

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of a Revised Petition by
Minnesota Power for a Competitive Rate
for Energy-Intensive Trade-Exposed
(EITE) Customers and an EITE Cost
Recovery Rider

Large Power Intervenors,¹

Petitioners,

vs.

The Minnesota Public Utilities
Commission,

Respondent.

**PETITION FOR WRIT
OF CERTIORARI**

COURT OF APPEALS NO. _____

**MINNESOTA PUBLIC UTILITIES
DOCKET NOS. E-015/M-16-564; E-
015/GR-16-664² & E-015/M-15-984
(renumbered E-015/M-16-564)**

**DATE OF DECISIONS:
JANUARY 2, 2018 (initial Order
denying reconsideration)**

**SEPTEMBER 7, 2017 (verbal Order)
and OCTOBER 13, 2017 (written Order
excluding rider revenue from 2016
baseline calculation and setting
parameters to identify exempt
customers)**

**MARCH 9, 2017 (verbal Order) and
APRIL 20, 2017 (written Order
authorizing cost recovery with
conditions, as such Order was**

¹ The Large Power Intervenors are an *ad hoc* consortium of large industrial customers of Minnesota Power (a regulated utility), consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation, each meeting the definition of energy-intensive trade-exposed (“EITE”) customers under Minn. Stat. § 216B.1696.

² The Commission’s October 13, 2017, Order was cross-filed in Minnesota Public Utilities Docket Number E-015/GR-16-664. This Docket Number is only listed to avoid waiver of any portion of the appeal.

subsequently interpreted on September 7 and October 13, 2017 in verbal and written Orders)

SEPTEMBER 15, 2016 (verbal Order) and DECEMBER 21, 2016 (written Order approving EITE [energy-intensive trade-exposed] rate, establishing cost recovery proceeding, and requiring additional filings)

MARCH 23, 2016 (Order denying without prejudice Minnesota Power's November 13, 2015, Petition for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider)

DATE AND DESCRIPTION OF EVENT TRIGGERING APPEAL TIME:

Electronic service of denial of petition for reconsideration on January 2, 2018

TO: The Court of Appeals of the State of Minnesota:

The above-named Large Power Intervenors Petitioners, mining and paper and pulp companies that, during normal operations, contribute \$5 billion to the Minnesota economy on an annual basis, directly and indirectly support over 13,000 jobs with a collective annual payroll of more than \$435 million, and pay more than \$155 million annually in State taxes, hereby petition the Court of Appeals for a Writ of Certiorari to review a series of decisions of the Minnesota Public Utilities Commission, culminating in the Commission's January 2, 2018, "Initial Order Denying Reconsideration," upon the grounds that the Commission has consistently erred in its interpretation of [Minn. Stat.](#)

[§ 216B.1696](#) (the “EITE statute”).

The Legislature enacted the [EITE statute](#) on June 13, 2015, with the express Legislative intent to achieve competitive electric rates for energy-intensive trade-exposed (“EITE”) customers of certain investor-owned electric utilities. Under the [EITE statute](#), the Commission is required to issue a final determination upon an EITE-rate application within 90 days of its filing by the utility and must approve an EITE rate schedule and corresponding EITE rate upon a finding of net benefit to the utility or the state. [Minn. Stat. § 216B.1696](#), subd. 2(b) and (c). Upon such approval, the utility shall create a separate account to track the difference in revenue between what would have been collected under the utility’s applicable standard tariff and the EITE rate schedule. [Minn. Stat. § 216B.1696](#), subd. 2(d). Subsequently, the Commission shall allow the utility to recover any costs, including reduced revenues, or refund any savings, including increased revenues, associated with providing service to an EITE customer, such that the EITE-rate impact is revenue neutral to the utility. *Id.* The [EITE statute](#) provides that the costs shall not be imposed upon, and the refunds shall not be payable to, the EITE customers nor low-income residential ratepayers who receive energy assistance from the low-income home energy assistance program (LIHEAP). *Id.* The [EITE statute](#) has not previously been interpreted by the Commission or any court.

In direct conflict with the [EITE statute](#), the Commission’s Orders have grafted onto the EITE-tariff a new increased-revenue mechanism, separate from the statutory tracker system, under which only certain utility customers (excluding EITE customers and low-income customers receiving LIHEAP assistance) receive payments from the

utility based on the EITE customers' excess net energy-purchase volumes compared to a year 2016 baseline not provided for in the statute. The net, and unlawful, effect of the Commission's extra-statutory action is a diversion of funds from the utility, ultimately resulting in increased rates for EITE customers and low-income customers receiving LIHEAP assistance.³ This additional mechanism is contrary to the express provisions of [Minn. Stat. § 216B.1696](#), which specifically prohibits the Commission from imposing the costs of the EITE credit on EITE customers and low-income LIHEAP recipients. The Commission's additional mechanism is further contrary to the express Legislative intent that "it is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers." [Minn. Stat. § 216B.1696](#), subd. 2(a). The Commission's action, under disguise of "interpretation" of the [EITE statute](#), causes the EITE customers to at least partially pay for the cost of the EITE credit approved by the Commission, in violation of the [EITE statute](#). This result is reflected, *inter alia*, in a January 31, 2018, [press release](#) in Minnesota Public Utilities Docket Number E-015/GR-16-664, in which the Commission advised that

The Commission's decisions in this case and prior cases will ensure that there will be no surcharges on customer bills related to the Energy Intensive Trade Exposed (EITE) rate discounts previously approved by the Commission.

Under the [EITE statute](#), this result is impossible, and shows how the Commission's extra-

³ The Petitioners will be filing a motion to supplement the record with proceedings from the Minnesota Power rate case pending before the Minnesota Public Utilities Commission, which case demonstrates the impact of the Commission's decisions in the EITE docket on EITE customers and low-income customers receiving LIHEAP assistance in the rate proceedings (Minnesota Public Utilities Docket Number E-015/GR-16-664).

statutory actions result in complicated cross-over actions in a rate case (Minnesota Public Utilities Docket Number E-015/GR-16-664) to achieve objectives contrary to [Minn. Stat. § 216B.1696](#), subd. 2(d), and directly contrary to the Legislature's intent.

Certiorari review is authorized by Minnesota Statutes § 216B.27, subds. 1, 2, and 5; § 216B.52, subd. 1; and § 14.63.

Filed herewith are copies of the January 2, 2018 Order (initial Order denying reconsideration); October 13, 2017 Order (written Order excluding rider revenue from 2016 baseline calculation and setting parameters to identify exempt customers); April 20, 2017 Order (written Order authorizing cost recovery with conditions, as such Order was subsequently interpreted on September 7 and October 13, 2017 in verbal and written Orders); December 21, 2016 Order (written Order approving EITE [energy-intensive trade-exposed] rate, establishing cost recovery proceeding, and requiring additional filings); and March 23, 2016 Order (Order denying without prejudice Minnesota Power's November 13, 2015, petition for a competitive rate for energy-intensive trade-exposed (EITE) customers and an EITE cost recovery rider).

Copies of the transcripts of the Commission's hearings for the following dates are included in the Commission's record: September 15, 2016; March 9, 2017; and September 7, 2017.

STOEL RIVES LLP

Dated: February 1, 2018

/s/ Marc A. Al

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**ATTORNEYS FOR THE LARGE
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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie J. Sieben	Commissioner
John A. Tuma	Commissioner

In the Matter of Minnesota Power's Revised
Petition for a Competitive Rate for Energy-
Intensive Trade-Exposed (EITE) Customers
and an EITE Cost Recovery Rider

ISSUE DATE: January 2, 2018

DOCKET NO. E-015/M-16-564

INITIAL ORDER DENYING
RECONSIDERATION

PROCEDURAL HISTORY

On October 13, 2017, the Commission issued its *Order Excluding Rider Revenue from 2016 Baseline Calculation*.

On November 2, Minnesota Power and the Large Power Intervenors¹ filed petitions for reconsideration of the October 13 order.

On November 13, the Minnesota Department of Commerce and the Office of the Attorney General filed answers opposing the petitions.

On December 14, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

The Commission has reviewed the entire record and the arguments of the parties.

Based upon this review, the Commission finds that the petitions do not raise new issues, do not point to new and relevant evidence, do not expose errors or ambiguities in the October 13, 2017 order, and do not otherwise persuade the Commission that it should rethink the decisions set forth in its order. The Commission will therefore deny the petitions for reconsideration.

The Commission also finds, however, that certain aspects of the petitions merit a fuller discussion. Therefore, this order will be followed, within 30 days, by a final order setting forth more fully the grounds on which the Commission is denying the petitions.

¹ The Large Power Intervenors are an ad hoc consortium of large industrial customers of Minnesota Power: ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation.

ORDER

1. Minnesota Power's and the Large Power Intervenors' petitions for reconsideration are denied.
2. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf

Daniel P. Wolf
Executive Secretary



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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange
Dan Lipschultz
Matthew Schuerger
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John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Minnesota Power's Revised
Petition for a Competitive Rate for Energy-
Intensive Trade-Exposed (EITE) Customers
and an EITE Cost Recovery Rider

ISSUE DATE: April 20, 2017

DOCKET NO. E-015/M-16-564

ORDER AUTHORIZING COST
RECOVERY WITH CONDITIONS

PROCEDURAL HISTORY

On June 30, 2016, Minnesota Power filed a revised petition to establish a competitive rate for energy-intensive trade-exposed (EITE) customers under Minn. Stat. § 216B.1696.¹

Section 216B.1696 allows utilities to propose alternative rate schedules designed to ensure competitive electric rates for EITE customers.² Minnesota Power proposed a rate schedule that would provide a usage-based "Energy Charge Credit" to EITE customers who meet certain conditions. The Company proposed to recover the cost of providing the credit through a surcharge on all other retail customers except those exempted from such recovery under the statute.³

On December 21, 2016, the Commission acted on Minnesota Power's revised petition, issuing an *Order Approving EITE Rate, Establishing Cost Recovery Proceeding, and Requiring Additional Filings*. The Commission found that the Company's proposed EITE rate schedule could be expected to yield a net benefit to the utility and therefore approved the rate schedule under Minn. Stat. § 216B.1696, subd. 2.

The Commission also ordered Minnesota Power to file rate-design proposals to recover the cost of the credits provided to EITE customers. And it directed Minnesota Power to file a revised communications plan addressing how the Company planned to notify ratepayers and local governing authorities of the surcharge it plans to impose on non-EITE customers.

¹ The revised petition addressed shortcomings in an earlier petition filed by the Company. *See In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-15-984, Order Denying Petition Without Prejudice (March 23, 2016).

² Minn. Stat. § 216B.1696, subd. 2.

³ EITE customers and recipients of energy assistance are exempted from paying for the cost of EITE credits. Minn. Stat. § 216B.1696, subd. 2(d).

On December 30, Minnesota Power made a compliance filing that included its cost-recovery proposal, several rate-design alternatives, and a revised communications plan.

On January 30, 2017, the following parties filed comments on Minnesota Power's EITE cost-recovery proposal:

- AARP
- Office of the Attorney General – Residential Utilities and Antitrust Division (OAG)
- Nine of Minnesota Power's large industrial customers (Large Power Intervenors)⁴
- Iron Mining Association of Minnesota
- Minnesota Department of Commerce (Department)
- Energy CENTS Coalition, Minnesota Citizens' Federation – Northeast, and the Citizens Utility Board of Minnesota (Consumer Advocates)

On February 2, Minnesota Power filed a response to the Department providing estimated bill impacts for non-EITE customers based on a fixed per-kilowatt-hour (kWh) surcharge.

By February 23, the following parties had filed reply comments:

- Large Power Intervenors
- Minnesota Power
- AARP
- Department

On March 1, Minnesota Power notified the Commission that it had chosen February 1, 2017, as the effective date for the EITE rate schedule.

On March 9, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

In this order, the Commission takes the following actions:

- authorizes Minnesota Power to collect a surcharge from non-EITE customers to recover the cost of providing credits to EITE customers;
- requires that Minnesota Power distribute the EITE surcharge as a uniform per-kWh charge applicable to all customer classes;

⁴ The Large Power Intervenors were ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation.

- directs the Company to refund to non-EITE customers any revenue increases resulting from increased sales to customers taking service under the EITE rate schedule;
- requires the Company to report back on its efforts to identify customers who may be exempt, based on income, from paying the EITE surcharge; and
- specifies the form and content of the notice that Minnesota Power must provide to non-EITE customers prior to collecting the surcharge.

The Commission will require Minnesota Power to make a compliance filing within 30 days setting forth the surcharge and refund mechanisms in detail.

II. Allocating Responsibility for the Cost of the EITE Rate Schedule

A. Introduction

Minnesota Power proposed assigning approximately 76 percent of the total EITE-discount cost to its Residential customer class, via one of two methods. Under the first method, each Residential customer would experience exactly a ten percent bill increase. Under the second method, the class as a whole would experience a ten percent increase, with individual customers seeing larger or smaller increases depending on their own electricity usage.

Minnesota Power proposed to recover the remaining cost from its General Service, Large Light & Power, and Municipal Pumping classes through a uniform per-kWh charge. These classes would see bill increases of 1.62–1.98 percent if EITE customers consume electricity at 2016 levels, or 4.55–5.53 percent if EITE customers achieve full production and consume a maximal amount of electricity.

The Company asserted that assigning the majority of the costs to its Residential customers was justified because the Residential class experienced a lower rate increase than the other classes in the Company's last rate case.

