

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of Minnesota Power’s Petition to
Ensure Competitive Electric Rates for Energy-
Intensive Trade-Exposed Customers

PUC Docket No. E015/M-15-984

REPLY COMMENT

An *ad hoc* consortium of large industrial end users of electric energy that meet the definition of energy-intensive trade-exposed (“EITE”) customers under section 216B.1696 of the Minnesota Statutes (the “EITE Statute”), consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation (collectively, “LPI-EITE”); submit this comment in reply to the initial comments submitted in response to the Minnesota Public Utilities Commission’s (the “Commission’s”) Notice of Comment Period on EITE Rate Schedule dated November 19, 2015 (the “Notice”), regarding Minnesota Power’s November 13, 2015, Petition to Ensure Competitive Electric Rates for EITE Customers (the “Petition”).

I. INTRODUCTION

In addition to LPI-EITE, a number of comments were filed in response to the Notice. The supporting comments¹ contain specific and documented information on the benefits EITE industries provide to the Minnesota economy and the competitive pressures faced by EITE industries. The remainder of the comments² rely on various contrived, and in some instances conflicting, interpretations of the net benefits test, while largely ignoring that the Minnesota legislature fundamentally changed ratemaking in passing the EITE Statute and setting forth a new energy policy of the State to ensure competitive electric rate alternatives for EITE

¹ Filed by the Minnesota Forest Industries (“MFI”) and Iron Mining Association (“IMA”).

² Filed by the Minnesota Department of Commerce (the “Department of Commerce”), Minnesota Office of the Attorney General (“OAG”), Energy Cents Coalition (“ECC”), Minnesota Citizens Federation Northeast (“MCFN”); AARP, and Minnesota Center for Environmental Advocacy/Sierra Club (“Environmental Organizations”) (collectively, the “Objectors”).

customers. In short, the Objectors fail to offer any legal support for their respective statutory interpretations or evidentiary support for their conclusions. Minnesota Power, LPI-EITE, IMA, and MFI have, on the other hand, set forth a legally defensible position that is supported by publicly available economic analysis. The Petition should therefore be approved, in its entirety, as soon as reasonably possible within the 90-day timeframe established under the EITE Statute.

II. ANALYSIS

A. **The EITE Statute Fundamentally Changed the Commission’s Authority for Setting Rates for EITE Customers**

Before addressing the Objectors’ comments, it is of paramount importance to re-emphasize the significant change the EITE Statute has made to ratemaking for EITE customers. As stressed in LPI-EITE’s initial comment, the legislature clearly stated that “It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers.”³ To achieve this objective, the legislature authorized certain investor-owned electric utilities to propose various EITE rate options; the approval of which all parties, even the Objectors, agree is subject to the test of whether the proposal results in a net benefit to the utility or the state.⁴ What was roundly ignored by many of the Objectors, however, is the fact that the Commission’s analysis is, per the EITE Statute, independent of the traditional ratemaking principles. The OAG concedes this point on page 2 of its comment, where it states “The Minnesota Legislature required the Commission to forego its normal rate review process when a utility proposes an EITE rate.”⁵ The Department of Commerce similarly conceded “The EITE Statute places no limit on the amount of the discount offered to EITE customers nor, correspondingly, does the EITE Statute limit the amount that potentially could be charged to other customers to recover the lost revenues.”⁶ In other words, traditional cost of service analysis, at least for the EITE rate, is irrelevant.

This change to ratemaking is evident in the EITE Statute, which states “Notwithstanding Minnesota Statutes, section 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16, the commission shall, upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and

³ MINN. STAT. § 216B.1696 subd. 2(a) (emphasis added).

⁴ MINN. STAT. § 216B.1696 subd. 2(b) and 3.

⁵ *OAG Comment*, pg. 2.

⁶ *Department of Commerce Comment*, pg. 3.

any corresponding EITE rate.”⁷ In other words, despite certain limitations governing the setting of rates set forth in a number of State statutes, the Commission’s only task is whether the proposed EITE rate schedule and corresponding EITE rate result in a net benefit to Minnesota Power or the State. Each of the statutes excluded from the Commission’s review are summarized below.

The relevant portion of section 216B.03 of the Minnesota Statutes is as follows:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, unreasonably prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to a class of consumers. 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, 216B.241, and 216C.05.⁸

By excluding this provision from the Commission’s consideration, any EITE rate schedule and corresponding EITE rate are not subject to the just and reasonable standard, may be preferential, and do not need to be set to encourage energy conservation. With respect to the exclusion of section 216B.05, it is clear, when read in conjunction with section 216B.1696, that any approval is governed by 216B.1696.⁹ The exclusion of 216B.06 from the Commission’s consideration of an EITE rate schedule and corresponding rate specifically allows the creation of an LPI-EITE rate schedule and corresponding rate. That section states:

No public utility shall directly or indirectly, by any device whatsoever, or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedules of rates of the public utility applicable thereto when filed in the manner provided in Laws 1974, chapter 429, nor shall any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon January 1, 1975, may be continued until schedules are filed.¹⁰

⁷ MINN. STAT. § 216B.1696 subd. 2(b) (emphasis added).

