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March 31, 2015

**VIA E-FILING AND U.S. MAIL**

Mr. Daniel P. Wolf
Minnesota Public Utilities Commission
121 7th Place Street, Suite 350
St. Paul, MN 55101

**Re: In the Matter of the Request of Minnesota Power for a Certificate of Need for the Great Northern Transmission Line**
**Docket No. E-015/CN-12-1163**
**OAH Docket No. 65-2500-31196**

Dear Mr. Wolf:

Attached for filing in the above docket please find the Exceptions to the Findings of Fact, Conclusions and Recommendation of the Administrative Law Judge Submitted by the Large Power Intervenors, with regard to the docket mentioned above.

Very truly yours,

/s/ Andrew P. Moratzka

Andrew P. Moratzka

APM/kap
Enclosure

## CERTIFICATE OF SERVICE

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

**Exceptions to the Findings of Fact, Conclusions and Recommendation of the Administrative Law Judge Submitted by the Large Power Intervenors**

In the Matter of the Request of Minnesota Power for a Certificate of Need for the Great Northern Transmission Line
MPUC Docket No.: E-015/CN-12-1163
OAH Docket No. 65-2500-31196

Dated this 31st day of March, 2015.

*/s/ Kathy Prestidge*
Kathy Prestidge

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**BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS**
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**FOR THE PUBLIC UTILITIES COMMISSION OF THE STATE OF MINNESOTA**
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| In the Matter of the Request of Minnesota Power for a Certificate of Need for the Great Northern Transmission Line Project | PUC Docket No. E-015/CN-12-1163<br><br>OAH Docket No. 65-2500-31196 |

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# EXCEPTIONS TO THE FINDINGS OF FACT, CONCLUSIONS AND RECOMMENDATION OF THE ADMINISTRATIVE LAW JUDGE SUBMITTED BY THE LARGE POWER INTERVENORS

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The following constitutes Exceptions to the Findings of Fact, Conclusions of Law and Recommendations of the Administrative Law Judge ("ALJ") dated March 16, 2015 (the "Recommendations") in this docket, submitted by the Large Power Intervenors ("LPI").[1]

# I. INTRODUCTION

In the proceedings below, LPI distinguished Minnesota Power's ("Minnesota Power" or the "Company") certificate of need application (the "Application") for the Great Northern Transmission Line ("GNTL" or the "Project") as one without precedent. Never before has a Minnesota utility proposed a transmission line to interconnect a large generating unit where the cost of the proposed transmission line and the cost of energy to be supplied by it are on virtual cost parity with a reasonable generation alternative and the cost of energy to be supplied by that alternative. While LPI did not oppose the Application, the group made five recommendations to the ALJ to ensure that the need criteria in Minnesota Statutes ("Minn. Stat.") 216B.243 and Minnesota Rules ("Minn. R.") 7849 are satisfied and help to alleviate the immediate financial pressure that Minnesota Power's recent rate increases have placed on all ratepayers. Specifically, LPI recommended that the Minnesota Public Utilities Commission (the "Commission"):

> (1) make any granting of the Application contingent upon approval of the 133 MW Renewable Optimization Agreements (the "133 MW ROAs") to ensure that cost recovery from Minnesota Power's ratepayers is limited to the 28.3% of projected Project costs as promised by the Company;
>
> (2) impose a "hard cap" on the amount of Minnesota Power's investment in the Project that may be recovered from its customers;

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[1] ArcelorMittal USA (Mincora Mine), UPM-Blandin Paper Company; Boise Paper (Boise), a Packaging Corporation of America Company, formerly known as Boise, Inc.; Enbridge Energy, Limited Partnership; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Verso Corporation (successor-in-interest to NewPage Corporation's Duluth Mill); PolyMet Mining, Inc.; Sappi Cloquet, LLC; USG Interiors, LLC; United States Steel Corporation (Keetac and Minntac Mines); and United Taconite, LLC (collectively, the "Large Power Intervenors" or "LPI").

(3) direct Minnesota Power to accrue allowance for funds used during construction ("AFUDC") rather than seek current recovery of construction work in progress ("CWIP") charges;

(4) authorize ratemaking recovery through a rider as opposed to base rates for a minimum of five (5) years after the Project is placed in service; and

(5) allocate the Company's rate increase to customer classes based on base revenues excluding fuel and other riders.

