

**STATE OF MINNESOTA  
BEFORE THE PUBLIC UTILITIES COMMISSION**

Beverly Jones Heydinger	Chair
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
John Tuma	Commissioner
Betsy Wergin	Commissioner

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

Docket No: E-015/M-15-984

**Comments of Legal Services Advocacy Project**

Introduction

The Minnesota Legislature, during its First Special Session in 2015, authorized certain utilities to propose rate options for Energy-Intensive, Trade-Exposed (EITE) customers.<sup>1</sup> On November 13, 2015, Minnesota Power filed a petition with the Minnesota Public Utilities Commission (the Commission) for approval of a tariff proposing an EITE rate.<sup>2</sup> On November 17, 2015, Minnesota Power submitted a *Corrected Pagination* filing.<sup>3</sup> On November 19, 2015, the Commission issued a “*Notice of Comment Period on the EITE Rate Schedule*” in response to Minnesota Power’s petition.<sup>4</sup> The Notice seeks comment on a discrete set of questions.

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<sup>1</sup> 2015 Minn. Laws, First Special Session, Chapter 1, Article 3, Section 26 (codified at Minn. Stat. § 216B.1696) (providing that “an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers, shall have the ability to propose various EITE rate options”).

<sup>2</sup> Minnesota Power, *Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed (“EITE”) Customers*, In the Matter of a Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed Customers (November 13, 2015).

<sup>3</sup> Minnesota Power, *Corrected Pagination Petition*, In the Matter of a Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed Customers (November 17, 2015).

<sup>4</sup> Minnesota Public Utilities Commission, *Notice of Comment Period on EITE Rate Schedule*, In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider, Docket No.: E-015/M-15-984 (issued November 19, 2015).

The Legal Services Advocacy Project is a statewide division of Mid-Minnesota Legal Aid, representing Legal Aid and the interests of low-income Minnesotans through legislative and administrative advocacy, research, and community education activities. LSAP appreciates the opportunity to offer comments in this docket. For the reasons articulated below, LSAP urges the Commission to deny Minnesota Power's petition.

### LSAP Response to Commission Notice Questions

1. *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?*

**A. Minnesota Power's Proposed Rate for EITE Customers Does Not Comply with Minn. Stat. § 216B.1696**

Minnesota Power's proposed rate for EITE customers does not comply with Minnesota Statutes, section 216B.1696 with respect to the criteria for qualification for the EITE rate. Therefore, Minnesota Power's petition should be denied.

Under the statute, one of the categories of customers eligible for the EITE rate is:

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.<sup>5</sup>

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<sup>5</sup> Minn. Stat. § 216B.1696, subd. 1(c)(4). (Emphasis added)

Eligibility for the proposed EITE rate for this category of customer thus hinges on four prongs. Minnesota Power has failed to present the Commission with any basis on which to determine eligibility of retail customers with regard to the third prong: retail customers who are “subject to globally competitive pressures.”

As a threshold matter, Minnesota Power provides no criteria by which to determine what constitutes “globally competitive pressures.” An EITE rate applicant who does not meet this prong is ineligible for an EITE rate. However, because Minnesota Power provides no guideposts to identify what constitutes "globally competitive pressures," it fails to meet its burden in this docket.

Secondly, even if it had defined and offered criteria to determine what constitutes "globally competitive pressures," Minnesota Power provides no criteria to test whether a potential EITE rate applicant is in fact “subject to” those pressures and thus eligible for the EITE rate. Absent any factors against which to weigh these questions, a determination of eligibility is impossible. The petition fails to comply with the statute. It should be denied.

**B. The Commission Can and Must Define Vague and Undefined Terms and Standards**

The Minnesota Supreme Court, in a recent case involving Minnesota Power, ruled that the Commission clearly has the authority to define a vague term left undefined in statute (in that particular case, the undefined term "exigent circumstances"). The Court found that where neither statute nor case law defines such a vague or undefined term, the Commission has the

authority to exercise its discretion to determine its meaning.<sup>6</sup> Similarly, in this docket, where neither statute nor case law provide a definition for "globally competitive pressures," the Commission has not only the authority, but also the obligation to define that term. With no definition or any standards by which judge, eligibility simply cannot be determined for a retail customer who satisfies the other three prongs of the statute regarding the criteria for qualification.

In that same case, the Court averred that if the Legislature had wanted to define the vague term in question, it would have.<sup>7</sup> Similarly, had the Legislature in Minnesota Statutes, section 216B.1696 wanted to define "globally competitive pressures" it would have. Thus, it falls to the Commission to do so.