Minnesota Power presented several other cost-allocation alternatives, including options that would give the Residential class 5 or 8.5 percent increases. The Company's proposal (Option 1a or 1b) and the alternatives are summarized in the following table:

Minnesota Power's Rate-Design Alternatives

	Impact to Residential Class	Impact to Remaining Classes	% Increase for Remaining Classes ⁵
Option 1a	10% of each customer's bill	Equal per-kWh charge	4.55 – 5.53%
Option 1b	10% average increase for class	Equal per-kWh charge	4.55 – 5.53%
Option 2a	8.5% of each customer's bill	Equal per-kWh charge	5.33 – 6.49%
Option 2b	8.5% average increase for class	Equal per-kWh charge	5.33 – 6.49%
Option 3a	5% of each customer's bill	Equal per-kWh charge	7.17 – 8.72%
Option 3b	5% average increase for class	Equal per-kWh charge	7.17 – 8.72%
Option 4	Per-kWh charge for each customer class based on the percentage of the Company's revenues contributed by the class		

B. Positions of the Parties

The Large Power Intervenors and the Iron Mining Association supported Minnesota Power's proposal. The Large Power Intervenors argued that it would bring the Company's Residential rates closer to cost while still keeping them low compared to those of neighboring utilities. They also argued, based on the class-cost-of-service study done by Minnesota Power in its pending rate case,⁶ that the Company's nonresidential rate classes are already significantly subsidizing the Residential class.

The Department recommended that the Commission adopt a flat per-kWh rate for all customer classes—which would range from \$0.00475, if EITE customers consume electricity at 2016 levels, to \$0.00677, if they reach full production. The Department argued that a flat rate would accomplish the statutory goal of “ensur[ing] competitive electric rates for energy-intensive trade-exposed customers,”⁷ while allowing rate-design issues to be addressed in the pending rate case with the benefit of a full record.

⁵ The figures in this column assume that EITE customers achieve full production. If the EITE customers do not reach full production, the percentage increases will be lower.

⁶ *In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Utility Service in Minnesota*, Docket No. E-015/GR-16-664, Direct Testimony and Schedule of David J. McMillan, at 25 (November 2, 2016).

⁷ Minn. Stat. § 216B.1696, subd. 2(a).

The Department also recommended that the Commission direct Minnesota Power to track the number of customer complaints regarding the EITE surcharge and to include that information with its annual EITE reporting beginning February 1, 2018.

The OAG agreed with Department that the EITE surcharge should be a uniform, per-kWh rate for all customer classes, arguing that Minnesota Power's proposal would put the burden of the EITE program disproportionately on Residential customers, who would see their rates increase by ten percent regardless of whether EITE customers reach full production.

The OAG also challenged the idea, advocated by Minnesota Power and the Large Power Intervenors, that the EITE charge should be designed to "correct" the rate design set in Minnesota Power's previous rate case. That rate design was the allocation that the Commission determined to be just and reasonable based on an exhaustive record, and to attempt to "bring rates closer to cost" without the robust record of a rate case, the OAG argued, would be unreasonable.

Finally, AARP also supported a surcharge spread equitably among Minnesota Power's retail classes. It argued that Minnesota Power had not made a compelling case for charging Residential customers the greatest share of the cost of EITE credits.

C. Commission Action

The Commission concurs with the Department, the OAG, and AARP that a uniform per-kWh charge applied to all customer classes is the fairest way to apportion the cost of the EITE credits.

The goal of the EITE statute is to ensure competitive electric rates for energy-intensive trade-exposed customers.⁸ To that end, the statute allows utilities to propose alternative rate schedules for EITE customers. It does not specify any particular structure for an EITE rate or provide any guidance as to how the cost of such a rate should be apportioned among non-EITE customers.⁹

Minnesota Power has chosen to offer usage-based credits to EITE customers under certain conditions. However, the Company proposes to assign more than 70 percent of the cost of EITE credits to its Residential ratepayers through a fixed ten percent bill increase.

The Commission concurs with AARP that Minnesota Power would need to provide a compelling justification for such a lopsided allocation of EITE costs. But the Company has not done so. It has not, for example, tied the Residential increase to the statute's purpose of achieving competitive rates for EITE customers. Instead, it argues that a large increase for Residential customers is appropriate because that class received a relatively small rate increase in the Company's last rate case.

⁸ *Id.*

⁹ *Id.*

The Commission agrees with the OAG that it is not appropriate to design the EITE surcharge to “correct” the rate design set in a rate case. In the absence of the robust record that would be developed in a rate case, the Commission will require Minnesota Power to distribute the EITE-credit expense as a single per-kWh charge applicable to all customers. This approach will treat all classes equally and allow for any needed changes to the Company’s overall rate design to be made in its pending rate case.

Finally, as recommended by the Department, the Commission will require Minnesota Power to identify the EITE surcharge as a separate line item on customer bills, and to track and report on the number of customer complaints, both oral and written, regarding the EITE surcharge with its other annual reporting.

III. Refunding Increased Revenues Associated with the EITE Rate Schedule

A. Introduction

The EITE statute provides that, upon Commission approval of an EITE rate schedule, a utility “shall create a separate account to track the difference in revenue between what would have been collected under the electric utility’s applicable standard tariff and the EITE rate schedule.”¹⁰ In the utility’s next rate case or through a rider, the utility must be allowed to “recover any costs, including reduced revenues, or refund any savings, including increased revenues, associated with providing service to a customer under an EITE rate schedule.”¹¹

Minnesota Power proposed to charge its non-EITE customers an “EITE Cost Recovery Adjustment” to recover the cost of the credits paid under the EITE rate schedule. However, the Company did not propose any specific mechanism for refunding potential increased revenues resulting from the EITE program.

B. Positions of the Parties

The OAG pointed out that Minnesota Power and its EITE customers had advocated for an EITE rate schedule, in part, on the theory that it would spur increased production by EITE customers. The OAG argued that, if EITE-customer production were to increase to the point that revenues from these customers exceeded the level of EITE-customer revenues before the new rate schedule took effect, then the Company should be required to refund the extra earnings to non-EITE customers as “increased revenues” under the statute.

Accordingly, the OAG recommended that Minnesota Power be required to track the revenues it receives from EITE customers in each year that it provides EITE credits. If the revenue from EITE customers in a given year is higher than the revenues the Company received from those customers before the EITE rate schedule took effect—the OAG chose 2016 as the baseline year—the Company must refund the additional revenue to non-EITE customers, up to the amount previously surcharged to them through the EITE Cost Recovery Adjustment.

¹⁰ Minn. Stat. § 216B.1696, subd. 2(d).

¹¹ *Id.*

AARP agreed with the OAG that the EITE statute requires Minnesota Power to refund any additional revenues it collects from EITE customers to the Company's non-EITE customers. As the EITE program is currently structured, AARP argued, Minnesota Power would receive a windfall at ratepayer expense if sales to EITE customers rise significantly.

While Minnesota Power and the Large Power Intervenors agreed that under the statute, an EITE rate schedule should be revenue neutral to the utility, they argued that the statute only requires the Company to track the difference between the revenue collected from EITE customers in a given year at the discounted rate and the revenue that would have been collected under standard rates at the same sales volume. The Large Power Intervenors asserted that requiring Minnesota Power to refund increased revenues from EITE customers would eliminate the net benefit to the Company that the Commission found in its December 21 order. And both parties maintained that the appropriate way to address increased or decreased revenues resulting from changes in sales to EITE customers would be through a rate case.¹²

C. Commission Action

The Commission agrees with the OAG and AARP that Minnesota Power should be required to refund all or some of the surcharges paid by non-EITE customers based on the increased revenues that result from increased sales to EITE customers taking service under the EITE rate schedule. This conclusion comports with the EITE statute, which requires that the Company "refund any savings, including increased revenues, associated with providing service to a customer under an EITE rate schedule."¹³

The Commission also agrees with the OAG that the refund should be calculated as the difference between the revenue Minnesota Power received from EITE customers in 2016, *before* the anticipated implementation of the EITE rate, and the revenue the Company receives from EITE customers *after* implementation of the EITE rate.¹⁴ Calculating the refund in this way makes sure that (1) EITE customers receive the full benefit of the EITE rate as intended by the statute; (2) non-EITE ratepayers receive refunds of some or all of the surcharges they pay based on "increased revenues" associated with the EITE rate as required by the statute; and (3) the utility is neither harmed nor enriched by the EITE rate. As such, the refund mechanism ensures that the EITE rate is revenue neutral as applied to the utility.

Refunding increased revenues in this manner based on increased production by EITE customers is fair to all stakeholders. EITE customers will not be affected by a refund; they will continue to receive additional credits as they purchase additional electricity. Non-EITE customers will get back some or all of the surcharges they paid to help spur the EITE customers' purchase of

¹² Minnesota Power noted that it has proposed an Annual Rate Review Mechanism in its pending rate case that would allow for rate adjustments between rate cases if changes in sales or other factors cause significant increases or decreases in the Company's actual return on equity.

¹³ Minn. Stat. § 216B.1696, subd. 2(d).

¹⁴ The Commission also notes that the OAG recommended calculating the revenue increase using projected 2016 EITE-customer revenues. Since complete data for 2016 are now available, however, it would be appropriate to use actual 2016 calendar year EITE-customer revenue as the baseline for calculating the extent of any refundable increases.

electricity, whereas without a refund they would, paradoxically, be required to pay more as Minnesota Power's revenues from EITE customers increase.

The refund mechanism is also fair to Minnesota Power because a refund will only occur if and to the extent that sales to EITE customers increase to the point where the revenues under the EITE rate schedule exceed what the Company was collecting under the standard rate. Moreover, refunds will be capped at the surcharges collected. To further ensure that refunds do not result in any financial harm to Minnesota Power, the Commission will require that the amount of any refund be determined based on the net revenue increase (subtracting fuel costs and other costs that increase with sales).

For the foregoing reasons, the Commission will require that Minnesota Power refund revenue increases associated with the EITE rate schedule as proposed by the OAG with the modifications noted above. The Commission also will require the Company to file the details of the surcharge and refund mechanisms, including the baseline gross revenue for 2016 and the methodology for determining net revenue increases.

IV. Protecting Low-Income Residential Ratepayers from Paying EITE Costs

A. Introduction

The EITE statute prohibits a utility from recovering EITE costs from any low-income residential ratepayers.¹⁵ The statute defines "low-income residential ratepayer" as a ratepayer who receives energy assistance from the low-income home energy assistance program (LIHEAP).¹⁶

Minnesota Power proposed to exempt from the EITE surcharge not only customers receiving LIHEAP assistance but any customer eligible for LIHEAP assistance, regardless of whether the customer is currently receiving such assistance.

Currently some 10,700 customers are enrolled in Minnesota Power's energy-assistance program; however, a 2009 survey identified approximately 36,000 Minnesota Power customers as being LIHEAP eligible. The Company proposed to survey its residential customers again to ensure that it has the most current information regarding LIHEAP-eligible customers.

The EITE statute also requires a utility proposing an EITE rate schedule to deposit \$10,000 into an account to be used to expand the outreach of the utility's Commission-approved affordability program.¹⁷

Minnesota Power stated that it would deposit \$30,000—\$20,000 more than the statutorily required amount—into a fund to enhance outreach to increase the number of customers enrolled in LIHEAP. The Company stated that it would work with the Department and interested

¹⁵ *Id.*

¹⁶ *See id.* (referring to definition in Minn. Stat. § 216B.16, subd. 15); Minn. Stat. § 216B.16, subd. 15 (defining "low-income residential ratepayers").

¹⁷ Minn. Stat. § 216B.1696, subd. 3.

stakeholders to develop a strategy to use the aforementioned additional funds to address concerns over the EITE program's impact on low-income ratepayers.

B. Positions of the Parties

Energy CENTS Coalition, Minnesota Citizens' Federation Northeast, and the Citizens Utility Board of Minnesota (collectively, the Consumer Advocates) argued that Minnesota Power had not provided a sufficiently detailed proposal for low-income customer outreach. They recommended that the Company be required to provide additional information about its LIHEAP outreach efforts before the Commission approves EITE cost recovery, specifically:

- A draft of the proposed updated customer-eligibility survey;
- An indication of whether the customer survey will simply count or estimate the number of income-eligible households or if it will actually identify income-eligible households;
- Specific outreach strategies;
- Attestations from LIHEAP agencies that they have the ability to process increased LIHEAP applications; and
- Information on the application of the LIHEAP exemption between program years.

However, if the Commission approves cost recovery on the current record, the Consumer Advocates recommended that Minnesota Power be required to provide quarterly reports with the following information:

- The level of customer participation in LIHEAP;
- Information about outreach efforts;
- Sales and revenue attributable to the EITE discount; and
- A description of how any EITE-attributable revenue will be refunded to ratepayers.

Minnesota Power opposed further low-income outreach requirements as a prerequisite to cost recovery but reiterated its commitment to work with the Consumer Advocates and others to minimize the impact on low-income customers. It also noted that its proposal goes further than required under the EITE statute, both by exempting LIHEAP-eligible customers from the surcharge, whether or not a customer is currently receiving LIHEAP, and by increasing the low-income outreach fund \$20,000 beyond the statutorily required level.

The Large Power Intervenors argued that requiring Minnesota Power to devise a plan to increase LIHEAP participation before cost recovery is approved would be contrary to the intent of the EITE statute. According to these intervenors, the Legislature, by requiring that a utility deposit low-income outreach funds "upon the filing of" its EITE petition, demonstrated the Legislature's intent that actual outreach efforts would occur later.

C. Commission Action

The Commission agrees with Minnesota Power and the Large Power Intervenors that the Company has met the statutory prerequisites for cost recovery. However, the Commission also agrees with the Consumer Advocates that further steps are necessary to effectuate the statutory protections for low-income customers.