LPI greatly appreciates the effort undertaken by the ALJ to analyze and assess the issues in this very complex and unique case. The ALJ noted that the first of LPI's proposed conditions was satisfied during the pendency of the proceedings below and correctly concluded that "there is no need to condition the [acceptance of the Application] on the 133 MW ROAs"[2] LPI agrees with that conclusion. However, the group disagrees with the ALJ's findings, conclusions, and recommendations with respect to LPI's other four recommendations. The Commission has discretionary authority to incorporate each of LPI's recommendations into an order approving the Application, should the Commission choose to approve it. LPI therefore submits these exceptions to clarify its position and advocate for modifications to the Recommendations.

## II. <u>ANALYSIS</u>

In analyzing a certificate of need application, the Commission is obligated to consider "the cost of the proposed facility and the cost of energy to be supplied by the proposed facility compared to the costs of reasonable alternatives and the cost of energy that would be supplied by reasonable alternatives."[3] To LPI's knowledge, the Commission has never before been faced with (and no party in the proceedings below cited) a certificate of need application wherein the utility proposed a transmission line to interconnect a large generation source and the cost of that line and the energy to be supplied by it were so close to the cost of the utility's identified

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[2] *In the Matter of the Request by Minnesota Power for a Certificate of Need for the Great Northern Transmission Line Project*, Docket No. E-015/CN-12-1163, Findings of Fact, Conclusions of Law, and Recommendation at ¶ 288 (Mar. 16, 2015) ("Recommendations").

[3] MINN. R. 7849.0120(B)(2)



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reasonable alternative. In light of this unprecedented circumstance, the evidence regarding Project costs presented below highlights the need for meaningful ratepayer protections that the ALJ should have, but did not, recommend to the Commission. If the Commission does not approve the conditions recommended by LPI, the Commission cannot ensure that the GNTL will be in the public interest without substantial and duplicative subsequent proceedings.

LPI submits the following arguments supporting its exceptions:

- The ALJ appropriately concluded that "the financial justification of the Project would substantially change" if Minnesota Power's customers were suddenly responsible for more than 33.3 percent of the operations and maintenance ("O&M") expenses attributable to the Project[4]; but the ALJ should have also concluded that the financial justification of the Project would disappear if the Project cost exceeds the cost of a reasonable alternative;

- The ALJ appropriately concluded that "because Minnesota Power's justification for the Project is based in large part upon Minnesota Power's representations that its ratepayers will only be responsible for 28.3 percent of the Project's total capital costs, and only 33 percent of the Project's O&M costs, conditions to set limits on Minnesota Power's ability to recover expenses are warranted in this proceeding"[5];

- The ALJ correctly noted that LPI witness Lane Kollen testified that the cost of the Project and the 250 MW Power Purchase Agreement and associated Energy Exchange Agreement between the Company and Manitoba Hydro (the "250 MW Agreements") is "similar to the cost of a natural gas fired combined cycle alternative,"[6] but erred in concluding that Mr. Kollen's analysis was "faulty"[7];

- Based on the undisputed evidence provided by LPI, the ALJ should have concluded that a "hard cap" on the Company's recoverable Project costs is (1) necessary to

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[4] Recommendations at 26-27, ¶ 150.
[5] *Id.* at 67, ¶ 29.
[6] *Id.* at 55, ¶ 290.
[7] *Id.* at 57, ¶ 298.

protect ratepayers from potential cost overruns that would make the Project uneconomical had they been known at the time of the Commission's decision and (2) appropriate in light of the Company's continually-increasing cost estimates and the $92 million in contingencies built into the most recent estimate;

- The Commission should exercise its discretion to condition approval of the Application on AFUDC treatment for Project costs in order to (1) ensure that Minnesota Power's customers are not required to reimburse the Company for Project costs until the Project is placed in service and (2) prevent Minnesota Power from discriminating against its own customers by permitting Manitoba Hydro to "pay later" through AFUDC while its customers could be required to "pay now" through CWIP;

- Although the ALJ correctly noted that the Commission has approved transmission cost recovery ("TCR") filings that provide for CWIP, the ALJ erred in concluding that requiring AFUDC treatment "would mark a significant departure from Commission precedent"[8] because none of the cases cited by the ALJ can be considered relevant precedent for treatment of Project costs in this case;

- The ALJ erred in concluding that "the record in this case fails to demonstrate that requiring AFUDC treatment of Project construction costs will result in more reasonable rates than allowing a current return on CWIP"[9] and should have recommended that the Commission condition approval of the Application on AFUDC treatment for Project costs based on evidence in the record;

- The Commission should exercise its discretion to condition approval of the Application on rider recovery of Project costs for a minimum of five (5) years in order to maximize transparency by establishing one venue for discussing the costs and revenues related to the Project; and

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[8] *Id.* at 59, ¶ 310.
[9] *Id.* at 60, ¶ 318.

