annualization adjustment of \$465,435 and associated benefits.

64. ~~The OAG, however, valued DEA's annualization adjustment of \$690,427 based on the wages claimed by DEA plus the OAG's calculation of the benefit expense for the 16 partially filled positions (\$589,224) and one new added position (\$101,183). . . .~~

68. ~~However—The OAG's proffered exclusion of \$690,427 for the annualization adjustment should be adopted. DEA's 2013 base year payroll expense is higher than any of the previous three years, and the company has not demonstrated that an additional upward adjustment is reasonable.—is inconsistent with the amount requested by DEA. According to DEA witness Doug Larson, DEA is seeking an annualization adjustment of \$397,225 for 16 partially filled positions plus \$68,210 for a new position added in 2014. The Administrative Law Judge recommends granting DEA's request for an increase of \$68,210 to cover additional wages for the new added position in 2014, but disallowance of the increase of \$397,225 to adjust for partial staffing in 2013, for a net disallowance of \$329,015.~~

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<sup>14</sup> Ex. 203 at 7 (Lee Direct).

<sup>15</sup> *Id.*

### III. ADDITIONAL LABOR CAPACITY

The OAG identified 842 work hours that Dakota previously billed to its unregulated subsidiary, Energy Alternatives Parent, Inc. (“EAI”), that the company now seeks to recover from ratepayers.<sup>16</sup> Dakota, however, did not claim that these 842 work hours were needed for its regulated functions, that obtaining this capacity offset other costs, or that ratepayers received any benefits of this added capacity. It would be unreasonable for ratepayers to bear the cost of this additional labor capacity without some evidence that it was necessary for utility operations. But Dakota did not require the capacity for operations in the past, because the labor capacity was for an unregulated subsidiary, and Dakota has not argued or produced any evidence suggesting that it is necessary now. The OAG, therefore, recommended that the cost of these work hours offset Dakota’s request.<sup>17</sup> In rejecting the OAG’s recommendation, the ALJ inappropriately placed the burden of proof on the OAG to demonstrate that these costs should not be allowed: “[t]here is no evidence that the 842 work hours previously provided and billed to EAI by DEA employees are not being fully utilized.”<sup>18</sup> Moreover, the only evidence relied on by the ALJ to support her recommendation was “DEA’s testimony . . . that it is fully utilizing those employees’ hours.”<sup>19</sup> This general claim in Dakota’s testimony is not a sufficient basis to award nearly 21 weeks of labor capacity to a company, or, in other words, to require ratepayers to pay for 21 weeks of labor capacity that it appears is not necessary for utility operations. Accordingly, the OAG takes exception to Finding 74 of the ALJ’s Report, and requests the Commission make the following modification:

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<sup>16</sup> See ALJ Report, Finding 69.

<sup>17</sup> OAG’s Initial Brief at 9.

<sup>18</sup> ALJ Report, Finding 74.

<sup>19</sup> *Id.*



~~74. The Administrative Law Judge concludes that t[The OAG's request for a downward adjustment to DEA's overall payroll expense based upon employee support service hours no longer being provided and billed to EAI is reasonable. DEA has not demonstrated that ratepayers have benefited from these service hours no longer being provided to EAI.lacks merit. There is no evidence that the 842 work hours previously provided and billed to EAI by DEA employees are not being fully utilized. On the contrary, DEA's testimony is that it is fully utilizing those employees' hours. More importantly, 21 of the 23 employees who billed EAI for work hours in 2010 are salaried employees, including DEA's CEO, Vice President of Finance, and the Corporate Controller. The salaries of these employees have been included within DEA's operating expenses from 2010 through 2013. Therefore, a reduction to DEA's requested rate increase is not warranted.~~

#### **IV. TRAVEL AND MISCELLANEOUS EXPENSES**

The ALJ allowed recovery of all of Dakota's expenses for travel and entertainment, other than those expenses that Dakota agreed to remove from its request.<sup>20</sup> The OAG recommended disallowing several of these expenses, including the following:

- \$2,066 in travel reimbursements for a Dakota board member to attend meetings of the National Rural Utilities Cooperative Finance Corporation ("CFC"), held outside of Dakota's service territory, while he was running for the CFC board<sup>21</sup>;
- \$672 in excess airfare costs for last-minute scheduling of a board member's trip to attend a meeting in Washington DC<sup>22</sup>;
- \$3,909 for groceries to serve employees at various company functions<sup>23</sup>; and

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<sup>20</sup> ALJ Report, Findings 61-62.