Accordingly, the Commission will require Minnesota Power to provide more information about its efforts to identify LIHEAP-eligible customers, including a description of Company-directed outreach efforts and updated customer data from the Company's survey, in its 30-day compliance filing and annual reports. And, to ensure that customers identified as LIHEAP eligible are clearly informed of their ability to seek exemption from the EITE surcharge, the Commission's Executive Secretary will review and approve the notice that the Company proposes to send them.

Finally, the Commission notes that its billing-error rules would apply if a low-income customer is billed for EITE costs.¹⁸ If Minnesota Power determines that it has been collecting an EITE surcharge from a low-income residential ratepayer, the Company will be required to remove the charge from the customer's bill immediately and to refund, with interest, any surcharges collected while the individual was eligible for the exemption, for up to three years.

The Commission will also require Minnesota Power to notify such a customer that he or she may file a complaint with the Commission seeking a variance from the Commission's billing-error rules to obtain a refund of additional surcharges paid more than three years before the error was discovered. The format of this notice will be approved by the Executive Secretary.

V. Notifying Non-EITE Customers of the Rate Change

A. Introduction

The Commission's December 21 order directed Minnesota Power to revise the Company's plan for notifying non-EITE customers of the new EITE surcharge so that the plan entails, at minimum, the following:

- Including a notice of the rate change with customer bills when the surcharge is first implemented;
- Providing written notice of the proposed change in rates to the governing body of each municipality and county in the area affected; and
- Mailing copies of the Commission's order to all municipalities, counties, and local governing authorities within the Company's Minnesota service area.

In Minnesota Power's December 30 compliance filing, the Company described its revised communications plan, which includes posting a press release on its website, providing a notice in each customer's first bill when rates change, providing written notice of the rate change to each

¹⁸ See Minn. R. 7820.3800.

municipality and county in the affected area, and mailing copies of the Commission's December 21 order and any subsequent EITE rate-change orders to all municipalities, counties, and local governing authorities in its service area.

B. Commission Action

The Commission concludes that Minnesota Power's revised communications plan complies with the December 21 order. However, the Commission will require the Company to take additional steps to ensure that its non-EITE customers understand the rate change. First, before Minnesota Power collects an EITE surcharge from any customer, the Company will be required to place an insert in all customer bills that does the following:

- explains the statutory authority for the surcharge;
- provides the Company's rationale for the EITE rate and surcharge;
- lists the names of the companies receiving the EITE rate;
- describes the overall impact on all the ratepayers;
- provides the anticipated monthly and annual impact on the ratepayer receiving the notice;
- explains the exemptions along with the process for customers to obtain those exemptions; and
- explains the process to file any complaints with Minnesota Power.

This bill insert will be approved by the Commission's Executive Secretary.

Second, Minnesota Power will be required to include a separate line on each customer bill identifying the "EITE Surcharge" being paid by the customer, along with an explanation of the Surcharge with the text, form, and placement to be approved by the Executive Secretary. This explanation must at a minimum include the following language:

EITE Surcharge is to pay for special reduced electric rates of 11 large industrial customers pursuant to a law passed by the Minnesota legislature in 2015 (Minn. Stat. § 216B.1696). The legislature allowed Minnesota Power to implement this surcharge on the ratepayers to recover the cost of lowered rates of these 11 large industrial customers because they are "Energy Intensive Trade Exposed" (EITE) companies. The 11 companies receiving the special lower rate paid for by the surcharge are:

[name companies]

Any complaints regarding this EITE Surcharge should be directed to Minnesota Power at [location for complaints to be sent in by phone, email, and mail].

In addition, for Residential customer bills, the explanation will also include the following language:

Exemption from EITE Surcharge. You may be entitled to an exemption from the surcharge. Minn. Stat. § 216B.1696 prohibits Minnesota Power from collecting the surcharge from low-income residential ratepayers. To determine if you qualify for this exemption you can contact Minnesota Power at [location for low-income exemption request to be sent in by phone, email, and mail].

ORDER

1. Minnesota Power shall be allowed to collect a surcharge from non-EITE customers other than those exempted based on income.
2. The surcharge shall be calculated as proposed by Minnesota Power to reflect the difference between the EITE-customer revenue received under the EITE rate schedule and the higher revenue the utility would have received under the prior rate applicable to those customers.
3. Minnesota Power shall collect the EITE surcharge as a single per-kWh charge applicable to all nonexempt customers.
4. Minnesota Power shall identify the EITE surcharge as a separate line item on customer bills and shall track and report on the number of customer complaints, both oral and written, regarding the EITE surcharge with its other annual reporting beginning February 1, 2018.
5. Minnesota Power shall refund revenue increases associated with the EITE rate schedule as proposed by the Office of the Attorney General on page 13 of its January 31, 2017 comments in this docket, with the following additions/clarifications:
 - a. The Company shall use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable increases;
 - b. The Company shall base the refund on net revenue increases; and
 - c. Minnesota Power shall make a compliance filing within 30 days setting forth the surcharge and refund mechanisms in detail, including the baseline gross revenue for 2016 and the methodology for determining net revenue increases.
6. Minnesota Power shall provide more information about its efforts to identify LIHEAP-eligible customers, including a description of Company-directed outreach efforts and updated information from the Company's customer survey, in its 30-day compliance filing and annual reports.
7. Minnesota Power shall, if it determines that it has been collecting an EITE surcharge from a low-income residential ratepayer, remove the additional charge from the customer's bill immediately and refund, with interest, any surcharges collected while the individual was eligible, in the preceding three years. The customer shall be notified that he or she may

file a complaint with the Commission to request a variance from the Commission's billing-error rules to obtain a refund of additional surcharges paid prior to the three-year period noted above. This notice shall be approved by the Executive Secretary.

8. The Executive Secretary is granted authority to approve the notice that Minnesota Power proposes to send to customers that may seek EITE exemption on the grounds of LIHEAP eligibility.
9. The Executive Secretary is granted authority to approve the notice that Minnesota Power proposes to send to customers that may seek an exemption on the grounds that they meet the statutory definition of an EITE customer. The Company shall, in its annual report, identify which specific provision of statute qualifies each EITE customer for the exemption.
10. Before Minnesota Power may collect an EITE surcharge from any customer, the Company shall place an insert in all customer bills:
 - explaining the statutory authority it used to implement the surcharge;
 - providing its rationale for the EITE rate and surcharge;
 - listing the names of the companies receiving the EITE rate;
 - describing the overall impact on all the ratepayers;
 - providing the anticipated monthly and annual impact on the ratepayer receiving the notice;
 - explaining the exemptions along with the process for customers to obtain those exemptions; and
 - explaining the process to file any complaints with Minnesota Power.

The notice shall be approved by the Executive Secretary.

11. There shall be a separate line on each customer bill identifying the "EITE Surcharge" being paid by the customer. Each bill shall contain explanation of the Surcharge with the text, form, and placement to be approved by the Executive Secretary. The notice shall at a minimum contain the following:

EITE Surcharge is to pay for special reduced electric rates of 11 large industrial customers pursuant to a law passed by the Minnesota legislature in 2015 (Minn. Stat. § 216B.1696). The legislature allowed Minnesota Power to implement this surcharge on the ratepayers to recover the cost of lowered rates of these 11 large industrial customers because they are "Energy Intensive Trade Exposed" (EITE) companies. The 11 companies receiving the special lower rate paid for by the surcharge are:

[name companies]

Any complaints regarding this EITE Surcharge should be directed to Minnesota Power at [location for complaints to be sent in by phone, email, and mail].

In addition, for Residential customer bills, the explanation will also include the following language:

Exemption from EITE Surcharge. You may be entitled to an exemption from the surcharge. Minn. Stat. § 216B.1696 prohibits Minnesota Power from collecting the surcharge from low-income residential ratepayers. To determine if you qualify for this exemption you can contact Minnesota Power at [location for low-income exemption request to be sent in by phone, email, and mail].

12. Minnesota Power shall make a compliance filing within 30 days incorporating the Commission's decisions regarding the above matters.
13. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf
Executive Secretary



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BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
Matthew Schuenger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Revised Petition by
Minnesota Power for a Competitive Rate for
Energy-Intensive Trade-Exposed (EITE)
Customers and an EITE Cost Recovery Rider

ISSUE DATE: December 21, 2016

DOCKET NO. E-015/M-16-564

ORDER APPROVING EITE RATE,
ESTABLISHING COST RECOVERY
PROCEEDING, AND REQUIRING
ADDITIONAL FILINGS

PROCEDURAL HISTORY

In 2015, the Minnesota Legislature enacted legislation intended to ensure competitive electric rates for certain energy-intensive trade-exposed (EITE) customers.¹ Under the statute, EITE customers are large industrial customers such as mining, steel processing, or wood products facilities.²

On November 13, 2015, Minnesota Power (the Company) filed a petition under the statute, which the Commission denied without prejudice.³ The Commission concluded that the Company's proposal did not demonstrate a net benefit to the utility or the state, as required by Minn. Stat. § 216B.1696.

On June 30, 2016, Minnesota Power filed a revised petition, proposing a modified rate schedule and cost-recovery rider. The Company stated that its revised petition addressed shortcomings identified by the Commission's March 23, 2016 order, and met the statutory requirements for approval.

¹ Minn. Laws 2015, 1st Special Session, Ch. 1, Art. 3 § 26; codified at Minn. Stat. § 216B.1696.

² See Minn. Stat. § 216B.1696, subd 1(c).

³ *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-15-984, Order Denying Petition Without Prejudice (March 23, 2016).

Also on June 30, several large industrial customers⁴ (the Large Power Intervenors) filed joint comments in support of the Company's petition. The Comments included affidavits from representatives of industry groups and most of the commenting companies, addressing economic conditions that they argued support the Company's proposal.

On July 27, 2016, several consumer advocacy groups⁵ (the Consumer Advocates) filed joint comments opposing the petition.

By August 1, 2016, the Commission received comments on the revised proposal from:

- AARP
- Iron Mining Association of Minnesota
- Large Power Intervenors
- Minnesota Department of Commerce, Division of Energy Resources (the Department)
- The Office of Attorney General – Residential Utilities and Antitrust Division (the OAG)
- Sierra Club North Star Chapter and Minnesota Center for Environmental Advocacy

By August 11, 2016, the Commission received reply comments from the following:

- Cliffs Natural Resources, Inc.
- Large Power Intervenors
- The OAG
- Minnesota Power
- Save Our Sky Blue Waters, Wetland Action Group, and Save Lake Superior Association

Generally, the Company and groups representing energy-intensive industries supported the Company's proposal, and groups representing consumer and environmental interests opposed it. The Department recommended that the Commission approve the petition with reporting requirements, concluding that the proposal complies with Minn. Stat. § 216B.1696 by showing a net benefit to Minnesota Power.

On September 14, 2016, the Commission received a letter supporting the petition from State Senators Thomas Bakk, Tom Saxhaug, and David Tomassoni, and State Representatives Rob Ecklund, Dale Lueck, and Jason Metsa.

⁴ ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation.

⁵ Citizens Utility Board of Minnesota, Legal Services Advocacy Project, Energy CENTS Coalition, and Minnesota Citizens Federation Northeast.

On September 15, 2016, the Commission met to consider the matter. To meet the statutory deadline for a decision in this proceeding, the Commission announced its decision at the Commission meeting to approve the petition in part, with reporting requirements detailed below, with this written order to follow.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission finds that Minnesota Power meets the eligibility criteria for proposing EITE rate options under Minn. Stat. § 216B.1696, subd. 2(a), and has met the evidentiary burden to show that its proposed rate schedule would confer a net benefit on the utility. Therefore, the Commission will approve Minnesota Power's proposed EITE rate schedule and corresponding rate, and will require annual reports to be filed with the Commission to facilitate evaluation of the rate's effectiveness at achieving statutory goals, and its effect on Minnesota Power and its customers.

The Commission needs additional information before it can approve a cost recovery mechanism. The Executive Secretary will issue a notice requesting comments and establishing procedures for a separate cost-recovery determination.

These actions are explained in further detail below.

II. The EITE Statute

Investor-owned electric utilities with between 50,000 and 200,000 retail customers⁶ may propose EITE-specific rate schedules under Minn. Stat. § 216B.1696.⁷ Upon filing for approval of an EITE rate schedule, the filing utility must deposit \$10,000 into an account devoted to funding a program approved by the Commission under Minn. Stat. § 216B.16, subdivision 15.⁸ If an EITE rate is approved, the Commission must allow revenue reductions (or increases) to be passed on to the utility's remaining (non-EITE) retail customers, except low-income customers participating in the Low Income Home Energy Assistance Program ("LIHEAP").⁹

Under the statute, the Commission "*shall*, upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and any corresponding EITE rate."¹⁰ It must do so "[n]otwithstanding Minnesota Statutes, section[s] 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16" ¹¹

⁶ Two Minnesota electric utilities meet these criteria: Minnesota Power and Otter Tail Power Company.

⁷ Minn. Stat. § 216B.1696, subd. 2(a).

⁸ Minn. Stat. § 216B.1696, subd. 3.

⁹ Minn. Stat. § 216B.1696, subd. 2(d).

¹⁰ Minn. Stat. § 216B.1696, subd. 2(b).

¹¹ *Id.* (Emphasis added.)

The plain language of Minn. Stat. § 216B.1696 requires the Commission to approve a proposed EITE rate schedule when a net benefit to the utility or the state is demonstrated, *notwithstanding* statutes that, among other requirements, ordinarily subject utility rate proposals to additional constraints.

