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December 21, 2015

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E015/M-15-984

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Minnesota Power's Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed Customers.

The petition was filed on November 13, 2015 by:

Herbert Minke  
Director, Energy Policy and Regulatory Affairs  
Minnesota Power  
30 West Superior Street  
Duluth, MN 55802

Minnesota Power's petition fails to demonstrate that its proposal meets the requirements of Minnesota Statutes section 216B.1696, and thus the Department recommends that the Commission **reject the petition without prejudice to allow Minnesota Power to file a compliant petition** and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEVE RAKOW  
Rates Analyst

SR/lt  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE  
DIVISION OF ENERGY RESOURCES

DOCKET No. E015/M-15-984

I. INTRODUCTION

On November 13, 2015, Minnesota Power, an operating division of Allete, Inc. (MP or the Company) petitioned the Minnesota Public Utilities Commission (Commission) for approval of the Company's *Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed Customers* (Petition). The Petition proposes to implement Minnesota Statutes section 216B.1696 (EITE Statute), which deals with energy-intensive trade-exposed (EITE) customers. MP proposes to create a new tariff offering for energy-intensive trade-exposed customers (EITE Discount Rider) and a new tariff to recover the resulting lost revenues from non-EITE, non-low income customers (EITE Surcharge Rider).

On November 19, 2015, MP filed a supplement to the Petition containing a letter of subscription (between MP and Magnetation, LLC) to the proposed EITE Discount Rider.

Also on November 19, 2015, the Commission issued its *Notice of Comment Period on EITE Rate Schedule* (Notice). The Notice requested comments on the following topics:

- 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?
- What criteria should the Commission use to evaluate whether MP's proposed EITE rate schedule provides net benefit to the utility or the state as required by Minn. Stat. § 216B.1696, subd. 2(b)? Has MP demonstrated that its proposed EITE rate schedule provides such net benefit?
- Are there additional or alternative rate options for EITE customers that would better meet the policy goals of the statute?
- Does MP's action on the deposit of \$10,000 for low-income funding comply with Minn. Stat. § 216B.1696, subd. 3, and is it reasonable?
- 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 rate case?

The Notice reserved comment on the following topics for a future date:

- The Commission is not seeking comment at this time on the merits of MP's proposed EITE cost recovery rider. Therefore, issues such as the allocation of costs to rate classes, which customers are to be excluded from the rider, and the merits of other design elements of MP's proposed EITE cost recovery rider, do not need to be addressed in comments.
- The Commission will establish a separate comment period on the merits of the proposed cost recovery rider, if necessary, likely after decisions are made on the merits of the issues currently open for comment.

On November 24, 2015, MP filed a letter stating the Company's belief that the Commission's Notice does not comply with the EITE Statute. On November 25, 2015, the EITE-eligible members of the Large Power Intervenors (LPI-EITE) filed a letter stating that LPI-EITE support the analysis set forth by MP.

On December 4, 2015, MP filed a letter stating that the Company deposited \$10,000 into the account of the Arrowhead Economic Opportunity Agency, Inc. (AEOA), and provided a copy of the memo sent to the AEOA.

Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department or DOC-DER) regarding the issues listed in the Notice. The Department notes overall that, because MP did not meet its burden of proof to show that the petition meets the requirements of the EITE Statute, analysis at this time of Minnesota Power's proposed \$11.45 per month, or 14.5 percent increase on average for Residential ratepayer, is not necessary.

## **II. DEPARTMENT ANALYSIS**

### **A. GOVERNING STATUTE**

MP filed the Petition pursuant to the EITE Statute, which states in part:

- Subd. 2. (a) ... 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 ...[.]
- (b) 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 any corresponding EITE rate.

- (c) The commission shall make a final determination in a proceeding begun under this section within 90 days of a miscellaneous rate filing by the electric utility.
- (d) ... 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. The utility shall not recover any costs or refund any savings under this section from any energy-intensive trade-exposed customer or any low-income residential ratepayers as defined in Minnesota Statutes, section 216B.16, subdivision 15.

In summary, subdivisions 2(a) and 2(b) allow certain utilities to offer various rate options to EITE customers. Subdivision 2(c) creates a deadline for Commission action. Subdivision 2(d) requires an account to track the change in revenues caused by the rate offerings and allows the utility to charge non-EITE and non-low income customers (as defined in the EITE Statute noted above) the revenue deficiency caused by the EITE rates.<sup>1</sup> 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.

## **B. STATUTORY TESTS**

The EITE Statute's subdivision 2 establishes four tests that must be applied to petitions proposing new tariff offerings for EITE customers. The Commission's Notice establishes questions regarding the four tests. The issues raised by the EITE Statute's tests and the Commission's Notice are addressed below.

