

Minnesota Public Utilities Commission
Staff Briefing Paper

Meeting Date: September 15, 2016 ** Agenda Item # 5

Companies: Otter Tail Power

Docket No. E-017/M-16-533
In the Matter of a Petition by Otter Tail Power (Otter Tail) for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Rider

Issues: (1) Should the Commission approve, modify, or reject Otter Tail Power’s proposed EITE Rate Rider pursuant to Minn. Stat. § 216B.1696?

(2) Should the Commission approve, modify, or reject Otter Tail Power’s proposed EITE Cost Recovery Rider at this time or defer the matter to Otter Tail Power’s next general rate case?

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1. Relevant Documents

Otter Tail Petition	June 27, 2016
Comments: OTP-EITE.....	June 28, 2016
Affidavit of Wayne Brandt (trade associations)	June 28, 2016
Affidavit of Peter Aube, Potlach Corp. (Amended 7/11/16)	June 28, 2016
Affidavit of Jack Wallingford, Norbord, Inc. (Amended 6/30/16).....	June 28, 2016
Affidavit of David Goetz, Cass Forest Products.....	June 28, 2016
Comments: Otter Tail	July 21, 2016
Comments: OTP-EITE	August 1, 2016
Comments: OAG	August 1, 2016
Comments: DOC.....	August 1, 2016
Replies: Otter Tail.....	August 11, 2016
Replies: OTP-EITE.....	August 11, 2016

2. Background

Minn. Stat. §216B.1696, *Competitive Rate for Energy Intensive Trade Exposed Electric Utility Customer*, was enacted in the 2015 Special Session and became effective July 1, 2015. The statute creates an energy-intensive trade-exposed (EITE) Customer category, and states that it is the policy of the state of Minnesota to ensure competitive electric rates for EITE Customers. To achieve this objective, it allows Minnesota Power (MP) and Otter Tail Power (Otter Tail) to propose special EITE rates options including, but not limited to, fixed-rates, market-based rates, and rates to encourage use of new clean energy technology. The Commission is to approve an EITE rate “upon a finding of net benefit to the utility or the state,” notwithstanding a number of ratemaking provisions of Chapter 216B, and to do so within 90 days of the utility’s filing.

Upon Commission approval of any EITE rate schedule, the statute requires the utility to create an account to track the difference in revenue between what would have been collected under the standard tariff and the EITE rate schedule. The Commission is required to allow the utility to recover any costs or refund any savings in its next general rate case or through an EITE cost recovery rider between rate cases. Costs cannot be recovered from EITE Customers or certain low-income residential customers.

On November 13, 2015, MP submitted its *Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed Customers*. The Petition included a request for approval of two separate proposals: (1) an EITE Customer Rider to provide an energy charge credit to EITE-eligible customers who meet specified criteria, and (2) an EITE Current Cost Recovery Rider to allow Minnesota Power to recover from non-EITE customers the costs of providing the rate credit to EITE Customers.

On March 23, 2016, the Commission issued its *Order Denying Petition without Prejudice* finding that MP had not met its evidentiary burden to show the proposed rates would confer a net benefit on the utility or the state.

3. Otter Tail Petition

On June 27, 2016, Otter Tail Power (Otter Tail) petitioned the Commission for approval of (1) its EITE Customer Rate Rider, and (2) its EITE Cost Recovery Rider.

On June 28, 2016, OTP-EITE, an *ad hoc* consortium comprising three forest products enterprises, filed comments in support of Otter Tail's petition. Those comments included affidavits from Potlach Mill, Norbord Mill, and Cass Forest Products. Two trade associations, Minnesota Forest Industries (MFI) and the Minnesota Timber Producers Association (TPA) also filed in support of Otter Tail's petition.

On July 21, 2016, Otter Tail filed comments in response to a Commission request.

On August 1, 2016, the Commission received comments from Minnesota's Office of the Attorney General (OAG), the Minnesota Department of Commerce (DOC) and OTP-EITE.

On August 11, 2016, the Commission received comments from Otter Tail and OTP-EITE.