The language of Minn. Stat. § 216B.1696, subd. 2 therefore expressly limits Commission consideration of a proposed EITE rate schedule to whether the rate schedule and corresponding rate results in a net benefit to the utility or the state. In particular, the Commission must evaluate the proposed EITE rate schedule and rates notwithstanding the ordinary legislative prohibition against unreasonably preferential or prejudicial rates, or the ordinary requirement that every rate be just and reasonable.¹² In addition, the Commission must evaluate the EITE rate schedule and rates notwithstanding section 216B.03's ordinary requirement to set rates that advance Minnesota's energy conservation and renewable energy goals "to the maximum reasonable extent."¹³

In other words, the governing statute precludes the Commission from "balancing the interests of the utility companies, their shareholders, and their customers to ensure that rates are 'just and reasonable'"¹⁴ as the Commission does routinely in rate proceedings. Instead, the statute directs the Commission only to consider the interests of the utility, or the state, and to determine if a proposed EITE rate schedule would be a net benefit to one of them.

Finally, the statute requires that the Commission "make a final determination . . . within 90 days" of a petition proposing an EITE rate schedule.¹⁵

III. Minnesota Power's Revised Proposal

As in Minnesota Power's previous petition,¹⁶ the Company proposed a two-part framework for implementing the EITE statute: (1) an EITE rate schedule in the form of a credit rider and related conditions for EITE customers (the EITE Customers Rider tariff and its Energy Charge Credit), and (2) a cost-recovery rider proposal for recovering the cost of the EITE credit for all retail customers not exempt from recovery under Minn. Stat. § 216B.1696, subd. 2(d) (the Current Cost Recovery Rider).

¹² Minn. Stat. § 216B.1696, subd. 2(b) (requiring the Commission to perform its analysis notwithstanding Minn. Stat. § 216B.03, which states that "[e]very rate made, demanded, or received by any public utility . . . shall be just and reasonable," and that "[r]ates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory [. . .]").

¹³ *Id.*, see also Minn. Stat. § 216B.03 ("To the maximum reasonable extent, the commission shall set rates to encourage energy conservation and renewable energy use and to further the goals of sections 216B.164 [distributed generation], 216B.241 [energy conservation improvement], and 216C.05 [energy planning and energy policy goals]) (emendations added).

¹⁴ *In re Interstate Power Co.*, 574 N.W.2d 408, 411.

¹⁵ Minn. Stat. § 216B.1696, subd 2(c).

¹⁶ Docket No. E-015/M-15-984.

The proposed EITE Customers Rider tariff would be the EITE rate schedule. It describes a rate option (the Energy Charge Credit) and the terms under which the option would be available to qualifying customers. The Energy Charge Credit amount would be the same as in Minnesota Power's original petition: 1.15¢ per kWh for all Firm Energy, Excess Energy, and Incremental Production Service Energy in excess of a monthly energy usage threshold of 450 hours of expected-peak electric usage.

The proposed EITE Customers Rider also requires participating customers to:

- have a Commission-approved Electric Service Agreement (ESA) with at least four years remaining;
- have a total power requirement of at least 2,000 kW set forth in the ESA; and
- sign a "Customer Commitment Letter Agreement" detailing the customer's "anticipated peak electric usage and other necessary information to calculate the ECC or other components" of the rider.

The proposed Current Cost Recovery Rider would recoup the costs of providing the credits under the EITE Customers Rider tariff from other Minnesota Power customers. The cost recovery rider would not apply to customers excluded by the EITE statute.

The Company asserted that its EITE rate schedule proposal differed from its original proposal, including the following changes:

- The number of customers eligible for the newly proposed EITE discount would be capped at the eleven customers who signed letter agreements in the initial petition filing.
- Because the number of customers will be capped, the total EITE discount would be capped.
- The Energy Charge Credit for EITE customers would end after four years.
- The Company conducted customer surveys to gather feedback on a proposed EITE rate and identified additional communication delivery methods including setting up a dedicated email address to receive and respond to customer feedback and inquiries.

In light of the above changes to the EITE rate schedule, the Company also modified proposed rate impacts on customers from whom the cost of the EITE credits would be recovered.

According to the Company, by limiting the number of customers that may apply for Energy Charge Credits, and limiting the credits available to each customer, residential and other customers will experience a smaller rate increase than in the Company's first proposal. The Company proposed that aspects of cost recovery would be modified as follows:

- Non-exempt Residential customers would experience an average increase of 10%, and if additional EITE customer production subsequently increases the amount of cost recovery in the Rider, the average Residential customer increase would remain at 10 percent (modifying an uncapped average 14.53% increase in the original petition).

- All non-Residential customer classes would have the same, fixed, per-kWh charge.
- General Service customers will experience an average 1.62% increase (4.07% in the original petition).
- Large Light and Power customers will experience an average 1.98% increase (0.07% in the original petition).
- Municipal Pumping customers will experience an average 1.76% increase (1.86% in the original petition).
- The Company would increase from \$10,000 to \$30,000 the funds allocated to low income customer outreach, and would work with stakeholders to design outreach programs to increase LIHEAP participation.
- The Company completed and included an updated Class Cost of Service Study (CCOSS) using 2015 actual information.

The Company argued that the revised rate proposal satisfies the Minn. Stat. § 216B.1696 requirement that the EITE rate provide a net benefit to the state or to the utility. According to the Company, the proposal would provide a net benefit to the utility in large part by increasing revenue from electricity sales to large industrial customers. The Company expects that the rate reduction would cause an increase in EITE customers' electric consumption.

In its petition, the Company calculated one possible net benefit scenario (which it identified as the "Return to Full Production Scenario") with the following estimates:

Benefits			
Change in Large Power Customer Revenues & Fixed Cost Coverage	Reduces the overall revenue requirements required from the Customer and reduces the fixed charges per customer billing unit	\$32.9 Million	
Increase in electric activity from Large Power customers multiplier effect	Additional electric revenues from additional economic activity from additional EITE production	\$28.3 Million	
Cost recovery for Energy Charge Credit	Equals Energy Charge Credit	\$19.2 Million	
Total Benefits to Utility:			\$80.4 Million
Costs			
Fuel costs from change in Revenues	Impact on net margin for increase in EITE Sales	\$21.2 Million	
Energy Charge Credit for EITE Customers	Direct reduction in EITE customer revenues	\$19.2 Million	
Total Costs to Utility:			\$40.4 Million
Net Benefit to Utility:			\$40.0 Million

Minnesota Power also claimed that the proposal would, more likely than not, benefit the state of Minnesota. Lowering costs for large industrial customers, the Company argued, promoted their economic viability, leading to net benefits to local economies.

IV. Support for the Petition

A. The Department

The Department analyzed the Company's utility-cost-benefit analysis and reached the following conclusion:

In summary, after reviewing the MP's benefit/cost model and the non-quantified benefits and costs, the Department concludes that MP has demonstrated a net benefit to the utility.¹⁷

To reach this conclusion, the Department analyzed the model and underlying assumptions the Company used to calculate the "Return to Full Production Scenario." The Department reasoned that even after adjusting anticipated costs and benefits for their likelihood of occurrence, identified benefits to the utility will always exceed the identified costs. Therefore, the Department concluded, it is likely the identified benefits to the utility will exceed the identified costs even if the utility's "Return to Full Production Scenario" overstates the benefit and understates the costs of the proposal because it is too optimistic.

The Department also considered other potential costs and benefits, such as variable operations and maintenance costs and reduced consumption by non-EITE customers, and concluded that other costs are unlikely to be large enough to meaningfully affect the analysis. In the Department's view, because elasticity of demand for electricity is "rather low," the effect of price increases on non-EITE customers would not result in a meaningfully large cost to the utility.

For these reasons the Department concluded that the Company demonstrated a net benefit to the utility.¹⁸ The Department recommended that the Commission approve the petition, with reporting requirements addressing the use and effects of the EITE rate.

B. Large Power Intervenor

Businesses potentially eligible for an EITE rate discount, and related industry groups, filed comments in support of the Company's proposal. These comments included several sworn affidavits attesting to economic conditions affecting EITE customers, and to anticipated effects of Commission approval or disapproval of the proposed rate.

¹⁷ Comments of the Minnesota Department of Commerce, Division of Energy Resources, at 19 (August 1, 2016).

¹⁸ The Department went on to explain that "[s]ince the EITE Statute requires only a demonstration of a net benefit to the utility, given the limited time available, the conclusion that MP had demonstrated a net benefit to the utility, and the less clear nature of MP's application of the benefit/cost model to the state of Minnesota, the Department did not review MP's analysis of a state of Minnesota test."

Comments from these customers and industry groups primarily focused on the anticipated economic impact of electric rates for customers receiving the credit. In general, supporting commenters argued that approval of the EITE rate schedule would make electric rates more competitive for EITE customers, and that the Energy Charge Credit would “reasonably likely” be a factor in EITE customers’ ongoing viability. According to sworn statements, for many EITE customers energy costs amount to approximately 20 – 25% of the cost of the goods they produce.

While Minnesota Power’s comments focused on the net benefit to the utility, these commenters argued that the EITE credit would result in a net benefit to the state, chiefly by being a net contribution to economic activity in the state.

V. Opposition to the Petition

Opposing parties and participants, including the OAG and the Consumer Advocates, argued that the Company failed to adequately quantify and demonstrate by a preponderance of the evidence the costs and benefits of the proposed rate. The Commission must approve a proposed EITE rate only if it finds a net benefit to the utility or the state. Several commenters argued that there was inadequate support in the record for such a finding, and so the Commission should reject the proposal. And commenters argued that if the Commission approved the petition, the public interest required tracking and reporting of the effectiveness of the EITE rate.

The Sierra Club and Minnesota Center for Environmental Advocacy challenged the proposal by arguing that EITE-eligible customers could pursue energy efficiency to reduce their energy costs without increasing costs for other customers. They also argued that the net benefit analysis must include environmental costs.

Critics of the proposal also objected to the Company’s cost-recovery allocation and rate design, arguing that the proposed responsibility across customer classes was unreasonable. Both the Department and the AARP asserted that the limited time available for reviewing the EITE rate schedule prevented a meaningful review of the CCOSS data and analysis underlying the proposed rate design. As a result, the Consumer Advocates and AARP recommended deciding the cost-recovery aspect of the EITE rate in the Company’s next rate case; the Department recommended approving the proposed cost-recovery but reviewing it in detail in the next rate case.

VI. Commission Action

The EITE statute requires that the Commission, “upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and any corresponding EITE rate.”¹⁹ The Commission denied Minnesota Power’s previous petition for an EITE rate and cost recovery because the record in that proceeding was inadequate to support the necessary finding.²⁰

¹⁹ Minn. Stat. § 216B.1696, subd. 2(b).

²⁰ *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E-015/M-15-984, Order Denying Petition Without Prejudice, at 10–12 (March 23, 2016).

Having reviewed the Company's revised proposal and expanded record in support of this petition, the Commission finds that the proposed EITE rate schedule—in the form of the EITE Customers Rider tariff and Energy Charge Credit—can be expected to yield a net benefit to the utility. The utility's proposal also meets every other statutory requirement for approval. Accordingly, the Commission will approve the proposed EITE rate schedule and its corresponding rates. The Commission requires additional information to be put into the record to analyze the issue of cost recovery.

A. The Proposal Meets Statutory Requirements

There is no dispute that Minnesota Power is an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers. Under Minn. Stat. § 216B.1696, subd. 2(a), the Company is authorized to propose EITE rate options for Commission consideration.

The eleven customers to whom the Company seeks to offer discounted EITE rates are eligible to receive those discounts, because they are energy-intensive trade-exposed customers as the statute defines the term. Each customer satisfies at least one of the four customer-types identified in Minn. Stat. §216B.1696, subd 1(c).²¹

And the Company's proposal to deposit \$30,000 in programs approved by the Commission under Minn. Stat. § 216B.16, subd. 15, satisfies the low-income funding requirement of Minn. Stat. § 216B.1696, subd. 3.

B. The Record Supports Finding a Net Benefit to the Utility

With its petition, Minnesota Power addressed many record-development shortcomings that the Commission identified in the previous petition. In particular, among other improvements, the record reflects:

- sworn statements in support of claimed benefits of the proposal;
- a more detailed quantitative net benefit analysis, including the underlying assumptions;
- additional notice to, and opportunities for feedback from, potentially affected customers; and
- structural changes to the proposal that mitigate or avoid potential detriments, including changes that limit both the number of eligible EITE customers and the term of the EITE rate such that it ends in 4 years.

²¹ (1) an iron mining extraction and processing facility, including a scam mining facility as defined in Minnesota Rules, part 6130.0100, subpart 16;
(2) a paper mill, wood products manufacturer, sawmill, or oriented strand board manufacturer;
(3) a steel mill and related facilities; and
(4) a retail customer of an investor-owned electric utility that has facilities under a single electric service agreement that: (i) collectively imposes a peak electrical demand of at least 10,000 kilowatts on the electric utility's system, (ii) has a combined annual average load factor in excess of 80 percent, and (iii) is subject to globally competitive pressures and whose electric energy costs are at least ten percent of the customer's overall cost of production.

The Commission concludes that the Company has identified the relevant potential benefits and costs to the utility, and has quantified them to the extent practicable. The Commission agrees with the Department that, upon thorough analysis of the utility's calculations and assumptions, Minnesota Power has demonstrated a net benefit to the utility, and that any unquantified cost considerations are not large enough to affect the overall analysis.

1. Benefits

In its petition, Minnesota Power estimates that the proposal would, in one scenario, generate \$80.4 million in benefits to the utility, and \$40.4 million in costs, for a net revenue benefit of \$40 million. The Company also identified less-easily quantified benefits, such as bolstering the Company's financial strength, credit rating, and access to capital by reducing the risk of losing revenue from large industrial customers.