### *1. Requirements of the Utility*

Since there are no specific rules for the EITE Statute, the Department examined MP's petition directly according to the EITE Statute and the Commission's general rules for petitions. That examination indicates that MP's filing is deficient in several ways. First, as discussed further below, MP failed even to provide some of the basic data to show that the Company's petition meets the requirements of the EITE Statute. The Department provides some information below in an attempt to rehabilitate certain failings in the petition, but

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<sup>1</sup> Under the EITE Statute the change could be either an increase or a decrease in revenues depending upon the specifics of the rate offerings made available by the utility and selected by EITE customers. However, MP's proposal would only create a decrease in revenues from EITE customers and a corresponding increase in revenues from other MP ratepayers.

notes that MP did not make an adequate showing on the core requirements of the EITE Statute. Regarding Miscellaneous tariff filings such as the Petition, Minnesota Rules 7829.1300 Subp. 5 states: "The Commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements." Further, the Commission may vary rules if a utility or party can make the required showings to obtain a variance, but the Commission cannot vary law. Thus, the Department concludes that MP's petition must be rejected. Rejecting the petition without prejudice would allow MP to file another petition that complies with Minnesota Statutes.

a) *Number of Customers*

The EITE Statute's subdivision 2(a), establishes the criterion that an "investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers" may propose new tariff offerings for EITE customers. Clearly, MP is an investor-owned electric utility. However, MP offered no evidence that the Company meets the EITE Statute's size requirement. While not required to rehabilitate flaws in a utility's proposal, the Department reviewed several years of MP's annual jurisdictional reports, which confirm that the Company has consistently had more than 50,000 and less than 200,000 retail electric customers.

b) *Low-income funding*

The Commission's Notice indicates that the topics open for comment at this time include the question, "does MP's action on the deposit of \$10,000 for low-income funding comply with Minn. Stat. § 216B.1696, subd. 3, and is it reasonable?" The EITE Statute's subdivision 3 requires:

Upon the filing of a utility for approval of an EITE rate schedule under this section, the filing utility must deposit \$10,000 into an account devoted to funding a program approved by the commission under Minnesota Statutes, section 216B.16, subdivision 15. The funds shall be used to expand the outreach of the commission-approved affordability program.

In response to this requirement, the Petition states that MP:

will be depositing \$10,000 into the account of the Arrowhead Economic Opportunity Agency, Inc. ("AEOA"). AEOA administers Minnesota Power's Commission-approved Customer Affordability of Residential Electricity ("CARE") Program and Minnesota Power shall designate that the funds be used to "expand the outreach" of CARE.

As noted above, on December 4, 2015 MP made a filing indicating that MP took this action. The Department confirmed with AEOA that the deposit was made. Thus, the Department

concludes that MP's action to deposit \$10,000 with Arrowhead Economic Opportunity Agency, Inc. for low-income outreach complies with the EITE Statute.

## 2. *Requirements of the Customers*

Overall, the Department begins by noting that MP failed to provide the basic data required by the EITE Statute regarding requirements of the customers. Again, Minnesota Rules 7829.1300 Subp. 5 states "The Commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements." The Commission's Notice indicates that the topics open for comment at this time include, "the types of customers eligible for the rate, the criteria for qualification for the rate." The EITE Statute's subdivision 1 (c) defines an EITE customer as including:

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

EITE Customer Commitment Letter Agreements (Letter Agreements) are the mechanism chosen by MP to formally commit customers to participation in the EITE Discount Rider. The Petition states that the following customers have signed a Letter Agreement:

- Verso Paper in Duluth;
- Sappi Mill in Cloquet;
- Boise Paper in International Falls;
- Blandin Paper in Grand Rapids;
- Mesabi Nugget in Hoyt Lakes;
- United States Steel, which operates Minntac Mine in Mountain Iron and Keetac in the city of Keewatin;
- Cliffs Natural Resources, which manages United Taconite in Forbes and Hibbing Taconite, located in Hibbing;
- Mining Resources near Chisholm; and
- ArcelorMittal which operates the Minorca Mine near the city of Virginia.

In the November 19, 2015 supplement to the Petition, MP provided a Letter Agreement by which Magnetation, LLC committed to participating in the EITE Discount Rider. MP plans for

additional customers to sign Letter Agreements. MP states that the Company will file all future initial Letter Agreements in a proposed periodic compliance filing for the EITE Surcharge Rider.

The Department reviewed MP's Petition, which provided the Company's interpretation of the qualifications for a customer to have EITE status. However, MP did not provide evidence documenting how the already committed customers' facilities (listed above) 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 recommends that the Commission reject MP's petition. It will be necessary for MP to document how each proposed EITE rate discount meets the requirements of the EITE Statute.