- The Commission should exercise its discretion to condition approval of the Application on the allocation of costs among customer classes based on base revenues excluding fuel and other riders to partially remedy existing interclass subsidies currently provided by the Large Power Class to other customer classes.

Therefore, the Commission should make appropriate modifications to the Recommendations as set forth below.

### A. The GNTL is a Project Without Precedent

The GNTL is unique among transmission line proposals brought before the Commission. Only two transmission projects have been approved by the Commission expressly to interconnect identified generation sources, and in only one of those two cases was rate recovery an issue.[10] In every case cited by Minnesota Power where alternative generation was evaluated, the cost of that generation was substantially more expensive than the proposed transmission line. Even in the case of Big Stone 2 - the only approved transmission project designed specifically to deliver energy and capacity from an identified generator that would be owned by an investor-owned utility (and therefore the only one analogous to the GNTL) - the generation alternatives were 24%-50% more expensive than the proposed Big Stone 2 unit.[11]

In stark contrast to the cases cited by Minnesota Power, the record in this proceeding contains undisputed evidence of virtual cost parity between the projected cost of the 250 MW Agreements and a gas-fired combined-cycle generation unit,[12] the Company's "only reasonable generation alternative."[13] Because the costs are so close and Minnesota Power has revised its cost estimate upward by $126.2 million since filing the Application,[14] the ALJ erroneously failed to recommend adequate ratepayer protections. While the ALJ correctly concluded that "the financial justification of the Project would substantially change" if Minnesota Power's customers were suddenly responsible for more than 33.3 percent of the O&M expenses attributable to the

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[10] LPI Brief at 3-6.

[11] *Id.* at 6.

[12] Ex. 50, *Direct Testimony of Lane Kollen*, 7:5, 8.

[13] Ex. 43, *Direct Testimony of Allen S. Rudeck, Jr.*, 30:5.

[14] Calculated by subtracting the midpoint of the cost estimate provided in the Application ($507.8 million) from the most recent cost estimate provided in the direct testimony of Minnesota Power witness Mr. Donohue ($634 million). *See* Ex. 50, *Direct Testimony of Lane Kollen*, 5:23-6:11, nn. 2, 4.

Project,[15] the ALJ did not come to the same conclusion with respect to the overall Project cost even though the evidence proffered by LPI supports just such a conclusion. In reviewing the Recommendations, the Commission should look on the record with fresh eyes, acknowledge that the Project may not be economical if the cost exceeds that of the reasonable alternative, and impose a "hard cap" on the Company's recoverable Project costs.

### B. The Commission Should Reject the Proposed "Soft Cap" and Impose a "Hard Cap" on the Company's Recoverable Project Costs

While ALJ correctly concluded that "conditions to set limits on Minnesota Power's ability to recover expenses are warranted in this proceeding,"[16] and all parties have conceded that cost recovery issues can be addressed in the Commission's order on the Application,[17] the "soft cap" recommended by the Department of Commerce-Division of Energy Resources (the "Department") and supported by the ALJ would be an insufficient and inefficient mechanism for protecting ratepayers from potential Project cost overruns. Under the "soft cap" recommended by the ALJ, Minnesota Power would be (1) limited to recover in riders the lesser of (a) 28.3 percent of the Project's total capital costs and (b) $201 million (in 2013 dollars), which is the high end of Minnesota Power's current estimate of customer responsibility;[18] (2) permitted to request recovery of costs above that amount only in a rate case; and (3) required to carry the burden of demonstrating the prudence of those additional costs and why it would be reasonable to recover them from ratepayers.[19] However, given the near cost-parity with a reasonable alternative, LPI argued that no cost above the Company's projection could be reasonable or prudent for ratepayers to bear.[20] LPI therefore continues to support a "hard cap" on Project costs.