⁸ MINN. STAT. § 216B.03.

⁹ MINN. STAT. § 216B.05 subd. 2a.

¹⁰ MINN. STAT. § 216B.06.

In other words, the exclusion of this section specifically addresses and removes any argument that LPI-EITE, as a subset of Minnesota Power's large power class, is somehow precluded from receiving a special EITE rate. In the same vein, the EITE Statute excludes the prohibition on rate preference under 216B.07 from the Commission's consideration.¹¹ And finally, the exclusion of section 216B.16 from the Commission's consideration, specifically allows the utility to proceed with a proposal of an EITE rate schedule and corresponding EITE rate, while at the same time requesting rider recovery for associated costs, outside of a general rate case.¹²

In summary, the Commission's review as to whether the EITE rate schedule and corresponding EITE rate result in a net benefit to the utility or the State (which review can occur outside of a general rate case), is independent and not constrained by whether the proposed EITE rate is just and reasonable, unduly discriminatory, encourages conservation, or results in an unreasonable preference or advantage.¹³ The result, as conceded by the Department of Commerce, is that the EITE rate is not bound by cost of service. LPI-EITE recognizes that this is a fundamental shift in traditional utility ratemaking. But the Supreme Court of Minnesota has long held that the Commission is a creature of statute. In 1985, the court noted "The legislature states what the agency is to do and how it is to do it."¹⁴ Here, the legislature has spoken - the Statutory objective is competitive rates for EITE customers, the tool is the EITE rate schedule and corresponding EITE rate, and the test for approval of the EITE rate schedule and corresponding EITE rate is the low-threshold of a net benefit to the utility or the State.

With this framework in mind, the remainder of this reply comment will focus on the four potential issues for the Commission in its review. First, whether the utility is eligible to submit the proposal. Second, whether the proposed recipients of the EITE rate schedule and corresponding EITE rate are energy-intensive trade-exposed customers. Third, whether the utility's proposed EITE rate schedule and corresponding EITE rate fall within the broad parameters of the EITE Statute. And finally, whether the Commission should approve the EITE rate schedule and any corresponding rate under the broad net benefits test.

¹¹ MINN. STAT. § 216B.07 ("No public utility shall, as to rates or service, make or grant any unreasonable preference or advantage to any person or subject any person to any unreasonable prejudice.")

¹² MINN. STAT. § 216B.16.

¹³ MINN. STAT. § 216B.1696 subd. 2(b).

¹⁴ *Peoples Natural Gas Co. v. Minn. Public Utilities Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985).

B. It is Undisputed that Minnesota Power is Eligible to Propose the EITE Rate Schedule and Corresponding EITE Rate

Although the Department of Commerce asserts that Minnesota Power “offered no evidence that the Company meets the EITE Statute’s size requirement,” the Department of Commerce conceded that Minnesota Power is eligible to file the Petition based on size and the \$10,000 deposit for low-income funding.¹⁵ LPI-EITE believes Minnesota Power’s qualification should be axiomatic but appreciates the Department of Commerce’s concession. No other party raised a concern regarding Minnesota Power’s eligibility.

C. It Cannot Reasonably Be Disputed that LPI-EITE Members are Eligible for the EITE Rate Proposed in the Petition

The Department of Commerce takes the unfortunate position that “MP did not provide evidence documenting how [LPI-EITE] meet MP’s interpretation of the EITE Statute’s definition of EITE. Because MP did not offer evidence to document how each participating customer actually qualifies for EITE status, the Department of Commerce recommends that the Commission reject MP’s petition.”¹⁶ This position is unreasonable and untenable. The Petition seeks the Commission’s approval of an EITE rate schedule and corresponding EITE rate, not approval of customer specific electric service agreements. Therefore, it is arguable whether the Department of Commerce’s concern is even relevant to the present matter. Even if it were relevant, the eligibility language is clear for iron mines and paper mills - they are specifically listed in the EITE Statute as eligible customers.¹⁷ The language is clear and unambiguous on this point, leaving nothing for Minnesota Power to prove with respect to LPI-EITE’s eligibility or for the Commission or Department to debate.¹⁸

D. It is Undisputed that the EITE Rate Schedule and Corresponding EITE Rate Fall Within the Broad Parameters of the EITE Statute

None of the Objectors raised any concerns as to whether the energy charge credit (“ECC”) proposed by Minnesota Power fits within the broad parameters of EITE Statute as a potential EITE rate offering under an EITE rate schedule.

