STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Vice Chair
Matt Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

In the Matter of Minnesota Power's Renewable Resources Rider and 2015 Renewable Factor

DOCKET NO. E015/M-14-962

REPLY COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL

I. INTRODUCTION

The Office of the Attorney General–Residential Utilities and Antitrust Division ("OAG") respectfully submits the following Reply Comments. The purpose of these Reply Comments is to respond to the comments filed by Minnesota Power ("Company") on May 30, 2017. Specifically, these Reply Comments will address the Company's argument that the treatment of the investment tax credits ("ITCs") at issue in the Commission's November 30, 2016 Order ("Order") is confiscatory. The legal authority cited by the Company itself demonstrates that the Order is not confiscatory.

The Company's dispute stems from the Commission's decision that $11.3 million in tax benefits generated by ITCs from the Bison Wind Projects and paid for by Minnesota Power's regulated ratepayers should count against Minnesota Power's revenue requirement.[1] The

[1] Order at 8.

Company believes that these benefits should belong to its parent company because they could not be realized but for the consolidated North Dakota tax return filed by the Company.[2]

II. THE ORDER IS NOT CONFISCATORY.

While the Company states that the Order was confiscatory, this assertion rests on a foundation of vague generalizations about Takings Clause jurisprudence and mischaracterizations of the Order. Closer examination of the authority cited by Minnesota Power shows, however, that the Order is not confiscatory.

The Company quotes the United States Supreme Court, saying that "[a]n assessment, fee, or tax may be a taking if the exaction is a *flagrant abuse*, and by reason of its *arbitrary character* is mere confiscation of particular property."[3] As in the case cited by Minnesota Power, the decision made by the Commission in its Order contains "no such arbitrary action" and instead "presents a question of policy."[4] Far from being "arbitrary," the Commission made a policy decision resting on the common-sense proposition that the tax benefits flowing from an investment made by the regulated affiliate should stay with the regulated affiliate, thereby "align[ing] the tax credits with the cost responsibility."[5] The Company is masquerading its disagreement with the reasoned policy determination of the Commission as an issue of Constitutional infirmity in order to justify its request to overturn the Order. As the Order was not arbitrary, and was instead based on a reasonable policy determination, the Commission should find that it was not confiscatory.

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[2] MP Comments at 19.
[3] MP Comments at 17 (citing *Houck v. Littler River Drainage Dist.*, 239 U.S. 254, 265 (1915)) (internal quotations omitted) (emphasis added).
[4] *Houck*, 239 U.S. at 265–66.
[5] Order at 8.

Minnesota Power's comments also gloss over the inescapable fact that it is not being deprived of anything that it would have in the first place, but for the tax credits created and paid for by its captive ratepayers. The Company argues that if ratepayers received the tax benefit from the investment that they paid for, it "is still subject to the North Dakota tax and will be out the money."[6] It also characterizes the Order as one that "divert[s] th[e] benefit to ratepayers."[7] These characterizations seek to obfuscate the reality of the situation. The benefits in dispute are benefits that exist only because of the investment made by the regulated ratepayers. The Order is not "diverting" benefits to ratepayers, it is allowing them to retain tax benefits that they themselves created. Similarly, the Company complains that it "will be out the money," but the money that it is talking about is money that it never would have had in the first place without the investment by ratepayers in the Bison Wind Projects. The Commission's Order properly assigned the tax benefits to the entity that created them, and has not improperly deprived the Company of anything it is otherwise entitled to.

[6] MP Comments at 17.
[7] MP Comments at 17.

III. CONCLUSION

For the reasons discussed herein, the Commission should find that its Order was not confiscatory.[8]

Dated: June 20, 2017

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

s/ Joseph C. Meyer
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ATTORNEYS FOR OFFICE OF THE ATTORNEY GENERAL – RESIDENTIAL UTILITIES AND ANTITRUST DIVISION

[8] The OAG continues to support its recommendation regarding the scope of the Order expressed in its comments of May 30, 2017. These reply comments do not modify that recommendation, rather they are intended to demonstrate that assertions that the Order was confiscatory are without merit.

LORI SWANSON
ATTORNEY GENERAL

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June 20, 2017

Mr. Daniel Wolf, Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

Re: ***In the Matter of Minnesota Power's Renewable Resources Rider and 2015 Renewable Factor***
MPUC Docket No. E015/M-14-962

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find Reply Comments of the Minnesota 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/ **Joseph C. Meyer**
JOSEPH C. MEYER
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Enclosure

AFFIDAVIT OF SERVICE

Re: ***In the Matter of Minnesota Power's Renewable Resources Rider and 2015 Renewable Factor***
MPUC Docket No. E015/M-14-962

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, DEANNA DONNELLY, hereby state that on 20th day of June, 2017, I efiled with eDockets ***Reply Comments of the Office of the Attorney General – Residential Utilities and Antitrust Division*** and served the same upon all parties listed on the attached service list by email, and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

s/ Deanna Donnelly
DEANNA DONNELLY

Subscribed and sworn to before me
this 20th day of June, 2017

s/ Ruth M. Busch
Notary Public
My Commission expires: January 31, 2020.

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