<sup>21</sup> *See id.* at 13; Ex 203 at 12 (Lee Direct).

<sup>22</sup> *See id.*

<sup>23</sup> *See id.* at 13-14.

- \$522 for a holiday luncheon for Dakota’s board members and select key staff members.<sup>24</sup>

While each of the Travel and Entertainment expenses identified by the OAG come from the categories highlighted in Minnesota law for careful scrutiny,<sup>25</sup> the ALJ appears to have applied a relatively lenient standard in awarding recovery of these costs. For instance, the ALJ awarded the \$672 in excess airfare for the last minute scheduled trip simply because the trip “was related to the provision of utility service.”<sup>26</sup> The ALJ also awarded \$2,066 in costs incurred for Dakota’s board member to run for the CFC board because it “has the potential to benefit Dakota’s members.”<sup>27</sup> Finally, the ALJ allowed recovery of food purchases because they were “used for Dakota’s wellness program” and for a Board of Directors luncheon.<sup>28</sup> The ALJ did not conclude that these costs provided any direct benefit to ratepayers. Instead, the ALJ justified her recommendation by pointing to tangential and speculative benefits, or to benefits for Dakota’s *employees*, rather than to ratepayers. Accordingly, the OAG takes exception to these Findings 61 and 62 and recommends they be replaced with the following:

61. DEA has not demonstrated a direct benefit for the Travel and Entertainment expenses identified and challenged by the OAG. Rather, DEA has sought recovery of these expenses by pointing to tangential and speculative benefits. This is not sufficient to warrant recovery, particularly for costs that have been identified in statute for careful scrutiny. Accordingly, it is not reasonable for DEA to receive recovery of \$2,066 in expenses for its board member to run for the board of the CFC board, of \$672 in excess airfare costs for a late scheduled trip, of \$3,909 for groceries to serve at company functions, or \$522 for food served at a board meeting.

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<sup>24</sup> *See id.*

<sup>25</sup> *See* Minn. Stat. § 216B.17(a) (2014)

<sup>26</sup> ALJ Report, Finding 61b.

<sup>27</sup> *Id.* at 61a.

<sup>28</sup> *Id.* at 61c, 61d.

## V. REVENUE APPORTIONMENT

### A. DAKOTA'S CCOSS RELIES ON AN INACCURATE MINIMUM SYSTEM.

Through its testimony and briefing, the OAG demonstrated that Dakota's minimum system analysis overestimates the customer cost portion of its distribution system because it relies on the less accurate minimum-size-method, and that it would be unreasonable to rely on Dakota's study for revenue apportionment or rate design. The OAG takes exception to the ALJ's recommendation that the Commission should adopt Dakota's minimum system analysis.<sup>29</sup> By stating that Dakota's recommendation "reflects real-world minimum-size equipment needed to serve customer load on DEA's system," the ALJ appears to have relied on the flawed premise that the minimum system should include some costs incurred to serve customer load.<sup>30</sup> As the OAG explained, this conflicts with both the explicit language of the NARUC manual, which states that costs incurred to serve load should be classified as demand costs, and the considerations used to classify other FERC accounts.<sup>31</sup> By including the costs to serve customer load in its minimum system, Dakota's analysis overestimates the customer-cost portion of its distribution system.

Moreover, the ALJ appears to have been influenced by the fact that the OAG's recommendation was not based on a methodology specifically discussed in the NARUC manual.<sup>32</sup> The OAG explained that the zero-intercept analysis is the more accurate methodology described in the NARUC manual, but that conducting a proper zero-intercept analysis presents

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<sup>29</sup> ALJ Report, Finding 111.

<sup>30</sup> *See id.* *See also* ALJ Report, Finding 104 (Stating that the OAG "acknowledged" that its recommended minimum system "would not be able to deliver capacity or any energy or service to customers of DEA.")

<sup>31</sup> OAG's Reply Brief at 4-5, citing NARUC manual at 90 (noting that the costs of distribution substations in FERC accounts 360-362 are classified as demand related "because substations are normally built to serve a particular load and their size is not affected by the number of customers to be served.")