MP states that the Company plans to file additional initial EITE Letter Agreements, upon execution, in a Supplemental Filing to this Docket. However, the Petition offers no information regarding how EITE status will be substantiated initially or verified on an ongoing basis in the future. This verification is important since the EITE Statute requires other MP ratepayers to pay for the costs of EITE discounts. The Department recommends that the Commission reject MP's proposal allowing new customer Letter Agreements to be signed until such time as MP is able to identify and provide a reasonable standard and process for verifying a new participant's status in terms of meeting the EITE Statute's definition of an EITE customer.

MP further states on page 8 of its Petition, regarding the EITE Statute's subdivision 2(a) provision, which allows the Company to set "terms of service to an individual or group of energy-intensive trade-exposed customers," that "Minnesota Power interprets this phrase to mean that not all customers that meet one of the four categories under the EITE Customer definition as described above necessarily meet terms of service as proposed by Minnesota Power in this filing." The Petition offers no information regarding how MP applied any other terms of service to the list of customers that qualify as EITE to arrive at a subset of customers that may sign Letter Agreements. The Department recommends that the Commission reject MP's proposal since it does not clearly state how MP applied any other terms of service to qualify customers for participation in the EITE Discount Rider.

### *3. Rate Option Offered and Rate Design*

The Commission's Notice indicates that the topics open for comment at this time include, "the individual design elements of the rate, and the specific rate option proposed."

MP failed to provide basic data required by the EITE Statute regarding tariff language.<sup>2</sup> Regarding rate design and the rate option proposed, Minnesota Rules 7825.3600 requires that "all proposed changes in rates shall be shown by filing revised or new pages to the rate book previously filed with the commission and by identifying those pages which were not

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<sup>2</sup> Again, Minnesota Rules 7829.1300 Subp. 5 states "The Commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements."

changed.”<sup>3</sup> Based on this Rule, MP concluded that a variance is necessary to allow the Company to provide the revised rate book pages in a subsequent compliance filing. Thus, rather than provide the required tariff language, MP requested a variance. MP’s justification of the variance request, via a reference to the variance criteria under Minnesota Rules, part 7829.3200, is as follows:

- *Enforcement of the rule would impose an excessive burden:*
  - MP states that providing the proposed language and the schedules and rate codes to be impacted allows for adequate Commission review, while identifying the proposed changes in rates and the associated rate book impacts. Updating of the impacted schedules in a compliance filing would allow for Commission approval of proposed rates in this instant docket.
- *Granting the variance would not adversely affect the public interest:*
  - The Company states that the Commission retains oversight of the proposed rates, as well as the impacts to the rate book; ratepayers and the Commission would have notice of the affected rates due to filing of the revised rate book pages in subsequent compliance filings and customer notices.
- *Granting the variance would not conflict with standards imposed by law:*
  - MP states that the subsequent compliance filing would reflect the outcome of the Commission’s review of the proposed language and rate book updates, so the granting of this variance would offer the most direct and consistent way of addressing this issue.

Regarding the first variance criterion, the Petition merely states that several tariffs are involved but does not demonstrate that providing the required information (red-lined pages and identification of pages that do not change) would create an excessive burden upon MP. It is not clear that adding the new language to several files and saving the files creates a burdensome level of work. Thus MP’s request for a variance fails the first test,<sup>4</sup> and the Department need not evaluate MP’s claims under the remaining two criteria. Nonetheless, because the EITE Statute places the financial responsibility for EITE discounts on non-EITE ratepayers, the Department notes the following regarding the second criterion. Regarding granting the variance not adversely affecting the public interest, it is important for Minnesota Power to inform its non-EITE customers about the rate increases that they would face once MP is able to meet the requirements of the EITE Statute. Therefore, the Department recommends that the Commission reject MP’s proposed rule variance.

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<sup>3</sup> The Department notes that Minnesota Rule 7825.3600 derives statutory authority from Minnesota Statutes section 216B.16 and thus the Commission may wish to consider whether any rule variance is needed, due to the “notwithstanding” clause under Minnesota Statute section 216B.1696, subdivision 2(b). However, at this time, the Department is following MP’s interpretation that a variance is required.

<sup>4</sup> The Department acknowledges that MP cites to past practice in Docket Nos. E015/M-07-216, *In the Matter of a Petition for Approval of a Wind Energy Power Purchase Agreement with FPL Energy Oliver Wind II, LLC and to Implement a Renewable Resources Rider*, and E015/M-12-920, *In the Matter of Minnesota Power’s Petitions for approval of its Boswell Energy Center Unit 4 Environmental Retrofit Project and Boswell 4 Environmental Improvement Rider* as supporting the variance request. However, the Commission’s Orders in both proceedings cited to the need for the Commission to make decisions in other related matters as a reason for granting the variances.