It is not necessary for all EITE customers to return to full production for Minnesota Power to realize a net benefit. As the Department's analysis accurately concluded, any amount of increased production would result in a net benefit to Minnesota Power. Nevertheless, EITE customers attested to the positive impact the proposed EITE rate would have on their production by lowering their cost of producing goods—several customers testified that energy costs represent 20–25% of their overall cost of production.

The Company also benefits to the extent the EITE rate helps any customer avoid reducing its electricity consumption. Reduced energy costs will likely be a factor in keeping EITE customers viable in competitive markets and therefore remain in operation as Minnesota Power customers. As the Company's treasurer attested, approximately 72 percent of Minnesota Power's retail revenue comes from industrial customers, and financial challenges for those customers can turn into financial challenges for the Company when they manifest as unplanned-for curtailed energy consumption.

2. Costs

The Company also provided evidence and analysis of costs to the extent practicable. The Company quantified the direct reduction in EITE customer revenues caused by the discount, and the expected impact on net margin for the increase in EITE Sales. The possible cost caused by revenue loss from non-EITE customers (resulting from an increase in their rates) is difficult to quantify, but as the Department acknowledged, relatively low elasticity of demand among non-EITE customers supports a conclusion that any cost from this factor is unlikely to amount to a large enough cost to meaningfully change the cost/benefit analysis.

3. Net Benefit

To summarize, the record reflects evidence and analysis on costs and benefits for the utility, and the evidence and analysis demonstrates by a preponderance of the evidence that the utility will likely experience benefits that exceed any identified costs—primarily by increasing net revenue through increased energy sales by more than any corresponding revenue-negative cost, but also by supporting the Company's financial strength.

For these reasons, the Commission is persuaded that the benefits of the proposed rate to Minnesota Power will exceed the costs, and will be greater than zero. Therefore, Minnesota Power has demonstrated that its proposed EITE rate schedule and corresponding rates will confer a net benefit on the utility of some amount.

The statute directs the Commission to approve rate schedules upon making the necessary finding of a net benefit, notwithstanding other ordinarily applicable factors. Accordingly, as required by Minn. Stat. § 216B.1696, subd. 2(b), the Commission will approve the EITE customer schedule and rate as proposed.

Having reached this conclusion, the Commission will make no finding about the proposal's costs or benefits to the state despite the substantial record directed at analyzing that question.²² The Commission's finding of a net benefit to the utility does not rely on evidence or analysis of purported benefits to the state, such as community economic development, jobs, or tax revenues.

Nor did the Commission focus on the competitiveness of the electric rates themselves. Though "competitive electric rates" is a stated policy objective of the EITE statute, the legislature also stated that EITE rate options are the means to accomplish the objective, and stated under what circumstances those EITE rate options must be approved.

The Commission's finding is also not affected by the existence of alternative means to reduce costs for EITE customers, or by reasonable alternative EITE rate proposals. The statute authorizes the Company to propose EITE rate options, and requires approval upon a net benefit finding by the Commission. Read as a whole, the statute reflects a legislative determination that, by satisfying the net benefit test, an EITE rate schedule is deemed consistent with the public interest.

And to remain strictly within the bounds established by the legislature, the Commission's finding does not concern possible rate impacts for customers subject to cost recovery under the statute. The final rate impacts are still unknown and will be addressed in a future Commission proceeding. The Commission notes, however, that the Company has committed funds to expand outreach of its affordability program as required by the statute.

For purposes of clarity and consistency with statutory requirements and the filed rate doctrine, where Customer Letter Agreements conflict with Commission-approved tariffs or Electric Service Agreements (ESAs), the tariffs and the ESAs shall prevail.

C. Additional Proceedings Necessary to Evaluate Cost Recovery

Minn. Stat. § 216B.1696, subd. 2(c) requires that the Company be allowed to recover the costs of its EITE rate schedule either through a cost recovery rider or in its next general rate case. The Commission needs more information in order to determine the reasonableness of the proposed EITE Cost Recovery Rider and so will not approve it at this time.

²² Minn. Stat. § 216B.1696, subd. 2(b) (requiring a finding of net benefit to the utility or the state).

The Department recommended against relying on the 2015 Class Cost of Service Study underlying the Company's cost recovery proposal, based on "the substantial expected impact on MP's ratepayers' bills and the limited amount of review time available." The Commission agrees that a more detailed look at the cost recovery proposal, supporting information, and possible alternatives is necessary before the Commission approves any particular cost recovery method.

The Executive Secretary will issue a notice establishing procedures and setting timelines for further evaluation of cost recovery options. In particular, the Commission will seek detail on alternative cost-recovery options and on potential percentage bill increases on non-residential customer classes if the residential class's share is lower than proposed by the Company.

The Commission will also require Minnesota Power to file a cost-recovery communications plan to ensure affected customers will be notified of EITE cost-recovery bill changes. The Commission and interested parties may then review the plan for adequacy in conjunction with the evaluation of cost recovery options.

D. Annual Reporting Requirement

The Commission agrees with the Department's recommendation to require annual reports addressing the continued qualification and economic conditions of participating customers. To facilitate evaluation of the rate and its effect on Minnesota Power and its customers, the Commission will require reporting of the additional information listed in the ordering paragraphs.

ORDER

1. Minnesota Power is an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers. It may therefore propose EITE rate options under Minn. Stat. § 216B.1696, subd. 2.
2. Under Minn. Stat. §216B.1696, subd. 1, customers need only satisfy one of (c)(1) through (c)(4) to satisfy the definition of an EITE customer.
3. The eleven customers to whom Minnesota Power seeks to offer EITE rate discounts are energy-intensive trade-exposed customers eligible to receive those discounts.
4. The Company's proposal to deposit \$30,000 in programs approved by the Commission under Minn. Stat. § 216B.16, subd. 15, satisfies the low-income funding requirement of Minn. Stat. § 216B.1696, subd. 3.
5. Minnesota Power's Proposed EITE rate schedule and corresponding rates can be expected to yield a net benefit to the utility. The Commission therefore approves the schedule and corresponding rates for EITE customers.
6. Where Customer Letter Agreements conflict with Commission-approved tariffs or Electric Service Agreements (ESAs), the tariffs and the ESAs shall prevail.

7. Minnesota Power shall establish a separate account to track the difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule, pursuant to Minn. Stat. § 216B.1696, subd. 2(d).
8. Annually, beginning on February 1, 2018, Minnesota Power shall file an EITE report. The report must:
 - a. include a list of all customers on the rate;
 - b. identify which specific provision of the statute qualifies the customer for the EITE rate;
 - c. state the revenue difference between what would have been collected under the electric utility's applicable standard tariff by customer and in total;
 - d. reflect the tracker activity and balance;
 - e. describe usage of the rate;
 - f. describe allocation of cost recovery, by class;
 - g. provide an update on EITE customers' operations, including production levels, employment levels, economic factors and competitive conditions, and taxes paid;
 - h. track over time residential disconnections, arrearages (including average amount in arrears), and LIHEAP participation;
 - i. contain a statement of Minnesota Power's view of regional economic conditions; and
 - j. include state agency or similar economic data on the condition of the regional economy.
9. Thirty days prior to each annual report, Minnesota Power shall meet with representatives of its customer classes to discuss the data to be filed in the annual report, and shall keep the representatives informed of the data until filing.
10. In its fourth annual report, Minnesota Power shall include an overview addressing the effects of the EITE rate and cost recovery.
11. Within 10 days of the date of this order, Minnesota Power shall file:
 - a. revised tariff pages for the EITE customer rider consistent with this order. If no objections to the filing are received within 10 days, the Executive Secretary is authorized to approve the revised tariff pages; and
 - b. various rate design proposals to recover the deficiency associated with the approved EITE rate.
12. The Executive Secretary is authorized to issue notices, establish procedures, and set timelines for the purpose of obtaining the information necessary to determine the reasonableness of the proposed EITE Cost Recovery Rider.

13. Within 10 days of the date of this order, Minnesota Power shall file a revised communications plan addressing cost recovery that shall, at a minimum,
 - a. include with each customer's first bill, when rates change, a notice approved by the Commission's Executive Secretary;
 - b. give written notice, as approved by the Commission, of the proposed change in rates to the governing body of each municipality and county in the area affected, pursuant to Minn. Stat. § 216B.16, subd. 1, and Staff Briefing Paper for Docket 16-564 on September 15, 2016, Page 42; and
 - c. mail copies of the Commission's Order to all municipalities, counties, and local governing authorities within its Minnesota service area.
14. The Executive Secretary may approve the communications plan if the Commission does not review it directly.
15. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf

Daniel P. Wolf
Executive Secretary



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**SEPARATE STATEMENT OF COMMISSIONER HEYDINGER,
WHICH COMMISSIONER TUMA JOINS**

I respectfully disagree with the Commission's order for the reasons set forth below.

Admittedly, this is a new provision of law, and it has been a particularly difficult provision to apply. Although there is support in the record for Minnesota Power's proposal, on balance I do not find there has been an adequate showing of a net benefit to the utility. Minnesota Power's revised proposal did not address the cost side as well as the benefit side of the cost/benefit ledger. Potential costs include the detriment to the utility or the state caused by increasing rates on other customers, as well as effects on the environment. Minnesota Power's net benefit analysis to the utility in its revised petition did not include an analysis of these possible effects.

Minnesota Power's petition instead focused on its claim that a five percent rate discount would incentivize EITE customers to either achieve or maintain full production and increase its revenue. There is, however, no analysis in the record showing that the rate discount would affect production levels. In fact, most customers who will receive the discount are currently operating at full production. Minnesota Power had the option to propose a rate discount that would apply to new or small EITE-eligible customers likely to benefit from a rate decrease and likely to add jobs as a result. But Minnesota Power only looked at a rate discount for its largest eligible EITE customers.

According to the Company, the probability of closing plants is higher if the probability of remaining open is lower without the discount. Minnesota Power did not demonstrate the likelihood of either of these two competing probabilities.

And to recover the lost revenue from the EITE-eligible customers, Minnesota Power proposes to dramatically increase rates for its residential customers. A rate hike of up to 10 percent would typically be granted only after a careful review of all costs and carries serious potential for rate shock for the residential customers. Additionally, there is no assurance that low-income customers who do not receive energy assistance have been identified by Minnesota Power to ensure that they are exempt from the rate increase as required by the statute.

Furthermore, as a mechanism to offset the burden of the rate increase, the EITE statute requires a utility to "refund any savings, including increased revenues, associated with providing service to a customer under an EITE rate schedule."¹ But Minnesota Power's proposal does not credit any increased revenues to its residential ratepayers, who will bear the burden of the proposed discount. As displayed in the Commission's order, the non-exempt ratepayers could shoulder up to \$19.2 million in increased rates, which would lead to a net benefit to Minnesota Power of \$40 million. If the EITE rate has the desired effect and the company's sales rise, I believe the non-exempt ratepayers should recover their contribution.

For all these reasons, I am not persuaded that, on balance, Minnesota Power demonstrated that its EITE proposal provides a net benefit to the utility, that it is structured to refund increased revenues to the non-EITE customers, or that it is in the public interest.

¹ Minn. Stat. § 216B.1696, subd. 2(d).

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
Nancy Lange
Dan Lipschultz
Matthew Schuerger
John A. Tuma

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by Minnesota Power
for a Competitive Rate for Energy-Intensive
Trade-Exposed (EITE) Customers and an EITE
Cost Recovery Rider

ISSUE DATE: March 23, 2016

DOCKET NO. E-015/M-15-984

ORDER DENYING PETITION
WITHOUT PREJUDICE

PROCEDURAL HISTORY

In 2015, the Minnesota Legislature enacted legislation intended to ensure competitive electric rates for certain energy-intensive trade-exposed (EITE) customers.¹ Under the statute, EITE customers are large industrial customers such as mining, steel processing, or wood products facilities.²

On November 13, 2015, Minnesota Power (the Company) filed the first petition under the statute, requesting approval of two riders: an EITE rate schedule rider and a cost-recovery rider. One proposed rider would credit EITE customers based on their peak electric usage and total energy consumption, and the second rider would recover EITE rate-schedule costs from customers not exempt from recovery under the statute.³ Effectively, the Company's EITE customers would see lower energy bills under certain conditions, and other customers would pay for the discount through their bills.

Under Minn. Stat. § 216B.1696, subd. 2(c), the Company's filing triggered a 90-day deadline for the Commission to make "a final determination." The Commission issued a Notice of Comment Period, establishing initial and reply comment periods addressing the rate schedule. The Commission did not seek comments addressing the merits of the proposed cost recovery rider, anticipating that it could seek comments on the issue later, if necessary.

¹ Minn. Laws 2015, 1st Special Session, Ch. 1, Art 3 §26; codified at Minn. Stat. § 216B.1696.

² See Minn. Stat. § 216B.1696, subd 1(c).

³ The utility is prohibited from recovering EITE-rate-related costs from EITE customers or from ratepayers who receive energy assistance from the low-income home energy assistance program (LIHEAP). Minn. Stat. § 216B.1696, subd. 2(d).

On November 24, Minnesota Power filed a letter objecting to the Commission's Notice, asserting that Minn. Stat. § 216B.1696, subd. 2(c), requires a Commission determination on the entirety of the Company's petition, and that reserving judgment on the merits of the cost recovery rider was inconsistent with the statutory deadline.

On November 25, a group of large industrial customers⁴ (the Large Power Intervenors) filed a letter echoing Minnesota Power's concerns about the Notice of Comment Period.

