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January 16, 2015

The Honorable Ann C. O'Reilly
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600 North Robert Street
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**RE: In the Matter of the Request of Minnesota Power for a Certificate of Need
for the Great Northern Transmission Line Project
MPUC Docket No. E015/CN-12-1163
OAH Docket No. 65-2500-31196**

Dear Judge O'Reilly:

Enclosed for filing in the above matter, please find the Reply Brief and Proposed Findings of the Minnesota Department of Commerce, Division of Energy Resources. Pursuant to Your Honor's request, the Proposed Findings are presented as a redlined version.

Sincerely,

s/ Peter E. Madsen

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Enclosures

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**RE: In the Matter of the Request of Minnesota Power for a Certificate of Need
for the Great Northern Transmission Line Project
MPUC Docket No. E015/CN-12-1163
OAH Docket No. 65-2500-31196**

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Ann Kirlin, hereby state that on the 16th day of January, 2015, I efiled the attached Reply Brief and Proposed Findings of the Minnesota Department of Commerce, Division of Energy Resources and/or served the same by United States Mail, upon all parties on the attached service list, postage prepaid, by depositing the same at St. Paul, Minnesota.

See attached service list

/s/ Ann Kirlin
ANN KIRLIN

Subscribed and sworn to before me on
this 16th day of January, 2015.

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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

OAH Docket No. 65-2500-31196
MPUC Docket No. E015/CN-12-1163

**REPLY BRIEF OF THE MINNESOTA
DEPARTMENT OF COMMERCE**

January 16, 2015

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INTRODUCTION

The Minnesota Department of Commerce, Division of Energy Resources (“Department” or “DOC-DER”) respectfully submits this Reply Brief to provide the Administrative Law Judge (“ALJ”) and the Minnesota Public Utilities Commission (“Commission”) with analysis of the facts and law pertaining to the request for a Certificate of Need (“CN”) for the Great Northern Transmission Line (the proposed “Project” or “GNTL”), filed by Minnesota Power (“MP” or “Applicant” or “Company”). While the Department continues to rely on the discussion and analysis provided in its Initial Brief, DOC-DER provides limited additional response to arguments set forth in the Initial Briefs of Residents and Ratepayers Against Not-so-Great-Northern Transmission (“RRANT”) and the Large Power Intervenors (“LPI”).

As indicated in Minnesota Statute section 216A.07, subd. 2, the Department is “responsible for the enforcement of chapters 216A, 216B and 237 and the orders of the commission issued pursuant to those chapters.” Overall, the Department’s role in all proceedings before the Commission is to help ensure that utilities provide reliable service at reasonable rates, and that they meet various requirements such as the Minnesota Renewable Energy Standard. In this role, the Department represents the overall public interest and makes recommendations to serve all members of the public.

In this case, Department experts evaluated the proposed Project and agree that the Company has satisfied its burden of proof under applicable CN criteria that the Commission uses to decide whether to grant or deny a CN. The Department also made additional recommendations to help serve the public interest, as discussed in its Initial Brief.

ANALYSIS

I. THE DEPARTMENT'S REPLY TO RRANT'S INITIAL BRIEF

In its Initial Brief, RRANT recommended that the Commission deny MP's application for a CN because the Applicant has not met its burden of proof and burden of production and has therefore not justified its need. RRANT opposed the proposed Project because:

- A. "it is for economic reasons which are not recognized in the Certificate of Need statutory criteria;"
- B. "it is grossly oversized when compared to the PPA's [power purchase agreement's] megawatt 'need' claimed by the Applicant;"
- C. "it is a segmented part of a much longer transmission line, to Arrowhead substation near Duluth, and across Wisconsin into Michigan towards Detroit;"
- D. "the cost apportionment is based on a 383 MW PPA balanced against a claimed 750 or 883 MW capacity, when in fact the potential capacity is much higher – if/when additional capacity is used, that would inequitably skew the ratio, Minnesota Power would use a lower percentage of that greater capacity, and Minnesota percentage would be lowered and the ratepayers allocation would then be too high;" and
- E. "a transmission line was not approved in the Integrated Resource Plan, and a transmission line was not approved as a part of the PPA review."

