BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA
121 Seventh Plaza East, Suite 350
St. Paul, MN 55101-2147

In The Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in the State of Minnesota	PUC Docket No. E-015/GR-16-664 OAH Docket No. 5-2500-34078

ANSWER TO PETITIONS FOR RECONSIDERATION

I. INTRODUCTION

On April 2, 2018, Minnesota Power (the "Company") and the Minnesota Department of Commerce, Division of Energy Resources' (the "Department") submitted separate petitions for reconsideration (collectively, the "Petitions"), to the Minnesota Public Utilities Commission's March 12, 2018, Findings of Fact, Conclusions and Order (the "Order"). Consistent with Minn. R. 7829.3000, subp. 4, the Large Power Intervenors ("LPI")[1] submit this answer to the Petitions (the "Answer"). For the reasons set forth below, LPI respectfully requests that the Minnesota Public Utilities Commission (the "Commission") reject the Petitions submitted by the Company and the Department.

II. ANALYSIS

As LPI noted in its own petition for reconsideration of the Order, "A petition for rehearing, amendment, vacation, reconsideration or reargument must set forth specifically the grounds relied upon or the errors claimed."[2] The Commission typically reviews petitions to determine whether they (i) raise new issues, (ii) point to new and relevant evidence, (iii) expose errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it

[1] LPI is an *ad hoc* consortium of large industrial end users of electric energy consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Enbridge Energy, Limited Partnership; Gerdau Ameristeel US Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; USG Interiors, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation.
[2] Minn. R. 7829.0300 Subp. 2.

should rethink its previous order.[3] Because neither of the Petitions meet any of the above requirements, LPI respectfully requests the Commission reject the arguments made by the Company and the Department. As LPI demonstrates below, the issues raised in the Petitions were fully and accurately addressed by the Commission, do not point to new and relevant evidence, do not expose any errors or ambiguities in the Order, and, therefore, do not warrant reconsideration.

A. MINNESOTA POWER'S PETITION

1. The Company's Sales Revenue Arguments Continue to Misstate Revenue Requirement by Obsolete Comparisons to Historical Data

With respect to sales revenue, the Company's Petition fails to include and incorporate all of the relevant data. The Company contends that fluctuating utilization rates for taconite customers and a failure to consider actual sales data in the record resulted in unreasonable revenue determination.[4] As LPI noted in its Reply Brief,[5] the Company's comparison of historical taconite utilization rates compared to forecasted electric energy sales is inaccurate. The Company's witness, Mr. Perala, even conceded during cross-examination that historical utilization numbers are no longer relevant due to new electric service agreements with certain taconite customers referred to as the Silver Bay Agreements.[6] Regarding those agreements, Mr. Perala testified that "[f]irst and foremost, load growth of this size and scale is hard to come by. By providing all of the power needs for Silver Bay, rather than just the small amounts of power not supplied by the SBPC's own generation units, *we are effectively adding another six million ton taconite plant to our load profile*."[7] In light of this addition to the Company's load profile, Mr. Perala then went on to confirm that "post the addition of Silver Bay, [the Company's proposed 90% utilization rate] now means something different to the Company in terms of

[3] *See e.g., In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-13-868, ORDER DENYING PETITIONS FOR RECONSIDERATION, at 1 (July 13, 2015).
[4] Minnesota Power Petition for Reconsideration and Request for Clarification Br. at 6-11 (Apr. 2, 2018) (eDocket No. 20184-141631-02) ("Minnesota Power Petition") (The Company refers to data listed on pages 8 titled "Table 1 Minnesota Taconite Utilization Rates", which purports to show the annual overall utilization rate of the Company's taconite customers from 2006 to 2016.).
[5] *See* LPI Reply Br. at 9-10 (Sept. 28, 2017) (eDocket No. 20179-135858-02) ("LPI Reply").
[6] Ex. 61 at 21:12-16 (Perala Direct).
[7] *Id.* (emphasis added).

overall energy sales than it did pre Silver Bay."[8] Troublingly, the Company continues to ignore this information. To be sure, the Company's arguments do not factor significant changes to its load profile, which makes its use of historical utilization rates misleading and irrelevant. Reintroducing the same argument (which LPI has already addressed), does not merit additional consideration from the Commission.