<sup>32</sup> *See* ALJ Report, Findings 101-103.

serious challenges.<sup>33</sup> To support its recommendation, the OAG demonstrated mathematically that the zero-intercept proxy produces results that are equivalent to a zero-intercept analysis.<sup>34</sup> The OAG's mathematical support was not disputed.<sup>35</sup> The ALJ, however, failed to mention the OAG's mathematical analysis and appears not to have considered it. Because the OAG's minimum system analysis produces the most accurate results, the OAG recommends the following modifications to the ALJ's report:

~~111. The Administrative Law Judge finds that DEA's minimum-size method for classifying distribution plant accounts is not reasonable and not accurate, and reflects real-world minimum-size equipment needed to serve customer load on DEA's system. The Administrative Law Judge recommends that the Commission accept DEA's proposed CCOSS, including the minimum size method. The OAG has demonstrated that its zero-intercept proxy is the most accurate methodology in the record, is consistent with the principles of cost-causation outlined in the NARUC manual, and is mathematically sound. Therefore, DEA shall use the zero-intercept proxy recommended by the OAG in its CCOSS.~~

~~112. In addition, the Administrative Law Judge recommends that the Commission require DEA to conduct its minimum system study in its next rate case by using the minimum size method, supported by the zero intercept method.~~

~~113. The Administrative Law Judge finds that there is insufficient evidence in the record to determine that a demand adjustment should be required in DEA's next rate proceeding, particularly if DEA performs its minimum system study using both the zero intercept and the minimum size methods of analysis. Therefore, the Administrative Law Judge does~~

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<sup>33</sup> OAG's Initial Brief at 15-17, 21.

<sup>34</sup> OAG's Initial Brief at 21; *See* Ex. 200 at 20-22 (Nelson Direct).

<sup>35</sup> Both Dakota and the DOC claimed in their respective Reply Briefs that they disputed the OAG's mathematical justification for its recommendation. Dakota's Initial Brief at 9; DOC's Initial Brief at 5-6. These claims are false. Neither party attempted to show how the mathematical equation proffered by the OAG was either incorrect or misplaced. *See* Ex. 200 at 20-22 (Nelson Direct). Rather, both parties made conceptual arguments that the OAG's proxy does not include material costs. While the OAG addressed the flaws in these arguments, they are not the same as disputing the OAG's mathematical analysis, and should not be offered as such. As it stands, the OAG has demonstrated—and parties have not disputed—that its methodology is mathematically equivalent to a zero-intercept proxy.

~~not recommend that the Commission require DEA to incorporate a demand adjustment into its next minimum-size method analysis.~~

**B. THE ALJ’S RECOMMENDED REVENUE APPORTIONMENT IS FLAWED.**

The ALJ rejected the OAG’s proposed revenue apportionment after finding that it “is based in part on [the OAG’s] CCOSS” that she rejected.<sup>36</sup> Because the OAG’s CCOSS produces the most accurate results, this Finding should be modified. In addition, the ALJ stated that the OAG over-emphasized the principle of balancing revenue increases among classes and under-emphasized cost considerations.<sup>37</sup> To demonstrate this point, the ALJ noted that “the OAG’s proposed revenue apportionment would place a *significantly higher burden* on the General Service customers” even though, based on Dakota’s CCOSS, this class already pays more than its cost of service.<sup>38</sup> Setting aside the parties’ dispute regarding the appropriate CCOSS, the OAG’s revenue apportionment leads to only a 1.91 percent increase for the General Service class—the third lowest increase of Dakota’s seven rate classes—if Dakota is awarded its entire request.<sup>39</sup> The OAG’s recommended revenue apportionment is reasonable, and requires all customer classes to make a meaningful contribution to Dakota’s supposed increased cost of service. For these reasons, the OAG recommends removing Findings 129 through 132 from ALJ’s Report and replacing them with the following:

129. The OAG’s proposed revenue apportionment is reasonable. The OAG’s proposed revenue apportionment is informed by the OAG’s CCOSS, which provides the most accurate assessment of customer costs. In addition, the OAG’s revenue apportionment requires each customer

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<sup>36</sup> ALJ Report, Finding 129.

<sup>37</sup> ALJ Report, Finding 130.

<sup>38</sup> ALJ Report, Finding 130 (emphasis added).

<sup>39</sup> See ALJ Report, Finding 128.

class to make meaningful contributions to Dakota's cost of providing utility service, while not over-burdening any single customer class.

## **VI. CUSTOMER CHARGE**

The OAG's testimony and briefs explain why maintaining Dakota's existing customer charge appropriately balances the policy objectives of (1) maintaining a financially viable utility; (2) promoting fairness among different customers; (3) encouraging conservation; and (4) minimizing harmful impacts on low-income customers. The ALJ, however, recommended increasing the monthly customer charge for the residential class from \$8 to \$9 and for the small general service class from \$10 to \$14.<sup>40</sup> The ALJ's recommendation is based on an exaggerated estimate of the costs that should be recovered in the customer charge. The ALJ also appears not to have appropriately considered the impact that raising the customer charge would have on low-income customers bills. Finally, the ALJ's Findings appear to minimize the meaningful conservation benefits that would result from maintaining the existing customer charge. For these reasons, the OAG takes exception to the ALJ's recommendation to increase the customer charges for residential and small business customers, and to the Findings that support this recommendation.