RRANT Initial Br. at 1–2. The Department addresses each of the claims underlying RRANT's recommendations in turn.

A. Contrary to RRANT’s Claim, Economic Considerations Are Relevant under the CN Statute

RRANT’s claim that economics is not recognized in the CN statutory criteria is without merit. RRANT Initial Br. at 2–5. Minnesota law explicitly states that cost is a criterion to be considered in making a CN determination regarding need for a transmission project:

[W]ith respect to a high-voltage transmission line, the benefits of enhanced regional reliability, access, or deliverability to the extent these factors improve the robustness of the transmission system or lower costs for electric consumers in Minnesota.

Minn. Stat. § 216B.243, subd. 3(9) (2014). Economic considerations as a basis for a transmission CN are clearly recognized under Minnesota law and are relevant in this proceeding.

B. Determination of Project Size: RRANT Incorrectly Compares the Proposed Project Size to Claimed Energy Need Rather than Evaluating Whether the Proposed Project is the Most Reasonable Alternative

RRANT’s broad claim that the GNTL is “grossly oversized” when *compared* to need is the incorrect way to evaluate the proposed Project. RRANT Initial Br. at 16–17. What is of relevant concern for the ALJ and the Commission is determining the most reasonable and prudent way to satisfy energy demand. In a CN proceeding, Minnesota Rules first require a determination of need: “the probable result of denial would be an adverse effect upon the future adequacy, reliability, or efficiency of energy supply to the applicant, to the applicant’s customers, or to the people of Minnesota and neighboring states.” Minn. R. 7849.0120(A) (2013). Once a determination of need is made, it is then that Minnesota Rules require a determination of which project best meets the need: “a more reasonable and prudent alternative to the proposed facility has not been demonstrated by a preponderance of the evidence on the record.” Minn. R. 7849.0120(B). In this case, RRANT has presented no evidence that any alternative, including a transmission line of an alternative size, is more reasonable and prudent than the GNTL. In fact, the record demonstrates otherwise. The Department refers the ALJ and the Commission to its

Initial Brief for its analysis as to why the GNTL is the most reasonable and prudent project in this matter. DOC Initial Br. at 20–32.

C. RRANT’s Claim that the Proposed Project is Part of a Longer Transmission Line is Not Relevant in this Matter

RRANT’s claim that the proposed Project is part of a much longer transmission line, “to Arrowhead substation near Duluth, and across Wisconsin into Michigan towards Detroit,” is not relevant for the decisions to be made in this proceeding. RRANT Initial Br. at 5–14. The Petition did not contain a request for a CN for the 345 kV project between the Blackberry substation and the Arrowhead substation:

At the time Minnesota Power filed its proposed notice plan and its exemption request, the Company anticipated filing a Certificate of Need application for two transmission lines and associated facilities – the Project and a separate 345 kilovolt (“kV”) transmission project between the terminus substation of the Project and the Arrowhead Substation near Hermantown, Minnesota. At this time there are not sufficient transmission service requests to support this second 345 kV phase. Thus, Minnesota Power has determined that it will not pursue construction of the 345 kV project at this time. Should that separate project move forward in the future, a new Certificate of Need application will be filed.

MP Ex. 9 at 2 (Petition). There are no requirements in Minnesota Statutes or Minnesota Rules to analyze a project that has not been proposed by any party.¹ In fact, MP’s decision to not move forward with the Blackberry—Arrowhead 345 kV project is a demonstration of how MP is managing the size of the proposed project (MW that can be transferred) relative to the size of the proposed need (MW of signed or expected agreements).

¹ Such an analysis may (or may not) be an appropriate contingency analysis in a CN proceeding.