2. The Company's Petition Fails to Demonstrate How the Commission's Return on Equity ("ROE") Determination was Unreasonable

Given the facts and record presented to it, the Commission's ROE determination was reasonable. Citing concerns of credit rating and the need for stability, the Company argues that the Commission's decision to set the Company's ROE at 9.25 percent was unreasonable. To support its claim, the Company cites to the national average ROE for vertically integrated utilities in the United States (approximately 9.66 percent) and the 9.41 percent ROE assigned to Otter Tail Power Company ("Otter Tail") in its last rate case.[9] Despite Commission precedent to the contrary, the Company claims that the Commission's recent decision to approve a higher ROE for Otter Tail, is relevant to this proceeding. It is not.

The Commission has historically placed great reliance on models and little weight on comparisons to ROE decisions for other utilities. For example, in Xcel Energy's 2013 rate case filing, Xcel Energy argued it was appropriate to consider rates of return awarded in other jurisdictions and in earlier cases in the State.[10] In that case, Company witness Robert Hevert testified on behalf of Xcel Energy.[11] The Commission rejected Xcel Energy's position. The Commission stated:

> [T]he commission sees little probative value in the four 2014 cost-of-equity decisions in other states cited by the ALJ, since these decisions were by definition specific to the circumstances of individual utilities, their service areas, and then-prevailing economic conditions.[12]

[8] Tr. Vol. 1 at 143:19-25.
[9] Minnesota Power Petition at 42.
[10] *In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Commission Docket No. E-002/GR-13-868 at 55 (May 8, 2015).
[11] *Id*. at 54.
[12] *Id*. at 59.

This portion of the decision was quoted by the ALJ overseeing the 2015 rate case of Minnesota Energy Resources Corporation ("MERC"), where again, Company witness Robert Hevert was offering testimony on behalf of the utility. The ALJ stated:

> MERC's witness, Mr. Hevert, notes that his ROE range and recommendation are "highly consistent with the returns authorized for other natural gas utilities with whom MERC must compete for capital: Eleven of the 22 cases decided since June 2014 included ROEs of 10.00 percent or higher." *The Commission, however, has found that comparisons to ROE decisions for other utilities are of little probative value in determining the ROE for a particular company* because ROE decisions are "by definition specific to the individual utilities, their service areas, and then-prevailing economic conditions." *In addition, the Administrative Law Judge concludes that ROE decisions dating back to 2014 are based on stale financial information and therefore should be given little weight in the determination of MERC's ROE*.[13]

The Commission accepted and concurred with the ALJ's analysis from that proceeding. It stated:

> The Commission concurs with the Administrative Law Judge's closely reasoned findings, conclusions, and recommendations on the cost of equity and will set that cost at 9.11%, the level recommended by the Department and found to be reasonable by the Administrative Law Judge.
>
> The Commission agrees with the Administrative Law Judge that the Department's cost-of-equity studies are methodologically transparent, analytically sound, ably executed, and supported by substantial evidence. *They are the best evidence in the record on the cost of equity, and the Commission concurs in the Administrative Law Judge's acceptance and adoption of them*.[14]

The Company's attempt to nonetheless assert that this Commission is required to look at a national average for ROEs, as well as the Commission's decision for Otter Tail Power, is without merit and should be rejected. As Dr. Amit aptly testified in this proceeding:

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[13] *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota*, OAH Docket No. 68-2500-32993, Commission Docket No. G-011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION, at 42 (Aug. 19, 2016) (emphasis added).

[14] *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota*, Commission Docket No. G-011/GR-15-736, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 25 (Oct. 31, 2016) (emphasis added).

> Investor expectations, the economics, depends on the current economic and financial environment. And what happened two years ago is totally irrelevant to the cost of equity today. *What happened a year ago is irrelevant as well to what the cost of equity is today.* So it makes no sense to go back and see what the result was two years ago or four years ago.[15]

Additionally, despite the Company's contention that the Commission's decision was unreasonable, the Company admits in its Petition that the Department's acceptable ROE range was 7.64 to 9.66 percent. 9.25 percent is well within this range. In fact, it is significantly closer to the top end of this range, and squarely within the top quartile. Furthermore, as noted on page 22 of Mr. Chris Walters' surrebuttal testimony, the median range of the four DCF results from his analysis is 7.45% to 8.79%, which is below the 9.25% ROE approved by the Commission in its Order. The Company has simply failed to demonstrate why the Commission's finding was unreasonable, and instead appears to be employing what amount to scare-tactics in an attempt to sway the Commission.

