VIA ELECTRONIC FILING

July 27, 2016

Mr. Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

RE: In the Matter of a Revised Petition by Minnesota Power (MP) for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider
PUC Docket No. E-015/M-16-564

Dear Mr. Wolf:

In connection with the above-captioned docket, please find joint comments submitted by the Citizens Utility Board of Minnesota, Legal Services Advocacy Project, Energy CENTS Coalition, and Minnesota Citizens Federation Northeast (the "Consumer Advocates").

Sincerely,

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STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Matt Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of a Revised Petition by Minnesota Power (MP) for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider	Docket No: E-015/M-16-564

Comments of Citizens Utility Board of Minnesota, Legal Services Advocacy Project, Energy CENTS Coalition, and Minnesota Citizens Federation Northeast (Consumer Advocates)

Introduction

The Minnesota Legislature, during its First Special Session in 2015, authorized certain utilities to propose rate options for Energy-Intensive, Trade-Exposed ("EITE") customers.[1] On November 13, 2015, Minnesota Power ("MP" or "the Company") petitioned the Minnesota Public Utilities Commission ("the Commission") for approval of a tariff proposing an EITE rate ("Initial EITE Petition").[2] On March 23, 2016, the Initial EITE Petition was denied without prejudice by the Commission ("March 23 Order").[3]

[1] 2015 Minn. Laws, First Special Session, Chapter 1, Article 3, Section 26 (codified at Minn. Stat. § 216B.1696) (providing that "an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers, shall have the ability to propose various EITE rate options").
[2] Minnesota Power, *Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed (EITE) Customers*, In the Matter of a Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-15-984 (November 13, 2015).
[3] Minnesota Public Utilities Commission, *Order Denying Petition Without Prejudice*, In the Matter of a Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-15-984 (March 23, 2016).

On June 30, 2016, Minnesota Power filed a revised petition for an EITE tariff and EITE Cost Recovery Rider ("Revised EITE Petition").[4] On July 6, 2016, the Commission issued a Notice of Comment Period on EITE Rate Schedule.[5]

The Citizens Utility Board of Minnesota, the Energy CENTS Coalition, the Legal Services Advocacy Project, and the Minnesota Citizens Federation Northeast (collectively, "the Consumer Advocates") appreciate the opportunity to offer comments in this docket. The Citizens Utility Board of Minnesota advocates for Minnesota residential and small business consumers through consumer outreach and administrative and policy advocacy to ensure utility service that is affordable, reliable, and clean. The Legal Services Advocacy Project is a statewide division of Mid-Minnesota Legal Aid, representing Legal Aid and the interests of low-income Minnesotans on utility and other issues through legislative and administrative advocacy, research, and community education activities. The Energy CENTS Coalition represents the interests of low-income Minnesotans through legislative and regulatory advocacy and direct bill-payment and conservation assistance programs, and is dedicated to ensuring affordable utility service for low- and fixed-income people. The Minnesota Citizens Federation Northeast (previously known as the Minnesota Senior Federation) is a charitable, non-profit, membership consumer organization, representing more than 1,000 Minnesotans, including more than 800 in Minnesota Power's service territory.

[4] Minnesota Power, *Revised Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed ("EITE") Customers*, In the Matter of a Revised Petition by Minnesota Power (MP) for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-16-564 (June 30, 2016).
[5] Minnesota Public Utilities Commission, *Notice of Comment Period on EITE Rate Schedule*, 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-16-564 (issued July 6, 2016).

For the reasons articulated below, the Consumer Advocates strongly urge the Commission to deny MP's petition. The Company has failed to meet its statutory requirement to demonstrate a net benefit to the utility or the state. Further, MP's Revised EITE Petition does not meet the public interest test because, among other things, it fails to justify the inordinate burden its proposed EITE tariff would place on residential ratepayers. If, however, the Commission does approve the Company's petition, the Commission should take the steps the Consumer Advocates recommend to protect residential customers from the proposed rate increase and to otherwise strengthen the tariff's consumer protections.

Response to Questions Posed in Commission Notice

A. *Does MP's proposed rate for EITE customers comply with Minn. Stat. § 216B.1696, including the types of customers eligible for the rate, the criteria for qualification for the rate, the individual design elements of the rate, and the specific rate option proposed?*

No. Minnesota Power's Revised EITE Petition does not comply with Minnesota Statutes, section 216B.1696, particularly with respect to the criteria for qualification for the EITE rate. Therefore, the petition should be denied.

By the express terms of the statute, an EITE rate schedule must be proposed for all prospective EITE customers, not just categorically eligible ones, such as paper and steel mills. Minnesota Statutes, section 216B.1696, defines an energy-intensive trade-exposed customer to include four types of customers, three of which are categorically eligible. It also includes a fourth:

> 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.[6]

MP's petition covers only three of the four types of customers: (1) an iron mining extraction and processing facility, including a scram 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; and (3) a steel mill and related facilities.[7]

The Consumer Advocates do not dispute that the customers the Company proposes to provide with an EITE rate schedule are categorically eligible. But a tariffed rate schedule is universally applicable to all statutorily-eligible customers, not just the customers that are the subjects of this petition. Therefore, to comply with the EITE statute – including, as the Commission specifies, the types of customers eligible for the rate and the criteria for qualification for the rate – the Revised EITE Petition <u>must</u> include the criteria under which the fourth category of customer would be eligible and the criteria to determine eligibility. The Company has utterly failed to supply this information and thus its petition should be denied.

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[6] Minn. Stat. § 216B.1696, subd. 1(c)(4) (Emphasis added).
[7] Minn. Stat. § 216B.1696, subd. 1(c)(1), (2), and (3).

Eligibility for the proposed EITE rate for this fourth category of customer hinges on five prongs. An eligible customer must: (1) be a retail customer of, and with a single electric service agreement with, an investor-owned utility; (2) collectively impose a specified peak demand on the system; (3) have a minimum, specified annual average load factor; (4) demonstrate that electricity costs are at least 10% of its overall cost of production; and (5) **be subject to globally competitive pressures.**[8]

MP's Initial EITE Petition was bereft of any criteria whatsoever to define globally competitive pressures, let alone any basis to determine whether a proposed EITE customer is subject to them. In its Revised EITE Petition, MP has again failed to present the Commission with any criteria and thus has not cured its initial, fatal omission. The Company has provided no criteria or any foundation on which the Commission might base a determination of eligibility for the rate for a customer in this fourth category. Therefore, the Company has not complied with Minn. Stat. § 216B.1696, and its Revised EITE Petition should be denied.

[8] *See* Minn. Stat. § 216B.1696, subd. 1(c)(4) (Emphasis added).