By November 22, 2015, the Commission had received comments from the following:

- AARP
- Energy CENTS Coalition
- The Iron Mining Association of Minnesota
- Large Power Intervenors
- Legal Services Advocacy Project
- Minnesota Citizens Federation Northeast
- Minnesota Department of Commerce, Division of Energy Resources (the Department)
- Minnesota Forest Industries
- The Office of Attorney General – Residential Utilities and Antitrust Division (the OAG)
- Sierra Club North Star Chapter and Minnesota Center for Environmental Advocacy

By December 31, 2015, the Commission had received reply comments from the following:

- Large Power Intervenors
- Minnesota Citizens Federation Northeast
- Minnesota Power
- Save Our Sky Blue Waters, Wetland Action Group, and Save Lake Superior Association

Generally, the Company and groups representing energy-intensive industries supported the Company's proposal, and groups representing consumer and environmental interests opposed it. The Commission also received at least two dozen comments from individuals, including a state legislator representing the affected region, opposing approval of the petition.

On February 11, 2016, the Commission met to consider the matter. To meet the statutory deadline for a decision in this proceeding, the Commission announced its decision to deny the petition without prejudice at the Commission meeting, with this written order to follow.

⁴ ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

The Commission finds that, while Minnesota Power meets the eligibility criteria for proposing EITE rate options under Minn. Stat. § 216B.1696, subd. 2(a), it has not met its evidentiary burden to show that the proposed rates would confer a net benefit on the utility or the state. The Company has not introduced sufficient, competent evidence of the relevant benefits and costs, or offered an analysis rigorous enough to sustain a finding of the necessary net benefit.

Therefore, the Commission denies Minnesota Power's petition without prejudice. Minnesota Power may file this or another EITE rate proposal in the future, with more robust evidentiary support.

These actions are explained in further detail below.

II. The EITE Statute

Investor-owned electric utilities with between 50,000 and 200,000 retail customers⁵ may now propose EITE-specific rate schedules under Minn. Stat. § 216B.1696.⁶ If an EITE rate is approved, the Commission must allow revenue reductions (or increases) to be passed on to the utility's remaining (non-EITE) retail customers, except low-income customers participating in LIHEAP.⁷

Under the statute, the Commission must, "upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and any corresponding EITE rate."⁸ It must do so "[n]otwithstanding Minnesota Statutes, section[s] 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16"⁹

Those statutory sections include factors that the Commission must ordinarily consider when evaluating utility rate proposals. When a net benefit to the utility or the state is demonstrated, the Commission must approve a proposed EITE rate schedule *notwithstanding* statutes that, among other requirements, direct the Commission to consider factors that might weigh against approval of the rate.

Accordingly, when evaluating a proposed EITE rate schedule, the Commission's primary consideration must be whether the rate schedule results in a net benefit to the utility or the state. The statute requires that the Commission "make a final determination . . . within 90 days" of a petition proposing an EITE rate schedule.¹⁰

⁵ Two Minnesota electric utilities meet these criteria: Minnesota Power and Otter Tail Power Company.

⁶ Minn. Stat. § 216B.1696, subd. 2(a).

⁷ Minn. Stat. § 216B.1696, subd. 2(d).

⁸ Minn. Stat. § 216B.1696, subd. 2(b).

⁹ *Id.*

¹⁰ Minn. Stat. § 216B.1696, subd 2(c).

III. Minnesota Power's Proposed EITE Rate Schedule and Cost Recovery Method

Minnesota Power proposed a two-part framework for implementing the EITE statute. The proposal incorporates a credit rider for EITE customers, and a cost-recovery rider for all retail customers not exempt from recovery under Minn. Stat. § 216B.1696, subd. 2(d).

A. The EITE Customers Rider

For EITE customers, a proposed EITE Customers Rider tariff describes a rate option and the terms under which the option would be available. As proposed, the framework could accommodate multiple EITE rate options, but it initially contains just one.

The Company proposed the following rate option for EITE customers:

Energy Charge Credit (ECC): There shall be an ECC of 1.15¢ per kWh for all Firm Energy, Excess Energy, and Incremental Production Service (IPS) Energy in excess of a monthly energy usage threshold determined to be 450 hours times the customer's expected peak electric usage¹¹

The proposed rider also requires customers to:

- have a Commission-approved Electric Service Agreement (ESA) with at least two years remaining;
- have a total power requirement of at least 2,000 kW set forth in the ESA; and
- sign a "Customer Commitment Letter Agreement" detailing the customer's "anticipated peak electric usage and other necessary information to calculate the ECC or other components" of the rider.

Customers qualifying for the rider would have their electric use evaluated monthly and receive a credit when electric consumption exceeds 450 hours times the anticipated peak demand—which the Company explains is approximately equivalent to a 62% load factor. For example, if a customer operates at its anticipated peak electrical demand for more than 62% of a given month (roughly 28 16-hour days), or operates nonstop at more than 62% of its capacity, it would receive a credit.

According to the Company, this calculation is designed to provide the largest credit for customers operating at or near full capacity, and smaller or no credits to customers only partially in operation. The Company also says it would "periodically update" the peak electric usage threshold to reflect changes in customer operations or load.

B. The EITE Cost Recovery Adjustment Rider

The second proposed rider would recoup the costs of providing the credits under the EITE Customers Rider tariff from other Minnesota Power customers. The rider would not apply to customers excluded by the EITE statute.

¹¹ Exhibit A-1 to Minnesota Power's Initial Filing, "Rider for Energy-Intensive Trade-Exposed (EITE) Customers," (November 13, 2015).

The Company proposed that costs be allocated to customer classes on a per-service-agreement basis. It acknowledged that this method “results in a relatively greater impact on residential and small commercial customers.” Minnesota Power justified this increased impact by arguing that those classes had received relatively smaller rate increases in the Company’s 2009 rate case and alleged that other customer classes have been subsidizing residential customers “for many years.”

The Company estimated that, if its proposal achieved its purpose,¹² residential customers would be required to pay an additional 1.52¢/kWh. It estimated that a typical, average residential customer would pay \$11.45 more every month (an average 14.53% increase). Because the increased charge to residential customers is per-kWh, low-usage customers would see a smaller monthly increase than high-usage customers. The Company proposed a flat \$11.45-per-month increase for General Service customers (an average 4.07% increase), Large Light and Power customers (an average 0.07% increase), and Municipal Pumping customers (an average 1.86% increase).¹³

IV. Positions of the Parties

The Commission received comments supporting and challenging the Company’s proposal from a wide variety of interested groups and individuals. Two primary areas of dispute emerged from the comments: (1) the level of scrutiny that the statute requires the Commission to apply, and (2) whether, upon applying the appropriate level of scrutiny, the Company had met its statutory burden. The Commission will summarize the supporting and opposing positions, below, before addressing them.

A. The Commission’s Role

At the Commission meeting and in comments, multiple parties described this statute as a “fundamental change to ratemaking.” Whether or not that is an accurate characterization, unchanged is the Commission’s obligation to implement the state’s energy regulatory policy. Participants generally agreed that the Commission must effectuate the state’s energy policy as set in statute, but they disagreed about how the Commission should perform its role under this new statute.

1. The Scrutiny Appropriate For Filings Under Minn. Stat. § 216B.1696

Supporters of the Company’s proposal emphasized the apparent urgency implicit in the statute’s 90-day deadline for a Commission “final determination.” They asserted that the Commission should apply a standard that is “broad,”¹⁴ a “low threshold,”¹⁵ and easily satisfied.

Oral statements by supporters at the Commission’s meeting went further, asserting that the Legislature had effectively already made the relevant policy decision, that the Commission risked

¹² According to the Company, if participating EITE customer demand is lower than expected, the actual amount to be recouped from other customers will be lower.

¹³ Percentage increases were estimated by the Company, based on a “typical average monthly bill.” Minnesota Power, Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed (“EITE”) Customers, Table 4, § IV.G. (November 13, 2015).

¹⁴ Large Power Intervenors, Comment, at 10 (December 21, 2015).

¹⁵ *Id.*

over-thinking its role, and that the proposal should be approved because Minnesota Power's showing was adequate and the industries affected required immediate rate relief.

Opponents of the Company's proposal urged that the statute requires a more rigorous standard. They argued that the statute obliges the Commission to evaluate whether the proposal provides a net benefit to the utility or the state, and that the statute places the burden of proof on the proposing utility. They argued that the standard should involve detailed scrutiny of the costs and benefits of the proposal.

2. Deferred Evaluation of the Proposed Cost Recovery Rider

The Commission's notice soliciting public comments stated that the Commission would "establish a separate comment period on the merits of the proposed cost recovery rider, if necessary, likely after decisions are made on the merits of the issues currently open for comment."

The Company and the Large Power Intervenors objected to this procedural approach, arguing that the statute did not allow for it. The Department advocated that the Commission require that non-EITE ratepayers receive notice and an opportunity to comment on a proposed or approved EITE-related rate increase. Several other commenters recommended further investigation before approving the proposed cost recovery rider.

B. Whether Minnesota Power Has Made the Required Showing

The disputes over the Commission's role animated conflicting interpretations of what the EITE statute requires an EITE-rate-proposing utility to demonstrate.

1. "Net Benefit to the Utility or the State"

There was broad agreement that the statute requires the Commission to determine whether the Company has shown its proposal would provide a net benefit to the utility or the state. Supporters and opponents disagreed about what the "net benefit" test should require.

Minnesota Power and supporters of the Company's proposal argued that it should be easy to satisfy the net benefit test, and that the Company had made the necessary showing.

The Company asserted that requiring participating customers to commit to at least two years in an Electric Service Agreement was a "crucial element" of demonstrating that their proposal resulted in a net benefit. According to Minnesota Power, the terms and service conditions of the EITE Customers Rider, together with the customers' Electric Service Agreements establishing a commitment to remain energy-intensive Minnesota Power customers for at least two years, constitutes a net benefit under the statute.

Minnesota Power emphasized that retaining EITE customers benefits the utility's system, and that the economic impact of those customers' continued operation benefits the state.

The Large Power Intervenors offered another analysis of the meaning of "net benefit." They argued that the net benefits standard is a broad test that is "met upon a showing of

improvement from the status quo.” They supported the argument by referring to a prior Commission order¹⁶ and a 2010 Minnesota Court of Appeals case.¹⁷ If this standard were applied, the Large Power Intervenors argued, the burden is easily satisfied by showing that the rate option reduces costs for EITE customers.

Opponents of the proposal argued that the statute is unambiguous, and what “net benefit” means can be determined without looking to other sources for its meaning. They emphasized the presence of the word “net” in the test, and argued that the Commission cannot make a net benefit finding without comparing benefits and costs.

2. Adequacy of the Record

Participants disagreed over whether the record was adequate for the Commission to perform its function.

As Minnesota Power wrote in its petition, “[t]he terms and service conditions in the EITE Customers Rider, when taken collectively, are intended to sustain through a written commitment the burden of proof that the EITE rates provide a ‘net benefit to the utility or the state’” The Company and petition supporters asserted that the details provided were sufficient to make the necessary showing.

Others, such as the OAG and the Department, argued that the Company had not performed an adequate cost-benefit analysis, or provided enough specific cost-benefit information, for the Commission to reach a conclusion on the question before it.

3. Permissible or Required Considerations Beyond Minn. Stat. § 216B.1696

Sierra Club North Star Chapter, Minnesota Center for Environmental Advocacy, and Energy CENTS Coalition asserted that although the EITE statute precludes strict application of several statutes commonly used to evaluate rate proposals, other statutory considerations still apply. For example, the state’s energy savings policy goal, Minn. Stat. § 216B.2401, is not excluded from Commission consideration by the EITE statute.

V. Commission Action

There is no dispute that Minnesota Power is an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers. Under Minn. Stat. § 216B.1696, subd. 2(a), the Company is authorized to propose EITE rate options for Commission consideration.

Having considered the Company’s proposal, however, the Commission concludes that the record is inadequate to demonstrate a net benefit to the utility or the state. The Commission will therefore deny the Company’s petition without prejudice.

¹⁶ *In the Matter of a Request for the Approval of the Asset Purchase and Sale Agreement Between Interstate Power and Light Company and Southern Minnesota Energy Cooperative*, Docket No. E001/PA-14-322, Order Approving Agreement Subject to Conditions, (June 8, 2015).

¹⁷ *In re: Valley Branch Watershed District*, 781 N.W.2d 417 (Minn. Ct. App. 2010).

A. The EITE Statute Authorizes a New Method of Adjusting Rates

Setting utility rates is one of the Commission's central and most important functions. The Commission has been delegated quasi-legislative and quasi-judicial authority to decide a wide range of often contested rate-setting issues. Rate setting determinations generally affect a broad range of ratepayer and public interests, and concern complex and technical issues such as the accuracy of financial information provided by the utility and the proper apportioning of recoverable costs across customer classes.

Interpretation of the EITE statute is an issue of first impression. The EITE statute provides a new method to adjust rates for EITE customers, and it anticipates that any revenue reduction would be recouped from other customers—whose rates are set using the traditional statutory ratemaking process.

Inherent in the Company's EITE rate proposal are common rate setting concerns affecting a broad range of ratepayer and public interests: the accuracy of financial information provided by the utility, customer class costs of service, appropriate rate design, and due process for customers affected by rate changes. The proposal has implications for resource planning and energy conservation efforts; it has potential economic effects on a large portion of the state.

The effect that this proceeding may have on future EITE rate proposals heightens its significance. The Company and rate-proposal supporters made clear that they view this proposal as a first step. Minnesota Power's proposal is designed to accommodate future EITE rate offerings, and it describes its proposed credit as "the initial EITE Customers Rider."¹⁸ The Commission is mindful that how it approaches each new question raised by an EITE rate filing might influence the course of future proposals—and each proposal under the EITE statute will be a rate proposal.