Specifically, LPI recommends prohibiting Minnesota Power from recovering any Project costs in excess of the Company's calculation of the "as-spent" equivalent to the 2013 dollar

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[15] Recommendations at 26-27, ¶ 150.
[16] *Id.* at 67, ¶ 29.
[17] *See* LPI Reply Brief at 9-10.
[18] Recommendations at 68, ¶31.
[19] *Id.* at 55, ¶ 292.
[20] LPI Reply Brief at 8.

estimate reflected in the Facilities Construction Agreement ("FCA"), excluding AFUDC.[21] This "hard cap" is greater than the midpoint of the Company's August 2014 estimate; it is the midpoint between the range midpoint and the upper end of the range used by the Company for the FCA.[22] The cap includes $92 million in contingencies and reflects the decisions made by the Company to locate the 500 kV series compensation station at a site separate from the Blackberry substation, as well as other routing decisions and preferences.[23]

As noted by the ALJ, LPI's position is based on a cost analysis completed by its expert, Mr. Kollen. However, the ALJ erred in concluding that Mr. Kollen's analysis was "faulty."[24] In the Recommendations, the ALJ stated that:

> 298. Moreover, LPI's recommendation for a "hard cap" is based on a faulty cost comparison by its expert. In doing the cost comparison, LPI witness Lane Kollen compared the 250 MW Agreements and the Project with a natural gas-fired alternative. This analysis dos not include the economic and environmental benefits Minnesota Power ratepayers are expected to receive from the recently approved 133 MW ROAs. In addition, the analysis fails to consider that the Commission has already approved the 250 MW Agreements and the 133 MW ROAs. Cancellation of these contracts and substitution of a natural gas-fired facility would be inconsistent with the resource decisions already made by the Commission, and would likely involve contract cancellation costs that have not been included in LPI's analysis.

These conclusions lack foundation and the ALJ cited no evidence in the record to support them. To the contrary, (1) Mr. Kollen's testimony that the cost difference between the 250 MW Agreements and the combined-cycle alternative would be approximately $1.60/MWh over a 40-year period went unchallenged in both written and oral testimony; (2) as noted by LPI in its Reply Brief, neither Minnesota Power nor any other party quantified any "economic" or "environmental" benefits of the 133 MW ROAs that would mitigate the cost of the 250 MW Agreements or the Project[25] and the ALJ has cited none; (3) no party argued that "contract

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[21] Ex. 51, *Surrebuttal Testimony of Lane Kollen*, 10:9-14.
[22] *Id.*
[23] *Id.* at 10: 15-19.
[24] Recommendations at 57, ¶ 298.
[25] LPI Reply Brief at 3, n. 12.

cancellation costs" should support the Application over the reasonable alternative; and (4) the Company's Project cost estimates are almost certainly low to begin with because, as noted by the ALJ, "none of the estimates include construction cost inflation"[26] and "none of the cost estimates . . . include financing costs to be incurred during construction," which Minnesota Power will likely seek to recover from customers either by capitalizing the financing costs as AFUDC or recovering a current return of the financing costs through CWIP.[27]

The ALJ drew three other conclusions in support of a "soft cap" that are based on a misapplication of the evidence in the record:

> 297. A "hard cap" is not reasonable because the Project still has to go through the routing process, and conditions could be added which would have the effect of increasing the cost of the Project. In addition, as the Commission recognized in the ITC Midwest Order, there can be unforeseen circumstances for any project that can lead to prudently incurred cost overruns. Thus, imposing a "hard cap" as a condition of the CON could preclude Minnesota Power from recovering its reasonable and prudent costs of service. Such a result would be contrary to Minnesota Statutes section 216B.16, subdivision 6, which requires the Commission to set rates at a level allowing the utility the opportunity to recover its "reasonable and prudent costs" of providing utility service.

First, the Project has made substantial progress in selecting a route for the Project and the Company's current budget estimate includes $92 million in contingencies designed, in part, to offset the effect of any cost increases that may yet be incurred due to refinements in the routing process. As noted above, LPI's proposed "hard cap" includes the $92 million in contingencies and reflects recent decisions made by the Company to locate the 500 kV series compensation station at a site separate from the Blackberry substation, as well as other routing decisions and preferences.[28] From a ratepayer standpoint, the contingencies built into the cost estimate more than adequately mitigate any potential cost increases that could arise in the remaining phases of the siting process, and any cost that would exceed the cost of the combined-cycle alternative could not be deemed reasonable or prudent in a rider or rate case proceeding.

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[26] Recommendations at 15-16, ¶ 89.
[27] *Id.* at 16, ¶ 90.
[28] Ex. 51, *Surrebuttal Testimony of Lane Kollen*, 10: 15-19.