B. *What criteria should the Commission use to evaluate whether MP's proposed EITE rate schedule provides a net benefit to the utility or to the state as required by Minn. Stat. § 216B.1696, subd. 2(b)? Has MP demonstrated its proposed EITE rate schedule provides such net benefit?*

For at least three reasons, the Company fails (once again) to demonstrate a net benefit. First, MP fails to demonstrate a causal link between the proposed EITE rate and job retention or workplace expansion. Second, the Company fails to demonstrate a nexus between the proposed lower rate and increased competitiveness. Third, the Company does not identify, consider, evaluate, or net out any adverse effects of the proposed EITE Cost Recovery Rider, including the severely negative impact on residential ratepayers. Moreover, the Consumer Advocates do not believe that the Company can adequately protect low-income ratepayers from the proposed rate increase or that it has taken sufficient energy efficiency measures to lower energy costs. In sum, although MP has made some improvements from its Initial EITE Petition, those improvements are not adequate to meet its burden, and the Revised EITE Petition fails to meet the net benefit test. It must be denied.

I. **MP Fails to Show a Causal Link Between the EITE Rate and Job Retention and Workplace Expansion**

Minnesota Power fails to make any causal connection between the proposed rider and increasing the viability of EITE customers. Beyond mere generalizations asserting that lower costs will help these customers, MP fails to demonstrate that this particular subsidy will have any discernible effect on the prospective EITE customers' economic health, their ability to increase production, or the likelihood that they will retain or increase jobs. Therefore, the Commission cannot find that MP's proposal will provide a net benefit to either the utility or to the State. The Commission should reject the revised petition.

The Company offers unsupported generalizations that do not meet its burden of proof. In his affidavit in support of the petition, Director of Energy Policy and Regulation Herbert Minke avers: "If the EITE [rate] is approved and implemented, it is reasonable to assume that a more competitive electricity rate would likely lead to increased production by Minnesota Power's taconite and paper customers."[9] First, this is a speculative and conclusory statement, devoid of factual support. Second, contrary to MP's unsupported conclusion, it is not reasonable to assume that a more competitive electricity rate would lead to increased production. As industry representatives themselves admit, restricting or expanding production results from a variety of factors: to wit, replenishing supplies;[10] an increase in iron ore prices and "building boom[s]" in other countries;"[11] an increase in car and truck production;[12] or reductions in imported steel.[13] Substantially more evidence would need to be adduced in order to establish a causal nexus between the isolated factor of lower rates and increased production.

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[9] Minnesota Power, *Revised EITE Petition*, *supra* note 4, at Exhibit J - AFFIDAVIT OF HERBERT MINKE, III, p. 2.

[10] *See, e.g., Taconite demand up; more production on Minnesota's Iron Range*, TWIN CITIES PIONEER PRESS, Sept. 11, 2009 (quoting Craig Pagel, President of the Iron Mining Association of Minnesota, who indicated that the "increased activity has more to do with replenishing reserves that were allowed to dwindle during the recession…"); available at http://www.twincities.com/2009/09/11/taconite-demand-up-more-production-on-minnesotas-iron-range/

[11] *See*, e.g., John Meyers, *Taconite production up on the Iron Range*, DULUTH NEWS TRIBUNE, DEC. 5, 2011; available at http://www.duluthnewstribune.com/content/taconite-production-iron-range.

[12] *See, e.g., Taconite Production Projected to Increase*, KBJR News, July 24, 2012 (reporting that "'[c]ar and truck sales are up, which make up 25 percent of the demand for steel in the United States,' said Iron Mining Association President, Craig Pagel"); available at http://www.northlandsnewscenter.com/home/Outlook-Taconite-Production-163635936.html?vid=a. Note that the U.S. auto industry set an all-time record in auto sales in 2015, and auto sales overall increased 2% last month. *See* Michael Wayland and Melissa Burden*, Auto industry sets all-time sales record in 2015,* DETROIT NEWS (Jan. 5, 2016); available at http://www.detroitnews.com/story/business/autos/ 2016/01/05/auto-sales/78295542/; and Nathan Bomey, *GM down, Ford up as new car sales rise 2.5% in June*, USA TODAY, July 1, 2016; available at http://www.usatoday.com/story/money/2016/07/01/us-auto-sales-june-2016/86608788/.

[13] *See, e.g.,* Mark O'Hara, *US Steel Producers Celebrate as Imports Fall to 4-Year Low,* MINNESOTA IRON MINING NEWS, March 28, 2016 (reporting that "US steel companies have had their share of victories in their battle against unfairly traded steel products"); available at http://www.taconite.org/news/latest/?109.

But the most persuasive argument that MP has failed to meet its burden to show net benefit or that the EITE rate schedule is needed to spur production comes from the MP's own proposal and the EITE companies' supporting affidavits themselves. According to their own testimony, these industries, whose customers argue that the EITE rate is necessary to make them competitive, are relatively stable or actually increasing production **today** – without any change in electric rates. For instance, Cliffs Natural Resources plans to construct a new direct-reduced iron plant at the site of the defunct Essar Steel plan in Nashwauk.[14]

The affidavit of Santi Romani, General Manager at United Taconite confirms that United Taconite expects to be at full employment in August 2016 because of the Cliffs plant – without an EITE tariff.[15] In addition, Jack Croswell, General Manager at Hibbing Taconite, admits in his affidavit of support that this customer is operating at full production already.[16] As he acknowledges, "[t]he annual rated capacity of Hibbing Taconite is 8.0 million gross tons. In 2015, Hibbing Taconite produced 8.1 million gross tons."[17] Further, MP's Revised Petition states that "paper industry customers' production […] remained relative [sic] stable" through 2014 and 2015.[18] Therefore, the EITE tariff will not spur increased production at facilities already running at full strength.

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[14] Hughlett, Mike, *Cliffs CEO paints upbeat picture of potential for disputed Essar Steel site,"* STAR TRIBUNE, July 12, 2016; available at: http://m.startribune.com/cliffs-ceo-paints-upbeat-picture-of-potential-for-disputed-essar-steel-stie/3865572111/?section=business.

[15] Affidavit of Santi Romani, In the Matter of a Revised Petition by Minnesota Power (MP) for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-16-564 (June 29, 2016), at 2.

[16] Affidavit of Jack Croswell, In the Matter of a Revised Petition by Minnesota Power (MP) for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-16-564 (June 28, 2016), at 1.

[17] Id.

[18] Minnesota Power, *Revised EITE Petition, supra* note 4, at 45.

In addition, the industry's justification that "the EITE tariff will help mitigate the impact of future electric rate increases at United Taconite" misses the mark by a wide margin.[19] The purpose of the tariff is to increase competitiveness, not provide rate mitigation. Speculative future mitigation of rate increases for one customer is not relevant to an evaluation of net benefit. This justification should be disregarded.