For example, the Company cites credit rating issues as a reason for the Commission to revise its ROE decision.[16] Importantly, none of the credit agencies downgraded ALLETE. The Company even notes in its cover letter that the credit agencies "affirmed its BBB+ issuer credit rating."[17] In short, the credit rating agencies have not taken any action to downgrade ALLETE, and the Commission is charged with setting a ROE for the Company based on the record before it, not potentially negative hypotheticals.

In another attempt to sway the Commission, the Company notes "the need for layoffs" due to the Order, including the Commission's decision on ROE.[18] The Company again fails to demonstrate how the Commission's decision is directly attributable to the lay-offs it asserts may be necessary cost-cutting measures or why cost-cutting measures are beyond what should be expected in providing electric service at just and reasonable rates. In fact, and in a noteworthy juxtaposition to the cost-cutting measures, the article cited by the Company to support its

[15] Tr. Vol. 3 at 229:23 - 230:4 (emphasis added).
[16] Rating Agency Action Updates (eDocket No. 20182-139884-01 (public), 20182-139884-02 (trade secret)).
[17] *Id.* (*See* attached cover letter submitted by the Company noting that its BBB+ issuer credit rating had been approved.).
[18] Minnesota Power Petition at 2, 42.

position concludes that the "cost-cutting efforts came after ALLETE released its final 2017 financial results, showing earnings of $3.38 per share on net income of $172.2 million and operating revenue of $1.42 billion. That's up from 2016, which saw earnings of $3.14 per share on net income of $155.3 million and operating revenue of $1.34 billion."[19] Although the Company is just one operating division of ALLETE, these statistics show that at least ALLETE, and perhaps by extension the Company, are fiscally healthy organizations. For all of the reasons noted above, the Company has failed to meet its burden on this issue. LPI supports the thoughtful analysis by the Commission on this matter, and respectfully requests that the Commission reject the Company's arguments on ROE.

3. Nothing in the Record Supports the Company's Claim for $6.23 Million in Lost Transmission Revenue

The Commission correctly noted that the Company "has not provided a sufficient factual basis for its $6.23 million adjustment" and that "the calculation used to convert $2.85 million to $6.23 million is not in the record nor is any explanation provided for how the raw MISO data in the supporting schedules result in a $2.85 million revenue loss."[20] In an attempt to refute the Commission's finding, the Company's Petition fails in the same two ways. First, the Petition still offers no explanation for how the raw MISO data in the supporting schedules result in a $2.85 million revenue loss. Instead, the Company asserts there was only limited cross-examination on the subject. Limited cross-examination does not, in and of itself, result in the utility meeting its burden of proof on an issue.[21] And it is not the burden of other parties to allow the Company an opportunity to improve an inadequate record via cross-examination. Second, the Company fails to provide a sufficient factual basis for the conversion. The Company notes: "[a]t the same time, Minnesota Power also provided the revenue impact data from MISO to support the full-year amount of $6.23 million (Total Company)/$5.15 million (MN

[19] http://www.duluthnewstribune.com/business/energy-and-mining/4407843-allete-mulls-layoffs-leaving-jobs-open (*last accessed* Apr. 9, 2018).
[20] FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 26 (Mar. 12, 2018) (eDocket No. 20183-140963-01) ("Order").
[21] Notwithstanding any cross-examination, "by merely showing that it has incurred, or may hypothetically incur, expenses, the utility does not necessarily meet its burden of demonstrating it is just and reasonable that the ratepayers bear the costs of those expenses." *The Order*, pg. 4 (quoting *In re N. States Power Co.*, 416 N.W.2d 719, 722-23 (Minn. 1987).

Jurisdictional) and requested the full-year amount in Surrebuttal Testimony."[22] Noticeably missing from this section is a citation of any kind. These failures affirm the Order, which recognized that the Company failed to provide a "factual basis" for its adjustment. The Commission was not mistaken on this issue and should therefore reject the Company's claims.