First, the ALJ inappropriately relied on the DOC's claim that the customer charge should recover all of the costs classified as "customer costs" in the CCOSS—which the DOC and Dakota claimed were \$23.39.<sup>41</sup> The OAG explained why some of these costs, such as the costs

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<sup>40</sup> ALJ Report, Findings 169-170.

<sup>41</sup> The ALJ also noted that Dakota appeared to agree with the DOC that all customer costs identified in the CCOSS should be considered in establishing the customer charge. *See* ALJ Report, Finding 161. This Finding is based on Dakota's change of position during the case. In its initial testimony, Dakota stated that "we believe it is appropriate for the monthly fixed charge to recover costs we incur to stand ready to provide electric service, *excluding the costs for primary line.*" Ex. 101 at 33 (Larson Direct) (emphasis added). In surrebuttal, however, Dakota claimed that this position was based on "political, policy, and rate design considerations" and that, without these considerations, the customer charge should include all of the costs identified as customer costs in the CCOSS. Ex. 127 at 15 (Footnote Continued on Next Page.)

of primary lines, are not appropriate to consider in setting the customer charge.<sup>42</sup> While the ALJ agreed that the OAG “raise[d] a noteworthy argument that the customer charge should be based solely on the secondary, fixed costs of the customer rather than the primary line,” she declined to follow this reasoning because “the OAG did not provide precedent for approaching the fixed-customer charge calculation in this manner.”<sup>43</sup> The OAG is not aware of a Commission decision in which this issue has been disputed, and the validity of the OAG’s analysis should not be rejected because the Commission has not previously ruled on this issue. Moreover, the OAG raised a similar issue in Xcel’s existing rate case, which the Commission has not yet ruled on.<sup>44</sup> In that case, the ALJ recommended maintaining the current customer charge. As part of her recommendation, the ALJ in the Xcel matter stated the following:

While reference to the CCOSS analysis is appropriate for revenue apportionment purposes, CEI and the OAG have raised valid questions about whether the average customer costs calculated by the Company’s CCOSS should be used in determining the fixed monthly customer charge. Consequently, the Administrative Law Judge finds it is appropriate to give less weight in this proceeding to the goal of moving the customer charges closer to cost as measured by the CCOSS in results than in prior proceedings.<sup>45</sup>

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(Footnote Continued From Previous Page.)

(Larson Direct). The OAG is concerned with Dakota’s claimed consideration of “political, policy, and rate design considerations” in determining the *cost*. While revenue apportionment and rate design decisions are based on a variety of factors, these other factors should stand on their own and not be used to influence the measure of costs, which is a factual determination that should be made before any other considerations. The OAG is also concerned with the fact that these considerations were not stated by Dakota until surrebuttal. Regardless, the OAG maintains that the costs of primary lines are not appropriate to consider in determining the customer charge.

<sup>42</sup> See ALJ Report, Findings 145-146.

<sup>43</sup> ALJ Report, Finding 168. The ALJ also claimed that the OAG did not address “important questions” raised by the Department regarding how distributed generation facilities should be considered in setting a customer charge. *Id.* OAG witness Mr. Nelson, however, did address this issue during direct examination. Specifically, Mr. Nelson pointed to several problems with the DOC’s analysis of distributed generation and stated that “[i]nstead of punishing the entire residential class for a few hypothetical distributed generation customers, it may be necessary for Dakota Electric to create a separate tariff for customers with distribution generation in order to implement proper price signals for those unique customers.” Tr. Evid. Hearing at 77-78 (Nelson) (Dec. 18, 2014).

<sup>44</sup> Docket No. 13-868.

<sup>45</sup> Findings of Fact, Conclusions of Law, and Recommendations, *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Finding 812, Dkt. No. E-002/GR-13-868 (Dec. 26, 2014).

For the same reasons, the customer costs identified in the CCOSS should not be used to inform the customer charge for Dakota.