Second, in its Reply Brief, LPI provided a thorough analysis of the facts underlying the ITC Midwest order cited by the Company and the ALJ.[29] In particular, LPI noted that the Minnesota-Iowa 345-kV Project "was designed to provide generation outlet capacity in southern Minnesota and northern Iowa but no generation sources were identified and ITC did not conduct a least-cost comparison against alternative generators. Thus, the Commission imposed a cost recovery limitation with less information than the Commission has before it in this case."[30] Although a "soft cap" may be appropriate for transmission lines being constructed in anticipation of generation in the region, a "hard cap" is appropriate in the narrow circumstances where, as here, a transmission line is proposed to deliver energy and capacity from a defined generation source and the cost of that source is at parity with the proposed project. The ITC Midwest Order is therefore inapposite to the facts before the Commission in this case.

Finally, the ALJ seeks to justify the "soft cap" by suggesting that it will "provide an incentive to Minnesota Power to control its costs without denying it the opportunity to recover any prudently incurred costs that exceed its current cost estimate."[31] That analysis misses the mark. The underlying purpose of a cap of any kind should be to protect ratepayers, not to incentivize the utility. Given the virtual cost parity between the Project and the reasonable alternative, the only way to ensure that ratepayers are protected from cost overruns is to impose a "hard cap" on recoverable Project costs, acknowledging that no cost above the cap could be prudently incurred. Moreover, and contrary to the ALJ's statement, such a hard cap would be consistent State law. Nothing in section 216B.16 mandates that a utility be guaranteed a return of and return on every penny it invests. Instead, the law requires the Commission to give "due consideration" to a number of factors.[32] After consideration of these factors, the Commission has great latitude in arriving at just and reasonable rates,[33] with "[a]ny doubt as to reasonableness . . . resolved in favor of the consumer."[34] Under the facts and circumstances of

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[29] *In the Matter of the Application of ITC Midwest L.L.C. for a Certificate of Need for the Minnesota-Iowa 345 kV Transmission Line Project in Jackson, Martin, and Faribault Counties*, Docket No. ET6675/CN-12-1053, ORDER GRANTING CERTIFICATE OF NEED WITH CONDITIONS (Nov. 25, 2014) (the "ITC Midwest Order"); LPI Reply Brief at 9-11 (referencing the project subject to the ITC Midwest Order as the "Minnesota-Iowa 345-kV Project").

[30] LPI Reply Brief at 11.

[31] Recommendations at 57, ¶ 296.

[32] MINN. STAT. § 216B.16 subd. 6.

[33] *In re Petition of Interstate Power Co.*, 419 N.W.2d 803, 807 (Minn. Ct. App. 1988).

[34] MINN. STAT. § 216B.03.

this case, the Commission would be well within its authority to protect ratepayers by imposing a hard cap. LPI therefore respectfully requests that the Commission exercise its discretion to modify the Recommendations and impose a "hard cap" on Minnesota Power's recoverable Project costs in the Commission's final order.

### C. The Commission Should Exercise Its Discretion and Approve LPI's Cost Recovery and Cost Allocation Recommendations

With respect to LPI's remaining recommendations, LPI agrees with the ALJ that they "are generally addressed in ratemaking or rider proceedings rather than CON proceedings."[35] However, LPI maintains that the facts of this proceeding are unique and addressing the AFUDC, rider recovery, and cost allocation issues at this time would be an effective and efficient means of ensuring ratepayer protections, especially when all relevant information is presently before the Commission and undisputed by the parties. LPI therefore respectfully requests that the Commission modify the Recommendations and mandate AFUDC treatment and rider recovery for at least the first five (5) years after the Project is placed in service and approve LPI's cost allocation proposal, each for the reasons set forth herein and described in LPI's briefing below.

#### 1. <u>The Commission Should Condition Approval of the Application on Minnesota Power's Accrual of AFUDC</u>

LPI agrees with the ALJ's finding that "[t]he Commission has consistently approved [TCR] filings that provide for a current return on [CWIP]."[36] However, LPI fundamentally disagrees with the ALJ's conclusion that "[t]o deny Minnesota Power the ability to make such a filing would mark a significant departure from Commission precedent."[37] Such a conclusion could only be reached if, in the cases cited by the ALJ, the Commission had heard arguments opposing the utilities' requests to recover CWIP and rejected those arguments. That was not the case. Until now, no party has protested a utility's request for current recovery of CWIP.[38]

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[35] *Id.* at 58, ¶ 304.
[36] *Id.* at 59, ¶ 310 (internal quotation marks removed).
[37] *Id.* at 59, ¶ 310.
[38] This fact, by itself, should not be held against LPI or any other party. The Commission has defended parties' ability to raise an issue in one proceeding that was not raised in a prior proceeding. *In re the Petition of Northern States Power Company d/b/a Xcel Energy for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-002/GR-08-1065, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, pg. 21 (Oct. 23, 2009) ("Nor does the Commission concur with the ALJ that past decisions treating the general allocator as a

Furthermore, the ALJ's conclusion ignores the fact that accruing AFUDC and recovering through base rates is the default method for recovering construction costs.[39] Current recovery of CWIP can only be achieved in a TCR rider, and then only at the discretion of the Commission.