Minnesota Power's proposed rate for EITE customers does not comply with Minnesota Statutes, section 216B.1696 regarding the criteria for qualification for the rate. Therefore, the Commission should deny the petition. If Minnesota Power were to refile, the Commission should require the company to propose: (1) a definition of what constitutes "globally competitive pressures"; and (2) the standards by which to determine if an applicant customer is actually subject to them.

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<sup>6</sup> In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in Minnesota, 838 N.W.2d 747, 752 (Minn. 2013), as modified on denial of reh'g (Oct. 31, 2013) (citing In re Minnesota Power, 807 N.W.2d 484, 489 (Minn. Ct. App. 2011) (upholding the Court of Appeals' finding that where no legislative or judicial definition of the term "exigent" exists, the Commission "may exercise its discretion" to determine what they are and that they are present).

<sup>7</sup> In re Application of Minnesota Power, 838 N.W.2d at 754-55.

2. *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?*

For two reasons, Minnesota Power's fails to meet its burden to show a net benefit.

First, the company omits several essential criteria that it would have to meet for the Commission to find a net benefit. Second, the justifications the company provides in its petition are insufficient to meet its burden to show the EITE rate as proposed passes the net benefit test. Therefore, Commission should deny Minnesota Power's petition. If Minnesota Power were to refile, the Commission should require the company to include the additional criteria and other convincing evidence to demonstrate there is a net benefit.

**A. Missed Criteria**

Several crucial criteria, necessary to evaluate whether or not Minnesota Power's proposed EITE rate schedule provides net benefit to the utility or the state, are conspicuously absent from the company's petition. Without them, it is not possible to determine whether or not there is a net benefit. Consequently, the Commission should deny the petition. If Minnesota Power were to refile, the Commission should order the company to include an analysis of the criteria that should have been included and evaluated, and show why and how they carry the company's burden to show the EITE rate schedule provides a net benefit.

1. Adverse Rate Impacts

Ratepayer impact is among the most important factors to consider in determining net benefit. There can be no net benefit to the utility or the state if the impact on other ratepayers is unduly or inordinately adverse. Therefore, Minnesota Power must evaluate, and the

Commission must consider, how this filing would affect residential ratepayers in general and non-exempt low-income ratepayers<sup>8</sup> in particular, and how any adverse impacts affect the utility or the state.

The petition indicates that the bill for a residential customers would "increase by about 14.5 percent."<sup>9</sup> By any measure, this is a large increase. It is more burdensome to residential ratepayers in Minnesota Power's service territory considering the depressed economic conditions that exist there presently. It is even more onerous to vulnerable Minnesota Power residential ratepayers who are low-income, including elder persons and persons with disabilities.

True, the EITE rate is intended to somewhat – through a connect-the-dots approach – ameliorate those conditions, but in the meantime, a 14.5% rate increase for residential ratepayers would exacerbate their financial and economic woes and the contribute to more economic hardship for the region.

Strikingly, the company presents no estimation of the consequences that such a steep increase would have on the net benefit evaluation. For example, the company takes no account of the likely sharp increase in uncollectibles, the loss of residential customers from

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<sup>8</sup> The EITE statute exempts only a small portion of low-income customers from the adverse rate impacts on residential customers that approval of this filing would create. See Minn. Stat. § 216B.1696, subd. 2(d) (providing that "[t]he utility shall not recover any costs or refund any savings under this section from (sic)...any low-income residential ratepayers as defined in Minnesota Statutes, section 216B.16, subdivision 15"). Low-income residential ratepayers defined in the referenced statute include only those receiving the federal Low-Income Home Energy Assistance Program (LIHEAP). See Minn. Stat. § 216B.16, subd. 15 (providing that "[f]or purposes of this subdivision, 'low-income residential ratepayers' means ratepayers who receive energy assistance from the low-income home energy assistance program (LIHEAP)"). Those eligible but not receiving LIHEAP, and those ineligible but still low-income, are not exempted.

<sup>9</sup> *Corrected Pagination Petition*, *supra* note 3, at 25.

disconnection, and other costs the company and the state would bear in terms of, for instance, increased costs for medical care and other public assistance payments.

Minnesota's filing is dramatically deficient. The Commission should deny the petition. If Minnesota Power were to refile, the Commission should require the company to develop and submit credible and justifiable conclusions of these impacts on the utility and the state.

