

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

In the Matter of the Verified Petition of Superior Water, Light & Power Company for a Declaratory Ruling or, in the alternative, for Approvals of a Holding Company Takeover

Docket No. 5820-DR-\_\_\_\_\_

**VERIFIED PETITION FOR DECLARATORY RULING OR, IN THE ALTERNATIVE,  
FOR APPROVALS OF A HOLDING COMPANY TAKEOVER**

Superior Water, Light & Power Company (“SWL&P”) hereby submits this Verified Petition for Declaratory Ruling or, in the alternative, for Approvals of a Holding Company Takeover (the “Petition”). The Petition pertains to the proposed acquisition of SWL&P’s immediate corporate parent, ALLETE, Inc. (“ALLETE”), by affiliates of Canada Pension Plan Investment Board (“CPP Investments”) and Global Infrastructure Management, LLC, which operates under the trading name Global Infrastructure Partners (“GIP,” and together with CPP Investments, the “Partners”) (the “Acquisition”). Through the Acquisition, ALLETE will transition to a private company with improved access to capital and Partner resources that can support ALLETE’s investment in the clean energy transition while continuing safe, reliable, and affordable utility service to SWL&P’s customers.

Although the Acquisition will change the ownership of ALLETE, the essence of the company will not change, including: (1) SWL&P’s operations, strategy, or values; (2) the Public Service Commission of Wisconsin’s (“PSCW” or the “Commission”) authority over SWL&P; (3) SWL&P’s commitments to the customers and communities it has served for over a century; and (4) the transparency to which the Commission is accustomed in its regulation of SWL&P.

SWL&P seeks a declaratory ruling from the Commission that the Acquisition does not require approval under the Wisconsin Utility Holding Company Act, Wis. Stat. § 196.795 (“WUHCA” or the “Act”) by virtue of ALLETE’s exemption under subsection (8)(a) of the Act.

SWL&P also seeks a ruling that the ALLETE holding company system will retain its WUHCA exemption following the acquisition.

In the alternative, SWL&P, ALLETE, GIP, and CPP Investments (collectively, the “Joint Applicants”)<sup>1</sup> hereby apply for all necessary Commission approvals for the acquisition, including approval under WUHCA’s takeover provision, Wis. Stat. § 196.795(3), if required.

## **I. INTRODUCTION**

This proceeding relates to the proposed acquisition of ALLETE, SWL&P’s corporate parent, by the Partners through Alloy Parent LLC (“Parent”). SWL&P is a Wisconsin public utility, providing electric, natural gas, and water service to customers in and around Superior, Wisconsin. ALLETE provides regulated utility service through SWL&P in Wisconsin and Minnesota Power in Minnesota. Additionally, ALLETE’s non-regulated-utility affiliates have long engaged in business activities related to the energy sector, including development of renewable generation and lignite mining. SWL&P is a relatively small component of ALLETE, comprising approximately ten percent (10%) of ALLETE’s revenues from regulated utility operations and just six percent (6%) of ALLETE’s overall revenues. Despite its small size, SWL&P has benefitted—and will continue to benefit after the Acquisition—from its affiliation with Minnesota Power.

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<sup>1</sup> Additional detail concerning the proposed post-closing organizational structure is included in Section I.C., *infra*, and Attachment A-2. Post-Acquisition, Alloy Parent LLC (“Parent”) will be the 100 percent owner of ALLETE, and Parent will be owned 40 percent by a wholly owned subsidiary of CPP Investments and 60 percent by investment entities managed and controlled by GIP affiliates.

The energy industry is evolving rapidly, with the transition to more renewable sources of energy, grid modernization, and changing customer needs and preferences driving change. The primary goal of transitioning to a private company with these strong Partners is to enable ALLETE to obtain the significant additional capital it needs to continue and expand its investment in clean energy technology and systems, including changing transmission and generation needs, and to further its commitment to provide safe, reliable, and affordable energy to its customers. The Partners are premier, well-resourced infrastructure investors at a global scale with deep industry expertise and strong long-term outlooks. Further, the Partners have an extensive base of assets and relationships that ALLETE can also leverage where applicable to the benefit of customers. The Partners are aligned with ALLETE's vision of continuing to advance Minnesota and Wisconsin clean energy goals and providing reliable, affordable energy and utility service to its customers. The Acquisition is expected to benefit customers by offering better alternatives to the volatility and inflexible demands of the capital marketplace when financing is needed, because ALLETE will have Partners who are familiar with the energy industry and aligned with SWL&P's values that have served customers effectively for more than 100 years.

SWL&P submits this Petition because the Acquisition is in the best interests of utility consumers, investors, and the general public. The Partners propose that Parent acquire all of the issued and outstanding common stock of ALLETE. Specifically, under the terms of the Agreement and Plan of Merger dated May 5, 2024 (the "Agreement"), and subject to customary closing conditions, including obtaining required regulatory approvals, ALLETE will be acquired by Parent through a reverse triangular merger, as described in Section II.C. The Agreement was unanimously approved by the ALLETE Board of Directors. The Acquisition is anticipated to close mid-year

2025. After closing, ALLETE will no longer be a publicly traded company and will be privately held.

No changes to SWL&P's costs or rates, cost structures, operations, or long-term plans are requested or expected in connection with the Acquisition. Before and after the Acquisition, ALLETE will continue to exist as a corporate entity and utility holding company owning and operating Minnesota Power and SWL&P, together with its other non-regulated-utility affiliates. The Acquisition only impacts the "upstream" ownership of ALLETE; it does not alter the "downstream" corporate subsidiaries of ALLETE, including SWL&P. Following the consummation of the Acquisition, SWL&P will continue to be a first-tier subsidiary of ALLETE and a public utility subject to Commission regulation. ALLETE anticipates no changes to the manner in which SWL&P provides public utility service to its customers, or to its relationships with the communities it serves or the Commission. Likewise, the Acquisition will have no impact on other SWL&P matters pending before the Commission, including SWL&P's pending rate case.<sup>2</sup> Finally, no transaction costs associated with the Acquisition will be allocated to SWL&P.

ALLETE meets the definition of a "holding company" under Wis. Stat. § 196.795(1)(h). However, because the ALLETE holding company was formed prior to November 28, 1985, and was not formed at the direction of a Wisconsin public utility, ALLETE has long been a "grandfathered" holding company exempt from regulation under WUHCA. As a result, SWL&P requests that the Commission issue rulings in this proceeding that (i) the Acquisition does not require Commission approval under WUHCA, including WUHCA's takeover provision (Wis.

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<sup>2</sup> Supplemental Testimony of Robert P. Sandstrom, at 6, *Application of Superior Water, Light and Power Company for Authority to Adjust Retail Electric, Gas, and Water Rates*, Docket No. 5820-UR-117 (May 31, 2024) (PSC REF#: 503929) (appended to this Petition as Attachment F).

Stat. § 196.795(3)) and (ii) confirm ALLETE and the holding company system resulting from the Acquisition retain their WUHCA exemption.

Should the Commission decline to grant the requested declaratory rulings, the Joint Applicants request, in the alternative, that the Commission grant all approvals necessary to consummate the Acquisition. Specifically, to the extent determined necessary, the Joint Applicants request that the Commission find that the Acquisition is in the best interests of utility consumers, investors, and the general public, and approve the Acquisition pursuant to WUHCA’s “takeover” provision in Wis. Stat. § 196.795(3). As discussed in greater detail herein, the Acquisition meets the best-interests standard because among other benefits, it is anticipated that the Acquisition will provide ALLETE and its subsidiaries (including SWL&P) with access to capital from additional sources or on more favorable terms than ALLETE could currently obtain, along with the benefits that come from the Partners’ substantial experience in the regulated and unregulated utility space, and the broadening of networks and relationships across the industry that the Partners can provide. These advantages should create benefits that accrue directly to the general public by facilitating expanded and more cost-effective investment opportunities, and to public utility consumers by meeting policy goals while keeping rates reasonable.