D. Cost Allocation Need Not Be Addressed at this Time

RRANT claims that when additional projects are constructed (for example, the Blackberry—Arrowhead 345 kV project) the capacity of the GNTL will change and thus cost apportionment should change as well. RRANT Initial Br. at 18–19. In response, the Department notes that, if and when the Blackberry—Arrowhead 345 kV project is constructed, questions about need for that facility and available alternatives to satisfying that need will be developed, which will assist in assessing the overall responsibility of parties (e.g. retail ratepayers, ALLETE’s shareholders, etc.) for the capacity and overall cost, which would be addressed in that proceeding as appropriate or in rate proceedings subsequent to CN approval. Thus, it would not be appropriate to speculate at this time what the results of any future analysis might be.

Furthermore, the Department demonstrated that general decisions regarding cost allocation among customer classes are not relevant at this time. DOC Initial Br. at 38–39. Such considerations are only relevant during a rate proceeding unless it can be shown that somehow cost allocations among customer classes could impact the overall analysis of alternatives.² DOC Ex. 53 at SR-2 (Rakow Direct). RRANT has not demonstrated that cost allocations create a distinction between alternatives. Thus, RRANT’s cost allocation issues do not need to be addressed at this time.

E. Analysis in Prior Related Dockets: RRANT’s Claim that the GNTL Was Not Approved

RRANT finally claims that the GNTL was not approved in MP’s most recent Integrated Resource Plan (Docket No. E015/RP-13-53), and a transmission line was not approved as a part of the review of the agreement underlying MP’s claimed need (Docket No. E015/M-11-938).

² Note that the Department did determine that cost allocation was a reason for distinguishing between the GNTL and an alternative with a Barnesville end point. DOC Ex. 53 at 47 (Rakow Direct).

RRANT Initial Br. at 14–15. These statements, while true, are not relevant in this matter. It is true that a specific transmission project (or for that matter, a specific generation project or PPA) was not approved in MP’s most recent resource plan. As the Department’s testimony demonstrates, however, the function of a resource plan is to determine the overall size, type, and timing of needs. It is highly unusual for a resource plan to analyze specific projects, like the GNTL, particularly since resource plans focus primarily on generation needs. DOC Ex. 53 at SR-2 (Rakow Direct).

Second, while RRANT’s claim that a transmission line was not approved as a part of the review of the agreement underlying MP’s claimed need is true, it too is not relevant in this matter. RRANT Initial Br. at 17–18. The docket in which the Commission reviewed the PPA was not a CN matter. What is important, however, is the fact that transmission costs were included when the 250 MW PPA was analyzed and approved by the Commission. The Department’s November 18, 2011 comments describe the analysis in MP’s petition for approval of the power purchase agreement as follows:

Attachment 2 provides the levelized cost of energy ([**TRADE SECRET DATA HAS BEEN EXCISED**] per MWh), the levelized cost of capacity ([**TRADE SECRET DATA HAS BEEN EXCISED**] per MWh), the levelized transmission costs ([**TRADE SECRET DATA HAS BEEN EXCISED**] per MWh) and the total levelized cost of the PPA.

MP Ex. 9 at Appendix C (Petition).

Thus, RRANT’s claims regarding analysis in prior dockets are without merit and should be disregarded.

F. Summary of the Department’s Reply to RRANT’s Initial Brief

In summary, RRANT presented neither evidence that calls into question the need for the proposed Project nor any evidence of a superior alternative to the proposed Project. The

Department recommends that the ALJ and the Commission disregard RRANT's arguments found within its Initial Brief.

II. THE DEPARTMENT'S REPLY TO LPI'S INITIAL BRIEF

A. Conditions on Approval of MP's Application for a Certificate of Need

In its Initial Brief, LPI summarized its recommendations in this proceeding regarding placing certain conditions on a CN:

- Impose a "hard cap" on the amount MP can recover from its customers for costs associated with the proposed Project;
- Condition the CN upon approval of MP's 133 MW Renewable Optimization Agreements ("ROA");
- Direct MP to accrue allowance for funds used during construction ("AFUDC") rather than permit it to seek current recovery of carrying charges during the construction period (construction work in progress or "CWIP");
- Authorize ratemaking recovery through a rider as opposed to base rates; and
- Allocate the increase to customer classes using base revenues excluding fuel and other riders.