That the Commission has the authority to engage in such an evaluation is settled law. In a Minnesota Power case, the Minnesota Supreme Court recently upheld the Commission's authority to consider just these sorts of criteria. In that case, the Court found it wholly appropriate for the Commission to consider the following factors in arriving at its decision: whether "[h]ouseholds and businesses struggling under the current adverse economic conditions...may face economic deprivations, business losses, and even disconnections...."<sup>10</sup>

The considerations that were determinative in that case are no less relevant here. Arguably, they are even more relevant; the increase contemplated here is 28% higher than the increase proposed in that case, where the Commission, upheld by the Supreme Court, strongly considered rate impacts on residential customers in this very utility's service territory.<sup>11</sup>

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<sup>10</sup> In re Application of Minnesota Power, 838 N.W.2d at 752.

<sup>11</sup> The proposed increase in the prior case was 11.3%, which the Commission found imposed an undue burden on residential ratepayers in MP's service territory. The 14.5% increase proposed in this tariff filing is 28% greater. See In re Application of Minnesota Power, 838 N.W.2d at 751.

## 2. Causal Link Between EITE Rate and Job Retention/Expansion

There is no argument that the purpose of this legislation is job preservation and expansion. As the legislation's chief House author expressly indicated, "the impetus for the bill is retaining jobs in northern Minnesota..."<sup>12</sup>

Minnesota Power's own filing underscores that employment is the prime goal. In an effort to show a net benefit, Minnesota Power generally argues that "EITE Customers are significant employers in the region ....." However, Minnesota Power's filing is utterly devoid of any specific criteria to determine whether or not granting an EITE rate to an EITE customer is directly linked to job retention or growth.

The Commission should deny Minnesota Power's petition. If Minnesota Power were to refile, the Commission should require the company to demonstrate a causal link between the provision of the EITE rate and the retention or addition of jobs by those EITE customers.

## 3. Direct Nexus Between EITE Rate and Global Competitiveness

Minnesota Power asserts that "[t]he Petition...is intended to *ensure competitive rates* for Energy-Intensive Trade-Exposed customers."<sup>13</sup> Yet, by Minnesota Power's own admission, "[e]nergy rates are one input into businesses and by themselves cannot ensure the competitiveness of industries tied to the global marketplace."<sup>14</sup> These contradictory

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<sup>12</sup> Laurel Baeger, *Bill Could Cut Costs for Mills, Plants*, International Falls Journal (March 24, 2015) (quoting chief House author).

<sup>13</sup> *Corrected Pagination Petition*, *supra* note 3 (contained in the STATEMENT REGARDING JUSTIFICATION FOR EXCISING TRADE SECRET INFORMATION).

<sup>14</sup> *Id.* at 33.



statements cannot be reconciled. If the stated purpose of the filing cannot be accomplished, then the petition should be denied.

Minnesota Power provides no information about what the relative energy rates and costs are currently for EITE customers compared to their global competitors. Even if the proposed rate break could improve EITE customers' global competitiveness, Minnesota Power has failed to provide the most basic threshold criteria to make a finding that it likely would, and therefore demonstrate net benefit. If rates and costs for EITE customers and their global competitors are currently comparable, then any rate break will not render an EITE customer more competitive.

Secondly, Minnesota Power fails to provide factors other than electricity costs that could or do render an EITE customer globally uncompetitive (e.g., wages, prices paid to vendors, shipping or transportation costs). In order to determine whether or not a net benefit exists from varying only one factors -- the reduction in electricity rates -- all these factors must be considered.

Business cycles come and go, and large customers adapt, sometimes by idling plants when necessary for reasons other than electricity rates and costs. Iron Range plants have been temporarily idled or closed due to a whole host of factors. For instance, in 2000, the LTV plant closed due to "facilities (sic) age and the declining quality of the ore feeding the plant;"<sup>15</sup> in 1986, the Reserve Mining closed its Iron Range operations due to environmental concerns;<sup>16</sup> and

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<sup>15</sup> Tom Scheck, *Mine Closing Rocks Iron Range*, Minnesota Public Radio (May 24, 2000).

<sup>16</sup> University of Minnesota, Duluth, Kathryn A. Martin Library, *Reserve Mining Company (1939-1986)*; at <https://libarchive.d.umn.edu/?p=creators/creator&id=882>

in 1983, Eveleth Mines suffered an economic setback when Ford Motor Company closed its steel subsidiary.<sup>17</sup>

Periodic recessions and other factors unrelated to electricity prices, create factors that contribute to plants being idled or closed.<sup>18</sup> The company's filing is deficient to show net benefit if it cannot show that the rate break proposed would be the critical factor in making the EITE customer more globally competitive.