In his direct testimony, LPI witness Mr. Kollen provided the first reasoned analysis challenging the appropriateness of Minnesota Power's current recovery of CWIP,[40] but that analysis was noticeably absent from the Recommendations. In his analysis, Mr. Kollen posited seven reasons why ratepayers should be allowed to defer payment to Minnesota Power through accrual of AFUDC. First, the AFUDC approach is consistent with Generally Accepted Accounting Principles (GAAP).[41] Second, it is consistent with the regulatory notion that ratepayers should not be responsible to bear a utility's costs until and asset is used and useful in providing service.[42] Third, it is consistent with the regulatory concept of generational equity - that is, that customers who use or benefit from an asset should be responsible for paying for that asset.[43] Fourth, costs of construction do not have a large immediate impact on customers rates.[44] Fifth, accrual of AFUDC on the 28.3% would match Minnesota Power's accrual of the 17.7% under its 133 MW Energy Sale Agreement with Manitoba Hydro.[45] Stated differently, if Minnesota Power uses the current recovery method, it discriminates against its own ratepayers by allowing Manitoba Hydro to "pay later" while requiring its own ratepayers to "pay now" for current recovery. Sixth, there is no evidence in the record to demonstrate that a current return is necessary for Minnesota Power to bolster or retain its financial health.[46] Finally, the Commission is not obligated to allow for current recovery under any State law, including section 216B.16 of the Minnesota Statutes. LPI, which represents approximately 50% of Minnesota

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non-issue, or affiliated interest orders approving it, create a presumption in its favor. Every rate case implicates literally hundreds of issues that must be addressed, deferred, or treated as non-issues in the course of a tight (normally, ten-month) time frame. The parties make their best judgments on which issues merit litigation during the rate-case timeframe, and they do not lose the right to raise other issues in subsequent cases.")

[39] The ALJ notes in paragraph 308 of the Recommendations that AFUDC is "[t]he traditional ratemaking approach," but does not acknowledge that it is the only ratemaking approach for major construction projects like the GNTL if the utility either (1) does not request current recovery through CWIP or (2) such a request is denied by the Commission.

[40] Ex. 50, *Direct Testimony of Lane Kollen*, 21-22.

[41] *Id.* at 21:6-14.

[42] *Id*. at 21:15-18

[43] *Id*. at 21:19-22.

[44] *Id*. at 21:23-22:1.

[45] *Id*. at 22:3-7.

[46] *Id*. at 22:8-9.

Power's customer base by revenue, continues to believe that these reasons support its position that the Commission should direct Minnesota Power to use the AFUDC approach.

Despite Mr. Kollen's unchallenged testimony, the ALJ concludes that "the record in this case fails to demonstrate that requiring AFUDC treatment of Project construction costs will result in more reasonable rates than allowing a current return on CWIP."[47] Quizzically, the ALJ makes the following findings in support of that conclusion, each of which is followed by a brief discussion:

> 315. Requiring AFUDC treatment of Project construction costs also has the potential to have adverse impacts on ratepayers although there is insufficient information at this time to draw a definitive conclusion. Providing a current return on CWIP provides customers a lower overall capital cost of approximately $55 million in nominal dollars as compared to recording AFUDCs. Given the timing delay in recovery under these two methods, the lower overall capital costs may not result in a benefit to ratepayers. A number of assumptions would be necessary to draw a conclusion as to the net impact on ratepayers.

As LPI stated in its Reply Brief, while the *total cost* of the Project will increase so long as the economy experiences inflation, neither Minnesota Power nor the Department offered any evidence that would suggest such an increase would harm ratepayers. Any focus on total cost is therefore distracting from the real issue of cost recovery. Minnesota Power witness Mr. McMillan acknowledged that Minnesota Power will fully recover its costs under either a current recovery of CWIP or an AFUDC approach.[48] And both Minnesota Power and Department witness Mr. Johnson concede that, on a net present value basis, it is unclear whether ratepayers would pay more under one or the other.[49] While the ALJ states that "the lower overall capital costs [of CWIP] may not result in a benefit to ratepayers," based on the evidence before the

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[47] Recommendations at 60, ¶ 318.