¹⁵ *Department of Commerce Comment*, pg. 4-5.

¹⁶ *Department of Commerce Comment*, pg. 6.

¹⁷ MINN. STAT. § 216B.1696 subd. 1(c)(1) and (c)(2).

¹⁸ MINN. STAT. §§ 645.08, 645.16.

E. The Net Benefits Tests Offered by the Objectors Fail as a Matter of Law

Given the language in the EITE Statute, and resulting shift in traditional ratemaking, it is not surprising that, consistent with the LPI-EITE's initial comment, the focus of the Objector's comments is on the "net benefit to the utility or the State" test. Only LPI-EITE's test tracks the precedent of the Commission and courts in Minnesota. For the reasons set forth below, the analysis and net benefits tests offered by the Objectors should be rejected.

1. The Department of Commerce's Net Benefits Analysis Should be Rejected

The Department of Commerce defines and applies the net benefits test in a manner that is contrary to the plain language of the EITE Statute. The Department of Commerce starts by recommending that "the Commission compare the present value of the quantifiable costs and benefits of MP's proposed rate offering both under a utility test and under a societal test (limiting the definition of 'society' to Minnesota). The Commission also should consider non-quantifiable benefits and costs."¹⁹ The Department of Commerce then examines the utility net benefits test and the State net benefits test. The Department of Commerce's analysis violates the EITE Statute in a number of ways.

First, the Department of Commerce's tests are inconsistent with the Commission's statutory role in reviewing the Petition. With respect to both the utility and State net benefits test, the Department of Commerce appears to define the benefits in terms of energy conservation, which it claims is a "common application of the test."²⁰ As noted above, the Commission's net benefit analysis is explicitly independent of 216B.03, which states that "To the maximum reasonable extent, the commission shall set rates to encourage energy conservation..."²¹ The EITE Rate is not set to encourage energy conservation; it is set to ensure competitive electric rates for EITE Customers. Therefore, the Department of Commerce's tests fail, as a matter of law, to properly frame the issue before the Commission.

¹⁹ *Department of Commerce Comment*, pg. 8. The Department of Commerce goes on to recommend that the Commission stick within the bounds of the Commission's and Department of Commerce's expertise and that, if additional expertise is necessary, that Minnesota Power should retain an independent consultant. It is not clear why, when the Department of Commerce was authorized to assess \$854,000 per biennium to implement the EITE Statute, the utility would be required to retain an independent consultant. MINN. STAT. § 216B.1696 subd. 4.

²⁰ *Department of Commerce Comment*, pg. 8 and 10.

²¹ MINN. STAT. § 216B.03.

Second, the Department of Commerce's utility net benefits test is contrary to the language in the EITE Statute regarding cost recovery and ignores the undeniable benefit of revenues from the EITE customers. The Department of Commerce breaks its analysis into two impacts, immediate and secondary.²² As to the former, the Department of Commerce asserts that the proposed EITE rate has no immediate benefits or costs to the utility because the net revenue change for MP is zero.²³ This fact is irrelevant to the net benefits analysis because it was specifically contemplated by the legislature - the legislature included a provision to ensure revenue neutrality for the utility proposing an EITE rate schedule and corresponding EITE rate.²⁴ The legislature would not establish a net benefits test that would be impossible of execution.²⁵ In other words, the legislature clearly did not intend for the Commission to consider the utility's cost recovery in the net benefits test. The first impact of the Department of Commerce's analysis is therefore legally deficient. But the admission from the Department of Commerce is helpful information with respect to the secondary impact.

As to the secondary impact, the Department of Commerce makes an equally faulty claim. It asserts that "[t]he resulting question is whether the price changes caused by the transfer payments impact the overall quantity of energy consumed, thus creating net benefits or costs under the utility test."²⁶ Underpinning this claim is the Department's allegation that an EITE discount may cause EITE customers to increase their energy consumption (a cost in its view) and that an EITE surcharge may cause non-EITE customer to decrease their energy consumption (a benefit in its view). Under the plain language of the EITE Statute, the level of energy consumption is only important in so far as it is a reflection of competitive electric rates.²⁷ On

²² *Department of Commerce Comment*, pg. 9.

²³ *Id.*

²⁴ MINN. STAT. § 216B.1696 subd. 2(d) ("Upon approval of any EITE rate schedule, the utility shall create a separate account to track the difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule. In its next general rate case or through an EITE cost recovery rate rider between general rate cases, the commission shall allow the utility to recover any costs, including reduced revenues, or refund any savings, including increased revenues, associated with providing service to a customer under an EITE rate schedule.")