If an EITE customer would be in no better posture vis-à-vis its global competitiveness despite receiving the rate break, then there is no net benefit associated with this tariff. Thus, if the rate break proposed in the filing will do nothing to fulfill what Minnesota Power itself proclaims is what the petition's primary intention – to “ensure competitive rates” – then it would be fruitless to provide it. If there is no showing that provision of the EITE rate will fulfill the purpose of the legislation, then can be no net benefit and what possible justification would there be for other ratepayers – especially low-income and other vulnerable ratepayers -- to absorb such a hefty cost shift?

Therefore, the Commission should deny Minnesota Power's petition. If Minnesota Power were to refile, the Commission should require the company to: (1) provide comparative rates and costs for the EITE customers and their global competitors; and (2) make a showing that provision of the EITE rate will make the EITE customers more globally competitive.

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<sup>17</sup> David Schultz David Jann, *The Use of Eminent Domain and Contractually Implied Property Rights to Affect Business and Plant Closings*, 16 WM. MITCHELL L. REV. 383, 427 (1990) (citing *Ford Action Deals a Blow to Eveleth Mines*, ST. PAUL DISPATCH, Sept. 15, 1983).

<sup>18</sup> See, e.g., Superior Mineral Resources LLC, *History*; at <http://www.superiormineral.com/history> (detailing how in 1982, six plants were idled as a result of the recession).

#### 4. Continued Need for the EITE Rate

Minnesota Power's petition's is fatally flawed because it provides no criteria to evaluate when the rate break – which would impose unduly burdensome costs onto residential customers – would no longer be necessary. The Commission should deny Minnesota Power's petition. If Minnesota Power were to refile, the Commission should require the company to determine what factors would be used to evaluate when an EITE customer is no longer "trade-exposed" or "subject to global pressures." When the EITE rate break is no longer necessary, then there can be no net benefit.

##### **B. Failure to Show Net Benefit**

In the justifications Minnesota Power does provide, the company has not met its burden to show there is a net benefit to the utility or the state. The Commission should deny Minnesota Power's petition.

First, the company asserts that "[t]he price of energy and its increasing cost are significant to...EITE customers [who] compete in a worldwide market where they are exposed to significant trade pressures..."<sup>19</sup> The filing contends that the EITE rate can "assist in keeping these customers cost competitive."<sup>20</sup> However, this general statement in no way demonstrates a net benefit to the utility or the state. Minnesota Power provides neither criteria to evaluate nor specificity to show who the competitors are, what they spend on electricity, or how the EITE rate would increase cost competitiveness. Thus, this broad assertion, without these other showings, does not demonstrate or meet its burden to show a net benefit.

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<sup>19</sup> Id., at 28.

<sup>20</sup> Id.

Next, the company claims that "[h]aving large industrial customers on the Minnesota Power system results in...decreased costs to other Minnesota Power customers."<sup>21</sup> In fact, approval of the petition for the EITE rate would result in just the opposite -- increased cost, and significantly increased cost at that – for other Minnesota Power customers. This assertion clearly does not show a net benefit to the utility or the state.

Next, the company asserts "[w]ithout the EITE Customers, electricity rates for all other Minnesota Power customers in Northeastern Minnesota **would** be greater than they are currently."<sup>22</sup> Of course, unstated by Minnesota Power is the fact that, under the proposal, with the EITE customers, electricity rates for all other Minnesota Power customers will be greater – substantially greater in fact – than they are currently, a fact that does not support a finding of net benefit.

Next, Minnesota Power claims a net benefit because EITE customers are "significant employers in the region,"<sup>23</sup> implying that the EITE rate will prevent layoffs. But Minnesota Power provides no evidence that providing an EITE rate break will not result in layoffs for other reasons. In other eras, when electricity prices were historically low and stable, the type of customers who would be eligible for the EITE rate laid off workers for business and economic reasons unrelated to energy costs. For instance, the "Minnesota iron mining industry shed over sixty thousand jobs, some due to seasonal layoffs and others permanent cuts, in the last

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<sup>21</sup> Id.

<sup>22</sup> Id. (Emphasis added)

<sup>23</sup> *Corrected Pagination Petition, supra* note 3, at 30.

years of the 1950s."<sup>24</sup> Minnesota Power's general statement regarding EITE customers as employers is substantially inadequate to meet its burden to show net benefit.