## **II. THE PARTIES AND THE TRANSACTION**

### **A. The ALLETE Family of Companies**

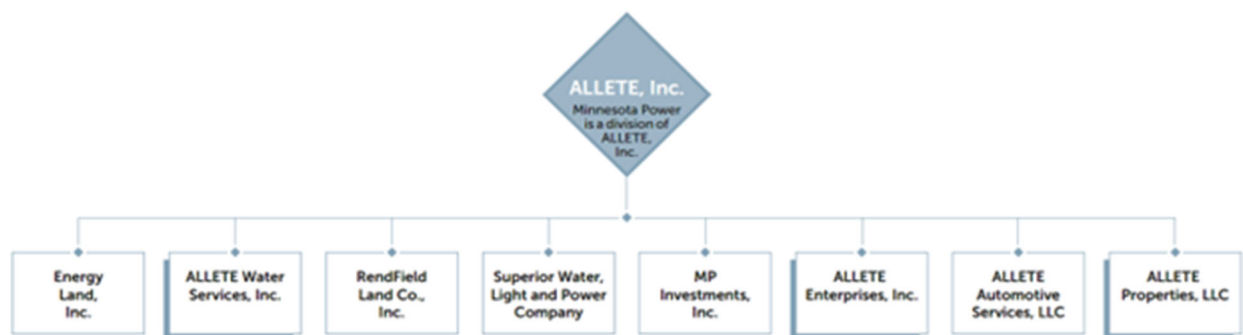
#### **1. ALLETE Inc.**

ALLETE is a reliable provider of competitively priced energy and invests in transmission infrastructure and other energy-centric businesses with a national footprint. Headquartered in Duluth, Minnesota, ALLETE is a publicly-traded Minnesota corporation. ALLETE’s primary lines of business include Minnesota Power, SWL&P, ALLETE Clean Energy, Inc. (“ALLETE

Clean Energy”), BNI Energy, Inc. (“BNI Energy”), and New Energy Equity LLC (“New Energy”). ALLETE is also a minority shareholder in American Transmission Company, owning an eight percent (8%) equity stake.

A simplified organization chart, showing all key subsidiaries of ALLETE, appears in Figure 1 below, with a more detailed organization structure included in Attachment A-1.

**Figure 1: Pre-Acquisition Structure of ALLETE, Inc. Family of Companies**



The entity now known as ALLETE was incorporated under the laws of the State of Minnesota on January 25, 1906, as the Duluth-Edison Electric Company.<sup>3</sup> In 1923, the Duluth-Edison Electric Company changed its name to Minnesota Power & Light Company.<sup>4</sup> Pursuant to Restated Articles of Incorporation filed with the Minnesota Secretary of State on May 12, 1998, Minnesota Power & Light Company became Minnesota Power, Inc.<sup>5</sup> A few years later (effective May 8, 2001), Minnesota Power, Inc. changed its name to ALLETE, Inc.<sup>6</sup> The stock of ALLETE is currently traded on the New York Stock Exchange. As of March 31, approximately 51 percent of ALLETE’s outstanding shares are owned by 18 investors, with BlackRock Fund Advisors (a subsidiary of BlackRock Inc. (“BlackRock”)) owning approximately 11.6 percent of common stock, with

<sup>3</sup> See Attachment G.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

another approximately 2 percent owned by other BlackRock subsidiaries, and The Vanguard Group, Inc. holding approximately 11.5 percent.<sup>7</sup>

Overall, ALLETE is a diversified energy company; however, relative to its peers, ALLETE is the largest investor in renewable energy of all publicly traded utilities in the U.S. relative to market capitalization. Still, ALLETE finds itself to be a relatively small company competing for capital in an increasingly demanding market. The need for substantial capital investments will likely increase as ALLETE and SWL&P continue the transition to more renewable, ever cleaner, and increasingly reliable transmission, generation, and distribution infrastructure all while balancing customers' increasing needs for energy. In light of these considerations, access to flexible, more reliable additional capital in coming years will be critical to ALLETE's financial health and the achievement of its ambitious sustainability and reliability goals.

## **2. Minnesota Power**

ALLETE's largest operating division is its regulated Minnesota electric utility, Minnesota Power. Minnesota Power generates, transmits, and distributes electric energy in northern Minnesota, a region rich in natural resources and related industrial enterprises. Minnesota Power serves approximately 150,000 customers, including 14 municipal systems and eight large industrial customers, in a 26,000-square-mile service territory. As an operating division of ALLETE, Minnesota Power is not a separate legal entity.

Renewable energy standards, changing customer preferences, and other factors are expediting Minnesota Power's clean energy transition. Minnesota Power currently provides over 50 percent renewable energy to its customers. Minnesota Power is well-positioned to pursue additional wind and solar generation, battery storage, transmission, and distribution investments

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<sup>7</sup> No other person or entity presently owns more than five percent (5%) of ALLETE's common stock.

that add value for its customers and help the company achieve its goal of delivering 100 percent carbon-free energy by 2040.

### **3. SWL&P**

Superior Water, Light & Power Company is a Wisconsin public utility and wholly-owned subsidiary of ALLETE. SWL&P serves approximately 15,000 electric customers, 13,000 natural gas customers, and 10,000 water customers in and around Superior, Wisconsin.

Except for a small amount of energy generated by its 470 kW AC community solar garden (Superior Solar),<sup>8</sup> SWL&P is a full-requirements wholesale customer of Minnesota Power. As noted above, SWL&P represents a relatively small component of ALLETE. SWL&P has leveraged its position as a wholesale customer to maintain electric rates that are among the lowest in Wisconsin and competitive nationally. In recent years, SWL&P has made investments in advanced metering infrastructure and increased its renewable service offerings. SWL&P was incorporated under the laws of the State of Wisconsin in 1889 and acquired by Minnesota Power & Light Company (now ALLETE) in the 1940s. SWL&P is a first-tier subsidiary of ALLETE. The relationship between ALLETE and SWL&P is governed by Commission-approved affiliate interest agreements, including the Electric Service Agreement, Transmission Interconnection Agreement, and Administrative Services Agreement.

### **4. ALLETE Clean Energy**

ALLETE Clean Energy, Inc. develops, acquires, and operates clean and renewable energy projects. Its fast-growing portfolio currently includes wind energy generation facilities across

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<sup>8</sup> Final Decision, *Application of Superior Water, Light and Power Company for Approval to Implement a Community Solar Garden Program*, Docket No. 5820-TE-100, November 6, 2020 (PSC REF#: 399602).



seven states, including Wisconsin. ALLETE Clean Energy was incorporated under Minnesota law in 2011.

## **5. New Energy Equity**

ALLETE acquired New Energy Equity LLC in 2022. Based in Annapolis, Maryland, New Energy is a leading developer of community, commercial and industrial, and small utility-scale solar energy generation projects, having completed more than 250 projects totaling more than 425 megawatts of capacity. New Energy is involved in greenfield solar facility development, as well as the acquisition of projects earlier in the development process. New Energy has completed projects and projects under development in 26 U.S. states. New Energy is a Delaware limited liability company.

## **6. BNI Energy, Inc.**

Through its subsidiary, BNI Coal, Ltd., BNI Energy operates a lignite mine near Center, North Dakota, producing about four million tons of lignite coal annually under a long-term cost-plus fixed-fee arrangement which runs until 2037. ALLETE is also leveraging BNI Energy's established relationships to explore opportunities for clean energy advancement in the state of North Dakota.

### **B. The Partners**

#### **1. CPP Investments**

CPP Investments is a professional investment management organization that manages the Canada Pension Plan Fund ("Fund") on behalf of the more than 22 million contributors and beneficiaries. CPP Investments' public purpose is to help provide a foundation upon which contributors and beneficiaries can build their financial security in retirement, with the long-term goal to contribute to the financial strength of the Fund by maximizing returns without undue risk

of loss. CPP Investments is governed and managed independently of the Canada Pension Plan and at arm's length from governments.

As of March 31, 2024, CPP Investments managed assets totaling C\$632.3 billion. In order to build diversified portfolios of assets, investments are made around the world in public equities, private equities, real estate, infrastructure, and fixed income. CPP Investments has built a significant investment portfolio in the United States, with C\$267.6 billion (approximately \$197.7 billion U.S. dollars) invested directly and indirectly in equity and fixed income in public and private companies across the United States economy, including in real estate, infrastructure, and energy. These investments represented approximately 42 percent of total assets as of March 31, 2024.