[48] *Evidentiary Hearing Transcript*, Vol. 1, 46:4-10.

[49] *Id.*, Vol. 2, 78:5-9; Minnesota Power Brief at 71 ("Given the timing delay in recovery under these two methods, a number of assumptions would be necessary to draw any definitive conclusion as to the net impact on ratepayers"); *see also* Department Brief at 37 ("Given that these calculations must include numerous assumptions on future rates of return, AFUDC rates (costs), discount rates, depreciable lives, etc., the Department is unable to precisely determine which method would result in the lowest real-dollar costs for ratepayers") (internal citation omitted).

Commission, the ALJ could equally have said that "the timing delay in recovery through AFUDC may result in a benefit to ratepayers."

> 316. Requiring AFUDC treatment of construction costs could also create the possibility of "rate shock" to customers once the Project is placed into service. Compared to AFUDC treatment, allowing a return on CWIP gradually phases in rate increases rather than creating a one-time rate adjustment for the entirety of the Project.

Whether or not an increase in rates after the Project is placed in service would constitute "rate shock" has as much to do with Minnesota Power's communications to its customers as it does the actual dollar value of the increase. The Company's recent spate of rate increases has resulted in a "rate shock" all its own. Indeed, rates have increased substantially for all ratepayers and no party has disputed that rates for the large power class have ballooned by more than 60% since 2007.[50] LPI understands the result of deferring costs by accruing AFUDC and believes it is in all ratepayers' best interest to do so.

> 317. Requiring AFUDC treatment of Project construction costs would harm Minnesota Power's cash flow, which, in turn, can lower its financial ratings and impose additional costs on ratepayers due to the higher cost of capital. The [Department] noted that while these harms are difficult to measure, standard recovery of Project costs through a return on CWIP may bring ratepayer benefits due to Minnesota Power's improved cash flow and stronger financial rating.

This finding by the ALJ is especially surprising because Minnesota Power witness Mr. McMillan acknowledged during the evidentiary hearing that the Company has not proffered any evidence to support the notion that the AFUDC approach would hurt the utility from a financial perspective.[51] Thus, the record contains no support for this statement whatsoever. Not only did Minnesota Power fail to demonstrate that accruing AFUDC would harm ratepayers, it failed to demonstrate that it would harm the Company.

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[50] Ex. 60, *Document Regarding Approval of Boswell 3 Environmental Improvement Rider in Docket No. E-015/M-06-1501*, at 2, Table 1; Ex. 61, *Document Regarding Minnesota Power's Renewable Resources Rider and 2015 Renewable Factor in Docket No. E-015/M-14-962*, at 2: Table 1; *Evidentiary Hearing Transcript*, Vol. 1, 54:17-56:3.

[51] *Evidentiary Hearing Transcript*, Vol. 1, 70:2-7.

Because Minnesota Power did not show that any party would be harmed if the Commission required it to accrue AFUDC and LPI, which represents over 50% of Minnesota Power's customers by revenue, has provided a reasoned analysis challenging the appropriateness of current recovery on CWIP, the ALJ erred in concluding that "the record in this case fails to demonstrate that requiring AFUDC treatment of Project construction costs will result in more reasonable rates than allowing a current return on CWIP."[52] LPI continues to support its recommendation that the Commission exercise its discretion to condition approval of the Application on accrual of AFUDC in order to (1) ensure that Minnesota Power's customers are not required to reimburse the Company for Project costs until the Project is placed in service and (2) prevent Minnesota Power from discriminating against its own customers by permitting Manitoba Hydro to "pay later" through AFUDC while its customers could be required to "pay now" through CWIP.

2. The Commission Should Condition Approval of the Application on Rider Recovery of Project Costs for a Minimum of Five Years

The Commission should actively pursue opportunities to maximize transparency in Minnesota Power's cost recovery for the GNTL, and conditioning approval of the Application on rider recovery for a minimum of (5) years after the Project is placed in service would provide such an opportunity. The ALJ concluded that "[i]t would be unreasonable to mandate recovery of Project costs through the TCR rider, either for the lifetime of the Project or for the next five years, because recovery through base rates may provide to be a more reasonable approach at some point."[53] However, the combination of contractual and other arrangements under which Minnesota Power will receive revenue, including the "must-take fee" under the 133 MW ROAs with Manitoba Hydro and possible MISO revenue credits, are unique to GNTL and create the potential for inefficiencies in tracking the Company's revenue requirement through multiple dockets. For these reasons, the ALJ erred in not recommending that the Commission condition its approval of the Application consistent with LPI's recommendation.