4. Outline of the Briefing Paper

Section 5 will provide a summary of the EITE Rate discount comprising the core of Otter Tail's

proposed Rate Rider and **Section 6** will summarize the parties' positions regarding Otter Tail's Rate Rider and Cost Recovery Rider.

Section 7 makes reference to key findings of the Commission in Minnesota Power's initial EITE petition (Docket 15-984), specifically, the Commission's evidentiary standards and its understanding of "net benefits" for EITE petitions.

The Staff analysis begins in **Section 8** by addressing a number of preliminary issues: (1) Otter Tail's eligibility to offer an EITE rate, (2) the customer's eligibility to receive EITE discounts, (3) Otter Tail's low-income outreach deposit, (4) Otter Tail's EITE tariff, (5) Otter Tail's rate description, (6) relevant decision criteria, (7) competitive electric rates, and (8) the probability of EITE Customer closure.

Section 9 comprises the Staff analysis of net benefits at the state level and **Section 10** presents the Staff analysis of net benefits at the utility level.

Section 11 offers an option for modification of Otter Tail's petition.

Section 12 focuses on Otter Tail's request for approval of its proposed Cost Recovery Rider.

Section 13 summarizes Commission decision options.

5. Summary of Otter Tail's EITE Rate Discount

Otter Tail requests Commission approval of an EITE Rate under the EITE Statute. Otter Tail proposes to make the rate available to three of its customers: **(1) Norbord Corporation (Solway MN), (2) Potlach Corporation (Bemidji MN) and (3) Cass Forest Products (Cass Lake and Aitken MN).**

The Customers claim that the cost of electricity accounts for approximately **5%** of their overall cost of production. The Customers seek a **20%** reduction in their electricity rate, an annual discount of approximately **\$938,000** (based on Otter Tail's test year revenue requirement as proposed in Otter Tail's current general rate case (Docket 15-1033)). Based on these figures, the 20% EITE discount would reduce the Customers' overall production cost by approximately **1%**. Otter Tail proposes to fund this discount by increasing rates to all other ratepayers by **0.456%**

(excluding LIHEAP residential customers). Otter Tail states that its proposal would increase average annual, non-LIHEAP, residential costs by **\$4.64**.

In the event the Commission rejects Otter Tail's petition for a 20% rate reduction, Otter Tail estimates that a **10%** EITE discount would increase rates for Otter Tail's non-exempt customers by **0.230%**, representing an average annual increase of **\$2.34** for residential customers.

Otter Tail proposes that, in order to receive the EITE discount, the EITE Customers must consume at least **60%** of normal consumption on an annualized basis. Otter Tail also proposes that the EITE discount remain in effect for **5** years (for a total discount of approximately \$4.69 million), at which time the EITE Customers must request renewal of their eligibility.

Otter Tail has created an EITE Deposit Account of **\$10,000**, proposing to make that account available to the Great Plains gas affordability program administered by the Salvation Army in Roseville, Minnesota.

6. Summary of Party Positions

6.1 Otter Tail Power Position

Otter Tail and the EITE Customers argue that the Customers are significant contributors to the Minnesota economy, that the Customers face stiff competition that may hamper their ability to remain operating in the state, and that the proposed EITE rate schedule would represent a net benefit to the utility or the state.

Otter Tail's EITE Customers have stated that: (1) they all face global market pressures from other producers in the United States and Canada; (2) market pressures from Canadian sawmills and oriented strand board manufacturers are primarily due to the cost of lumber for use in the manufacturing processes; and (3) the cost of materials, including logs or pulpwood, for these manufacturing processes account for approximately 60-70 percent of the cost of production. The EITE Customers have represented to Otter Tail that Canadian timber is priced much lower than Minnesota timber due to the way the Canadian government oversees ownership of the vast Canadian timber stands.

Otter Tail requests that the Commission make its determination on the EITE Rate within 90 days of its filing, recognizing that additional time for the Commission to complete its review and to

issue a written order may be necessary. Additionally, while Otter Tail includes in this filing a proposal for rate treatment of any costs that must be reallocated to non-EITE Customers should an EITE cost recovery rate be approved (EITE Surcharge), Otter Tail recognizes that the Commission may determine such treatment concurrently with its determination on whether or not to approve the EITE Rate or at some other time either in this Docket or in another rate proceeding. In the event the Commission decision on the EITE Surcharge is not made concurrently with the Commission's decision on the EITE Rate, Otter Tail requests that the Commission: (1) order that Otter Tail may account for uncollected revenues using deferred accounting until the EITE Surcharge is approved; or (2) order that the EITE Rate is not effective until the first of the month after a Commission decision on the EITE Surcharge.