#### 4. *Net Benefit Tests*

The Commission's Notice indicates that the topics open for comment at this time include, "What criteria should the Commission use to evaluate whether MP's proposed EITE rate schedule provides net benefit to the utility or the state." Again, MP failed to provide the overall cost-benefit test required by the EITE Statute. Minnesota Rules 7829.1300 Subp. 5 states "The Commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements."

To guide future analysis under the EITE Statute, the Department provides the following overview. First, the Department recommends 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. This consideration should be done in a manner similar to how the Commission evaluates, for example, alternatives in certificate of need proceedings.

The Department also recommends that the Commission generally limit its consideration to matters within the Department's and Commission's expertise. If the Commission determines to consider information regarding economic development, the Department notes that evaluating the overall benefits to EITE customers and *overall* harm to MP ratepayers who will eventually shoulder the responsibility of paying for the rate discount is a specialized task. MP should work with an independent consultant or the Minnesota Department of Employment and Economic Development to produce such analysis if MP determines to continue to pursue action under the EITE Statute.

MP may also wish to consider filing a revenue-neutral rate case or miscellaneous tariff filing to revise the apportionment of revenue responsibility to customer classes if MP can support its proposal and show that it is in the public interest.

##### *i. Utility Benefit/Cost Test*

The Commission's Notice indicates that the topics open for comment at this time include, "has MP demonstrated that its proposed EITE rate schedule provides such net benefit?" The EITE Statute's subdivision 2(b) establishes the criteria to be used by the Commission as "upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and any corresponding EITE rate." Thus, a Commission finding that MP's proposal passes either a utility or state of Minnesota benefit/cost test would require the Commission to approve the Petition.

A utility cost test measures cost-effectiveness from the viewpoint of the utility. In terms of energy conservation—a common application of the utility cost test, examples of the benefits are the avoided supply costs of energy and demand along with the reduction in transmission, distribution, generation, and capacity valued at marginal costs for the periods when there is a load reduction. In that context, the costs for the utility test are the program

costs incurred by the utility, the incentives paid to the customers, and the increased supply costs for the periods in which load is increased.

Regarding a utility benefit/cost test, the immediate effect of the Petition—offering decreased rates to some customers (the EITE Discount Rider) and increased rates to other customers (the EITE Surcharge Rider)—is that the net revenue change for MP is zero. Economically, all that happens is that the EITE Statute mandates transfer payments amongst MP's customers—the price of electricity goes up for some customers and down for other customers. This transfer payment creates no immediate benefits or costs to MP; said another way, the utility is indifferent as to which ratepayers write the checks. Thus, the immediate effect of the Petition cannot be said to support a finding of net benefit to the utility.

A secondary impact of the proposed transfer payments is to change the cost of energy for customers; this change may result in customers changing their behavior—the quantity of energy consumed. The transfer payment to an EITE customer (within the EITE Discount Rider) is applied via a decrease in the energy charge, here labeled by MP as an Energy Charge Credit.<sup>5</sup> Thus, the EITE customers may change their behavior in response to the new price signal—potentially increasing their energy and/or demand requirements above what they would otherwise have used and thus potentially imposing a cost under the utility test. Similarly, to the extent that the transfer payment from non-EITE, non-low income customers (within the EITE Surcharge Rider) is applied via an increase in the energy charge, then those customers may change their behavior in response to the new price signal—decreasing their energy requirements and thus potentially creating a benefit under the utility test.<sup>6</sup>

The 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. To answer this question the Department reviewed the forecasting section of MP's 2015 integrated resource plan (IRP) to determine if changes in the price of electricity were included in MP's energy forecast process. MP's forecast process starts with gathering price data; see Figure 1 on page 5 of Appendix A of MP's petition in Docket No. E002/RP-15-690. Thus, it appears that price was considered by MP as potentially having a significant impact on energy consumption. However, the final customer class energy forecasts do not include the price of electricity as a variable; see pages 32 to 39 of Appendix A of MP's petition in Docket No. E002/RP-15-690. Therefore, the Department concludes that MP's forecast process indicates that changes in the price of electricity should not be expected to have a significant impact on MP's energy sales to any particular customer class and thus should have no impact under the utility test.

Finally, the Department notes that costs will be incurred by MP to administer the EITE Discount Rider and EITE Surcharge Rider. The Department is not aware of the size of these costs but would welcome reply comments from MP regarding the amount of such costs. However, if these costs are significant, then they could impact the utility test. Therefore, the

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<sup>5</sup> The Petition at page 11 proposes to apply a discount per-kWh above a minimum consumption level.