As an institutional investor with a broad global portfolio, CPP Investments invests across the energy sector, focusing on the energy transition and considering sustainability-related factors to make more informed decisions to deliver superior long-term investment outcomes. As part of that approach, CPP Investments has committed to achieve net zero emissions across all scopes by 2050, in both its portfolio and operations, and growing “Green & Transition” assets to at least C\$130 billion Canadian dollars by 2030. CPP Investments also has deep expertise across utilities, midstream energy companies, and energy generation and has strategically partnered with numerous companies across these sectors. For example, CPP Investments successfully partnered with Puget Sound Energy (“Puget”), the largest electric and gas utility in Washington state with over 1.2 million customers, via a take-private transaction in 2007. This partnership similarly allowed Puget to execute its long-term growth strategy and accelerate its decarbonization efforts through financial investment.

CPP Investments' decision to pursue the Acquisition aligns with its long-term investment strategy, which includes investments in both conventional and renewable energy assets globally. As a long-term investor, CPP Investments will bring its sector expertise and long-term capital to support ALLETE's strong management team and its commitment to advancing a sustainable, clean-energy future while delivering safe, reliable, and affordable energy services to its customers. CPP Investments recognizes ALLETE's focus on safety, integrity, community engagement, and employee development, along with the quality ALLETE management team. CPP Investments prides itself on its responsible investment approach, which is centered on delivering value to its beneficiaries, and believes that the delivery of ALLETE's Sustainability-in-Action strategy<sup>9</sup> will generate substantial value both for ALLETE's customers and CPP Investments' contributors and beneficiaries.

## **2. Global Infrastructure Partners**

GIP is the trading name of Global Infrastructure Management, LLC, which was founded in 2006. GIP is a leading infrastructure investor that specializes in investing in, owning, and/or operating some of the largest and most complex assets across the energy, transport, digital infrastructure, and water and waste management sectors. GIP has approximately \$115 billion in assets under management and its portfolio companies employ over approximately 116,000 people, in each case as of March 31, 2024. GIP's focus on real infrastructure assets, combined with its deep proprietary origination network and comprehensive operational expertise, enables GIP to be responsible stewards of its investors' capital and to create positive economic impact for communities. Additionally, with decarbonization central to its investment thesis, GIP is well

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<sup>9</sup> See ALLETE, Inc., 2023 Corporate Sustainability Report: People. Planet. Prosperity. (2023), <https://allete.blob.core.windows.net/allete/Documents/Sustainability/ALE-Sustainability-Report.pdf> (appended to this Petition as Attachment H).

positioned to support the global energy transition and aspires to be one of the world's leading owners, developers, and operators of renewable energy assets. GIP capitalizes on its leadership in renewables, expertise in midstream and transport infrastructure, and strong relationships with business and government leaders to contribute efficiently to the world's decarbonization.

GIP's decision to pursue the Acquisition is directly tied to ALLETE's commitment to decarbonize its system while continuing to effectively serve its customers and communities. Equally important is the high quality of ALLETE's management team and employees, along with the company's established track record of delivering on its commitments to the energy transition and the customers and communities it serves.

GIP has a long track record of investment in the utility sector. Like CPP Investments, GIP's practice is to invest in infrastructure assets using common investment funds or similar investment structures that typically include three separate legal entities: the general partner, the limited partners, and the fund itself. This structure allows GIP to provide clear lines of ownership and control of the assets in which each fund invests. The fund's general partner typically has legal authority and control over the actions of the fund and has the responsibility to manage the fund according to governance documents and certain ethical obligations. The limited partner(s) of a fund are the entities (primarily) or individuals that invest their capital in the fund; they receive limited rights to participate in major decisions (such as liquidation of the fund), but do not have the ability to participate in the day-to-day decisions of such fund. Likewise, it is common for firms like GIP and CPP to use an investment structure that includes intermediate companies that may allow for variation in liability, taxation, and other important corporate characteristics that are independent of any particular investment or acquisition.

Earlier this year, GIP announced a transaction whereby BlackRock, Inc. will acquire 100 percent (100%) of the limited liability company interests of GIP (the “GIP/BlackRock Transaction”). After completion of this transaction, BlackRock will have an indirect interest in the general partnerships that control each of the GIP funds, but GIP will continue to be the fund manager. Thus, the strategic and day-to-day operations and activities of GIP, including the funds that are investing in ALLETE, will continue to be managed as they are now. The current GIP management team will continue to manage the key strategic direction, operations, and activities of the business (including decisions in respect of the GIP funds). The GIP/BlackRock Transaction is currently awaiting the last required regulatory approvals and is anticipated to close in the third quarter of 2024.

### **C. Description of the Acquisition**

As approved unanimously by the ALLETE Board of Directors,<sup>10</sup> and upon receipt of regulatory approvals,<sup>11</sup> the Acquisition will occur pursuant to the terms and conditions provided in the Agreement, a copy of which is provided as Attachment B to this Petition.

Under the Agreement, when the Acquisition closes, a wholly-owned subsidiary of CPP Investments will acquire, through Parent, 40 percent of the outstanding common stock of ALLETE. GIP will control its 60 percent ownership of Parent through two funds: Global Infrastructure Partners V (“GIP Fund V”)<sup>12</sup> and Tower Bridge Infrastructure Partners, L.P.

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<sup>10</sup> The Acquisition was unanimously approved by ALLETE’s Board of Directors on May 5, 2024; a copy of the relevant ALLETE Board of Directors resolutions is provided as Attachment C to this Petition.

<sup>11</sup> Required regulatory approvals are identified in Section V., *infra*.

<sup>12</sup> GIP Fund V has several limited partners in the form of funds that aggregate different classes of investors, including the current limited partners in Global Infrastructure Partners V-A/B, L.P., Global Infrastructure Partners V-C Intermediate, L.P., and Global Infrastructure Partners V-C2 Intermediate, L.P. These investor funds have only limited rights of the type described in Section II.B.2, above, and do not have the ability to exercise control over ALLETE.

(“Tower Bridge”),<sup>13</sup> both of which are managed by a GIP controlled affiliate as the general partner. The Acquisition will be accomplished via a reverse triangular merger. Parent has created a merger subsidiary, known as Alloy Merger Sub LLC (“Merger Sub”), which is an entity formed solely for the purpose of merging with ALLETE. At the time of closing, ALLETE will merge into Merger Sub, with ALLETE as the surviving entity. Current ALLETE shareholders will receive \$67.00 in cash per share.<sup>14</sup> By assuming ownership of all ALLETE shares, the ALLETE family of companies (including all assets and liabilities) will fall under shared ownership of the Partners, through the entities described above. ALLETE and SWL&P will not incur any additional debt in connection with the Acquisition. The overall transaction value is approximately \$6.2 billion, with approximately \$3.9 billion for ALLETE shares and approximately \$2.3 billion of assumed ALLETE debt.

After these actions, the surviving entity, ALLETE, will be a wholly-owned subsidiary of Parent. All of ALLETE’s current subsidiaries and operating divisions will continue to exist as they exist today, as depicted in Figure 1, above. Except for a new tax-sharing agreement among the Partners, ALLETE, and SWL&P, Commission approval of which will be sought in a separate docket after the Acquisition, there will be no changes to the affiliated interest relationships between the ALLETE entities as a result of the Acquisition. ALLETE will remain a standalone company and will have the same relationship with SWL&P that it has now.

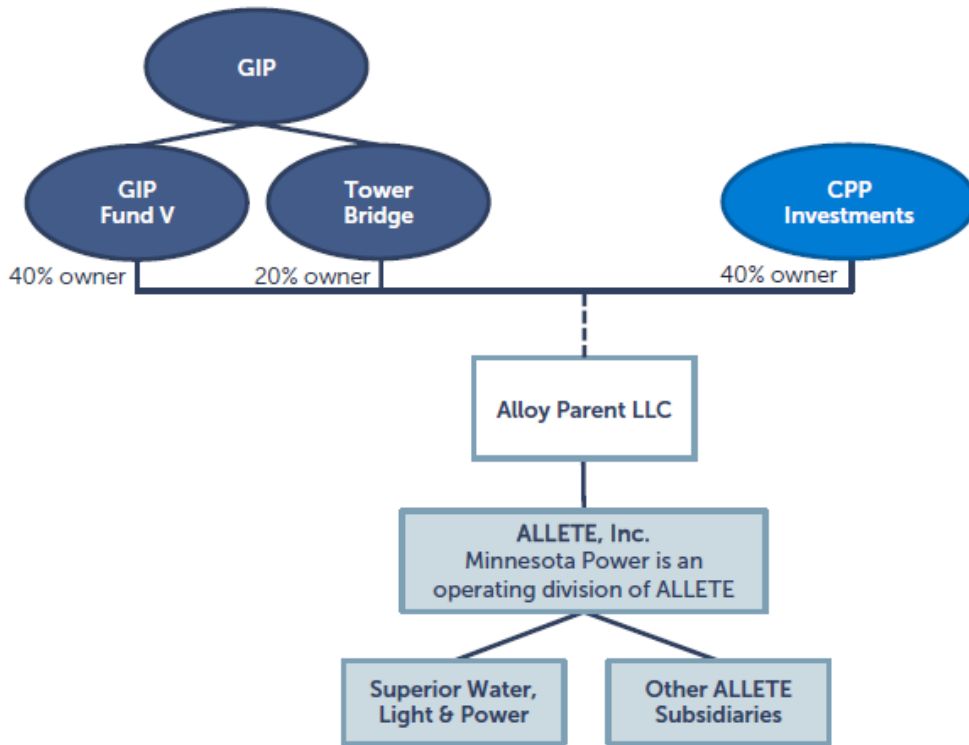
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<sup>13</sup> California Public Employees’ Retirement System (“CalPERS”) is the sole limited partner of Tower Bridge. CalPERS has only limited rights of the type described in Section II.B.2, above, and does not have the ability to exercise control over ALLETE.