In sum, these contradictory admissions from the petitioner and proponents themselves undermine their own arguments and constitute self-incriminating evidence that the Revised EITE Petition fails the net benefit test. Providing an EITE rate break to customers who are already at or will already be ramping up to full production absent any subsidy would be foolhardy and unnecessarily detrimental to all other ratepayers, including and especially those low- and fixed-income residential customers who can least afford the substantial rate increase that would accompany approval of the Revised EITE Petition. Minnesota Power has the burden to show that a 5% reduction in electric costs for those industries will result in the retention or expansion of those living wage jobs. The Company has not done so. It has not met its burden of proof. The Revised EITE Petition should be denied.

[19] Affidavit of Santi Romani, *supra* note 15.

II. MP Fails to Show Reducing Rates Will Make EITE Customers More Competitive

Minnesota Power has not demonstrated that electric rates, as opposed to the myriad of other factors that contribute to competitiveness, is the one factor that, if reduced, would make the EITE customers more competitive. Moreover, even if this factor **could** be isolated and shown to be determinative, the reduction proposed here would not make the EITE customers more competitive, but rather impose an unnecessary and substantial burden on other customers.

A. MP Has Not Shown Electricity Rates are the Determinative Factor in Making EITE Customers More Competitive

Minnesota Power asserts that its petition "is intended to ensure competitive rates for Energy-Intensive Trade-Exposed customers."[20] Yet, by the Company's own admission, "[e]nergy rates are [just] one input into businesses and by themselves cannot ensure the competitiveness of industries tied to the global marketplace."[21] These contradictory statements cannot be reconciled.

Electric costs are not determinative of whether or not Minnesota Power's large customers are competitive, and, therefore, the proposed five percent reduction in electric rates for those customers will not make them <u>more</u> competitive. Many other factors unrelated to electric rates are equally or more influential in these customers' ability to compete in a globally competitive market. The Revised EITE Petition should be denied.

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[20] Minnesota Power, *Revised Petition*, *supra* note 4, at STATEMENT REGARDING JUSTIFICATION FOR EXCISING TRADE SECRET INFORMATION.
[21] Minnesota Power, *Initial EITE Petition*, *supra* note 2, at 33

Business cycles come and go, and large customers adapt, sometimes by idling plants when necessary for reasons other than electricity rates and costs. Iron Range plants have been temporarily idled or closed due to a whole host of factors. For instance, in 2000, the LTV plant closed due to "facilities [sic] age and the declining quality of the ore feeding the plant;"[22] in 1986, Reserve Mining closed its Iron Range operations due to environmental concerns;[23] and in 1983, Eveleth Mines suffered an economic setback when Ford Motor Company closed its steel subsidiary.[24] Periodic recessions and other factors unrelated to electricity prices cause the idling or closing of plants.

As to the current situation, financial analysts attribute the current downturn in the steel industry not to increased electric costs, but rather to high inventory levels and foreign steel imports. Note the following reports:

- "U.S. Steel said that it will temporarily idle a part of its Minnesota Ore Operations at the Minntac iron ore plant in Mt. Iron, MN, to adjust production. The move will be effective Jun 1, 2015. Iron-bearing rock (known as taconite) is mined and processed into iron ore pellets at the Minntac plant for use in the company's steelmaking plants. *U.S. Steel's existing inventory levels and adjustments of its steel production throughout North America led to this decision.*"[25]

[22] Tom Scheck, *Mine Closing Rocks Iron Range*, Minnesota Public Radio (May 24, 2000).
[23] University of Minnesota, Duluth, Kathryn A. Martin Library, *Reserve Mining Company (1939-1986)*; at https://libarchive.d.umn.edu/?p=creators/creator&id=882
[24] David Schultz David Jann, *The Use of Eminent Domain and Contractually Implied Property Rights to Affect Business and Plant Closings*, 16 WM. MITCHELL L. REV. 383, 427 (1990) (citing *Ford Action Deals a Blow to Eveleth Mines*, ST. PAUL DISPATCH, Sept. 15, 1983).
[25] *See* Energy CENTS Coalition*, Comments of Energy CENTS Coalition,* In the Matter of a Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-15-984 (December 21, 2015), at 5 (Emphasis added).

- “U.S. Steel regularly adjusts production at its operating facilities to adapt to the changing market conditions owing to the cyclical nature of the industry. Economic factors like high levels of imports, unfairly traded products and the reduced steel prices continue to have an adverse impact on steel production. A total of 412 employees working at the Keetac plant have been informed about the idling of production . . . As reported on Jan 27, 2015, U.S. Steel's fourth-quarter 2014 profits slipped 7.4% to $275 million or $1.83 per share from $297 million or $1.93 per share recorded in the year-ago quarter. However, the company saw a significant increase in its adjusted earnings which surpassed expectations. . . The company expects moderate growth in the global economy during 2015 with U.S. growth rate at roughly 3% and European region growth rate at roughly 1%.”[26]

- “U.S. Steel said, earlier this month, that it is idling its Lorain Tubular Operations in Lorain, OH, and also temporarily suspending operations in another steel tube facility in Houston, TX, resulting in a lay off of 756 workers. . .U.S. Steel, which had around 26,000 employees in North America in 2013, blamed plunging oil prices and weakening tubular market conditions for the planned closures in Ohio and Texas. Crashing oil prices are affecting demand for products made in these plants and hurting the company’s business in the energy market.”[27]

Other factors beyond inventory levels, imports, and lower production levels also contribute to the current economic condition of steel companies. For example, U.S. Steel’s financial position has been affected by the accelerated payment of $118.6 million demanded by the owners of at least 25% of the its debt. Originally, U.S. Steel had until 2019 to repay the debt but the demand for payment, by The Bank of New York Mellon, was made on November 20, 2015.[28]

[26] Id.
[27] Id.
[28] Id.

And, as the largest supplier of steel tubular goods to energy production companies, U.S. Steel is also affected by the depressed energy sector and lower crude oil prices, the latter of which accounting for 10% of steel consumption. Further, "'U.S. Steel has faced several challenges following the global recession. Some of these challenges were due to difficult markets, while some related to the company's core operations.'"[29]

Factors well beyond electric rates, and even beyond the primary economic issues of imports and inventories, affect U.S. Steel's financial health. The following (non-exhaustive) list illustrates that the cost of electricity is not the key to the competitiveness of steel companies:

- "By 2009, U.S. Steel's pension plan was underfunded by . . . $1.7 billion. More than half of pension assets were invested in equities. With the crash in stock prices, the assets of U.S. Steel's pension fund also came down. To add to these struggles, retiree medical and life insurance plans were also underfunded by $2.9 billion."[30]

- "U.S. Steel (X) has issued notices to more than 2,000 employees of its Illinois plant under the Worker Adjustment and Retraining Notification (WARN) Act. The plant produces tubular products for the steel industry. The energy sector accounts for 10% of steel consumption in the US. The sector was buoyant, driven by shale discoveries and rising crude oil production. However, steel demand from the energy sector has been hit, as crude oil prices have fallen to multi-year lows."[31]

- "U.S. Steel is investing $47.5 million towards the construction of a coupling facility. This facility will help U.S. Steel develop premium value-added steel products for the energy industry. Value-added steel products sell at higher prices compared to standard steel products. This is also part of the Carnegie Way plan, through which U.S. Steel is working to increase its profit margins."[32]

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[29] Id.
[30] Id., at 6.
[31] Id.
[32] Id.