In sum, because Minnesota Power has failed to include sufficient criteria to determine net benefit, and because Minnesota Power's justifications to show net benefit are inadequate, the company has failed to meet its burden to show there would be a net benefit sufficient to approve the tariff filing. The Commission should reject Minnesota Power's petition.

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

Minnesota Statutes, section 216B.1696 allows certain electric companies to file for approval of an EITE tariff and rate. The statute specifically mentions three rate options: (1) "fixed-rates"; (2) "market-based rates"; and (3) "rates to encourage utilization of new clean energy technology."<sup>25</sup> While expressly not an exclusive list, it is nonetheless interesting that lower rates are not mentioned in the statute.

The Legislature specifically mentioned three specific types of EITE rate options and Minnesota Power presented an option not mentioned – and at that, an option that imposes a 14.5% rate increase on other residential customers. A rate to encourage utilization of new clean energy technology, for instance, could provide significant environmental, economic, and other benefits to the utility, state, and region. But it is not mentioned, considered, or evaluated. The Commission should deny the petition for the failure to present other options.

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<sup>24</sup> Jeffrey Thomas Manuel, *Developing Resources: Industry, Policy, and Memory on the Post-Industrial Iron Range* (2009), at 112-13 (citing *U.S. Iron Ore Market Squeezed by Steel Slump, Rise in Imports*, NEW YORK TIMES, March 23, 1958).

<sup>25</sup> Minn. Stat. § 216B.1696, subd. 2(a).

If Minnesota Power were to refile, the Commission should require the company to present the alternative rate options expressly enumerated in the Legislation, discuss the net benefits each provides, and justify why its chosen option is superior to the three enumerated in the statute.

4. *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 Commission should prohibit Minnesota Power from implementing a cost recovery rider prior to its next general rate case. First, a full debate should be allowed on the cost allocation for recovery of the EITE subsidy. Second, the EITE expense is just one of many incurred by the company between rate cases. It, like all others, should be part of the general rate case where a full and fair opportunity exists to have these costs and allocation proposals vetted in the appropriate forum, and traditional hearing procedures provided in statute and rule are followed.

## The Public Interest Test

The increase that the proposed EITE rate would require for residential ratepayers is not just and reasonable. The burden imposed particularly on non-exempt, low-income ratepayers is undue. Minnesota Power's petition fails the public interest test and should be denied.

Nothing in the EITE statute removes the Commission's obligation to, ultimately, find a request by any utility to be in the public interest and any rate to be just and reasonable. It is true that the EITE statute indicates that: "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."<sup>26</sup> It is further true that part of the language in section 216B.03 requires just and reasonable rates.<sup>27</sup> On the surface, it might – incorrectly – be construed that the "just and reasonable" standard would not apply in this case.

However, upon closer reading, that is not true. The only logical interpretation from this closer analysis is that Legislature's enumeration of those specific statutes was intended to overcome the statutory provision barring discriminatory rate treatment and not to suggest that the rates proposed do not have to be just and reasonable. Any other reading is absurd and violates Minnesota Statutes, section 645.17 – Presumptions in Ascertaining Legislative Intent.

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<sup>26</sup> Minn. Stat. § 216B.1696, subd. 2(b).

<sup>27</sup> Minn. Stat. § 216B.03 (providing, in part, that "[e]very rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable").

Minnesota Statutes, section 645.17, in pertinent part, provides that: (1) "the legislature does not intend a result that is absurd, impossible of execution, or unreasonable;" and (2) "the legislature intends to favor the public interest as against any private interest."<sup>28</sup> The "notwithstanding" language must be read to include all the referenced sections together, lest an absurd and unreasonable result, not in the public interest, is mistakenly reached.

The three pertinent, substantive sections mentioned in the "notwithstanding" language are Minnesota Statutes, sections: (1) 216B.03; (2) 216B.06; and (3) 216B.07.<sup>29</sup> Minnesota Statutes, section 216B.06 prohibits charging similarly situated customers different rates from the schedule on file governing those similarly situated customers.<sup>30</sup> Minnesota Statutes, section 216B.07 prohibits a similar and related practice: rate discrimination or "rate preference" as it is termed in the statute.<sup>31</sup>

Minnesota Statutes, section 216B.03 – while also requiring "just and reasonable rates" – pertinently prohibits "unreasonably preferential, unreasonably prejudicial, or discriminatory" rates and requires rates to be "sufficient, equitable, and ***consistent in application to a class of consumers***."<sup>32</sup> To read the EITE statute to mean that the Commission does not continue to have the obligation to ensure that rates are "just and reasonable" would violate not only overriding Minnesota law governing statutory interpretation, but also would violate the most

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<sup>28</sup> Minn. Stat. § 645.17.