B. THE DEPARTMENT'S PETITION

1. Because No New Information was Presented, the Department's Petition for Reconsideration Does Not Provide Valid Reasoning to Unwind the Commission's Beneficial Rate Mitigation Decisions

Despite the fact that the Commission already addressed the 2017 Tax Cuts and Jobs Act (the "2017 Federal Tax Act") in this rate case, the Department contends that the Commission should now take notice of new material impacting the Company's rate case.[23] The Department argues that the Commission should do this to reduce the remaining accounting lives of Boswell Units 3 and 4 to 2035.[24] Essentially, the Department's proposal can be summed up in the following steps: (1) include the 2017 Federal Tax Act revenue in the rate case; (2) reduce the accounting lives of Boswell Units 3 and 4 from 2050 to 2035; (3) use the excess revenue from the decreased tax rate to offset the cost of retiring Boswell Units 3 and 4 in 2035 rather than 2050; and (4) refund any excess tax revenue to ratepayers. For the following reasons, the Department's proposal should be rejected.

The Commission created a mutually beneficial situation for ratepayers and the Company when it approved the proposal to extend the accounting life of Boswell Units 3 and 4 to 2050,[25] and ordered the Company to begin exploring securitization plans for Boswell.[26] The direction to begin analysis and potential development of a securitization proposal is a positive development. LPI does not believe it would be prudent to forego this opportunity simply because rate mitigation has come in the form of the 2017 Federal Tax Act.

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[22] Minnesota Power Petition at 40 (This statement is not followed by a citation of any kind nor is there a specific citation provided that refers to $6.23 million in the record.).
[23] The Department Petition for Reconsideration Br. at 5 (Apr. 2, 2018) (eDocket No. 20184-141615-01) ("Department Petition").
[24] *Id*. at 11.
[25] Order at 13-14.
[26] *Id.*

To support its proposal, the Department requests that the Commission take notice of "material new information about the enactment" of tax reform.[27] As the Commission is well aware, the 2017 Federal Tax Act was previously addressed by LPI and others in the rate case. To be sure, LPI specifically requested that the Commission take notice of the 2017 Federal Tax Act, while maintaining its positions regarding securitization and the accounting lives of Boswell Units 3 and 4.[28] Although LPI understands the Commission speaks through its orders, the Order is silent on LPI's request as it was addressed in deliberations. During deliberations, Commissioner Tuma noted that:

> I think we're in a good position right now. And I hope that we can work expeditiously with our utilities and that they recognize the importance of giving ratepayers back the money that they're due and so that we don't get into a fight over that…and so I think as we have a record to move forward on and we're developing a record in a different way, in a different proceeding, it makes sense that we can keep it outside of this -- outside of this rate case.[29]

As evidenced by Commissioner Tuma's remarks, all parties involved understood that ratepayers would be entitled to a refund due to the 2017 Federal Tax Act. It is also clear that this issue will be addressed in a separate docket (or dockets). Simply introducing estimates of the refund amounts does not amount to material new information that justify modifying the Order.

LPI appreciates and respects the work the Department did to put together its proposal. But LPI cannot accept that the proposal is reasonable or worth reconsideration. The Department does not raise any materially new information and its proposal deprives ratepayers from benefits of rate mitigation in this proceeding and rate reduction stemming from the 2017 Federal Tax Act in a separate docket as well as the opportunity to further explore securitization as a rate mitigation tool. Therefore, LPI respectfully requests that the Commission reject the Department's Petition.

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[27] Department Petition at 5.
[28] LPI Regarding Preferred Decision Alternatives Ltr. (Jan. 16, 2018) (eDocket No. 20181-138983-01) ("Decision Alternatives Letter").
[29] Deliberations Tr. at 175:6-17.

III. CONCLUSION

The Petitions for Reconsideration filed by the Company and the Department fail to raise material new issues for the Commission's review. Nothing submitted by either party has met the burden requiring the Commission to consider the arguments presented. Therefore, LPI respectfully requests that the Commission deny the Petitions for Reconsideration filed by Minnesota Power and the Department.

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Respectfully submitted,

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