- "There are two basic types of steel production processes: blast furnace (or BF) and electric arc furnace (or EAF). U.S. Steel produces all of its steel through blast furnaces. A blast furnace has high set-up costs compared to an EAF. As the fixed costs associated with BFs are higher, they severely affect the profits for steel companies in downturns. The reasoning is pretty simple. When production falls, fixed costs are divided among fewer units. This increases the per-unit production cost. When capacity utilization rates are low, as they are currently, the profitability of steelmakers using blast furnaces comes down. On the other hand, steel companies using EAFs to produce steel generally don't see huge swings in their profits."[33]

- "An integrated steel producer, U.S. Steel has been using self-mined iron ore for steel production. It hasn't been able to benefit from lower steel scrap and iron ore prices. By producing steel through EAFs, U.S. Steel can use steel scrap to produce finished steel. The company will benefit from lower steel scrap prices. U.S. Steel had halted expansion at its iron ore mine in Minnesota."[34]

- "U.S. Steel has announced an investment of $230 million to construct an EAF at its facility in Fairfield Works, Alabama. The construction will begin in 2Q 2015, and it's expected to complete by 3Q 2016. EAFs will provide U.S. Steel with operational flexibility, as it's much easier to adjust production levels in an EAF."[35]

In addition, not all steel companies are experiencing the issues unique to U.S. Steel. For example, Steel Dynamics, (80-82%) owner of Mesabi Nugget and Mining Resources, already produces steel using EAFs and, unlike U.S. Steel, "posted losses for five consecutive years between 2008 and 2013 . . [and was] 'still making money.'"[36] Analysts expect the company to "'grow earnings at an average rate of 11.9%'" despite a forecasted loss of 39.33% in 2015.[37] Further, analysts assert that Steel Dynamics "'has

[33] Id.
[34] Id., at 6-7.
[35] Id., at 7.
[36] Id.
[37] Id.

the balance sheet and cash flow to capitalize on the current market dislocation'" and they expect scrap values "'will allow Steel Dynamics to expand profit margins.'"[38] The CEO of Steel Dynamics stated that "there continues to be strength in several key steel-consuming end markets" and believes that the company is "'poised to capitalize on meaningful growth opportunities, both near-term and in the future.'"[39]

In other words, there are no general, operational conclusions that can be made about the Iron Range's taconite companies. It is misleading to suggest that electricity costs are more important than other production costs, company management practices, and operational inefficiencies and differences among companies.

Further, the steel industry is not the only industry that is experiencing high inventory rates and pressure from global competition. The downward trend in the oil and gas sector, for example, has caused Honeywell "'to forecast sales growth of one to two percent, a slower growth rate than . . . anticipated.'"[40] And, "'rising global crop stockpiles and the strengthening of the dollar have weighed on U.S. grain exports.'"[41]

It is misguided to isolate electric costs as the primary economic pressure and to narrow the focus of that pressure to only a few industries. To do so improperly misdirects attention from the real problems leading to competitive problems. Lowering electric rates for a select few and raising electric rates for residential and other business customers will not solve the problems facing taconite companies, and to do so is not in the public interest.

[38] Id.
[39] Id.
[40] Id., at 8.
[41] Id.

MP fails to provide factors other than electricity costs that render or could render an EITE customer globally uncompetitive (e.g., wages, pensions, prices paid to vendors, shipping or transportation costs, internal operational inefficiencies). In order to determine whether or not a net benefit exists from varying only one factor – the reduction in electricity rates – all these factors must be considered and analyzed. The Company has identified and evaluated none. Further, the Company acknowledges, "[t]he cost challenges facing these customers are not a temporary condition; they are an ongoing cost of doing business"[42] For all these reasons, the Revised EITE Petition should be denied.

B. The Proposed Rate Reduction Will Not Make the EITE Customers Competitive

A closer look at Minnesota's taconite industry shows that the proposed rate would fall far short of what is needed to make the EITE customers competitive. Analysis of historical annual production at the facilities of the proposed EITE customers, comparing the relative proportion of projected demand of iron and paper customers, shows that paper mills use significantly more electricity on a MWh/T basis.[43] Applying the 80%/20% projected energy usage ratio between mining and paper companies to the 4.8 TWh of projected usage in Table 6 of the Revised EITE Petition divides the total into approximately 3.8 and 0.9 TWh of demand, respectively, for mining and paper customers. When divided over those customers' annual capacities in US tons, taconite production is estimated at 82 kWh/ton and paper

[42] Minnesota Power, *Revised Petition*, *supra* note 4, at 36.
[43] Minnesota Power, *Minnesota Power 2015 Integrated Resource Plan,* In the Matter of Minnesota Power's Application for Approval of its 2015-2029 Resource Plan, Minnesota Public Utilities Commission Docket No. E015/RP-15-690, September 1, 2015, at Appendix A: Minnesota Power's 2014 Annual Electric Utility Forecast Report, at 34-35.

production is estimated at 633 kWh/ton. These estimates are in line with figures in industrial literature.[44]

A five percent rate reduction will have a larger dollars-per-ton impact the operating costs of paper mills, since they use more electricity per ton than do taconite mines. Carrying out the above production assumptions to estimate each proposed EITE customers' 2016 electricity bills, the Company's proposal amounts to an average of only $0.21/ton reduction in production costs for mining customers. According to Minnesota State Representative Tom Anzelc, the companies assert that they need to reduce their production costs $10 per ton "'just to remain viable.'"[45] Thus, the proposed $0.21/ton reduction amounts to slightly more than **one-fiftieth** of the total cost reduction the taconite companies say they need to achieve. If the rate reduction will not achieve the statutory goal, then it is pointless and needlessly harmful to other ratepayers to approve it. MP's petition should be rejected.

C. MP Has Failed to Show a Sufficient Link Between a Rate Reduction and Increased Competitiveness

In sum, the Company's filing is fatally deficient to show net benefit if it cannot show that the rate break proposed would be the critical factor in making the EITE customer more globally competitive. The intent of Minnesota Statutes, section 216B.1696, is to increase the competitiveness of the EITE customers – it is not to simply provide electric rate cost relief.

