

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

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

FIRST PREHEARING ORDER

A prehearing conference was held before Bruce H. Johnson, Administrative Law Judge, on August 12, 2008, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota. The following persons appeared:

Samuel Hanson and Elizabeth Brama, Attorneys at Law, Briggs and Morgan, 2200 IDS Center, 80 South Eighth Street, Minneapolis, Minnesota 55402, and Christopher Anderson, Associate General Counsel, Allete, Inc., 30 West Superior Street, Duluth, Minnesota 55802, appeared for and on behalf of Allete, Incorporated, doing business as Minnesota Power (Minnesota Power).

Valerie Means, Assistant Attorney General, 1400 BRM Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared for and on behalf of Minnesota Department of Commerce, Office of Energy Security (OES).

Ron Giteck and William Stamets, Assistant Attorneys General, 900 BRM Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared for and on behalf of the Office of the Attorney General Residential and Small Business Utility Division (OAG/RUD).

Robert S. Lee and Andrew P. Moratzka, Attorneys at Law, Mackall, Crouse & Moore, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, Minnesota 55402, appeared for and on behalf of the Large Power Intervenors (LPI).

Pam Marshall, Executive Director, 823 East Seventh Street, St. Paul, Minnesota 55106, appeared for and on behalf of Energy CENTS Coalition (ECC).

Eric F. Swanson, Attorney at Law, Winthrop & Weinstine, Suite 3500, 225 South Sixth Street, Minneapolis, Minnesota 55402, appeared for and on behalf of Boise, Inc. (Boise).

Robert Harding, Rates Analyst, and Louis Sickmann, Rates Analyst, appeared for and on behalf of the Public Utilities Commission staff.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following:

ORDER

Procedure

1. The rules of the Office of Administrative Hearings govern the conduct of the hearings in this matter. Parties must notify the Office of Administrative Hearings as soon as possible if or interpreter or an accommodation for a disability is needed to enable participation in any of the hearings.

2. Requests of subpoenas for the attendance of witnesses or the production of documents shall be made to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at www.oah.state.mn.us.

Parties, Intervention, and Public Participation

3. The parties to this matter, as named in the Commissioner's Notice and Order for Hearing issued on July 21, 2008, are Minnesota Power, OES, and OAG/RUD. Prior to the prehearing conference, Petitions to Intervene were filed with the Administrative Law Judge by ECC, Boise, and a group calling itself the Large Power Intervenors (LPI) comprised of large industrial customers of Minnesota Power.¹ Upon inquiry at the prehearing conference, there were no objections were raised to those Petitions, and they were GRANTED. ECC, Boise, and LPI are, therefore, admitted to this proceeding as full parties.

4. Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge no later than September 3, 2008. Copies of the Petition must be served upon all existing parties and the Commission. A Notice of Appearance must be filed with the Petition. Objections to such a petition must be filed within seven days of the filing of the petition.

5. Members of the public need not become parties to participate in this matter. Members of the public may participate in the public hearings and may offer oral

¹ ArcelorMittal USA (Minorca Mine); UPM-Blandin Paper Company, Boise Cascade Corporation; Enbridge Energy, Limited Partnership; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; NewPage Corporation; PolyMet Mining, Inc.; Sappi Cloquet, LLC; United States Steel Corporation (Keewatin Taconite and Minntac Mine); and United Taconite, LLC.

or written testimony and exhibits pursuant to Minn. R. 1400.6200, subp. 5, and 1400.7150, subp. 1. If time permits, public participation may also be permitted by the Administrative Law Judge during the evidentiary hearing. Any person who participates in a public or evidentiary hearing may be questioned by the parties and the ALJ. Written public comments must be received by the Administrative Law Judge no later than October 17, 2008.

Schedule

6. Minnesota Power has agreed to waive the statutory deadline for the Commission's final order on its application for a change in rates for a period of one week. Minnesota Power will confirm that waiver in writing to the Commission. Contingent on the filing of that waiver, the following schedule is adopted:

Event or Document	Event Date or Due Date
Minnesota Power's Direct Testimony	May 2, 2008
Deadline for Intervention	September 3, 2008
Other Parties' Direct Testimony	September 26, 2008
Notice of Public Hearings Completed	September 13, 2008
Public Hearings	
Eveleth– afternoon and evening	September 30, 2008 meeting places/times to be determined
Grand Rapids	October 1, 2008 meeting place/time to be determined
Little Falls	October 2, 2008 meeting place/time to be determined
Duluth – afternoon and evening	October 6, 2008 meeting places/times to be determined
Written Public Comments	October 17, 2008
All Parties' Rebuttal Testimony	October 22, 2008
All Parties' Surrebuttal Testimony	November 5, 2008
Evidentiary Hearing	November 12-14, 17-21, 2008

Initial Briefs and Proposed Findings	December 19, 2008
Reply Briefs	January 16, 2009
Anticipated ALJ Report	February 19, 2009
Exceptions to ALJ Report	To be determined by Commission
Commission Oral Argument/Deliberations	To be determined by Commission
Commission Final Order	To be determined by Commission (not later than April 19, 2009)

7. Nonpublic versions of prefiled testimony shall be eFiled by the date indicated; paper copies thereof must be received by the ALJ and appropriate parties the following business day.

8. Notice of the public and evidentiary hearings shall be given by Minnesota Power as set forth in the Commission's Notice and Order for Hearing.

Settlement

9. Minn. Stat. § 216B.16, subd. 1(a), requires the Administrative Law Judge to convene a proceeding for the purpose of encouraging settlement of any or all of the issues in this proceeding. The Administrative Law Judge encourages the parties to discuss opportunities for settlement with each other prior to the public hearings. During the days of the public hearings, an informal conference will be held to discuss the progress of such discussions.