<sup>6</sup> The Petition at page 15 proposes to recover the costs on a per-kWh basis for residential customers and on a monthly charge per service agreement for all other customers.

Department recommends that, in reply comment, MP offer information regarding the costs that will be incurred by MP to administer the program—including negotiating Letter Agreements.

In summary, the above analysis indicates that, considering energy system impacts, MP's proposal cannot be expected to have a net benefit under the utility test. Thus, the Department concludes that the Company's proposal does not provide net benefits to the utility and fails the EITE Statute's utility test.

*ii. State of Minnesota Benefit Test*

A societal cost test, here limited to the state of Minnesota, measures cost effectiveness from the point of view of society as a whole, including both the participants' and the utility's costs. In terms of energy conservation—a common application of the test, the benefits are the avoided supply costs of energy and demand along with the reduction in transmission, distribution, generation, and capacity valued at marginal costs for the periods when there is a load reduction. The costs for the societal test are the costs paid by both the utility and the participants, including the effects of externalities. Note that under a societal test the benefits and costs should include externalities. Thus, if a proposal results in an increase/decrease in energy consumption, it will likely result in increased/decreased pollution and thus externalities under a societal test. This approach is similar to how Department staff use externalities to evaluate conservation projects and MP should include consideration of such externalities in the Company's cost benefit analysis.

As with the utility benefit/cost test, the immediate effect of the Petition—offering decreased rates to some customers (the EITE Discount Rider) and increased rates to other customers (the EITE Surcharge Rider), with the net change for MP being zero—results in a proposal with essentially no cost to Minnesota. Economically, all that happens is that the EITE Statute mandates transfer payments amongst customers—the price of electricity goes up for some customers and down for other customers. As noted above, this transfer payment creates no immediate benefits or costs to Minnesota.<sup>7</sup> Thus, the immediate effect of the Petition cannot be said to support a finding of net benefit to Minnesota.

The analysis of the secondary impact of the proposed transfer payments, 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. Finally, the Department notes that the costs incurred by MP to administer the program, discussed above, also would apply to the societal test.

In summary, the above analysis indicates that, considering energy system impacts, MP's proposal cannot be expected to have a net benefit under the societal test. Thus, the

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<sup>7</sup> The Department acknowledges the concerns expressed by the EITE Statute's exclusion of low-income customers from the EITE Surcharge Rider, however the general principle holds.

Department concludes that the Company's proposal does not provide net benefits to the state of Minnesota and fails the EITE Statute's societal test.

*iii. Non-energy Benefits and Costs*

If the Commission were to disagree with the Department's analysis and conclusions regarding non-energy benefits and costs, the Department offers the following overview. Overall, and quite obviously, the largest potential impact the EITE Statute could be claimed to be addressing is the possibility of an EITE customer permanently shutting down. Continuing to think of the EITE Statute's benefit/cost test requirements in the framework of existing analysis, such an event would be similar to a new conservation project, albeit a conservation project that no one desires. However, MP's 2015 IRP does include substantial additions of new resources. The reduction in energy and demand requirements implied by MP losing a large customer would lack the incentive payment costs of a similar conservation project and would eliminate the need for at least a portion of the new resources. Therefore, if the EITE Discount Rider successfully avoids a permanent shut down of a large customer that would imply that the EITE Discount Rider would impose net costs upon MP's system since new resources will be required to serve MP's existing customer base.

In terms of the analytical details, the potential economic development impacts (permanent shut downs of large customers) have two aspects. First for the EITE customers—again, if the Commission determined to use such information in its decision making process—the Commission would have to determine two things:

- the expected impact of a permanent shut down of an EITE customer; and
- the incremental impact of the EITE Discount Rider upon the risk of a permanent shut down of the EITE customer.

Conceptually, once determined those two items can be multiplied by each other in order to determine the expected value of the payments under the EITE Discount Rider.

Second, for the non-EITE customers, the Commission again would have to determine two things:

- the expected impact of a permanent shut down or bankruptcy of a non-EITE customer; and
- the incremental impact of the increased payments under the EITE Surcharge Rider upon the risk of a permanent shut down or bankruptcy of a non-EITE customer.

Again, those two items can be multiplied by each other in order to determine the expected value of the payments under the EITE Surcharge Rider.

Then, the expected value of the risk of an EITE customer shutting down that may be avoided by the payments under the EITE Discount Rider could be compared to the expected value of the risk of a non-EITE customer shutting down that may be created by payments under the

EITE Surcharge Rider, to determine the overall economic development impact of the Petition. Such analysis is outside the DOC-DER's purview and the Petition offers no such analysis.