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[44] *See, e.g.,* World Resources Institute, *Energy Efficiency in U.S. Manufacturing, the Case of Midwest Pulp and Paper Mills* (2013), at 14-15; and U.S. Department of the Interior, U.S. Geological Survey, *Estimates of Electricity Requirements for the Recovery of Mineral Commodities, with Examples Applied to Sub-Saharan Africa* (2011), at 61.

[45] John Myers, *As Minnesota taconite producers cut their costs, labor contracts are next*, DULUTH NEW TRIBUNE, June 21, 2015 (quoting Minnesota State Representative Tom Anzelc, who represents House District 5B, which encompasses parts of Cass and Itasca Counties).

If an EITE customer would be in no better posture vis-à-vis its global competitiveness despite receiving the rate break, then there is no net benefit associated with this tariff. Thus, if the rate break proposed in the filing will do nothing to fulfill what MP itself proclaims is what the petition's primary intention – to "ensure competitive rates" – then it would be senseless to provide it. If there is no showing that provision of the EITE rate will fulfill the purpose of the legislation, then can be no net benefit, and what possible justification would there be for other ratepayers – especially low-income and other vulnerable ratepayers – to absorb such a hefty cost shift? Even if the proposed rate break could improve EITE customers' global competitiveness, MP has failed to provide any evidence to support a finding that it likely would, and therefore it cannot demonstrate a net benefit. If the stated purpose of the filing cannot be accomplished, then the petition should be denied.

III. MP Fails to Show EITE Customers Have Made Cost-Effective Investments in Efficiency and Conservation to Lower Costs

Minnesota Power's proposal would transfer $19 million, via electricity payments, from residential and other ratepayers to 11 private companies. Before this proposed rate schedule can be determined to provide a net benefit to the utility or to the state, the EITE customers should be required to demonstrate that they have made all possible investments in efficiency and conservation that would cost-effectively lower their energy bills.

MP's proposal touches briefly on the EITE customers' energy conservation efforts, but it does not demonstrate that these customers have captured all the cost-effective savings available to them.

In its Revised EITE Petition, MP states:

> Minnesota Power's EITE customers have recently invested over $40 million and have saved 170 million kWh each year through energy efficiency and conservation projects…Clearly, EITE customers have and continue to take energy conservation seriously and have acted on large measures to lower power costs through efficiency and demand side management.[46]

However, MP proposes to transfer $19 million per year from residential and other ratepayers to EITE customers – or a total of $76 million over the four-year duration of the EITE tariff. It is reasonable to ask whether there are opportunities for the EITE customers to invest in cost-effective efficiency and conservation measures. Indeed, it is the policy of the State of Minnesota that:

> Cost-effective energy savings should be procured systematically and aggressively in order to reduce utility costs for business and residents, **improve the competitiveness and profitability of business**, create more energy-related jobs, and reduce the pollution and emissions that cause climate change.[47]

As the Sierra Club and Minnesota Center for Environmental Advocacy noted in their comments on MP's Initial EITE Petition, rather than a discount, a program or policy to strengthen EITE businesses through energy conservation "more closely aligns with section 216B.1696 as an example of 'rates to encourage utilization of new clean energy technology.'"[48] A simple rate discount for EITE customers, as MP proposes, would actually reduce the companies' incentive to pursue energy savings.

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[46] Minnesota Power, *Revised EITE Petition, supra* note 4, at 39.
[47] Minn. Stat. § 216B.2401 (Emphasis added).
[48] Sierra Club North Star Chapter and Minnesota Center for Environmental Advocacy, *Sierra Club North Star Chapter and MCEA Joint Comments on Minnesota Power's Petition to Ensure Competitive Electric Rates for Energy Itensive [sic] Trade-Exposed Customers*, In the Matter of a Petition to Ensure Competitive Electric rates for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-15-984, (December 21, 2015), at 2.

IV. MP's Net Benefit Analysis is Incomplete and Ignores Adverse Impacts

In its March 23 Order, the Commission interpreted "net benefit" as follows: "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."[49] However, MP's proposal fails to list or analyze any harmful impacts of its proposal – for example identifying and accounting for the significantly adverse effects on residential customers of an inordinately large increase and the consequential and adverse economic effects on the region and the state. It is impossible to determine whether or not there is a net benefit if there is no analysis of, as the Commission has required, "corresponding negative consequences." Accordingly, MP's Revised EITE Petition is fatally deficient and it should be denied.

Ratepayer impact is among the most important factors to consider in determining net benefit. There can be no net benefit to the utility or to the state if the impact on other ratepayers is unduly or inordinately adverse. Therefore, at a minimum, MP must evaluate, and the Commission must consider, how this filing would affect residential ratepayers in general and non-exempt low-income ratepayers in particular, and how any adverse impacts affect the utility or the state.

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[49] Minnesota Public Utilities Commission, *Order Denying Petition Without Prejudice*, *supra*, note 3, at 10.

The petition indicates that the bill for a residential customer would increase by about ten percent.[50] By any measure, this is a large increase. It will be particularly burdensome for customers who use electricity for space heating. These customers are very likely to use more than 1,000 kWh per month in the winter months, exceeding MP's "high usage" customer estimate. The bill increase is even more onerous to vulnerable MP residential ratepayers who are low-income or on fixed incomes, including elders and persons with disabilities.

The exemption under the EITE statute for certain low-income customers (i.e., those receiving LIHEAP) protects only a limited percentage of low-income customers. Many more will be harmed. A much larger portion of Minnesota Power's low-income residential customers are eligible for, but do not receive, LIHEAP. Fewer than 30% of the income-eligible households in MP's service area actually receive financial assistance from LIHEAP. The overwhelming majority of lower-income MP customers do not receive any help at all from LIHEAP.

By definition, one-quarter of Minnesota households are income-eligible for LIHEAP.[51] However, in areas of the state with lower household incomes, such as those in MP's service area, a greater percentage of households are income-eligible for LIHEAP. The Company estimates that, as of 2009, approximately 36,000 customers were income-eligible for LIHEAP, but only 10,700 are currently enrolled.[52] Further, an additional segment of ratepayers who

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[50] Minnesota Power, *Revised EITE Petition*, *supra* note 4, at 29.
[51] Households with incomes at or below 50% of the State Median Income qualify. *See* Minnesota Department of Commerce, *Energy Assistance Program*; at http://mn.gov/commerce/consumers/your-home/save-energy-money/low-income-assistance/eap/ (indicating that LIHEAP grants are available to "households with income at or below 50 percent of the state median income").
[52] Minnesota Power, *Revised EITE Petition*, *supra* note 4, at 55.

are marginally above the income-eligibility for LIHEAP are financially vulnerable and will be adversely affected by the proposed 10% increase.