Discovery

10. A party may serve requests for information on any other party. All requests for information shall be made in writing by e-mail, and the requesting party shall follow the e-mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. **Information requests shall NOT be eFiled.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, an e-mail request is required only between the requesting and responding party. Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought. Any request received by e-mail after 4:30 p.m. on a business day, on a weekend day, or on a Minnesota state holiday is considered received on the next business day.

11. The party responding to the request shall provide the requested information to the requesting party within eight business days of receipt of the

information request. If the information cannot be supplied within eight business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to work out a schedule of compliance with the requesting party.

12. Responses to information requests shall be submitted by e-mail, and the responding party shall follow the e-mail with a copy of the response sent by regular U.S. mail or other delivery service, unless the receiving party agrees to accept responses by e-mail delivery only. **Information request responses shall NOT be eFiled.** If a response includes material designated as Trade Secret or Nonpublic, an e-mail response is required only between the requesting party and the responding party. Any response received after 4:30 p.m. on a business day is considered to be received the following business day.

13. If the responding party is unable to send the response by e-mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery so that the requesting party receives the entire response including any material designated as Trade Secret or Nonpublic by the date due. Responding parties may utilize optical data storage (DVDs or CDs) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

14. A party that wishes to receive e-mail copies of requests or responses shall notify the requesting or responding party, which shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of the Protective Order in this matter before providing the information.

15. Minnesota Power proposed a Protective Order for these proceedings. Upon inquiry, there were no objections to the proposed form of the Protective Order and that order was ADOPTED. A copy of the Protective Order accompanies this Prehearing Order.

16. A common practice in Commission proceedings is for a party to make a blanket information request for copies of all responses to other parties' information requests. Any responding party is allowed to object and decline to provide all or certain Trade Secret or Nonpublic information in responses to any particular party. Any party denied responses in this manner may raise the issue with the ALJ through a motion to compel.

17. The following persons shall be served with an e-mail copy of any information requests or responses addressed to Minnesota Power.

Christopher Anderson (canderson@allete.com)
Marcia Podratz (mpodratz@mnpower.com)
Thomas Bailey (tbailey@briggs.com)

Any necessary paper copies of information requests or responses shall be mailed to:

Christopher Anderson Minnesota Power 30 Superior Street Duluth, MN 55802-2093	Marcia Podratz Minnesota Power 30 Superior Street Duluth, MN 55802-2093
Thomas Bailey Briggs and Morgan PA 2200 IDS Center Minneapolis, MN 55402-2157	

18. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be brought informally by email. Notice of such motions will be made by email. Informal motions to address discovery requests and responses will usually be heard by telephone conference.

Prefiled Testimony

19. Prefiled testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being cited by page and line number, paragraph number, or similar identifier.

20. A paper copy of prefiled testimony being offered for admission into the record at the hearing shall be provided for use at the hearing. The offering party will identify the document as having been eFiled (with the unique eFile identifying number of the document). The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

21. Corrections to any prefiled testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practical after the hearing. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any such supplemental record data will be identified by the ALJ as included in the official record.

22. Prefiled testimony that is not offered into the record or stricken portions of prefiled testimony that is offered, shall be considered withdrawn and no witness shall be

cross-examined concerning the withdrawn testimony. Any new affirmative matter that is not offered in reply to another party's direct case will not be allowed in rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any prefiled testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than three days prior to the commencement of the evidentiary hearing.

Witnesses

23. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: Minnesota Power, LPI, ECC, Boise, remaining intervenors in the order of intervention, OAG/RUD, and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff and the Administrative Law Judge.

24. In the event that a witness must be scheduled for a day certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

25. Witnesses will be allowed ten minutes in which to summarize their prefiled testimony. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion with a showing of good cause for not having addressed that information in prefiled testimony. Similarly, a witness will be permitted to respond to new matter raised by another party that was not previously addressed in prefiled testimony upon direct examination and with the prior approval of the Administrative Law Judge.

26. Parties shall examine and cross-examine witnesses through their attorneys if they are represented by counsel. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

27. Except for good cause shown, objections by any party relative to the qualifications of a witness or the admissibility of any portion of a witness' prefiled testimony (except surrebuttal testimony) shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, no later than two weeks prior to commencement of the evidentiary hearing. Objections to surrebuttal testimony shall be filed and served no later than two business days prior to commencement of the evidentiary hearing.

Filing of Documents (Excluding Information Requests and Responses)

28. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3, and the Commission's standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

29. The effective date of filing shall be the date the document is eFiled, mailed by U.S. Mail, or delivered to the Administrative Law Judge. Parties using the eFiling system should retain the unique document identifier as proof of filing through that system. Proof of service to the service list in this proceeding shall be filed with each document or within three business days thereafter.

30. With the exception of Trade Secret and other Nonpublic Data, copies of all documents that are filed shall be served by e-mail according to the attached official service list by 4:00 p.m., and a hard copy shall also be mailed or delivered that day to the persons so indicated on the official service list. The list will be revised as necessary by the Office of Administrative Hearings.

31. Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or delivery to the parties who have signed Exhibit A to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

32. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

33. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available from the Commission website and may be viewed at www.puc.state.mn.us/docs/tradsecret.pdf. Access to nonpublic data shall be governed by the Protective Order to be issued in this proceeding.

Dated: August 15, 2008

s/Bruce H. Johnson

BRUCE H. JOHNSON
Assistant Chief Administrative Law Judge