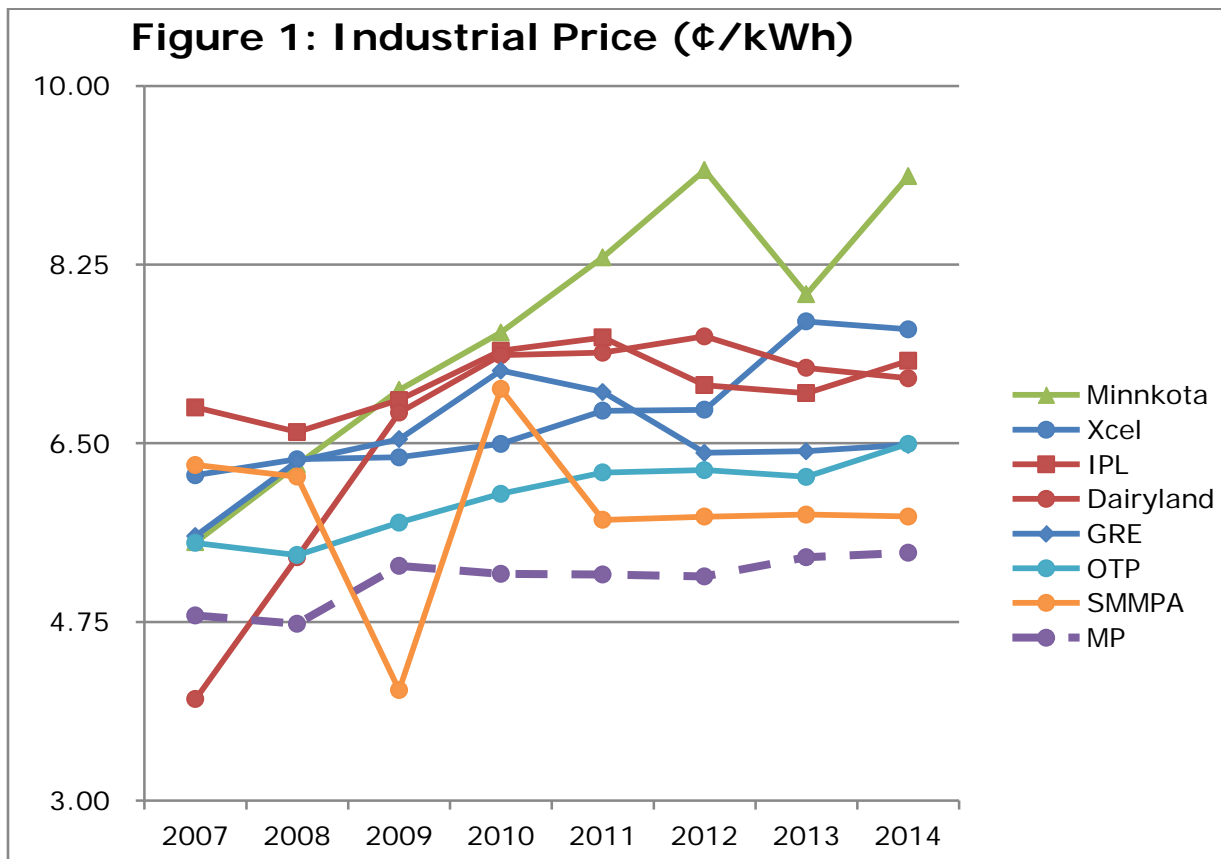
A further complication would be introduced by the limitation of the consideration of benefits and costs to the state of Minnesota. For example, not all of the impact of the permanent shut down of an EITE customer would be felt in Minnesota. Similarly, not all of the impact of the permanent shut down or bankruptcy of a non-EITE customer would be felt in Minnesota.<sup>8</sup> Thus, for the state of Minnesota test, additional information would have to be obtained regarding the portion of the impact that would occur in Minnesota. The expected impact of a permanent shut down or bankruptcy filing would be multiplied by the percentage of costs that would impact Minnesota to determine the impact under the EITE Statute's state of Minnesota benefit/cost test.