²⁵ MINN. STAT. § 645.17.

²⁶ *Department of Commerce Comment*, pg. 9.

²⁷ Again, reducing the overall consumption on Minnesota Power's system is not pertinent to the analysis. It is statutorily irrelevant because the Commission's analysis is independent of section 216B.03 of the Minnesota Statute. Furthermore, the Department of Commerce's reference to Minnesota Power's integrated resource plan is misplaced. Minnesota Power's forecasts include a variety of potential futures, including load growth and load decline. Relying on one trend-line to argue that the cost of electricity is independent of consumption is devoid of documentary support.

this point, the EITE rate schedule and corresponding EITE rate is absolutely a benefit. The benefit to the utility is an incentive for EITE customers, customers that make up roughly 63% of all retail sales for the Company under normal operating conditions,²⁸ to return to full-production.²⁹ The potential benefit is more stable revenues for Minnesota Power, which will not be required to file a rate case, or multiple rate cases, to seek recovery of fixed costs and lost demand and energy margins from other customers.³⁰ At the same time, a more stable large power class will help the company retain its current credit rating. There is no cost associated with the EITE rate to Minnesota Power because, according to the Department of Commerce, it is revenue neutral. Therefore, there is only benefit, which is a net benefit under the EITE Statute. The Commission's analysis can and should stop here. The net benefits test is met by demonstrating a benefit to the utility or the State.³¹ Having shown that the EITE rate schedule and corresponding EITE rate benefit Minnesota Power, the Petition must be approved.³²

Third, the Department of Commerce's State net benefits test ignores documented benefits to the State of EITE customer operation. The Department of Commerce's analysis on the State net benefits also breaks the impacts into primary and secondary. With respect to the former, the Department of Commerce asserts that the shift in costs has "no immediate benefits or costs to Minnesota."³³ The Department of Commerce is incorrect. Providing a platform for success to EITE customers, which is the intent of the EITE Statute by declaring competitive electric rates for EITE customers an important State policy, helps stabilize the Minnesota economy via retention of jobs and tax revenue. This information is set out in detail in the initial comments of Minnesota Power, LPI-EITE, IMA, and MFI. The Commission's analysis in making its

²⁸ *The Petition*, at pg. 15 (citing ALLETE, Inc. 2014 Form 10-K, pg. 8).

²⁹ It is also important to note that returning to full production is not load growth - new industrial load on Minnesota Power's system will come, if at all, with the addition of anticipated of new, but not yet realized, mining operations.

³⁰ On this point, it is worth noting that the Commission accepted and adopted the Department of Commerce's findings that LPI-EITE members' contribution to Minnesota Power's recovery of fixed costs and stable revenues to be a benefit. *See e.g., In the Matter of Minnesota Power's Petition for Approval of an Amendment to the Electric Service Agreement Between Boise, Inc. and Minnesota Power*, PUC Docket No. E-015/M-13-1084, ORDER APPROVING PROPOSED AMENDMENT TO ELECTRIC SERVICE AGREEMENT AND ADOPTING DEPARTMENT OF COMMERCE RECOMMENDATIONS, pg. 4 of adopted recommendations ("Such an extension would be beneficial to both MP and its ratepayers. The proposed rates for Boise include a contribution to MP's fixed costs and thus the Company's ratepayers would benefit from such a contribution that would otherwise have to be collected from them. The extension would benefit MP by providing it with additional stability in its revenues by having one of its largest customers under contract through December 31, 2023.").

³¹ MINN. STAT. § 216B.1696 subd. 2(b).

³² *Id.*

³³ *Department of Commerce Comment*, pg. 10.

determination under subdivision 2(b) of the EITE Statute must reflect consideration of this analysis.

As to the secondary impact, the Department of Commerce asserts “the change in the cost of energy for customers, would be the same for society as for the utility. Therefore, the Department concludes that the changes in the price of electricity should not be expected to have a significant impact on MP’s sales to any particular customer class and thus should have no impact under the societal test.”³⁴ Because this argument is the same as applied to the secondary impact of the utility net benefits test, the argument fails for the reasons set forth above.