<sup>14</sup> A copy of the Definitive Proxy Statement filed with the Securities and Exchange Commission (“SEC”) is included as Attachment D.

The post-closing structure of the combined entity, with SWL&P continuing in the same position as a subsidiary of ALLETE, is provided in Figure 2 below, and a more comprehensive organizational diagram is provided in Attachment A-2.

**Figure 2: Simplified Post-Acquisition Structure**



After the Acquisition, ALLETE will continue to have its own Board of Directors with fiduciary and oversight responsibilities. Further, at least one member of the ALLETE Board of Directors must be from Wisconsin, and the Board must have at least two independent directors. The chief executive officer of ALLETE, currently Bethany Owen, will be a member of the Board of Directors. Additionally, the operational management team at SWL&P will remain in place at closing of the Acquisition. ALLETE will also continue to secure debt as needed, and to receive credit ratings from rating agencies accordingly. SWL&P will continue to have the same relationship with ALLETE and Minnesota Power—governed by affiliated interest agreements

approved by the Commission—and will continue to be subject to the ongoing jurisdiction of the Commission (just as it is today). In short, very little will change after the Acquisition for SWL&P.

#### **D. Reasons for the Acquisition**

The energy industry is evolving rapidly, with the transition to more renewable sources of energy, transmission and distribution grid modernization, and customer needs and preferences driving change. Throughout SWL&P's and Minnesota Power's long history, the organizations have successfully navigated significant change by prioritizing innovation and creative approaches to the rapidly evolving world around them while never losing a focus on the unique customers and communities they serve. ALLETE is the largest investor in renewable energy of all publicly traded utilities in the U.S. relative to market capitalization. ALLETE has many more investments in renewable energy, carbon-reduction, and clean-energy enabling technologies ahead. To achieve its clean energy transition goals, significant capital investments are required. ALLETE believes that partnering with highly committed owners that share its values and are willing and able to dedicate resources to ALLETE and its Sustainability-in-Action strategy is the best path forward for ALLETE, its customers, communities, and employees.

ALLETE made the choice to partner with CPP Investments and GIP specifically. The Partners are highly regarded infrastructure investors with deep industry expertise, resources, and strong long-term outlooks. Together, they bring decades of experience investing in large-scale infrastructure businesses across sectors to support sustainable, long-term growth. Both Partners pride themselves on their responsible investment approach, which is centered on delivering long-term value to their organizations and the communities in which they operate. The Partners have a successful track record of long-term partnerships with infrastructure businesses and recognize the important role that ALLETE serves in the nation's energy future. ALLETE believes that partnering



with new highly committed owners to finance its ambitious strategy is the best path forward for the ALLETE organization, its customers, communities, and employees.

The Partners also share ALLETE and SWL&P's values of safety, integrity, planet, and people. As demonstrated by the extensive commitments set forth in the Merger Agreement, the Partners recognize the importance of ALLETE and SWL&P's employees and their ties to the communities they serve and in which they operate. The Partners share ALLETE's support for a collaborative stakeholder approach which will continue going forward. They further share ALLETE's view that customers are at the center of its business, and that serving customers and meeting their needs is paramount—consistent with ALLETE and SWL&P's long utility histories as public utilities.

#### **E. Commitments to Wisconsin and the Superior Community**

Under the terms of the Agreement governing the Acquisition, included as Attachment B to the Petition, ALLETE and the Partners have made several commitments and agreements:

**Headquarters:** ALLETE will continue to be headquartered in Duluth, Minnesota, and SWL&P will continue to be headquartered in Superior, Wisconsin.

**Names:** ALLETE will continue to be known as "ALLETE," and SWL&P will continue to be known as "Superior Water, Light & Power Company."

**Company Employees:** For the two-year period following the Acquisition, each ALLETE nonunion employee who continues employment with ALLETE as of the effective time of the Acquisition will retain extensive protections, including the same or better employment position in the same location and wages, incentives, benefits, and employee protections no less favorable than those available to the employee immediately prior to the Acquisition. These employees are also provided with other customary employee protections, such as recognition of pre-Acquisition

service with ALLETE for benefit plan purposes, waiver of pre-existing condition limitations under post-Acquisition health plans, and credit for deductibles and co-payments under post-closing plans for the year of the Acquisition.

ALLETE will also continue to honor its union contracts after the Acquisition closes. This includes terms of compensation, benefits, and work conditions, among other provisions of any applicable union contract. ALLETE will satisfy all notice, information, consultation, bargaining or consent obligations owed to any labor union, labor organization, or employee representative representing any union employee in connection with the transactions contemplated by the Acquisition.<sup>15</sup>

Additionally, none of ALLETE, SWL&P, or the Partners intend to change long-standing practices with regard to contractors. For example, ALLETE and SWL&P routinely require contractors and subcontractors to pay their workers the prevailing wage as evidenced by local collective bargaining agreements, and to ascertain local conditions, work rules, and union jurisdiction. SWL&P also seeks to deploy union labor wherever reasonably possible.

**Continuing Operations and Customer Service:** SWL&P anticipates continuing to operate in its current form, providing the same services and programs to water, electric, and natural gas customers within its service territory that are currently provided.

**Maintaining Current Management:** ALLETE will agree to maintain the current senior management team, subject to changes to account for voluntary departures or terminations in the ordinary course. ALLETE and the Partners expect that the current ALLETE management team (including the management team of SWL&P) will continue to operate the utility in the normal course, consistent with current management functions, and that the current management team will

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<sup>15</sup> Additional information related to employee protections are set forth in the Agreement.

continue to lead ALLETE and remain as the primary points of contact for customers, regulators, and other stakeholders. Key regulatory contacts at SWL&P are not expected to change. As noted above, SWL&P will continue to have the same relationship with the Commission that it has now.

**Local/Independent Directors:** At least one member of the ALLETE Board of Directors will be from Minnesota and at least one will be from Wisconsin, and two members of the board of directors will be independent directors. The chief executive officer of ALLETE, currently Bethany Owen,<sup>16</sup> will continue to be a member of the Board of Directors.

**Budgets:** Consistent with current Board of Directors roles and obligations, capital budgets, including material variances of such budgets for ALLETE as a whole, shall be approved by a majority of the Board of Directors of ALLETE.

**Community Commitments:** After the consummation of the Acquisition, ALLETE (and by extension, SWL&P) shall maintain historic levels of economic development and charitable contributions in service territories of ALLETE and its subsidiaries.

**Separateness:** The Commission is familiar with the affiliated interest agreements and arrangements between ALLETE and SWL&P that protect SWL&P's customers and provide appropriate governance for the entities under the ALLETE umbrella, including SWL&P. Except for updating the tax-sharing agreement to include the Parent, the Acquisition will not cause a change to those affiliate relationships. In addition to these significant protections, ALLETE and SWL&P will agree to certain corporate separateness (i.e., "ring fencing") commitments with respect to Parent and other GIP/PPP Investments entities,<sup>17</sup> including:

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<sup>16</sup> See prior commitment with respect to retention of current management.