B. The EITE Statute Does Not Require the Commission to Lower its Evidentiary Standards

Commission functions and powers are described in Minn. Stat. § 216A.05. The Commission is required to "review and ascertain the reasonableness of tariffs of rates"¹⁹ In doing so it may make investigations and determinations as authorized by the legislature.²⁰

Ordinarily, the Commission would refer cases like this one, with contested material facts and significant issues that have not been satisfactorily resolved, to the Office of Administrative Hearings (OAH) for formal evidentiary proceedings.²¹ Rate cases are routinely referred to OAH for record development, with a Commission decision to follow—often after a year or more of detailed evidentiary proceedings and upon a record of thousands of pages of sworn expert testimony, supporting evidence, and arguments.

¹⁸ Minnesota Power, Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed ("EITE") Customers, at 11 (November 13, 2015).

¹⁹ Minn. Stat. § 216A.05, subd. 2(2).

²⁰ Minn. Stat. § 216A.05, subd. 1.

²¹ Minn. R. 7829.1000.

But the EITE statute requires that the Commission make a “final determination” within 90 days of a filing proposing an EITE rate schedule under Minn. Stat. § 216B.1696. No contested case proceeding could be reasonably conducted within 90 days.²²

Nothing in the statute, however, directs the Commission to constrain its evidentiary requirements. Ordinarily, rate adjustments of any magnitude must be supported by competent evidence and analytical rigor commensurate with the significance of the request. The statute requires the Commission to reach a decision in an expedited manner, but not to abandon or lower its standards for making reasoned decisions.

The Commission concludes that the Legislature did not intend to eliminate or minimize the Commission’s discretion to disapprove a proposed EITE rate. The plain language of the statute contains no such limitation. The Commission will therefore apply its ordinary standard, and will require that claims be proved by a preponderance of the evidence.

C. The EITE Statute Places the Burden on the Company to Establish a Net Benefit to the Utility or the State

The primary dispute in this case centers on how to interpret the statute’s test for approving an EITE rate schedule. The statute requires approval of an EITE rate schedule “upon a finding of net benefit to the utility or the state.”²³ The Commission will focus, as the participants did, on the meaning of “net benefit.”

A review of Minnesota Statutes Chapter 216B reveals that the Legislature often refers to benefits of energy-related policies and projects. Frequently, though not always, the statutes refer to costs together with related benefits.²⁴ The phrase “net benefit,” however, occurs only once in Chapter 216B—in the EITE statute.

The statute is clear and unambiguous—the Commission must make a finding on the *net benefit* of the Company’s proposal. The Commission must give effect to the word “net,” and it will do so using the direction the Legislature has provided.

“When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.”²⁵ The Legislature also requires that “words and phrases are construed according to rules of grammar

²² The Commission acted promptly to comply with the statutory deadline by deviating from its ordinary practice in at least two ways: (1) by not referring the case to OAH, and (2) by adjusting its ordinary process, which would have resulted in a written order on or before the deadline, so that it could use the time available to evaluate the proposal and the comments.

²³ Minn. Stat. § 216B.1696, subd. 2(b).

²⁴ See, e.g., Minn. Stat. §§ 216B.1635, subd. 2(xi), .1641(e)(5), .166, subd. 3(d), .1692, subd. 5, .241, subd. 1c(f), .241, subd. 7 (referring to benefits together with related, potentially-offsetting costs); cf. Minn. Stat. §§ 216B.1611, subd. 1, .1638, subd. 2(b)(9), .164, subd. 4b(1), .1645, subd. 2a(b)(5) (referring to benefits without reference to potentially-offsetting costs).

²⁵ Minn. Stat. § 645.16.

and according to their common and approved usage[.]” and that “general words are construed to be restricted in their meaning by preceding particular words[.]”²⁶

The Commission concludes that the Legislature’s use of the phrase “net benefit” is distinct from uses of the word “benefit” alone. The benefit must be netted against something.

The natural and ordinary conclusion is that a “net benefit” is the benefit, net of corresponding negative consequences. The Legislature expects, and has required, that the Commission balance the benefits and the detriments of EITE rate proposals.

The Commission rejects the arguments that the “net benefit” test is meant to be a low threshold, easily satisfied, or that the Commission should seek the Legislature’s intent somewhere other than the statute itself. It is not necessary to look beyond the plain language of the statute to understand the test the Commission is meant to apply. A net benefit to the utility or the state—not only to EITE customers—must be established.

D. The Record Is Inadequate to Conclude that the Company’s Proposal Results in a Net Benefit to the Utility or the State

To find a net benefit requires that the Commission examine relevant benefits, related offsetting detriments, and weigh them against one another. Only if the Commission is presented with a record that reflects relevant benefits in excess of relevant costs can it make the necessary finding.

The record in this case is inadequate to make the required finding. As a threshold matter, the Commission is not persuaded that the record adequately identifies all the categories of relevant benefits and costs.

The Company and the proposal’s advocates identified several categories of potential benefits: jobs and economic development, tax revenue, energy sales, and system reliability, for example. But, as the OAG and others identified, many of the purported benefits are inadequately quantified, and the proposal is likely to result in costs that there has been no attempt to quantify.

There is also no discussion of how increased revenue from the proposal would be recognized and shared with non-EITE customers, as the statute contemplates—further suggesting that the record inadequately accounts for relevant benefits. Without evidence of the benefits’ magnitude or likelihood, and by not thoroughly accounting for reasonably likely benefits, the record prevents meaningful analysis of the net effect of the proposed credit on the utility or the state.

Relevant costs were also inadequately considered in the supporting materials; consequently, evidence addressing the cost side of the benefit/cost ledger is incomplete and largely absent. Potential costs could include: the detriment to the utility or the state caused by increasing rates on other customers, the effect of the rate on the environment, increased generation and transmission costs, and others.

²⁶ Minn. Stat. § 645.08.

The purpose of the statute is to ensure competitive electric rates for EITE customers, but only so long as a rate proposal results in a net benefit to the utility or the state. The Commission cannot net benefits against costs when the relevant benefits and costs are not in evidence, and when the record does not reflect a deliberate effort to identify and articulate the types of costs that might be relevant.

Besides being inadequately developed, the supporting material presented to the Commission lacked features the Commission would ordinarily expect and require of evidence supporting a rate proposal, including:

- verified pleadings or sworn expert testimony;
- notice to customers that may be affected by rate increases and an opportunity to comment;
- development of the relevant issues through, e.g., discussion of alternatives considered and consultation with affected parties;
- support for a proposed rate design, such as an up-to-date class-cost-of-service study.²⁷

The Commission cannot reasonably approve the proposed EITE rate schedule based on the provided record, which is composed primarily of unverified claims and conclusory supporting statements.

Additionally, the proposed EITE Energy Charge Credit has no apparent mechanism for ascertaining if it is no longer needed. If the rate is to be in effect indefinitely, the importance of reliable and rigorous supporting evidence is magnified. A mistake about whether this proposal produces a net benefit could result in a net detriment indefinitely.

The Company's burden is to demonstrate a net benefit. Without a record that identifies potential benefits and costs, and quantifies both to the extent practicable, a net benefit cannot be established by a preponderance of the evidence. The record in this proceeding does not permit the Commission to conclude the burden has been met. The petition must therefore be denied.

The Commission denies the petition without prejudice. Because the record precluded evaluation of this proposal on the merits, the Company may refile this proposal, or file a modified or new proposal.

E. Expectations for the Record in Future EITE Proposals

The Commission will not, at this time, prescribe detailed requirements for an adequate record under Minn. Stat. § 216B.1696. Evaluating a record is a highly fact-specific undertaking, and the Commission is not in a position today to articulate evidentiary requirements for future EITE rate schedule proposals.

²⁷ This list is not a list of requirements, but a non-exhaustive list of concerns or suggested improvements identified during the proceeding for this specific combined rate and cost-recovery request.

At a minimum, an adequate record contains sufficient competent evidence to sustain a conclusion that the proposal results in a net benefit to the utility or the state. As always, candidly identifying, addressing, and, ideally, resolving contentious issues before filing would further facilitate Commission review.

F. Issues Raised but Not Decided

Finally, having concluded that the record is inadequate to support a net-benefit finding, the Commission does not reach other issues of statutory construction raised in comments or at the Commission meeting.

If necessary, these will be addressed in future proceedings.

ORDER

1. Minnesota Power is an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers. It may therefore propose EITE rate options under Minn. Stat. § 216B.1696, subd. 2(a).
2. The record does not demonstrate that Minnesota Power's proposed rate schedule provides a net benefit to the utility or the state. Minnesota Power's petition is therefore rejected without prejudice.
3. This order shall become effective immediately.

BY ORDER OF THE COMMISSION



Daniel P. Wolf
Executive Secretary



This document can be made available in alternative formats (e.g., large print or audio) by calling 651.296.0406 (voice). Persons with hearing loss or speech disabilities may call us through their preferred Telecommunications Relay Service.

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of a Revised Petition by
Minnesota Power for a Competitive Rate
for Energy-Intensive Trade-Exposed
(EITE) Customers and an EITE Cost
Recovery Rider

Large Power Intervenors,¹

Relators,

vs.

The Minnesota Public Utilities
Commission,

Respondent.

WRIT OF CERTIORARI

COURT OF APPEALS NO. _____

**MINNESOTA PUBLIC UTILITIES
DOCKET NOS. E-015/M-16-564; E-
015/GR-16-664² & E-015/M-15-984
(renumbered E-015/M-16-564)**

**DATE OF DECISIONS:
JANUARY 2, 2018 (initial Order
denying reconsideration)**

**SEPTEMBER 7, 2017 (verbal Order)
and OCTOBER 13, 2017 (written Order
excluding rider revenue from 2016
baseline calculation and setting
parameters to identify exempt
customers)**

**MARCH 9, 2017 (verbal Order) and
APRIL 20, 2017 (written Order
authorizing cost recovery with
conditions, as such Order was**

¹ The Large Power Intervenors are an *ad hoc* consortium of large industrial customers of Minnesota Power (a regulated utility), consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation, each meeting the definition of energy-intensive trade-exposed (“EITE”) customers under Minn. Stat. § 216B.1696.

² The Commission’s October 13, 2017, Order was cross-filed in Minnesota Public Utilities Docket Number E-015/GR-16-664. This Docket Number is only listed to avoid waiver of any portion of the appeal.

subsequently interpreted on September 7 and October 13, 2017 in verbal and written Orders)

SEPTEMBER 15, 2016 (verbal Order) and DECEMBER 21, 2016 (written Order approving EITE [energy-intensive trade-exposed] rate, establishing cost recovery proceeding, and requiring additional filings)

MARCH 23, 2016 (Order denying without prejudice Minnesota Power's November 13, 2015, Petition for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider)

TO: The Minnesota Public Utilities Commission:

You are hereby ordered to return to the Court of Appeals and serve on all parties in accordance with Rule 115.04, subdivision 3, within 30 days after service of the petition or 14 days after delivery of a transcript, whichever is later, an itemized statement of the record, exhibits and proceedings in the above-entitled matters so that this court may review the decisions of the Minnesota Public Utilities Commission issued on the dates noted above.

You are further directed to retain the actual record, exhibits, and transcript of proceedings (if any) until requested by the clerk of the appellate courts to deliver them in accordance with Rule 115.04, subdivision 5.

Copies of this writ and accompanying petition shall be served forthwith either

personally or by mail upon the respondent Minnesota Public Utilities Commission or their attorneys:

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101

Thomas Bailey
General Counsel
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
Saint Paul, MN 55101

Lisa Crum, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1400
Saint Paul, MN 55101

and upon the Attorney General at:

Lori Swanson
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and the following parties which have participated in the proceedings before the Commission or their attorneys:

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Proof of service of the writ and of the itemized list shall be filed with the clerk of
the appellate courts.

Dated: February ___, 2018

Clerk of Appellate Courts

By: _____
Assistant Clerk

95730587.4 0064591-00013

**STATE OF MINNESOTA
IN COURT OF APPEALS**

In the Matter of a Revised Petition by
Minnesota Power for a Competitive Rate
for Energy-Intensive Trade-Exposed
(EITE) Customers and an EITE Cost
Recovery Rider

**STATEMENT OF THE CASE OF
PETITIONS**

COURT OF APPEALS NO. _____

Large Power Intervenors,¹

**MINNESOTA PUBLIC UTILITIES
DOCKET NOS. E-015/M-16-564; E-
015/GR-16-664² & E-015/M-15-984
(renumbered E-015/M-16-564)**

Petitioners,

vs.

The Minnesota Public Utilities
Commission,

Respondent.

1. Court or agency of case origination and name of presiding judge or hearing officer.

The case originated with the Minnesota Public Utilities Commission:

Hon. Nancy Lange
Hon. Dan Lipschultz

Chair
Vice-Chair

¹ The Large Power Intervenors are an *ad hoc* consortium of large industrial customers of Minnesota Power (a regulated utility), consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation, each meeting the definition of energy-intensive trade-exposed (“EITE”) customers under Minn. Stat. § 216B.1696.

² The Commission’s October 13, 2017, Order was cross-filed in Minnesota Public Utilities Docket Number E-015/GR-16-664. This Docket Number is only listed to avoid waiver of any portion of the appeal.

Hon. Matthew Schuerger
Hon. John Tuma
Hon. Katie Sieben

Commissioner
Commissioner
Commissioner

2. Jurisdictional statement

(B) Certiorari appeal.

- | | |
|---|---|
| (1) Statute, rule or other authority authorizing certiorari appeal: | Minnesota Statutes § 216B.27, subsds. 1, 2, and 5; § 216B.52, subd. 1; and § 14.63. |
| (2) Authority fixing time limit for obtaining certiorari review: | Minnesota Statutes § 216B.52, subd. 1, and § 14.63. |

(D) Finality of order or judgment.

