BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
John A. Tuma	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 customers[4] (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 groups[5] (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.

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[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 customers[6] 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]

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[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).

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[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 Intervenors

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.

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[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 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;
(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
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.

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