<sup>17</sup> The Agreement does not preclude ALLETE or its subsidiaries from requesting to a governmental entity that corporate separateness conditions set out in the Agreement be limited to a portion of ALLETE, or to certain of its subsidiaries or affiliates. ALLETE and SWL&P anticipate the corporate separateness conditions agreed to in this proceeding will be limited to those relevant to SWL&P, and, after the

- SWL&P, ALLETE, and Parent will maintain separate books and records, agree to prohibitions against loans or pledges of assets of ALLETE without regulatory approval, and generally hold ALLETE and SWL&P harmless from any business and financial risk exposures associated with Parent or its subsidiaries or affiliates;
- ALLETE and Parent will provide regulators with appropriate access to ALLETE's and SWL&P's books and records; appropriate access to ALLETE's and SWL&P's financial information and filings; access to and audit rights with respect to the documents supporting Parent's costs that may be allocable to ALLETE; and appropriate access to ALLETE's board minutes, audit reports, and information provided to or by credit rating agencies pertaining to ALLETE;
- ALLETE and Parent will maintain separate debt and stock, if any;
- Neither ALLETE (including SWL&P) nor Parent shall provide direct credit support to a credit facility of the other through a guarantee, and none of ALLETE's credit facilities shall include any cross-default provision whereby a default under any of Parent's credit facilities would cause a default under any of ALLETE's credit facilities;
- ALLETE will maintain its own corporate and debt credit rating, and its own ratings for long-term debt;
- ALLETE will not make or declare a distribution, unless on the date of such distribution ALLETE's corporate credit/issuer rating is at least investment grade (or its then equivalent) with S&P, Moody's or Fitch Ratings, unless ALLETE first files with and receives authorization from the applicable regulator for such distribution;
- Parent may pledge its ownership of ALLETE for the benefit of Parent's lenders unless prohibited by the applicable regulatory authority, but may not pledge to Parent's lenders the assets of ALLETE unless specifically allowed by the applicable regulatory authority;
- ALLETE will not transfer any asset or facility of ALLETE to Parent or any subsidiary or affiliate of Parent (excluding any ALLETE subsidiary) without first obtaining authorization from the applicable regulatory authority, except for those transfers that do not require regulatory approval under applicable laws;
- ALLETE will be structured such that, in the event of a bankruptcy of Parent or any of its subsidiaries or affiliates (other than ALLETE and its subsidiaries), a bankruptcy court will not be expected to consolidate the assets and liabilities of ALLETE with Parent or any Parent entity, and, except as may be required by law, any costs incurred as a result of bankruptcy of Parent or any Parent entity cannot be sought from ALLETE; and

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closing, ALLETE and SWL&P are permitted, under the Agreement, to request the Commission alter those conditions.

- Parent officers and directors that are employed by entities in the direct organizational structure between ALLETE and the Parents shall not be permitted to hold senior management positions with ALLETE.

**No Acquisition Premium:** Neither ALLETE nor SWL&P will attempt to recover the acquisition premium of the transactions contemplated by the Acquisition from their utility customers.

**Transaction Costs:** Neither ALLETE nor SWL&P will attempt to recover the costs of executing the transactions contemplated by the Acquisition from their utility customers. This includes, among other things, legal fees, goodwill, regulatory filing costs, and other costs historically recognized as transaction costs. ALLETE and SWL&P will likewise not deploy “push down accounting” (i.e., adjustment of SWL&P’s asset or liability values or books and records to reflect the purchase price) with respect to the Acquisition.<sup>18</sup>

**Transition Costs:** Neither ALLETE nor SWL&P will attempt to recover transition costs, if any, of the transactions contemplated by the Acquisition from their utility customers, except to the extent the transition costs produce savings (and then only when and if savings materialize).

**Debt Maintenance:** ALLETE and SWL&P will use commercially reasonable efforts to maintain their debt/equity ratios and their corporate and facility ratings in accordance with regulatory requirements.

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<sup>18</sup> SWL&P maintains its books in accordance with the Commission’s Uniform System of Accounts and does not intend to adjust the historical cost values of its assets and liabilities, record any goodwill, nor include costs in its cost of service that are related to the Acquisition. In accordance with Generally Accepted Accounting Principles in the United States, Parent will account for the transaction using the acquisition (or purchase) method of accounting for business combinations. The related purchase accounting journal entries, including the creation of goodwill, will be recorded at Parent and will not be pushed down to SWL&P or ALLETE, resulting in no changes to books related to the purchase accounting journal entries. Transaction-related costs incurred by ALLETE will be recorded in Account 426.5, Other Deductions and not included in SWL&P’s cost of service.

**Books and Records/Reporting Transparency:** SWL&P will continue to provide the Commission access to SWL&P's books, records, and information.

In addition, ALLETE has compiled a comparison of SEC and other investor-related reporting that ALLETE currently undertakes to the comparable information that will be available to regulators after the Acquisition. This comparison is appended to this Petition as Attachment E. As this comparison illustrates, the potentially relevant information available to the Commission post-Acquisition will be substantially similar to what is available now—just in slightly different forms. SWL&P will also continue to make all required filings with the Commission. Though not required, ALLETE will continue to publish its Corporate Sustainability Report, which contains information related to environmental, social, and governance issues, including the Company's efforts to encourage diversity, equity, and inclusion efforts.

**Rates for Utility Customers:** Following the close of the Acquisition, SWL&P will continue to be regulated by the Commission. The Acquisition is not expected to impact retail rates for SWL&P customers, and SWL&P is not seeking any changes in its pending rate case related to the Acquisition.

### **III. REQUEST FOR DECLARATORY RULINGS**

Pursuant to Wis. Stat. § 227.41 and Wis. Admin. Code § PSC 2.07, SWL&P hereby petitions the Commission to issue two declaratory rulings in this proceeding. *First*, SWL&P requests a finding that the Acquisition does not require Commission approval under WUHCA, Wis. Stat. § 196.795, including WUHCA's takeover provision (Wis. Stat. § 196.795(3)). *Second*,

SWL&P requests a finding that ALLETE and the holding company system resulting from the transaction continues to be exempt from WUHCA pursuant to Wis. Stat. § 196.795(8)(a).

SWL&P requests these rulings based on the statements of fact alleged in the balance of this Petition, including its attachments, all of which are incorporated by reference herein. A declaratory ruling is appropriate to provide the Joint Applicants and the resulting holding company system with clarity as to the application of WUHCA, Wis. Stat. § 196.795, to the Acquisition. The declaratory ruling shall be binding upon the Joint Applicants and the resulting holding company system.<sup>19</sup>

**A. The Acquisition Does Not Require Commission Approval Under WUHCA Because ALLETE is Exempt.**

SWL&P first requests that the Commission issue a declaratory ruling that no approval is required for the Acquisition to proceed because ALLETE is exempt from WUHCA.

ALLETE meets the definition of a “holding company” under the Act because it is the parent of SWL&P, a Wisconsin public utility. WUHCA defines “holding company,” in relevant part, as “[a]ny company which, in any chain of successive ownership, directly or indirectly as a beneficial owner, owns, controls or holds 5 percent or more of the outstanding voting securities of a public utility, with the unconditional power to vote such securities.”<sup>20</sup> Because there is no dispute that SWL&P is wholly owned by ALLETE, it meets the definition of a holding company under WUHCA.

Despite meeting the definition of “holding company,” ALLETE is not, and has not been, subject to regulation under WUHCA pursuant to the “grandfathering” exemption in Wis. Stat. § 196.795(8)(a). That subsection provides that WUHCA, in its entirety, “does not apply to any

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<sup>19</sup> Addresses are set forth on the signature page to this Petition.

<sup>20</sup> Wis. Stat. § 196.795(1)(h).

holding company which was organized or created before November 28, 1985, and which was not organized or created by or at the direction of a public utility.”<sup>21</sup> As defined in Chapter 196, “public utility” means a regulated Wisconsin public utility.<sup>22</sup>

The entity known today as ALLETE was incorporated under the laws of the State of Minnesota in 1906 as Duluth-Edison Electric Company—well before the relevant WUHCA grandfathering date of November 28, 1985. Moreover, ALLETE was not created at the direction of a regulated Wisconsin public utility. The only Wisconsin public utility in the ALLETE holding company system is SWL&P, and SWL&P was not acquired by ALLETE until the 1940s. Thus, ALLETE was not created at the direction of SWL&P (or any other “public utility”) and is an exempt holding company under WUHCA. The Commission has previously recognized this, identifying ALLETE and Xcel Energy Inc. as exempt, “Non-Wisconsin Holding Company Systems” in biennial reports to the Wisconsin Legislature.<sup>23</sup>

As a result of ALLETE’s exemption from the Act, none of WUHCA’s provisions apply to the ALLETE holding company system, including the takeover provision (Wis. Stat. § 196.795(3)).