Furthermore, the Department of Commerce ignores the documented benefits in going one step further by apparently arguing that the State, or at least Minnesota Power ratepayers, could be better off via the permanent shut down of one or more EITE customers than by allowing recovery of costs associated with the EITE rate schedule. The Department of Commerce states:

[T]he Petition at page 28 states, “Without the EITE Customers, electricity rates for all other Minnesota Power customers in Northeastern Minnesota would be greater than they are currently.” However, since 1) MP needs to add generation resources to its system to serve the needs of EITE and non-EITE ratepayers and 2) MP proposes a significant increase in rates to non-EITE ratepayers, MP has not fully addressed the effects of its EITE proposal on its ratepayers.³⁵

It appears that the Department of Commerce is asserting that Minnesota Power should be required to compare the rate impact of the proposed EITE rate (assuming full EITE customer production/energy consumption, sales growth, and future rate base additions) against the rate impact of no EITE rate (assuming declining EITE customer production/energy consumption, sales decline, and no future rate base additions). In other words, the Department of Commerce appears to be arguing that the State may be better off without LPI-EITE industries, which make up approximately 40% of the economy in Northern Minnesota.³⁶ LPI-EITE is extremely troubled if that is the Department of Commerce’s position. As explained below, state and federal

³⁴ *Id.*

³⁵ *Id.* at 14-15.

³⁶ THE ECONOMIC IMPACT OF FERROUS AND NON-FERROUS MINING, James Skurla, Director, UMD Labovitz School of Business and Economics, Bureau of Business and Economic Research; at page x, available at: <https://lsbe.d.umn.edu/uploads/FINAL%20Mining%202012%20Report.pdf>.

policy makers have recognized the importance of EITE industries to the economy and as a matter of national security.

2. The OAG’s Net Benefits Analysis Should be Rejected

The OAG’s analysis correctly identifies three key pieces of the EITE Statute. First, that it is the energy policy of the State to ensure competitive electric rates for EITE customers.³⁷ Second, that “If the Commission finds a ‘net benefit’ for the utility or the state, the law states that the Commission must approve the proposed rate.”³⁸ Third, that the Commission is obligated to make a final determination in a proceeding commenced under the EITE Statute within 90 days of the utility’s filing.³⁹ Despite these concessions, the OAG asserts that “[U]nder a ‘net benefit’ analysis, the Commission must quantify any benefits *and compare them to the costs to the utility and the public.*”⁴⁰ This interpretation conflicts with the OAG’s admission that the net benefit is calculated separately for the utility and the state - total benefits are not tallied and then compared to the total costs to the utility and the public. In any event, the OAG’s analysis suffers additional deficiencies. After summarizing certain employment and income statistics for Northern Minnesota, the OAG lists out a number of unanswerable questions that the Commission must allegedly answer within the 90 day timeframe. LPI-EITE has two responses.

First, the OAG’s citation to economic conditions in Northern Minnesota covers a much broader area than Minnesota Power’s service territory. This point is generally evident by the fact that the U.S. Census Bureau projections cited by the OAG covers 320,000 Minnesotans as compared to Minnesota Power’s total of roughly 144,000 customers.⁴¹ More specifically, and as can be seen in the map attached as Exhibit A to this reply comment, Minnesota Power’s service territory is largely limited to Duluth, small areas surrounding the members of LPI-EITE, and the lakes area in Crow Wing and Morrison counties.⁴² The remainder of Arrowhead Region is served by co-ops such as Lake Country Power (“Lake Country”), Cooperative Light and Power Association of Lake Country (“CLPA”), Arrowhead Electric Cooperative Incorporated

³⁷ OAG Comment, pg. 2.

³⁸ OAG Comment, pg. 2 (emphasis added).

³⁹ OAG Comment, pg. 2-3.

⁴⁰ OAG Comment, pg. 4 (emphasis in original).

⁴¹ OAG Comment, pg. 5.

⁴² Exhibit A was commissioned by members of LPI-EITE and prepared by Barr Engineering based on the publicly available information on the Minnesota Geospatial Information Office’s website, which is available here: <http://www.mngeo.state.mn.us/eusa/index.html>.

(“Arrowhead Electric”) and municipally owned utilities.⁴³ None of these customers will be impacted by the Petition. Furthermore, the residential rates for these customers are already much higher than the residential rate for Minnesota Power’s customer. According to the information contained in the Petition, the average current residential rate is \$0.1045/kWh.⁴⁴ Adding the EITE Cost Recovery Adjustment of \$0.0152/kWh would bring that rate to \$0.1197/kWh. On the other hand, the average residential rate for Lake Country (45,145 residential customers), CLPA (5,438 residential customers), and Arrowhead Electric (3,683 residential customers) for 2014 was currently \$0.1342/kWh, \$0.1196/kWh, and \$0.1373/kWh, respectively.⁴⁵ Even with the EITE Cost Recovery Adjustment, rates for Minnesota Power’s residential customers would be roughly equal to (in one instance) and much less (in two other instances) than the cooperatives serving a majority of the Arrowhead Region. Furthermore, Lake Country residential customers, who pay a very significant \$42/mo. customer charge, will see a \$10/month increase in their bills effective in April 2016.⁴⁶ While LPI-EITE is sensitive to the increases the EITE Cost Recovery Adjustment would put on Minnesota Power’s residential customers, the demographic and economic conditions in Northeastern Minnesota cited by the OAG need to be put in this perspective. It also bears re-emphasis that the EITE Statute specifically contemplates protecting those customers who need assistance by explicitly excluding low-income customers from the EITE Cost Recovery Adjustment.⁴⁷