Strikingly, as in its previous EITE filing, the Company presents no estimation of the consequences that such a steep increase would have on the net benefit evaluation. For example, the Company takes no account of the likely consequences of the rate hike, including a sharp increase in arrearage levels, uncollectable accounts, service disconnections, and other social costs the Company and the state would bear (e.g. forced mobility, reliance on other public assistance payments), and potential adverse health and safety consequences.

That the Commission has the authority to engage in such an evaluation is settled law. In a Minnesota Power case, the Minnesota Supreme Court recently upheld the Commission's authority to consider just these sorts of criteria. In that case, the Court found it wholly appropriate for the Commission to consider the following factors in arriving at its decision: whether "'[h]ouseholds and businesses struggling under the current adverse economic conditions…may face economic deprivations, business losses, and even disconnections….'" [53]

V. The LIHEAP Customer Exemption from EITE Cost Recovery is Inadequate to Protect Low-income Customers

Under the EITE statute, customers that receive LIHEAP are exempt from the EITE cost recovery and, therefore, are insulated from the proposed residential rate increase.[54] However, if customers do not receive LIHEAP, they cannot be exempt from the EITE cost recovery proposal, and will inordinately suffer.

[53] In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in Minnesota, 838 N.W.2d 747, 752 (Minn. 2013), as modified on denial of reh'g (Oct. 31, 2013).
[54] Minn. Stat. § 216B.1696, subd. 3.

The Consumer Advocates are skeptical that a sufficient number of LIHEAP customers will be identified and enrolled so as to insulate a meaningful number of low-income customers from the EITE rate increase. Therefore, more low income customers will be subject to the Company's EITE cost recovery proposal.

Existing outreach funds available to the LIHEAP administering agency in MP's service territory (the same agency that administers MP's low-income affordability program, CARE) have gone unspent.[55] Nothing in the Revised EITE Petition suggests that this condition will change. Further, the number of Minnesota Power LIHEAP customers has remained constant for several years, despite the outreach funds available through the state.[56] Not only does the Company's proposal provide no net benefit to the State, it actually harms Minnesota Power's residential customers, a disproportionate number of whom are low and fixed income.

VI. MP Has Failed to Demonstrate a Net Benefit

Minnesota Power has failed to show a net benefit, despite some improvement from its Initial EITE Petition, notably: a cap on EITE customers; a four-year program limit; the requirement of at least some minimum load factor requirement for EITE customers; and the proposal to recover the EITE cost on a per-kilowatt-hour basis. However, these improvements are inadequate to enable the Company to meet the net benefit and public interest tests.

[55] Energy CENTS Coalition, *Comments of Energy CENTS Coalition*, supra, note 25, at 15.
[56] Id., at 16.

Although the Company's 10% proposed increase on residential customers is less than it originally proposed, a double-digit rate increase on residential customers is still harsh. And while it is true that the Company has proposed to increase its contribution for LIHEAP to $30,000, the majority of MP's low-income customers will still be significantly burdened with a rate hike. On balance, the Revised EITE Proposal does not provide a net benefit to the State or to the Company's residential ratepayers and is not, therefore, in the public interest.

C. Are there additional or alternative rate options for EITE customers that would better meet the policy goals of the statute?

Minnesota Statutes, section 216B.1696, specifically mentions three rate options: (1) "fixed-rates"; (2) "market-based rates"; and (3) "rates to encourage utilization of new clean energy technology."[57] Once again, the company fails to explore and analyze additional or alternative rate options for EITE customers that would better meet the policy goals of the statute and might eliminate or reduce the rate impacts on other customer classes. The Legislature deigned to enumerate three possible options to fulfill the intent of the statute, but did not include a rate break among them. The Company has not even looked at alternatives.

[57] Minn. Stat. § 216B.1696, subd. 2(a).

MP claims that it "selected the [rate break] as the most appropriate approach…due to the premise that operating at high utilization rates for these energy-intensive customers translates to the EITE customer using high levels of energy consistently in most hours of the month."[58] That reason alone, under any circumstances, would not meet a preponderance test to demonstrate that a rate break is the superior alternative. The unenumerated option MP chose results in a 10% increase in rates for residential customers, including low-income and other economically disadvantaged customers in an already economically depressed service territory. That is reason enough to deny the petition.

The Legislature specifically mentioned three specific types of EITE rate options and Minnesota Power presented an option not mentioned – and at that, an option that imposes a double digit rate increase on other residential customers. The other, unexplored options could provide added benefits to the utility, the state, and/or ratepayers. For example, a rate to encourage utilization of new clean energy technology could provide significant environmental, economic, and other benefits to the utility, state, and region. But it is not even mentioned, much less considered or evaluated. Because no other alternatives, including the ones enumerated in the EITE statute have neither considered nor analyzed, the PUC should find that the company has failed to meet its burden and should deny the revised petition.

[58] Minnesota Power, *Revised EITE Petition, supra* note 4, at 11.

D. To what extent should the Commission consider or rely on MP's Class Cost of Service Study? Can the Commission make a decision on MP's Class Cost of Service Study without referral to a contested case proceeding?

The Commission should ignore MP's Class Cost of Service Study (CCSS) without referral to a contested case proceeding. The Company's own CCSS is used to justify a significant cost shift. It has not been subjected to the rigorous scrutiny and analysis which would be required in a normal rate case proceeding. This fact alone delegitimizes and disqualifies the proffered CCSS.

As the Commission itself instructs, any "cost of service study is not [an] infallible guide to cost of service…"[59] And, as the Minnesota Supreme Court has acknowledged, any "cost of service study itself involves a certain arbitrariness…"[60] Indeed, as the United States Supreme Court has correctly observed in *Colorado Interstate Gas Co. v. Federal Power Comm'n*, "[a]llocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science."[61] In many instances, dueling Class Cost of Service Studies reach different conclusions. For instance, in one PUC determination – not insignificantly involving a gas company providing service to Iron Range taconite mine customers – "the PUC's calculation of the total cost of service for the taconite class...was $1,902,508 annually [while] the cost of service study submitted by the taconite producers…showed cost of service to the taconite producers of only $276,943."[62]

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[59] Minnesota Public Utilities Commission, DOCKET NO. E-015/GR-09-1151, In the Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota, *FINDINGS OF FACT, CONCLUSIONS, AND ORDER*, November 2, 2010, at 56.

[60] Petition of Inter-City Gas Corp., 389 N.W.2d 897, 902 (Minn. 1986).

[61] Colorado Interstate Gas Co. v. Federal Power Comm'n, 324 U.S. 581, 589 (U.S. 1945).