Separate and apart from the “grandfathering” exemption in subsection (8)(a) of the Act, the takeover provision also includes an additional exemption relevant here. Subsection (3) provides that the requirement for approval of a takeover “does not apply to the taking, holding or acquiring

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<sup>21</sup> See Wis. Stat. § 196.795(8)(a) (“This section does not apply to any holding company which was organized or created before November 28, 1985, and which was not organized or created by or at the direction of a public utility.”) As used in this context “section” refers to the entire statutory section comprising WUHCA (Wis. Stat. § 196.795).

<sup>22</sup> See *id.* § 196.01(5) (defining “public utility,” in relevant part, as “every corporation, company, individual, association, their lessees, trustees or receivers appointed by any court, and every sanitary district, town, village or city that may own, operate, manage or control any toll bridge or all or any part of a plant or equipment, within the state, for the production, transmission, delivery or furnishing of heat, light, water or power either directly or indirectly to or for the public”).

<sup>23</sup> See, e.g., Pub. Serv. Comm’n of Wis., Report to the Legislature on Operations of Wisconsin Public Utility Holdings Companies for 2023, at 11-12 (May 4, 2023) (PSC REF#: 467411) (hereinafter, “2023 PSCW Holding Company Report”).



of the voting securities of any holding company existing before November 28, 1985, if such holding company is a company which provides public utility service.”

The Commission has previously interpreted subsection (3) as *conferring* authority to approve the takeover of an otherwise exempt pre-1985 holding company (i.e., one that is not itself a public utility) despite the plain language of subsection (8)(a).<sup>24</sup> This interpretation is in error. In language that could not be clearer, a pre-1985 holding company not formed at the direction of a Wisconsin public utility is exempt from the Act *in its entirety*. The exception from takeover approval under subsection (3) applies to holding companies *that are not otherwise exempt under subsection (8)(a)*, namely pre-1985 holding companies that are themselves public utilities and were, by definition, formed at the direction of public utilities. Interpreting subsection (3) as conferring Commission jurisdiction over holding companies that are wholly exempt from the Act under subsection (8)(a) is contrary to plain statutory language and the legislative intent to exclude “[t]he traditional ‘old’ holding companies” from the Act.<sup>25</sup> Properly construed, the takeover approval under subsection (3) applies only to holding companies that are (1) not otherwise exempt under subsection (8)(a) and (2) do not themselves provide public utility service; namely, holding companies with public utility subsidiaries formed *after* 1985. Stated differently, the exception from subsection (3) applies to holding companies that are *not* otherwise exempt under subsection (8)(a) and *do* provide public utility service.

Alternatively, the Acquisition is exempt from approval under subsection (3) because ALLETE provides “public utility service.” Notably, the legislature did not limit this exception to

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<sup>24</sup> Final Decision at fn. 2, *NewPage Holding Corp.*, Docket 1330-DR-101 (Dec. 11, 2007), 2007 WL 4632141 (“However, SENA’s exemption under sub. (8) does not exempt NewPage from the requirement of sub. (3), because SENA does not ‘provide public utility service.’”).

<sup>25</sup> See J. Robert Malko & George R. Edgar, *Energy Utility Diversification: Its Status in Wisconsin*, Public Utilities Fortnightly (Aug. 7, 1986) at p. 22 (“Malko & Edgar”). Mr. Edgar was a sitting PSCW commissioner when this article was published.

holding companies formed by a “public utility,” which by definition can only mean a Wisconsin public utility.<sup>26</sup> Therefore, the legislature must have meant “public utility service” in its broader sense and not limited to the service provided by a Wisconsin public utility, such as a holding company like ALLETE that provides service as a public utility in another state. Construing “public utility service” more broadly would be consistent with the Commission’s approach in *Joint Application of Fortis Inc., ITC Holdings Corp., and ITC Midwest LLC, for Approval of a Holding Company Acquisition*, Docket 9400-YO-101 (Oct. 6, 2016). There, the Commission broadly interpreted the terms “eligible asset” and “foreign affiliate” under subsection (6m) of the Act to allow non-U.S. entities to acquire a Wisconsin transmission company.<sup>27</sup>

Based on the foregoing, SWL&P respectfully requests a declaratory ruling that no approval under WUHCA is required for ALLETE to proceed with the Acquisition. Issuing such a ruling would be consistent with a declaratory ruling issued by the Commission in 2000 relating to a transaction involving another Wisconsin public utility, Consolidated Water Power Company (“CWP”) in *Petition of Consolidated Papers Inc., and Consolidated Water Power Company, Stora Enso Oyv, and Stora Enso Acquisition, Inc., for Declaratory Ruling Regarding the Exemption of Stora Enso Consolidated Papers From Regulation as a Holding Company Pursuant to Wis. Stat. § 196.795(8)*, Docket No. 1330-DR-100 (hereinafter, “*Consolidated Papers*”). In that case, the Commission issued a declaratory ruling concerning the proposed merger of Consolidated Papers, Inc. (“CPI”), the corporate parent of CWP (a regulated public utility), into Stora Enso Consolidated Papers, Inc. (“Stora Enso”).<sup>28</sup> The Commission “determined that the transactions resulting in the

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<sup>26</sup> Wis. Stat. § 196.01(5).

<sup>27</sup> Final Decision at 24-35, *Joint Application of Fortis Inc., ITC Holdings Corp., and ITC Midwest LLC, for Approval of a Holding Company Acquisition*, Docket 9400-YO-101 (Oct. 6, 2016).

<sup>28</sup> Order, *Petition of Consolidated Papers Inc., and Consolidated Water Power Company, Stora Enso Oyv, and Stora Enso Acquisition, Inc., for Declaratory Ruling Regarding the Exemption of Stora Enso*

merger of CPI into Stora Enso do not require any prior and subsequent Commission approval” and that Stora Enso succeeded to CPI’s grandfathering exemption under WUHCA.<sup>29</sup>

As in *Consolidated Papers*, ALLETE’s proposed transaction involves the acquisition of an exempt holding company and first-tier parent of a Wisconsin-regulated public utility. Also as in *Consolidated Papers*, the Acquisition will be accomplished via a merger, with the present ALLETE holding company emerging from the transaction as a subsidiary of an entity owned and controlled by a third party (here, the Partners). As such, the Commission should accord the Acquisition the same treatment and issue a declaratory ruling confirming that no approval is required under WUHCA.

**B. ALLETE and the Holding Company System Resulting from the Acquisition  
Retain an Exemption from WUHCA Under Wis. Stat. § 196.795(8)(a).**

The Joint Applicants also request that the Commission conclude that ALLETE and the holding company system resulting from the Acquisition succeed to ALLETE’s existing exemption from WUHCA under Wis. Stat. § 196.795(8)(a).

On multiple occasions, the Commission has held that the merger or acquisition of an exempt holding company does not disturb the holding company’s “grandfathering” exemption under WUHCA. The same is true here. ALLETE, the existing WUHCA-exempt holding company, will continue to exist after the Acquisition. The Acquisition only affects upstream ownership of ALLETE; it does not alter ALLETE or its downstream subsidiaries, such as SWL&P.

As discussed above, in *Consolidated Papers*, a WUHCA-exempt holding company, CPI, merged into Stora Enso.<sup>30</sup> The Commission determined that Stora Enso “succeeds to CPI’s

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*Consolidated Papers From Regulation as a Holding Company Pursuant to Wis. Stat. § 196.795(8)*, Docket No. 1330-DR-100, 2000 WL 36565227 (Aug. 1, 2000).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

exemption under Wis. Stat. ch. 196, pursuant to Wis. Stat. § 196.795(8) . . . .”<sup>31</sup> The Commission further concluded that Stora Enso is exempt from the asset cap provisions of Wis. Stat. § 196.795(6m)(b).<sup>32</sup>

Since then, the CWP holding company system has been party to various transactions involving entities upstream of the immediate corporate parent of CWP. Each time, the Commission has confirmed that CWP’s immediate parent retained its subsection (8)(a) exemption from the Act but has declined to rule whether and to what extent the exemption applies to the rest of the holding company system.