Second, the questions the OAG claims the Commission must answer within the 90-day timeframe are largely unanswerable in any timeframe. No party has the ability to predict future operations of LPI-EITE members. And that isn’t the point of the EITE Statute. The net benefits test is statutorily informed by the Commission’s obligation to ensure competitive electric rates for LPI-EITE customers.⁴⁸ Under this directive, and the general test for net-benefits that a proposed change provides a net benefit, even if it isn’t perfect, if the status quo could lead to a detrimental impact,⁴⁹ it is clear that the legislature intended to create one tool (competitive

⁴³ <http://www.mngeo.state.mn.us/eusa/index.html>.

⁴⁴ *The Petition*, pg. 12. Average bill of \$78.81 divided by average consumption of 754 kWh is \$0.1045/kWh.

⁴⁵ http://www.eia.gov/electricity/sales_revenue_price/pdf/table6.pdf.

⁴⁶ <http://www.lakecountrypower.coop/displaynewsreleaseall.php?id=466>; *see also* http://www.lakecountrypower.coop/userfiles/Rate_Card_for_NSA_packets.pdf.

⁴⁷ MINN. STAT. § 216B.1696 subd. 2(d).

⁴⁸ MINN. STAT. § 216B.1696 subd. 2(a).

⁴⁹ *LPI-EITE Comment*, pg. 8-10.

electric rates) as part of a platform for EITE customers' success to help ensure greater employment and tax revenue. The only question before the Commission is whether the status quo could lead to detrimental impacts in the form of reduced employment and tax revenue and increased electric rates for other customers. As explained in detail in LPI-EITE's initial comment, the answer to that question is "yes." The OAG's list of questions should therefore be disregarded.

3. AARP's Net Benefits Analysis Should be Rejected

According to AARP, "the 'net benefit to the utility or the state standard - should be interpreted as requiring an analysis of how much better off **ratepayers as a whole** are if the selected EITE customers remain on the MP electric system. This type of analysis is often described as calculating a 'bypass rate' or a 'load retention rate.'"⁵⁰ It refers to this as a "load retention rate" - whether EITE customers would remain on Minnesota Power's system without a certain level of subsidy.⁵¹ AARP goes on to assert "What is required in this case is an analysis that keeps its determinations soundly within the Commission's realm of ratemaking, without resorting to predictions of possible impacts outside of revenue requirement calculations."⁵²

As explained in detail above, this narrow question is not before the Commission. The test established in the EITE statute is whether there is a net benefit to the utility or the State, which are not the same as a net benefit to the utility's ratepayers. The State has declared competitive electric rates for EITE customers to be the energy policy of the State. The intended benefit of this policy is to do more than focus on electric rates, it is to help ensure greater employment and tax revenue, the very things in which the State has a direct interest. Minnesota Power ratepayers live and work in Northeastern Minnesota and therefore stand to share in the benefits of this policy in ways not accounted for on their electric bills. If the legislature had intended a narrower ratepayer benefits test, it would have said so in the EITE Statute. AARP's test and arguments therefore miss the mark.

⁵⁰ *AARP Comment*, pg. 3-4 (emphasis in original).

⁵¹ *Id.* at 4.

⁵² *AARP Comment*, pg. 4-5

4. MCFN's Net Benefits Analysis Should be Rejected

MCFN's net benefits analysis is closer to the applicable net benefits test in terms of simplicity. But MCFN asks the wrong question. According to MCFN, the alleged question is "Would the proposed electric shift restore [economic] health, which is now seriously damaged?"⁵³ That question assumes that in order to provide a net benefit to the State or the utility, Minnesota Power's proposed EITE rate must, on its own, fix myriad economic problems. While it is appropriate for the net benefits test to look beyond just electric rates, MCFN's question sets up an impossible standard for any single policy measure to meet and does not fit the framework of the EITE Statute. The intent of the EITE Statute is to provide one tool to address one of the significant challenges facing the iron mining and paper industries - uncompetitive electric rates - in order to provide broader economic benefits. Thus, the appropriate questions before the Commission are (a) whether the rates for Minnesota Power are competitive, and (b) whether the status quo electric rates could lead to detrimental impacts that could be at least partially mitigated by the ECC. As explained in detail in LPI-EITE's comment, the answer to the first question is "no," and the answer to the second question is "yes." MCFN's framing of the issue is therefore inaccurate and its comments should be disregarded.