[62] Reserve Min. Co. v. Minnesota Pub. Utilities Comm'n, 334 N.W.2d 389, 393 (Minn. 1983).

The "finding" in MP's CCSS that, in effect, other customers – residential especially – are currently under-paying, and deserve to be saddled with a rate shift is derived from one and only one particular choice of cost methodology which produces the desired result. It is not unlikely that an alternative methodology would produce a different result.

But this proceeding does not present an opportunity for such debate or analysis. Only a contested case can afford the appropriate forum to decide these important issues. The theoretical question of "who is subsidizing whom" is not settled, and it is not in the purview of the EITE proceeding to settle it. Accepting MP's arguments on this question in this proceeding, especially as justification to adopt cost-shifting proposals that have been rejected before, would amount to contradicting repeated past judgments by the PUC arrived at through thorough and traditional rate case deliberations.

Therefore, the PUC should completely disregard MP's comments about cost allocation and underpayment by the residential and other classes, since those topics will not receive proper and adequate analysis and deliberation in this abbreviated EITE proceeding. For all the reasons articulated, the PUC should not rely on MP's Class Cost of Service Study without referral to a contested case proceeding.

E. Under Minn. Stat. § 216B.1696, subd. 2(d), the Commission shall allow recovery of costs in the next general rate case or through an EITE cost recovery rate rider between general rate cases. Should the Commission allow MP to implement a cost recovery rider prior to its next general ratecase?

No. The Commission should prohibit Minnesota Power from implementing a cost recovery rider prior to its next general rate case. The EITE rate is intended to help trade-exposed customers subject to "globally competitive pressures." Minnesota Power is not one of those customers.

The EITE expense is just one of many incurred by the company between rate cases. It, like all others, should be part of a general rate case and should, like any cost, be subjected to regulatory and intervenor scrutiny prior to receiving approval for recovery. Moreover, it should be considered in the totality of the revenue requirement, cost recovery, cost allocation, and rate of return discussions in the public forum, where traditional hearing procedures provided in statute and rule are followed, and all parties afforded a full and fair opportunity to be heard.

Further, if the PUC does grant the petition, a significant cost shift and burden will fall on residential ratepayers, creating a disproportionate impact on the thousands of low-income customers who do not receive LIHEAP. There is no reason to impose that burden in advance of an examination of all revenues and costs in the next rate case.

Finally, if, as the company asserts, there will be "increased revenues from EITE customers" that "should result in decreased costs to other customers,"[63] then the PUC, if it approves the rider, should order that residential and other ratepayers upon whom the burden of the EITE rate is imposed obtain immediate relief through a bill credit in the same proportion that the cost impact of EITE is borne when those increased revenues materialize.

In sum, the Commission should not shall allow recovery of costs through an EITE cost recovery rate rider between general rate cases. These important subject cannot possibly receive proper and adequate analysis and deliberation in this abbreviated EITE proceeding.

The Public Interest Test

The increase that the proposed EITE rate would require for residential ratepayers is not just and reasonable.[64] The burden imposed particularly on non-exempt, low-income ratepayers is undue. As noted, the magnitude of the increase would impose a disproportionate and heavy burden on residential ratepayers, especially on those ratepayers who are physically and financially vulnerable, including low-income ratepayers, elders, and persons with disabilities. The extraordinary and adverse increase is precipitated by an unfair allocation of EITE costs, arrived at singularly by the Company based on a Class Cost of Service Study that no other party has had an opportunity to scrutinize or challenge.

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[63] Id., at 44.

[64] The statute authorizing MP to petition for approval of an EITE rate schedule does not eliminate the overriding requirement that rates be just and reasonable. *See* Legal Services Advocacy Project, *Comments of Legal Services Advocacy Project*, In the Matter of a Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No. E-015/M-15-984 (December 21, 2015), at 14-17.

MP's proposal allocates more than 76% of the EITE tariff costs to residential ratepayers.[65] The Company incorrectly justifies this approach by indicating that, in its last rate case (2009), residential customers received a 4% increase, compared with higher increases for other customer classes.[66] This rationale is hopelessly flawed.

First, the Commission's determination of fair cost allocation from seven years ago is not an appropriate basis for a significant cost increase today. Second, the proposal presupposes the Commission erred in its determination of fair cost allocation seven years ago. Because the Company disagrees with a long-past Commission's determination – reached after, appropriately, all parties had the opportunity to be heard in a contested case and public process – is no justification for an unfair allocation now. Finally, as noted, the Commission should not allow a CCSS – presented in an isolated tariff filing rather than in a normal rate proceeding – to underpin an allocation determination, particularly one that imposes such a high burden on residential ratepayers.

MP also argues that a proportionally higher rate increase for residential customers is justified to meet the $55 million revenue shortfall it identified in its updated CCSS. The purpose of an EITE Rider, however, is not to increase the Company's overall revenue. If the Company believes that costs are unfairly allocated, or that it requires an increase in overall collections, then the Company should file a rate case, where their proposals can receive full consideration, and all parties have a full and fair opportunity to be heard. Second, as noted, the basis for the discovery of the shortfall is a CCSS that, improperly, has not been vetted

[65] Minnesota Power, *Revised EITE Petition, supra* note 4, at Exhibit B.1.
[66] Id., at 20.

through the Commission's public process. On a procedural basis alone, the Commission should discount any evidentiary weight the Company intends its CCSS to carry. Substantively, close scrutiny of the Company's CCSS by other intervenors and the Commission, in the context of a formal proceeding, could well further undermine its credibility. For these reasons, the Company's Revised EITE Petition is not in the public interest and should be denied.

Additional Consumer Protections are Needed if the Commission Approves MP's Petition

If the Commission approves the Company's Revised EITE Petition despite the significant concerns outlined herein by the Consumer Advocates, a number of measures need to be taken to protect consumers. First, in order to receive the reduced rate, EITE customers should be required to maintain a minimum load factor of at least 70%. Second, the Commission should require Minnesota Power to attest that it will not seek additional discounts for EITE customers. Third, the Commission should require the Company to track and report the impact of the EITE tariff in order to verify anticipated benefits. Fourth, the Commission should retain the authority to terminate the EITE tariff if evidence shows that it is not providing the intended net benefit. Finally, the Commission should require MP's shareholders to bear some or all of the EITE expense.

I. EITE Customers Should Be Required to a Maintain a Minimum Load Factor of At Least 70%

Minnesota Power's proposal to require a 62% minimum load factor for EITE customers is inadequate because it does not meet the threshold of full or near-full production levels. If the Commission approves the Company's petition, the Commission should increase this requirement to at least 70%.