<sup>29</sup> The others – Minnesota Statutes, sections 216B.05 and 216B.16 -- are not substantive, but rather procedural.

<sup>30</sup> Minn. Stat. § 216B.06 (providing that, in pertinent part, "[n]o public utility shall directly or indirectly...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").

<sup>31</sup> Minn. Stat. § 216B.07 (providing that "[n]o 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 or disadvantage").

<sup>32</sup> Minn. Stat. § 216B.07. (Emphasis added)



foundational principle of utility regulation. Former Assistant Attorney General in the Minnesota Office of the Attorney General and Counsel for the Minnesota Public Utilities Commission Meghan Hetzler reminds, in a 2010 William Mitchell Law Review article, of the "long-standing precedent directing that rates must be reasonable for both customers and public utilities"<sup>33</sup> and that "[u]tility retail rates must be reviewed by the state regulatory commission and found reasonable before those rates can be charged to customers."<sup>34</sup>

Moreover, as the Minnesota Supreme Court has declared in the recent Minnesota Power case, the Commission can and must exercise its "'legislatively delegated duties and powers to protect the public interest'" in determining and insulating ratepayers from "excessive" rate increases.<sup>35</sup>

Given this analysis, there can be no other conclusion but that the Legislature provided language to overcome the bar against rate discrimination and that the Commission can and must retain its responsibility to ensure rates are just and reasonable. The increase that would be imposed upon residential ratepayers – especially upon non-exempt low-income or fixed-income and financially vulnerable elderly and persons with disabilities in Minnesota Power's service territory – is unjust, unreasonable, and unaffordable.

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<sup>33</sup> Megan J. Hertzler, Mara N. Koeller, *Who Pays for Carbon Costs? Uncertainty and Risk in Response to the Current Patchwork of Carbon Regulation for Public Utilities*, 36 WM. MITCHELL L. REV. 904, 933 (2010).

<sup>34</sup> *Id.*, at 931.

<sup>35</sup> *In re Application of Minnesota Power*, 838 N.W.2d at 761 (citing *In re Excess Surplus Status of Blue Cross & Blue Shield of Minn.*, 624 N.W.2d 264, 279-81 (Minn. 2001)).

Even the American Coalition for Clean Coal Electricity (ACCCE) – an industry group – acknowledges the additional hardship that unjust rate increases inflict on financially vulnerable ratepayers. In its 2014 report, ACCCE explains how higher energy costs disproportionately impact low-income households:

Lower-income families are more vulnerable to energy costs than higher-income families because energy represents a larger portion of their household budgets, reducing the amount of income that can be spent on food, housing, health care, and other necessities...Energy costs in 2014 are projected to account for an average of 26% of their family budgets....<sup>36</sup>

The exemption under the EITE statute for certain low-income customers (i.e., those receiving LIHEAP) only protects a limited percentage of low-income customers. Many more will be harmed. A much larger portion of Minnesota Power's low-income residential customers are eligible for, but do not receive, LIHEAP. According to a recent Congressional Research Service report, only *one in six* low-income households that are eligible to receive LIHEAP actually receive the benefit.<sup>37</sup> Further, an additional segment of ratepayers who are above the eligibility level for LIHEAP but are eligible for other public benefits are far from financially secure. All these non-exempt customers will feel the full brunt of the 14.5% increase.

The company has failed the public interest test. Its petition should be denied.

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<sup>36</sup> American Coalition for Clean Coal Electricity, *Energy Cost Impacts on American Families, 2001-2014* (Feb. 2014), at 3; [http://www.americaspower.org/sites/default/files/Trisko\\_2014.pdf](http://www.americaspower.org/sites/default/files/Trisko_2014.pdf)

<sup>37</sup> Libby Perl, Congressional Research Service, *LIHEAP: Program and Funding*, RL31865 (Jan. 28, 2015), at 7 (reporting that in FY 2009 only 16% of households eligible for LIHEAP actually received LIHEAP).

### Conclusion

For the reasons articulated above, Minnesota Power has failed to offer critical definitions of undefined terms and standards necessary to determine eligibility; failed to include essential criteria necessary to determine whether there is the statutorily required net benefit necessary to approve the petition; failed to show, as required, that there is a net benefit to its proposal; and failed the public interest test. Consequently, Minnesota Power has failed to meet its burden of proof to gain approval of its petition. It should be denied.

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Respectfully submitted,

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