In its Initial Brief, the Department addressed each of LPI's recommendations and presented its own recommendations in this matter, which include agreeing with LPI's proposal to condition granting this CN on approval of MP's 133 MW ROA and imposing a "soft cap" on costs, consistent with the Commission's general ratemaking approach. DOC Initial Br. at 33-40. The Department refers the ALJ and the Commission to its recommendations found in its Initial Brief and hence does not repeat those recommendations in this Reply Brief as the Department

continues to rely on the discussion and analysis provided there. The Department does, however, respond to additional arguments that LPI raised in its Initial Brief.

B. The Combined-Cycle Alternative and LPI's Proposed Hard Cap on Cost Recovery

In its Initial Brief, LPI discussed a combined-cycle alternative as a reasonable alternative to the GNTL and its underlying power purchase agreements. LPI Initial Br. at 4–5. In response, the Department notes, first, that the combined-cycle alternative that LPI claims is close in cost to the GNTL (but costs more based upon current projections) is a non-renewable energy generation option, while the PPA with Manitoba Hydro represents a renewable energy generation option. Further, energy on the proposed GNTL would directly and indirectly replace coal generation in Minnesota and would also indirectly replace natural gas generation. DOC Ex. 53 at 46 (Rakow Direct). Since Minnesota law creates a preference for renewable resources under Minn. Stat. § 216B.243, subd. 3a, the basis for LPI's cost cap is reliance on an alternative that is inferior under both LPI's own economic analysis and under Minnesota law that encourages renewable resource options.

C. The Scope of this CN Proceeding is Limited to Issues Relevant to an Assessment of Need Criteria

LPI accurately recites the scope of this proceeding as stated by the Commission. LPI Initial Br. at 2. LPI, however, is incorrect that the Commission provided a carte blanche for raising cost-recovery issues when it stated: “The parties may also raise and address other issues relevant to the application.” *In the Matter of the Request of Minnesota Power for a Certificate of Need for the Great Northern Transmission Line Project*, Docket No. E-015/CN-12-1163, Order Accepting Filing, Varying Time Lines, and Notice and Order for Hearing at 4 (Jan. 8, 2014). Allocation of costs among customer classes and rate design are generally not relevant for evaluating need or distinguishing among alternative projects. Moreover, as the Department

stated in its Initial Brief, cost recovery issues are best resolved in cost-recovery proceedings (e.g. riders) and general rate cases if and when a utility seeks cost recovery. DOC Initial Br. at 35–39. It is there where notice is provided to the Commission and to the public that cost recovery is sought and where a record can be fully developed in that regard based on input that could come from all affected customer classes. It would simply be unprecedented to make such decisions in this CN docket without giving all affected parties a chance to weigh in on such issues. Thus, LPI’s arguments about cost allocation among customer classes and rate design should be disregarded in this matter (but could be raised in subsequent rate proceedings).

D. Summary of the Department’s Reply to LPI’s Initial Brief

The Department refers the ALJ and the Commission to its recommendations found in its Initial Brief and continues to rely on the discussion and analysis provided there. In addition, the basis for LPI’s cost cap constitutes reliance upon an alternative that is inferior under LPI’s own economic analysis and under Minnesota law that encourages renewable resource options. Finally, the Department does not agree that certain cost recovery issues that LPI raised are relevant or appropriate to consider in this CN proceeding.

III. DEPARTMENT RECOMMENDATIONS

The Department continues to recommend that the Commission approve the proposed Project. In addition, granting a CN for the proposed GNTL should be conditioned on the Commission:

- Approving MP’s 133 MW ROA (second EEA and ESA) and the FCA (which has already been approved by FERC);
- Ordering MP to use the Commission’s externality values in future CN proceedings; and
- Ordering the following “soft cap” on cost recovery:

1. MP would be limited to recover in riders only the amount of costs that MP proposes in this proceeding;
2. MP could request recovery of costs above the CN amount only in a rate case;
and
3. MP would have the burden of proof to show that any such costs are prudent and why it would be reasonable to recover such costs from ratepayers.

As mentioned in the Department's Initial Brief, there are not any unresolved issues between DOC and MP at this time.

Dated: January 16, 2015

Respectfully submitted,

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