In 2007, the Commission approved the sale of all issued and outstanding stock of Stora Enso North America, Inc. (SENA, the successor corporation to CPI) to NewPage Holding Corporation (“NewPage”).<sup>33</sup> The Commission observed that the transaction did not result in any change to CWP’s outstanding securities, stating that “CWP’s common stock will not be sold, transferred, taken, acquired, exchanged or converted” and that all such stock would continue to be owned by SENA.<sup>34</sup> The Commission concluded that the transaction involved an acquisition governed by WUHCA’s takeover provision, Wis. Stat. § 196.795(3).<sup>35</sup> The Commission ultimately approved the transaction, subject to certain conditions, and determined that SENA maintained its exemption from WUHCA under Wis. Stat. § 196.795(8)(a), but declined to decide whether and to what extent the exemption applied to the rest of the holding company system.<sup>36</sup>

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> Final Decision, *In re: NewPage Holding Corporation*, Docket No. 1330-DR-101, 2007 WL 4632141 (Dec. 11, 2007) (the “2007 CWP Decision”).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

The Commission approved subsequent acquisitions of CWP's upstream parent companies in 2014 and 2022.<sup>37</sup> In both cases, the Commission approved the transaction under WUHCA's takeover provision (Wis. Stat. § 196.795(3)), subject to limited conditions.<sup>38</sup> The 2014 decision also contained an express conclusion that the CWP's immediate corporate parent remained exempt under WUHCA,<sup>39</sup> a finding that the Commission did not modify in its 2022 decision.<sup>40</sup> In both cases, the Commission continued to decline to decide the scope of the exemption.<sup>41</sup> But as a practical matter, since 2007 the Commission has regulated the CWP holding company system as generally exempt from the Act except for the specific WUHCA provisions imposed in the takeover approvals.

The 2000 merger of New Century Energies, Inc. with Northern States Power Company is also instructive. In that transaction, New Century Energies, Inc. and Northern States Power Company merged, with Northern States Power Company as the surviving entity.<sup>42</sup> Northern States Power Company then changed its name to Xcel Energy, Inc.<sup>43</sup> Because Northern States Power Company was organized prior to November 28, 1985 and was not organized or created at the direction of a public utility, the Commission has concluded that Xcel Energy, Inc. continues to be

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<sup>37</sup> Final Decision, at 1, 3-5, *Application of Consolidated Water Power Company for Approvals Associated with the Acquisition of its Corporate Parent, Version Corporation, by BillerudKorsnäs AB*, Docket No. 1330-EI-102 (Mar. 22, 2022) (PSC REF#: 433415) (the "2022 CWP Decision"); Final Decision, *Application of Consolidated Water Power Company for Approvals Associated with the Acquisition of its Corporate Parent, NewPage Corporation by Verso Paper Corporation*, Docket No. 1330-EI-100 (Apr. 3, 2014) (PSC REF#: 201584) (the "2014 CWP Decision").

<sup>38</sup> 2022 CWP Decision, at 8; 2014 CWP Decision, at 7.

<sup>39</sup> 2014 CWP Decision, at 5.

<sup>40</sup> See 2022 CWP Decision, at 6-7.

<sup>41</sup> 2014 CWP Decision at 7; 2022 CWP Decision at 7.

<sup>42</sup> New Century Energies, Inc. & Northern States Power Company, Amendment No. 4 to Form U-1 Application-Declaration Under the Public Utility Holding Company Act of 1935 (Aug. 16, 2000), <https://www.sec.gov/Archives/edgar/data/1004858/000089808000000290/0000898080-00-000290-0001.txt>

<sup>43</sup> *Id.*

exempt from WUHCA: “Since Xcel Energy’s predecessor NSP was incorporated under the laws of Minnesota prior to [November 28, 1985], it is exempt from Wis. Stat. § 196.795(8)(a).”<sup>44</sup>

Importantly, a Commission declaratory ruling holding that ALLETE and the holding company system resulting from the Acquisition retain an exemption from WUHCA will not diminish the Commission’s authority to regulate the holding company system—now or in the future. The Commission has found authority under Wis. Stat. § 196.795(11)(b) to impose on “exempt holding companies” reasonable terms, limitations, or conditions on any holding company which are consistent with certain requirements of WUHCA or “which relate to future investments by the holding company . . . .”<sup>45</sup>

#### IV. ALTERNATIVE REQUEST FOR APPROVALS

If the Commission declines to issue a ruling that the Acquisition is exempt from WUHCA, the Joint Applicants respectively request that the Commission issue various approvals as set forward in this Section IV.

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<sup>44</sup> 2023 PSCW Holding Company Report, *supra* note 23, at 12.

<sup>45</sup> See 2007 CWP Decision, construing Wis. Stat. § 196.795(11)(b). Indeed, notwithstanding Xcel Energy’s exemption from WUHCA, the Commission has applied “many of the Wisconsin holding company policies and requirements on Xcel Energy and [its Wisconsin public utility affiliate] NSPW, under Wis. Stat. § 196.795(11)(b).” 2023 PSCW Holding Company Report, *supra* note 23, at 13. However, the Commission has never squared its interpretation of subsection (11)(b) with the plain language of subsection (8)(a), which exempts a pre-1985 holding company not created at the direction of a public utility from the Act *in its entirety*. Subsection (11)(b) appears to have been intended to provide “retroactive authorization for four utility holding companies, including WICOR, *which had organized in the early 1980s*.” Malko & Edgar at p. 22. Thus, construing subsections (8)(a) and (11)(b) *in para materia* leads to the conclusion that subsection (11)(b) does not apply to a holding company exempt under subsection (8)(a).

**A. Approval of the Takeover of a Holding Company Under WUHCA – Wis Stat.  
§ 196.795(3)**

The Joint Applicants request that the Acquisition be approved as a “takeover” of a holding company pursuant to Wis. Stat. § 196.795(3). As discussed below, the Acquisition is in the best interests of utility consumers, investors, and the general public, and should therefore be approved.

WUHCA provides that no person may “take, hold or acquire, directly or indirectly, more than 10 percent of the outstanding voting securities of a holding company, with the unconditional power to vote those securities” unless the Commission finds, after investigation and opportunity for hearing, that the transaction is in the “best interests of utility consumers, investors and the public.”<sup>46</sup> As detailed above, the Joint Applicants contend that WUHCA does not apply to the Acquisition because of ALLETE’s statutory exemption from WUHCA.

If the Commission concludes that the WUHCA takeover provision applies to the Acquisition, the Acquisition meets the best-interests standard and should be approved because it will produce numerous benefits to utility consumers, investors, and the public. The Commission has held that approval under the best-interests standard requires a finding that some affirmative benefits will result from the transaction.<sup>47</sup> Those benefits must inure to each of the relevant stakeholders (utility consumers, investors, and the general public) independently and not just in the aggregate.<sup>48</sup> The magnitude, certainty, and timing of prospective benefits are evaluated on a case-by-case basis, though the Commission has “typically conditioned its approval of holding

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<sup>46</sup> Wis. Stat. § 196.795(3).

<sup>47</sup> Final Decision, at 19, *Joint Application of Fortis, Inc., ITC Holdings Corp., and ITC Midwest LLC for Approval of a Holding Company Acquisition*, Docket No. 9400-YO-101 (Oct. 6, 2016) (PSC REF# 292924).

<sup>48</sup> *Id.*

company transactions in a manner such that there was some degree of certainty in the benefits for utility ratepayers and the public.”<sup>49</sup>

The Acquisition is expected to result in near-term and long-term benefits to utility consumers, investors, and the general public. With respect to utility consumers, and SWL&P’s customers specifically, the Acquisition will ensure that SWL&P continues to benefit from an affiliation with a strong and innovative utility holding company. As noted above, a principal goal of ALLETE’s “Sustainability-in-Action” strategy is to enhance ALLETE’s commitment to provide affordable, reliable, and increasingly clean energy to its customers. Fully realizing the potential benefits of the “Sustainability-in-Action” approach requires adequate access to capital, a key opportunity presented by partnering with CPP Investments and GIP.