Second, the ALJ's recommendation to increase the customer charge does not consider the OAG's analysis of the effect that raising the customer charge will have on low-income customers. Specifically, the OAG demonstrated that maintaining a low customer charge would benefit the majority of low-income customers.<sup>46</sup> For the few low-income, high-use customers on Dakota's system, the OAG demonstrated that maintaining the current customer charge would result in minimal increased monthly bills of only sixty cents.<sup>47</sup> The Report does not reflect that the ALJ considered this information in her decision; instead, the ALJ focused on the DOC's argument that Dakota's current customer charge results in low-income, high-use customers paying a \$6.14 monthly intra-class subsidy.<sup>48</sup> As explained above, however, this claimed subsidy is based on a flawed CCOSS that overestimates the customer cost portion of the distribution system. More importantly, by focusing on claimed intra-class subsidies paid by a few low-income customers, the DOC's argument fails to consider the detrimental effect that raising the customer charge will have on the bills of low-income customers as a whole. For these reasons, the ALJ should have considered the OAG's analysis demonstrating that maintaining the current customer charge will benefit low-income customers.

Finally, the ALJ inappropriately ignored the effect that maintaining the existing customer charge will have on energy conservation. Maintaining a lower customer charge promotes conservation by increasing the volumetric charge, providing a greater reward to customers who reduce their energy consumption. The ALJ claimed, however, that even with an increased

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<sup>46</sup> See OAG Initial Brief at 25.

<sup>47</sup> See *id.*

<sup>48</sup> See ALJ Report, Finding 166.



customer charge (and lower volumetric charge), Dakota’s ratepayers will have an incentive to conserve energy, and that Dakota will continue to participate in conservation improvement programs.<sup>49</sup> This analysis, however, ignores the *degree* to which Dakota’s customers are incented to conserve. The OAG provided quantitative analysis demonstrating how maintaining the customer charge would considerably reduce energy consumption.<sup>50</sup> By increasing the incentive to conserve, the OAG’s recommendation promotes the statutory mandate that “[t]o the maximum reasonable extent, the Commission shall set rates to encourage energy conservation . . . .”<sup>51</sup>

After properly considering the factors discussed above, the ALJ’s recommendation to increase the customer charges for the residential and small business classes should be modified. Accordingly, the OAG recommends removing Findings 166 through 170 from ALJ’s Report and replacing them with the following:

166. The record in this matter demonstrates that the customer charge of \$8.00 pays for a substantial portion of the customer costs generated by the CCOSS, when primary lines are excluded. The record further demonstrates that it is not appropriate to include the costs of primary lines in the costs used to inform the customer charge.

167. The OAG has provided extensive and persuasive, quantitative evidence demonstrating that increasing the customer charge will have detrimental effects on the majority of low-income customers. In addition, the OAG has demonstrated that the effect of maintaining the current customer charge will have minimal effects on a small number of high-use, low income customers.

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<sup>49</sup> ALJ Report, Finding 167.

<sup>50</sup> Ex. 200 at 30 (Nelson Rebuttal) (demonstrating that maintaining the existing customer charge would reduce consumption equivalent to eliminating 610 residential homes, versus Dakota’s initial request).

<sup>51</sup> Minn. Stat. § 216B.03 (2014).

168. The record in this matter also demonstrates that increasing the customer charge will have a negative effect on customers incentive to conserve. This conflicts with the statutory directive to “set rates to encourage energy conservation.” Minn. Stat. § 216B.03 (2014).

169. For these reasons, it is appropriate and reasonable to maintain the existing \$8 customer charge for the Residential class and the \$10 customer charge for the Small General Service class.

## VII. CONCLUSION

For the foregoing reasons, the OAG recommends that the Commission make the specific modifications to the ALJ’s Findings as described above, and that it make other changes it deems necessary to the ALJ’s report that are consistent with these modifications.

Dated: March 12, 2015

Respectfully submitted,

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UTILITIES AND ANTITRUST DIVISION



LORI SWANSON  
ATTORNEY GENERAL

STATE OF MINNESOTA  
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March 12, 2015

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Mr. Daniel Wolf, Executive Secretary  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 7<sup>th</sup> Place East  
St. Paul, MN 55101-2147

**Re: *In the Matter of the Application of Dakota Electric Association for Authority to Increase Rates for Electric Service in Minnesota***  
**Docket No. E-111/GR-14-482**  
**OAH Docket No. 80-2500-31796**

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find the *Exceptions to the Findings of Fact, Conclusions of Law and Recommended Order* 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 DOBSON  
Assistant Attorney General

(651) 757-1432 (Voice)  
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Enclosure



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_14-482_Official cc Service List
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