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[52] Recommendations at 60, ¶ 318.
[53] Recommendations at 61, ¶ 325.

3. The Commission Should Condition Approval of the Application on the Company's Allocation of Costs Among Customer Classes Based on Base Revenues

Finally, while LPI agrees with the ALJ's finding that "[c]ost allocation matters are traditionally addressed in cost recovery or rate case proceedings,"[54] LPI disagrees with the ALJ's finding that "not all customer groups have received a fair opportunity to participate and develop the record on this issue"[55] because cost allocation was not identified in the Notice and Order for Hearing "and was not raised until after the intervention deadline."[56] As noted in LPI's Reply Brief, the Application sets forth a table estimating rate increases of 3.29% for residential customers, 3.05% for general service customers, and 3.46% for large light and power customers, and 4.93% for large power customers.[57] Thus rate impacts of the GNTL have been at issue since the Company's initial filing in this docket. Moreover, LPI believes that all parties that would otherwise intervene in a cost recovery or rate case proceeding are parties to this docket. LPI, which represents approximately 50% of Minnesota Power's customers by revenue, and the Department, which intervenes in the interest of all customers,[58] are both present. Furthermore, LPI is unaware of any recent rider-recovery petitions in which the Company served its estimated 140,000 customers with notice of increased rates prior to implementation to afford all ratepayers the ability to participate in this proceeding.[59] Because it would be administratively more efficient to address the issue of cost allocation in this docket and because rider recovery filings are not served on all customers, the ALJ erred in concluding that "the issue of cost allocation is best left to future cost recovery proceedings where all customer classes are on notice that

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[54] Recommendations at 62, ¶ 327.

[55] *Id.* at 62, ¶ 328.

[56] *Id.*

[57] LPI Reply Brief at 20; Ex. 50, *Direct Testimony of Lane Kollen*, 25:17-19 (citing Application at 30).

[58] Over the course of this proceeding, it has become clear that LPI's positions on certain key issues of cost control differ from those advocated by the Department. Thus, to the extent that the Department purports to represent the best interests of ratepayers in this proceeding, the Department does not speak for LPI.

[59] *Id.* at 20-21; *see*, *e.g.*, Docket No. E015/M-14-990 (notice of Minnesota Power petition for approval of its 2015 Boswell Unit 4 Emission Reduction Factor served only on general service list). Indeed, the applicable rule governing service of miscellaneous filings (*e.g.*, a rider filing) only requires service on the general service list. Minn. R. 7829.1300 subp. 2. But the Commission has, in a number of instances, addressed cost allocation and rate design in a rider proceeding. *See e.g., In re Minnesota Power's Petitions for Approval of its Boswell Energy Center Unit 4 Environmental Retrofit Project and Boswell 4 Environmental Improvement Rider*, Docket No. E-015/M-12-920, ORDER APPROVING BOSWELL ENERGY CENTER UNIT 4 RETROFIT PROJECT AND AUTHORIZING RIDER RECOVERY, pgs. 8-9, ordering para. 2, 3 (Nov. 5, 2013).

ratemaking decisions will be made."[60] LPI therefore continues to support its recommendation that the Commission condition approval of the Application on the Company's allocation of costs among customer classes based on base revenues, excluding fuel and other riders.

## III. CONCLUSION

LPI appreciates the ALJ's efforts in preparing the Recommendations, but the Commission should make certain modifications to reflect the evidence in the record and ensure that adequate ratepayer protections are in place before the Company begins construction of the GNTL. As explained in detail above, the Commission should condition approval of the Application by:

- imposing a "hard cap" on the amount of Minnesota Power's investment in the Project that may be recovered from its customers;
- directing Minnesota Power to accrue AFUDC rather than seek current recovery of CWIP charges;
- authorizing ratemaking recovery through a rider as opposed to base rates for a minimum of five (5) years after the Project is placed in service; and
- allocating the Company's rate increase to customer classes based on base revenues excluding fuel and other riders.

[60] Recommendations at 62, ¶ 329.

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Respectfully submitted,

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