- | | |
|---|--|
| (1) Does the judgment or order to be reviewed dispose of all claims by and against all parties, including attorney fees? | No. |
| (2) If no:
Did the district court order entry of a final partial judgment for immediate appeal pursuant to Minn. R. Civ. App. P. 104.01? | Not applicable. |
| (3) If yes, provide the date of the order: | |
| (4) If no, is the order or judgment appealed from reviewable under any exception to the finality rule? | Yes. |
| (5) If yes, cite rule, statute or other authority authorizing appeal. | Minn. Stat. §§ 216B.52, subd. 1, and § 14.63 provide for appeal of a decision by the Commission within 30 days after a request for rehearing pursuant to Minn. Stat. § 216B.27, subsds., 1, 2, and 5, has been denied. |

Rehearing was denied by initial written Order dated and electronically served on January 2, 2018.

3. State type of litigation and designate any statutes at issue.

Petitioners the Large Power Intervenors are mining and paper and pulp companies that, during normal operations, contribute \$5 billion to the Minnesota economy on an annual basis, directly and indirectly support over 13,000 jobs with a collective annual payroll of more than \$435 million, and pay more than \$155 million annually in State taxes. Their certiorari appeal arises from a series of Orders of the Minnesota Public Utilities Commission (the “Commission”), culminating in an [“Initial Order Denying Reconsideration”](#) dated January 2, 2018. In its Orders, the Commission ruled on Minnesota Power’s petition for approval of an energy-intensive trade-exposed (“EITE”) electricity rate and corresponding EITE rate schedule as provided for by [Minn. Stat. § 216B.1696](#) (the “EITE statute”). Although the Commission found that the EITE rate and EITE rate schedule were a net benefit to Minnesota Power and approved the EITE rate and EITE rate schedule, it modified the statutory cost-recovery methodology in such a manner as to diminish the credit provided for by the EITE rate schedule and expressly approved by the Commission, in violation of the [EITE statute](#).

Under the [EITE statute](#) and upon approval of the EITE rate schedule by the Commission, the utility “shall create a separate account to track the difference in revenue between what would have been collected under the electric utility’s applicable standard tariff and the EITE rate schedule.” [Minn. Stat. § 216B.1696](#), subd. 2(d). Subsequently, “the commission shall allow the utility to recover any costs, including reduced revenues,

or refund any savings, including increased revenues, associated with providing service to a customer under an EITE rate schedule,” such that the impact of the EITE rate schedule is revenue neutral to the utility. *Id.*

The Commission’s interpretation of the unambiguous statute introduces a “base year” not provided for in the statute, fails to appropriately use the statutorily-mandated tracker although the Commission ordered the establishment of that tracker, and fails to tie cost recovery exclusively to the statutorily-mandated tracker approved by the Commission, directly contrary to the [EITE statute](#). The Commission’s interpretation requires payments by the utility not provided for by the [EITE statute](#) to non-exempt non-EITE customers and causes the EITE customers to pay for at least a portion of the cost of the EITE credit approved by the Commission, also directly contrary to the [EITE statute](#). This result is reflected, *inter alia*, in a January 31, 2018, [press release](#) in Minnesota Public Utilities Docket Number E-015/GR-16-664, in which the Commission advised that

The Commission’s decisions in this case and prior cases will ensure that there will be no surcharges on customer bills related to the Energy Intensive Trade Exposed (EITE) rate discounts previously approved by the Commission.

Under the [EITE statute](#), this result is impossible, and shows how the Commission’s extra-statutory actions result in complicated cross-over actions in a rate case (Minnesota Public Utilities Docket Number E-015/GR-16-664) to achieve objectives contrary to [Minn. Stat. § 216B.1696](#), subd. 2(d), and directly contrary to the Legislature’s intent.

4. Brief description of claims, defenses, issues litigated and result below.

The Legislature enacted the [EITE statute](#) on June 13, 2015, with the express

Legislative intent to achieve competitive electric rates for EITE customers of certain investor-owned electric utilities. Under the [EITE statute](#), the Commission is required to issue a final determination upon an EITE-rate application within 90 days of its filing by the utility and must approve an EITE rate schedule and corresponding EITE rate upon a finding of net benefit to the utility or the state. [Minn. Stat. § 216B.1696](#), subd. 2(b) and (c). Upon such approval, the utility shall create a separate account to track the difference in revenue between what would have been collected under the utility's applicable standard tariff and the EITE rate schedule. [Minn. Stat. § 216B.1696](#), subd. 2(d). Subsequently, the Commission shall allow the utility to recover any costs, including reduced revenues, or refund any savings, including increased revenues, associated with providing service to an EITE customer, such that the EITE-rate impact is revenue neutral to the utility. *Id.* The EITE statute provides that the costs shall not be imposed upon, and the refunds shall not be payable to, the EITE customers nor low-income residential ratepayers who receive energy assistance from the low-income home energy assistance program (LIHEAP). *Id.* The EITE statute has not previously been interpreted by the Commission or any court.

On November 13, 2015, Minnesota Power submitted its first petition to implement the EITE Statute in docket number E015/M-15-984 (the "Initial Petition"). 90 days later, on February 11, 2016, the Commission met to consider the matter.³ After considering the

³ *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E015/M-15-984, ORDER DENYING PETITION WITHOUT PREJUDICE, at 2.

arguments from the parties, the Commission voted to deny the Initial Petition without prejudice (the “Initial Order”), issuing a final order on March 23, 2016.⁴ On June 30, 2016, Minnesota Power submitted a revised petition to implement the EITE Statute (the “Revised Petition”), and the Large Power Intervenors submitted supporting affidavits and information in docket number E-015/M-15-984, which the Minnesota Public Utilities Commission renumbered to E-015/M-16-564.

On September 15, 2016, the Commission met and orally approved Minnesota Power’s proposed EITE rate. On December 21, 2016, more than 90 days after its oral approval, 174 days after Minnesota Power filed the Revised Petition, and more than 18 months after the statutory directive to make Minnesota electric rates more competitive, the Commission issued its written Order granting the Revised Petition, approving Minnesota Power’s EITE rate schedule and its corresponding rates, and specifically directing Minnesota Power to establish a tracker account to track the difference between what would have been collected under Minnesota Power’s applicable tariff and the EITE rate schedule (“EITE Rate Approval Order”).⁵ Multiple filings and hearings followed.

On December 30, 2016, consistent with the EITE Rate Approval Order, Minnesota Power submitted a compliance filing that included its cost-recovery proposal, various

⁴ Initial Order at 2.

⁵ *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E015/M-16-564, ORDER APPROVING EITE RATE, ESTABLISHING COST RECOVERY PROCEEDING, AND REQUIRING ADDITIONAL FILINGS, at 9, 12-13 (December 21, 2016).

rate-design alternatives, and an updated communications plan.⁶ Multiple parties commented and the Commission met to consider the matter on March 9, 2017. At that time, the Commission orally approved a cost-recovery mechanism, which was detailed in the Commission’s April 20, 2017, EITE Conditional Cost Recovery Approval Order, which Order provided (to the extent relevant in this appeal) as follows:

- Minnesota Power was authorized to collect a surcharge from non-EITE customers to recover the cost of providing credits to EITE customers, based upon a uniform per-kWh charge and calculated to reflect the difference between the EITE-customer revenue received under the EITE rate schedule and the higher revenue the utility would have received under the prior rate applicable to the EITE customers;
- Minnesota Power was directed to refund to non-EITE customers any net revenue increases resulting from increased sales to customers taking service under the EITE rate schedule, using the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable increases; and
- Minnesota Power was required to make a compliance filing setting forth the surcharge and refund mechanisms in detail, including the baseline gross revenue for 2016 and the methodology for determining the net revenue increases.⁷

The elements of the Order set forth in the second and third bullet point are not provided

⁶ *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E015/M-16-564, ORDER AUTHORIZING COST RECOVERY WITH CONDITIONS, at 2 (April 20, 2017) (“EITE Conditional Cost Recovery Approval Order”).

⁷ *EITE Cost Recovery Approval Order* at 12.

for in [Minn. Stat. § 216B.1696](#) and were immediately of significant concern to Relators, but their scope, meaning, and impact could not be determined until the Commission considered the compliance filing provided for in the third bullet point.

On May 22, 2017, consistent with the EITE Conditional Cost Recovery Approval Order, Minnesota Power submitted its compliance filing.⁸ Multiple parties commented and the Commission met to consider the matter on September 7, 2017. At that time, and as reflected in the October 13, 2017, EITE Rider Calculation Order, the Commission rejected Minnesota Power’s compliance filing and entered an Order directing Minnesota Power (to the extent relevant in this appeal) to:

- exclude EITE-rider revenue from the 2016 baseline calculation provided for in the EITE Conditional Cost Recovery Approval Order;
- use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable revenue increases; and
- use revenues, rather than billing units, to determine the refund.⁹

While [Minn. Stat. § 216B.1696](#) mentions “refunds,” those refunds are tied to “savings” and only come about under circumstances *other* than under the currently-approved EITE tariff, which is based on a fixed amount (1.15¢) per kWh (or \$11.50 per MWh) when the EITE customer at issue exceeds a negotiated threshold usage of electricity. Under the current EITE tariff, and because the EITE tariff is based on a line-

⁸ *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, Docket No. E015/M-16-564, ORDER EXCLUDING RIDER REVENUE FROM 2016 BASELINE CALCULATION AND SETTING PARAMETERS TO IDENTIFY EXEMPT CUSTOMERS, at 2 (October 13, 2017) (“EITE Rider Calculation Order”).

⁹ EITE Rider Calculation Order at 8.

item discount on the EITE customer's electricity invoice, the utility will never receive more revenue under the EITE tariff approved by the Commission than it would have received under the pre-EITE tariff. Under a hypothetical alternative tariff, not negotiated nor approved by the Commission in this case but foreseen by the Legislature in [Minn. Stat. § 216B.1696](#), refunds of savings can exist.¹⁰

Contrary to the EITE statute, the Commission's EITE Conditional Cost Recovery Approval Order and EITE Rider Calculation Order have grafted onto the EITE-tariff an unlawful refund mechanism to only certain utility customers (excluding EITE customers and low-income residential customers receiving LIHEAP assistance) based on the EITE customers' energy-purchase volumes compared to a 2016 baseline. The net, and unlawful, effect of the Commission's extra-statutory action is a diversion of funds from the utility, ultimately resulting in increased electricity rates for EITE customers and low-income residential ratepayers receiving LIHEAP assistance, contrary to the express provisions of [Minn. Stat. § 216B.1696](#), which specifically prohibits the Commission from imposing the costs of the EITE credit on EITE customers and low-income customers receiving LIPEAD assistance, and contrary to the express Legislative intent that "it is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers." [Minn. Stat. § 216B.1696](#), subd. 2(a).

¹⁰ For example, if the utility were to receive approval for a fixed price of electricity for a number of years, in which the price for the initial period exceeds the current (non-fixed) rate, the utility receives more revenue initially under the EITE tariff than under the pre-EITE tariff. As the non-fixed rates climb, the margin decreases until the savings disappear and an EITE-cost is incurred by the utility. During the surplus period, non-exempt, non-EITE customers are entitled to the savings under [Minn. Stat. § 216B.1696](#), subd. 2(d).

5. List specific issues proposed to be raised on appeal.

[Minn. Stat. § 216B.1696](#), subd. 2(d) requires the public utility to create a separate account to track the difference in revenue between what would have been collected under the utility’s applicable standard tariff and an approved EITE rate schedule. Under the Commission-approved tariff at issue, the tracker shows lost revenue, because the tariff provides for a bill credit to EITE customers who exceed an electricity usage threshold. [Minn. Stat. § 216B.1696](#), subd. 2(d) requires the Commission to allow the utility to recover that lost revenue from (and thus charge) non-EITE, non-exempt, customers. In its Orders, the Commission allows the charge, but also provides for a payment to those non-EITE, non-exempt, customers when the EITE customers increase their electricity usage. Those payments are not available to EITE customers or low-income customers receiving LIHEAP assistance, thereby diminishing the effect to the EITE customers of the EITE credit. (See the Commission’s EITE Conditional Cost Recovery Approval Order at 12 and EITE Rider Calculation Order at 8.) Does the Minnesota Public Utilities Commission’s unilateral addition onto Minnesota Power’s EITE tariff of a payment requirement to non-EITE, non-exempt, customers based on the difference between the utility’s net revenues from EITE customers under the EITE tariff compared to the actual 2016 calendar-year revenues from EITE customers violate [Minn. Stat. § 216B.1696](#)?

6. Related appeals.

None.

7. Contents of record.

Is a transcript necessary to review the issues on appeal? Yes.

If yes, full or partial transcript?

A full transcript of the hearings held on September 15, 2016; March 9, 2017; and September 7, 2017 are required and have been filed with the Commission.

Has the transcript already been delivered to the parties and filed with the trial court administrator?

Yes. The transcripts have been filed with the Commission.

If a transcript is unavailable, is a statement of the proceedings under Rule 110.03 necessary?

Not applicable.

In lieu of the record as defined in Rule 110.01, have the parties agreed to prepare a statement of the record pursuant to Rule 110.04?

No.

8. Is oral argument requested?

Yes.

If so, is argument requested at a location other than that provided in Rule 134.09, subd. 2?

No.

9. Identify the type of brief to be filed.

Formal brief under Rule 128.02.

10. Names, addresses, zip codes and telephone numbers of attorney for petitioners and respondents.

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Dated: February 1, 2018

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