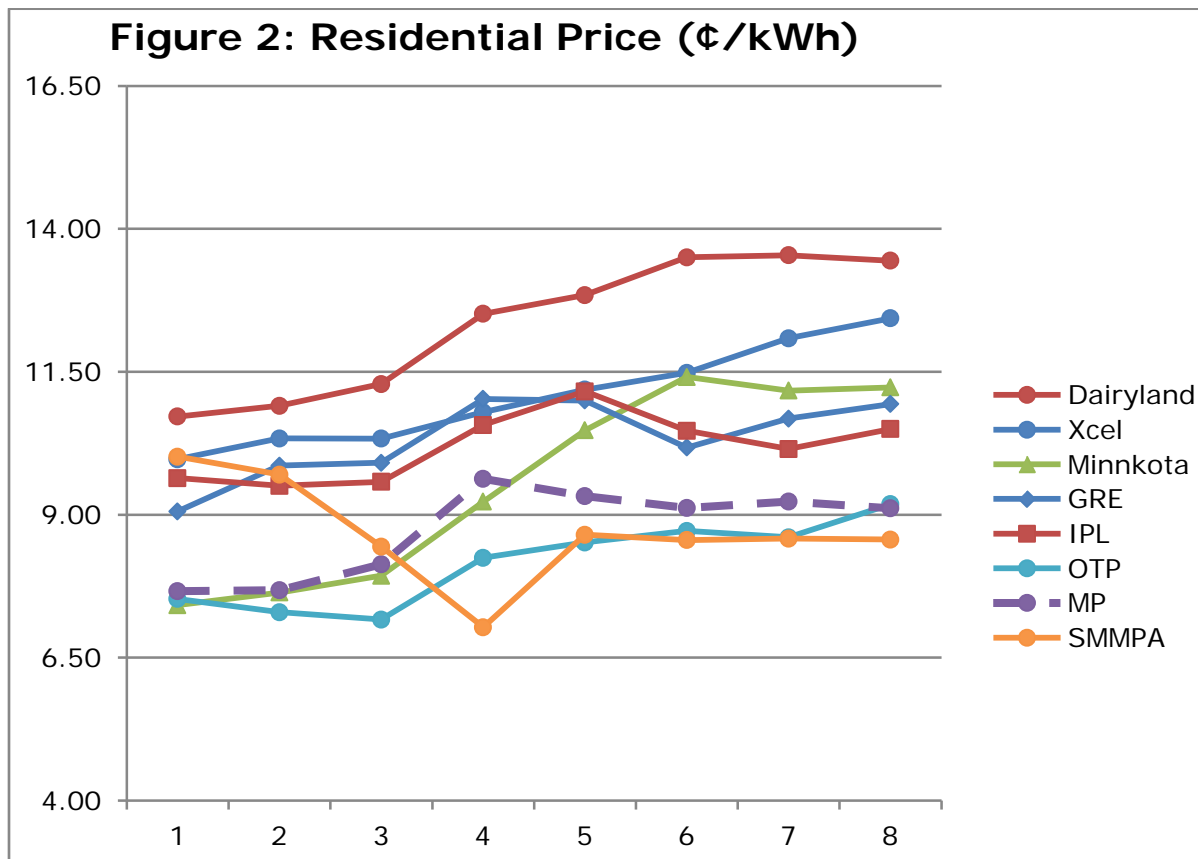
*iv. Other Issues*

First, the Petition at page 33 states that, "As shown in Figure 1 below, Minnesota Power's Large Power rate has increased at a significantly higher rate than the Consumer Price Index ('CPI')." In response, the Department notes that the Annual Forecast Report (AFR) filings made by all utilities under Minnesota Rules 7610 indicate that MP has the most level and lowest industrial rates in Minnesota; see Figure 1 below for data from the filings of the utilities that file resource plans with the Commission. Since the Petition also proposes that residential rates would change, the Department also provides Figure 2 below showing the comparable residential rates. Again, MP's residential rates are among the lowest in Minnesota.

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<sup>8</sup> For example, if an EITE or non-EITE business customer were to enter bankruptcy its shareholders would suffer losses; shareholders are not necessarily limited to Minnesota.





Second, regarding the potential for permanent shut downs of MP’s EITE customers to create economic development issues, the Department notes that MP’s 2015 IRP, while discussing the Company’s expected load and capability, stated the following:

Overall, growth is still expected throughout the long-term planning horizon, driven by large industrial customer expansion and organic growth in the residential and commercial sectors.

For the 2015 Plan, the load outlook includes a projection for considerable growth over the 15-year period. In particular, Minnesota Power is expecting significant industrial customer expansion.

The Department invites MP to comment on how the Company’s expectations for industrial customers, as stated above in the 2015 IRP, impact the potential for non-energy system costs created by permanent shut downs of EITE customers.

Third, the 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.

Fourth, the Petition at page 29 states:

EITE Customers have funded approximately 50% of the costs of adding these renewable energy sources... without actually being able to fully utilize these power sources to meet their energy supply needs. EITE customers run their operations all day, every day to optimize their operations to minimize product costs. As such, the intermittent nature of wind energy would not adequately supply these operations.

However, on page 15 the Petition states, “approximately 63% of all retail sales for the Company come from the EITE customers.” Thus, the Petition demonstrates that EITE customers are paying a lesser portion of the costs of renewable energy than their retail share. Correspondingly, non-EITE customers are paying more than their retail share.