5. The Environmental Organizations' Comment Contains no Net Benefits Analysis and its Recommendation Should be Rejected

The Environmental Organizations' comment is focused on energy conservation. The Environmental Organizations state "We therefore request that the Commission reject Minnesota Power's petition because, absent a commitment to achievable, transparent energy savings measures from EITE customers, it does not represent a net benefit to the utility or the state."⁵⁴ For the reasons set forth above, energy conservation is not a factor that governs the Commission's review of the Petition. The Environmental Organization's recommendation should therefore be rejected.

This is not, however, to say that EITE members are disinterested in conservation. To the contrary, EITE members consistently engage in energy conservation efforts to keep the overall cost of production as low as possible as one tool to remain competitive in the global marketplace.

⁵³ *MCFN Comment*, pg. 2.

⁵⁴ *Environmental Organizations Comment*, pg. 3.

These efforts have been well documented in trade secret reports submitted to the Department of Commerce. Notwithstanding these efforts, LPI-EITE welcomes additional incentives in the form of conservation, demand response, and other measures as additional offerings under the proposed EITE rate schedule.

F. Concerns Regarding the Competiveness of Industries on the Iron Range Has National Attention and is a Matter of National Security

White House Chief of Staff Dennis McDonough travelled to the Iron Range on December 22, 2015, to receive a firsthand account of the crisis presently facing the iron industry. The news accounts, and comments from various legislators, underscore the importance of establishing a platform for success of EITE customers. Minnesota Public Radio reported on Mr. McDonough's comments, which were:

McDonough didn't promise any specific help. But he said President Barack Obama had directed him to visit the Iron Range because of the urgency he attaches to the situation there and in other steel-producing communities around the country. "This is a challenge that has important economic consequences, but important national security consequences as well," McDonough said.⁵⁵

Similar remarks were made by Minnesota U.S. Senator Amy Klobuchar. As noted by the Star Tribune:

Sen. Amy Klobuchar, whose grandfather was an Iron Ranger and who gets a lot of political support from the region, said this situation is different and more grave. She laid out the arguments for tariffs, calling a domestic steel industry necessary for national defense and crucial for the regional economy.⁵⁶

LPI-EITE is well aware that there are a number of global pressures facing their respective industries. Through the EITE Statute, the State can now do its part in providing one tool to help these industries - competitive electric rates. The State, via the Commission, must influence the factors it can control to help the struggling industries. Electric energy rates are such a factor.

⁵⁵ <http://www.mprnews.org/story/2015/12/22/iron-range-white-house-meeting>.

⁵⁶ <http://www.startribune.com/white-house-chief-of-staff-denis-mcdonough-visits-iron-range-to-show-support-for-laid-off-workers/363282621/#1>.

III. CONCLUSION

The EITE rate schedule and corresponding EITE rate set forth in the Petition are a necessary and reasonable first step in improving the competitiveness of Minnesota Power's large industrial rates. The ECC, a rate design tool intended to increase the competitiveness of Minnesota Power's large industrial rates, while at the same time encouraging full production from EITE industries, job retention, and electric rate stability, meets the broad net benefits test. Despite conceding that the new energy policy of the State is to ensure competitive electric rates for EITE customers, none of the Objectors offer an accurate or workable net benefits test that complies with the EITE Statute. The Commission must focus its analysis on the potential detrimental impacts of the status quo, which are the issues the EITE Statute was designed to address. These potential detrimental impacts, as well as the potential benefits of the EITE rate schedule and corresponding EITE rate have been well documented by Minnesota Power, LPI-EITE, IMA, and MFI. LPI-EITE therefore respectfully requests that the Commission approve the Petition as soon as reasonably possible, effective February 11, 2016.