Along similar lines, though the Joint Applicants do not expect that the Acquisition will have an impact on rates for utility customers or materially affect other SWL&P matters pending before the Commission, it is expected that the Acquisition will result in a financially stronger ALLETE. Access to capital from new sources or on more favorable terms than currently available to ALLETE is likely to produce long-term benefits through access to lower cost capital, which benefits, when realized, will be passed on to consumers.

Finally, for CPP Investments and GIP, as investors, the Acquisition represents a significant opportunity to partner with an organization (ALLETE) that is aligned with their respective investment approaches and values and is well-positioned for future growth and success, as discussed above.

The general public is expected to benefit from the Acquisition. Access to additional capital is necessary for ALLETE to realize its sustainability and decarbonization goals. The Acquisition

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<sup>49</sup> *Id.*



will enhance ALLETE’s ability to drive its transition to cost-effective, renewable sources of energy, a goal that is consistent with Wisconsin’s state energy policy, as set forth in Wis. Stat. § 1.12, and Governor Evers’ State of Wisconsin Clean Energy Plan.<sup>50</sup> The Acquisition will also provide ALLETE with access to the Partners’ network of contacts and energy industry knowledge and expertise. Additionally, SWL&P will maintain its headquarters in Superior, Wisconsin, and ALLETE will maintain its corporate headquarters in Duluth, Minnesota. This will ensure that the economic value brought by these entities’ presence in the greater northwest Wisconsin/northeast Minnesota region will continue without interruption or abatement after the Acquisition is complete.

### **B. Other Approvals**

The Joint Applicants include in this Petition a blanket request for all Commission approvals necessary to consummate the Acquisition. However, as discussed in greater detail below, the Joint Applicants do not believe that the Acquisition constitutes a “reorganization of [a] public utility” requiring PSCW approval under Wis. Stat. § 196.79, or results in the “formation of a holding company” requiring a Certificate of Approval under Wis. Stat. § 196.795(2). Similarly, approval of new or modified affiliated interest agreements under Wis. Stat. § 196.52 is not sought in this Petition.

**Approval of Reorganization Under Wis. Stat. § 196.79:** Wis. Stat. § 196.79 requires Commission approval for any “reorganization of any public utility.”<sup>51</sup> The Commission may not approve any reorganization without finding that such reorganization is consistent with the public

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<sup>50</sup> State of Wis., Dep’t of Admin., Off. of Sustainability & Clean Energy, Clean Energy Plan (April 2022), <https://osce.wi.gov/Documents/SOW-CleanEnergyPlan2022.pdf> (appended to this Petition as Attachment I).

<sup>51</sup> Wis. Stat. § 196.79.

interest.<sup>52</sup> While the term “reorganization” in this context is not defined, the Joint Applicants submit that no approval is required under Wis. Stat. § 196.79 because the Acquisition does not in any way impact the corporate organization of SWL&P, the relevant “public utility.” As the Commission reasoned in a 1993 decision, this provision “does not seem to be applicable where, as here, a reorganization does not alter the corporate legal form [of a utility] or adjust any creditor interest [in a utility] as in a traditional, insolvency-type reorganization.”<sup>53</sup> The same is true of the Acquisition, which involves the change in ownership of SWL&P’s corporate parent.

To the extent the Commission finds that approval as a “reorganization” is required, the Joint Applicants request that the Acquisition be approved because it is in the public interest. As discussed at length above, the Acquisition will produce substantial benefits and meets the more stringent best-interests standard of the takeover statute. Accordingly, to the extent required, the Acquisition should be determined to be in the public interest and approved as a reorganization pursuant to Wis. Stat. § 196.79 for all of the same reasons.

**Formation of a Holding Company:** The Joint Applicants request that the Commission find that the Acquisition does not result in the formation of a holding company requiring approval under Wis. Stat. § 196.795(2).

“No person may form a holding company unless the person has received a certificate of approval from the commission . . . .”<sup>54</sup> Under WUHCA, “form a holding company” means, in relevant part, “[a]s a beneficial owner, to take, hold or acquire 5 percent or more of the outstanding

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<sup>52</sup> *Id.*

<sup>53</sup> Further Findings of Fact, Conclusions of Law and Final Order Upon Reopening, *GTE North Incorporated*, Docket 2180-AT-111, 1993 WL 599082 (Dec. 23, 1993).

<sup>54</sup> Wis. Stat. § 196.795(2)(a).

voting securities of a public utility, other than a transmission company, with the unconditional power to vote those securities.”<sup>55</sup>

The Acquisition does not result in Parent or any upstream entities that facilitate the Acquisition forming a holding company. In contrast to WUHCA’s takeover provision, which requires Commission approval to “directly or indirectly” take, hold, or acquire more than 10 percent of the outstanding voting securities of a *holding company*, a holding company is formed only when one directly “take[s], hold[s], or acquire[s]” the voting securities of a regulated *Wisconsin public utility*. Here, the Acquisition will not change the direct ownership of SWL&P—ALLETE will continue to exist and will continue to hold all shares of SWL&P stock. Before and after the Acquisition, ALLETE will have the unconditional power to vote the shares of SWL&P, and ALLETE will continue to receive the economic gains or losses of SWL&P.

Finding that the Acquisition does not result in the formation of a new holding company—but rather the takeover of an existing holding company—makes sense in light of WUHCA’s overall structure. As discussed above, separate subsections of WUHCA regulate the *formation* of holding companies (subsection (2)) and the *takeover* of holding companies (subsection (3)).<sup>56</sup> If the acquisition of an interest in an existing, upstream holding company (as here) required “formation” approval under subsection (2), there would be no reason to create a separate statutory provision regulating the “taking, holding, or acquiring” of existing holding companies.<sup>57</sup> To be clear, every takeover of a Wisconsin holding company necessarily involves the formation of one or more new holding companies of the public utility involved; namely the entity acquiring the holding company and the other entities in the chain of ownership of the resulting holding company

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<sup>55</sup> *Id.* § 196.795(1)(g).

<sup>56</sup> Compare Wis. Stat. § 196.795(2) to Wis. Stat. § 196.795(3).

<sup>57</sup> See Wis. Stat. § 196.795(3).

system. Given that, if the Legislature had intended for takeovers to be approved as “formations” then there would have been no purpose served by creating a separate approval for the takeovers. Consistent with principles of statutory interpretation under Wisconsin law, this construction of WUHCA harmonizes subsection (2) and subsection (3) and ensures that both subsections are given independent meaning.<sup>58</sup>

**Affiliated Interests:** Wis. Stat. § 196.52 requires Commission approval of affiliated interest agreements in certain situations. Here, SWL&P has a number of existing affiliated interest agreements with its parent, ALLETE. Because the Acquisition occurs upstream of ALLETE and will not result in new affiliated interest agreements, there are no new affiliated interest agreements arising from the Acquisition except for a new tax-sharing agreement between ALLETE and SWL&P. The tax-sharing agreement is anticipated to be effective after the closing of the Acquisition, and prior approval of the tax-sharing agreement will be sought from the Commission pursuant to a separate affiliated-interest filing. Accordingly, the Joint Applicants do not seek any approvals under Wis. Stat. § 196.52 in this docket.

## V. OTHER STATE AND FEDERAL APPROVALS REQUIRED

The Acquisition is subject to approval by the Federal Energy Regulatory Commission (“FERC”), the Minnesota Public Utilities Commission (“MPUC”), and other federal regulatory bodies. ALLETE and/or the Joint Applicants have filed applications for approval of the Acquisition with FERC and MPUC. The Joint Applicants agree to notify the Commission regarding the outcome of the FERC and MPUC proceedings. A complete listing of regulatory

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<sup>58</sup> See *State ex rel. Kalal v. Circuit Ct. for Dane Cty.*, 2004 WI 58, ¶ 46, 681 N.W.2d 110, 124 (“Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.”)

approvals associated with the Acquisition is included in the Definitive Proxy Statement, included herewith as Attachment D.

## **VI. RELIEF REQUESTED**

For all of the reasons discussed herein, SWL&P respectfully requests that the Commission issue declaratory rulings that (a) the Acquisition does not require Commission approval under WUHCA, including WUHCA's takeover provision (Wis. Stat. § 196.795(3)) and (b) ALLETE and the holding company system resulting from the Acquisition continue to be exempt from WUHCA.

In the Alternative, and subject to the commitments contained herein, the Joint Applicants request that the Commission issue all necessary consents, authorizations, approvals, and rulings within its jurisdiction.

Respectfully submitted this 19th day of July, 2024.

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