Moreover, MP’s statement is not relevant to the issue at hand since no one customer fully utilizes any one particular resource. Instead, all customers use the utility’s system. Specifically, MP develops the Company’s resource plan to serve the Company’s entire load and not any one sub-set of customers.

Fifth, the Company states at page 29 that:

When analyzing the Class Cost of Service Study from the last Minnesota Power rate case in 2009, including rates for recoveries under subsequent cost recovery riders, residential rates would need to rise nearly 20% if they were not subsidized by other rate classes. Large Power customers pay for approximately 70% of this cross-subsidy to residential customers.

The Department notes that MP has long had a remedy available to address such a concern. MP could file a revenue-neutral rate case or miscellaneous tariff filing proposing to change the apportionment of revenue responsibility to customer classes, if MP can show that the current apportionment does not adequately reflect cost of service as MP claims.<sup>9</sup> The Department recommends that, in reply comments, MP provide any evidence the Company has that might support the Company’s claim that EITE customers are paying more than the cost of service.

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<sup>9</sup> Such a petition would involve a class cost of service study, rate design, and related elements.



## 5. *Alternative Rate Options*

The Commission's Notice indicates that the topics open for comment at this time include, "are there additional or alternative rate options for EITE customers that would better meet the policy goals of the Statute?" The policy goal is clearly laid out in the EITE Statute: "it is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers."

In response, the Department notes that there may be alternative rate options for EITE customers that would better meet the policy goals of the EITE Statute. For example, as noted above, realigning the apportionment of revenue responsibility to customer classes may be appropriate if MP can provide the information to support such a proposal. However, the EITE Statute clearly states that an investor-owned electric utility has the ability to propose EITE rate offerings and MP has done so. The EITE Statute is silent on whether any other entity may propose EITE rate options. In any case, the Department does not propose alternative EITE rate options.

The Department notes that better aligning the price signals sent by MP's tariffs with costs would represent an improvement in economic efficiency. However, at this time MP has not provided any information showing that customers respond to price signals.<sup>10</sup> Thus, such an improvement in aligning price signals would not impact a benefit/cost analysis.

## 6. *Implementation Prior to Next General Rate Case*

The Commission's Notice indicates that the topics open for comment at this time include, "should the Commission allow MP to implement a cost recovery rider prior to its next general rate case?" The Department notes that the EITE Statute states "the utility shall create a separate account to track the difference in revenue" and "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." Since the EITE Statute requires non-EITE ratepayers to pay for the discount to EITE customers, whether now or in the future, it may be preferable for revenue decreases and increases to be offsetting to the extent possible and minimize a cost or benefit for subsequent generations of ratepayers or carrying charges on such a tracker.

However, at a minimum, it would be helpful for non-EITE ratepayers to receive a notice of the change in rates, similar to what would occur in a rate case, and for non-EITE ratepayers to have adequate opportunity to comment on the proposed rate increases they would face under the proposal, perhaps with public hearings if the Commission so determines, preferably prior to the rate increases being placed into effect or as a condition of the rates being authorized once MP meets its burden of proof. Therefore, the Department recommends that, if the Commission approves the EITE Discount Rider, the Commission allow MP to implement a cost recovery rider prior to its next general rate case to offset the lost revenues. However, MP should provide notice to its non-EITE ratepayers and allow an adequate opportunity for input from non-EITE ratepayers.

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<sup>10</sup> That is, the information available implies that demand is highly inelastic (unresponsive to price signals).

### III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission deny MP's proposal without prejudice, until such time as MP is able to:

- demonstrate that its proposal provides a net benefit to MP or Minnesota, addressing the issues identified above;
- offer evidence documenting how each participating customer actually qualifies for EITE status reject each customer's participation in the EITE tariff; and
- provide a reasonable process for verifying a participant's meeting the statutory definition of an EITE customer.

The Department also recommends that the Commission:

- reject MP's proposed rule variance;
- compare the quantifiable costs and benefits of MP's proposed rate offering under both a utility test and a societal test (limiting "society" to Minnesota);
- consider non-quantifiable benefits and costs;
- limit its consideration to matters within the Commission's expertise; and
- determine that MP's proposed EITE rate offering does not pass the utility and state of Minnesota net benefit tests established by the EITE Statute.

The Department recommends that in reply comments or in MP's next petition the Company:

- offer information regarding the costs that will be incurred by MP to administer the program—including negotiating letters of subscription; and
- provide any information it has that might demonstrate that EITE customers are currently paying more than the cost of service.

/lt

**CERTIFICATE OF SERVICE**

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**MINNESOTA DEPARTMENT OF COMMERCE – COMMENTS**

Docket Nos. **E015/M-15-984**

Dated this **21st** day of **December, 2015**.

/s/Linda Chavez

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