Dated: December 31, 2015

Respectfully submitted,

STOEL RIVES LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka

Sarah Johnson Phillips

Emma J. Fazio

33 South Sixth Street, Suite 4200

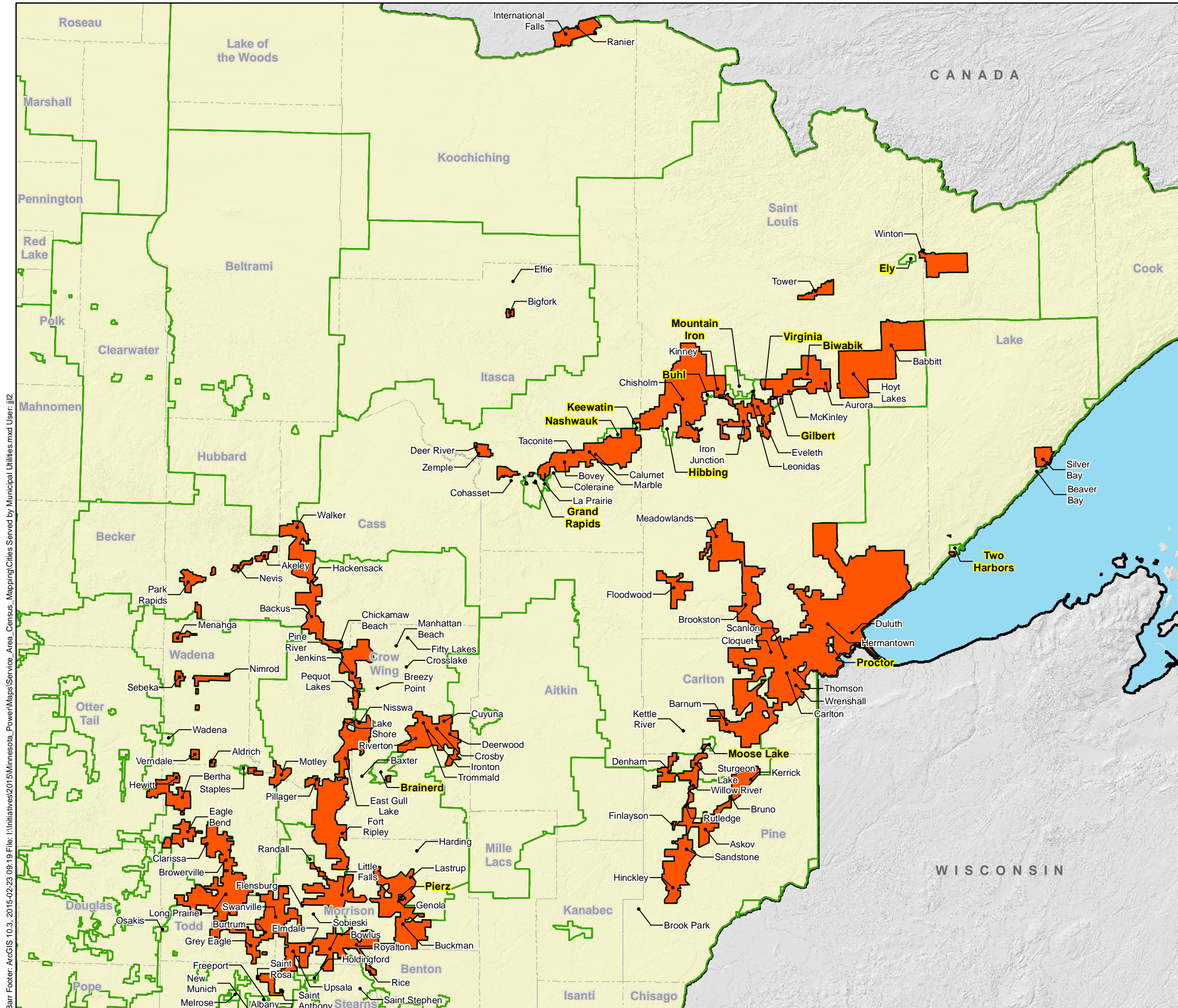
Minneapolis, MN 55402





Tele: 612-373-8800

Fax: 612-373-8881

Attorneys for LPI-EITE

EXHIBIT A



- Municipal Locations within 5 Miles of Minnesota Power Electric Utility Service Areas
-  Minnesota Power Electric Utility Service Area
-  Other Electric Service Utility Area
-  County Boundary
-  State Boundary

Biwabik - City Served by Municipal Utility

City Name	Utility Name
Biwabik	Biwabik Public Utilities
Brainerd	Brainerd Public Utilities
Buhl	Buhl Water and Light Department
Ely	Ely Utilities Commission
Gilbert	Gilbert Water and Light
Grand Rapids	Grand Rapids Public Utilities
Hibbing	Hibbing Public Utility
Keewatin	Keewatin Public Utilities
Moose Lake	Moose Lake Water and Light
Mountain Iron	Mountain Iron Public Utilities
Nashwauk	Nashwauk Public Utilities
Pierz	City of Pierz
Proctor	Proctor Public Utilities
Two Harbors	City of Two Harbors
Virginia	Virginia Department of Public Utilities

The above table depicts cities served by municipal utilities along with their associated utility name.

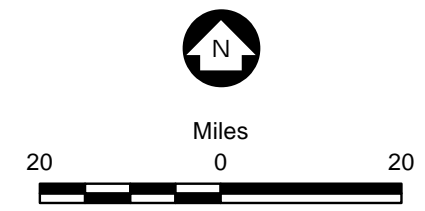


Figure X
CITIES SERVED BY MUNICIPAL UTILITIES