Rather than indicate full production levels, a 62% load factor would allow the EITE customers to qualify for discounted electric rates for production levels below the current average loads. In its 2015 Integrated Resource Plan, MP stated that its "industrial load contributes an average system load factor of approximately 80 percent."[67]

Minnesota Statutes, section 216B.1696, provides some guidance on the question of load factor. Under the statute, among other criteria, a "retail customer of an investor-owned electric utility" eligible for the EITE rate must have "combined annual average load factor in excess of 80 percent…"[68] The Legislature's requirement here strongly suggests what it expects from the three industries expressly listed, including a load factor of above 80%.

II. MP Should Be Barred from Seeking Additional Discounts for EITE Customers

Minnesota Power should be prohibited from seeking additional EITE discounts for the four-year period the EITE rate schedule would be in effect. If the proposed discount does what the Company argues it will do, then no further discount is necessary, and certainly none would be inappropriate. Any further discount would not increase competitiveness; it would merely provide undue rate relief for the Company.

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[67] Minnesota Power, *Minnesota Power 2015 Integrated Resource Plan*, *supra* note 43, at 27.
[68] Minn. Stat. § 216B.1696, subd. 1(c)(4).

III. MP Should Track and Report Outcomes of the EITE Tariff

Minnesota Power should track and report outcomes of the EITE tariff. If the Commission determines the Revised EITE Petition is in the public interest, an evaluation of EITE outcomes is critical to determining whether or not the EITE Rider continues to meet that standard.

Consequently, the Company should be required to track and regularly report:

1. EITE customers' load factors. Load factor should increase due to the EITE tariff.
2. Indicators to measure whether residential customers are struggling with their electric bills, including: (i) number of customers in arrears; (ii) average arrears; (iii) disconnection notices issued; and (iv) disconnections. An increase in these metrics may signal that the EITE Cost Recovery Rider is having a negative effect on residential customers.
3. LIHEAP participation rate. The rate should increase, showing success of the expanded outreach efforts.

IV. The Commission Should Retain the Authority to Terminate the EITE Tariff

If these metrics, changing industry or global conditions, or other future factors or findings indicate that the EITE tariff is failing to provide a net benefit to the utility or the state or otherwise falling short of the statutory requirements, the Commission should retain the right to terminate it.

V. Shareholders Should Be Required to Bear All or a Portion of the EITE Costs

By far, EITE customers cause the greatest portion of volatility and risk to Minnesota Power's sales, profits, and return on investment. The boom and bust pattern of the mining and paper industries constitute an on-going problem and risk for MP's energy generation investments. These cycles also constitute a serious on-going problem for MP's business model, simply because the LP class consumes 60% of MP's output.

MP’s shareholders are therefore heavily dependent on sales and profits from the LP class, and hold a heightened stake in the health of those few, large customers. MP’s situation is unusual, and very far from a balanced customer load that an electric utility would want to have, but that is the reality, and has been for many decades.

In contrast, the residential class, as well as small to medium business and municipal customers, are stable, dependable, and predictable. For residential customers, electric service is an absolute necessity, and the same is true for municipal customers. Most of the smaller business base is proportional to the overall population, which changes only gradually. It is the customer classes other than the class to which the EITE belongs that provide to MP the greatest degree of predictability, the least elasticity of usage, and the least risk to its sales, profits, and dividends to shareholders.

It would be reasonable to expect that electric rates for the EITE customers should factor in some kind of surcharge to reflect the high degree of risk which these customers pose. Presumably, this would be a factor in MP’s negotiation of long-term contracts with these customers, but just what role this plays is not known.

It is reasonable for MP and its shareholders to be extremely concerned about the future of its taconite and paper mill customers, since such a large portion of electric sales and profits depends on them. Therefore, it is in the long-term interest of MP and its shareholders to “invest” in the sustainability of those customers, by absorbing the cost of an EITE rider. If MP and its shareholders sincerely believe that the proposed EITE discount will make a material contribution to ensure the ongoing competitiveness, productivity, and electric usage of the EITE customers, then MP shareholders should be willing to absorb that cost. The alternative – to impose the expense as a cost recovery rider on other customers, who are steady, dependable, and low-risk – amounts to an undeserved, punitive measure. Since the other customers absolutely require the monopoly service provided by MP, they are a captive customer base which can easily be taken for granted.

In contrast, MP's shareholders – the largest holdings of which are far removed from MP's service territory – are in a strong position to absorb the $19 million per year expense of the EITE discount. According to its February 18, 2016 press release, "ALLETE's Regulated Operations segment, which includes Minnesota Power…recorded a net income of $131.6 million, an increase of $8.6 million over the 2014 net income."[69] The proposed cost shift of $19 million represents just 14.4% of the 2015 net income of ALLETE's Regulated Operations Division.

In addition, apart from the historic boom and bust cycles which have occurred to date, the long-range future of the taconite and paper mills is, at best cloudy. Both markets and industries are in the midst of major structural change.

For the paper mills, the issue is the continuing decline in the overall market, as digital information storage and display continues to reduce the demand for paper. That results in an overall shrinkage in the need for industrial capacity. As for the taconite mills, the problem is several-fold: huge steel-making capacity is being developed in other countries; increased automation and economic efficiency accompanies much of the new mining and steelmaking capacity elsewhere; and most major mining operations elsewhere have additional financial

[69] Press Release, ALLETE, Inc., *ALLETE, Inc. Reports Increased 2015 Earnings*, February 18, 2016; at http://investor.allete.com/releasedetail.cfm?releaseid=955508.

advantages because they access ore with a higher iron content than Minnesota's taconite. New federal tariffs on foreign steel have helped greatly, with production and employment now partially returning to the Iron Range. But, for a variety of factors, return of production to the full levels of just a few years ago is very much in doubt.

As a result, the long range viability of MP's taconite and paper mill customers is in serious doubt, at least at the magnitude and level of current capacity and electric usage. It makes no sense now, or continually in the future, to try to compensate for that on the backs of residential and other non-EITE customers, and all the more so given the magnitude of the rate cost shift.

Conclusion

For the reasons articulated, Minnesota Power has failed to demonstrate that the proposed EITE tariff will have a net benefit to the utility or the state and is in the public interest, and has failed to justify the large cost increase proposed for residential ratepayers. Consequently, Minnesota Power has failed to meet its burden of proof to gain approval of its petition. The petition should be denied. However, if the Commission does approve the EITE tariff, the changes recommended by the Consumer Advocates should be made in order to strengthen consumer protections.

The Consumer Advocates recommend that the Commission:

1) Find that the revised EITE Petition does not provide a net benefit to the utility or to the State, is not in the public interest, and deny the Revised EITE Petition.

2) Find that Minnesota Power cannot adequately protect low-income customers from the proposed residential rate increase.

3) If the Commission approves the Revised EITE Petition, adopt the Consumer Advocates' recommendations to strengthen consumer protections.

Respectfully submitted, July 27, 2016

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