6.2 OTP-EITE Position

The overwhelming benefits of potentially preserving the viability of OTP-EITE members far outweigh the relatively negligible costs of the 20% EITE rate discount. OTP-EITE respectfully requests that the Commission approve Otter Tail's 20% discount no later than September 26, 2016, because doing so would result in a net benefit to Otter Tail and the state.

Representatives from the Minnesota Forest Industries, Timber Producers Association, and OTP-EITE have submitted sworn affidavits describing the myriad ways they contribute to the prosperity of northwest Minnesota and the state. These affidavits also demonstrate that OTP-EITE members face difficult challenges due to heavy competition from international entities coupled with uncompetitive electricity rates that continue to rise despite their best efforts to conserve energy and reduce costs. When the significant benefits of the EITE rate are netted against the relatively low costs of the proposal in the petition, the evidence is undoubtedly sufficient to prove that the proposed EITE rate will result in a net benefit to Otter Tail and the state. These benefits come not in the form of increased production or economic development, but rather in retaining the existing economic benefits and jobs these EITE Customers provide. This is consistent with the Legislature's intent for the EITE legislation. As was implied in the House Job Growth and Energy Affordability Policy and Finance Committee hearing on the bill, the Legislature passed the EITE legislation as a job retention measure. It was not considered an economic development bill, because the legislature recognized the need for protecting existing jobs in northern Minnesota.

6.3 OAG Position

Otter Tail and the EITE Customers have not shown a net benefit to the utility or to the state. The

forest products industry clearly provides many important benefits to the utility, the state, and to the specific regions where they operate. But these benefits must also be put in their proper context. Ultimately, the Commission is not deciding whether the forest products industry or any individual facility provides a benefit – or even a “net benefit” – to the utility or the state. Rather, the Commission must decide whether the EITE rate proposed by Otter Tail results in a net benefit for the utility or the state. Therefore, as the Commission must assess whether the supporters of the proposed EITE rate have demonstrated that the special rates are needed and, if so, whether they would make a meaningful impact for the EITE Customers. Any benefits that the Commission finds must then be weighed against the impact of shifting these costs onto other customers. In its analysis the Commission should consider: (1) whether Otter Tail’s three EITE Customers need electric rate support, (2) the impact of the proposed discount on the EITE customers, and (3) the costs to non-EITE customers providing the EITE rate.

6.4 DOC Position

DOC concludes that it is unclear whether Otter Tail’s petition meets the requirements of the EITE statute to deposit \$10,000 with an agency that promotes affordability programs and to designate the funds to be used for outreach. Without clarity on this issue, DOC cannot recommend that the Commission approve the petition.

DOC notes that Otter Tail did not provide any proposed tariff language explaining how the proposed 20% bill reduction would be applied to qualifying EITE Customers’ bills. Without a draft of Otter Tail’s tariff language it is not possible to analyze the design elements of Otter Tail’s rate nor the specific rate option proposed. DOC recommends that the Commission reject the petition without prejudice to allow Otter Tail to submit proposed tariff language, and once submitted DOC will work with Otter Tail on compliance issues.

DOC states that Otter Tail’s petition does not identify the rates it intends to charge to non-EITE, non-exempt ratepayers. Given the lack of clarity for both the EITE Discount Rider and EITE Cost Recovery Rider, along with numerous other deficiencies of the petition, DOC recommends that the Commission reject the petition and has no comment on the individual design elements of Otter Tail’s Cost Recovery Rider.

7. *Prior Commission Decision*

On March 23, 2016, the Commission rejected, without prejudice, Minnesota Power’s initial petition for approval of an EITE Rate Rider and an EITE Cost Recovery Rider (Docket 15-984). In that Order the Commission made several statements that are applicable to EITE petitions in general.

With respect to evidentiary standards the Commission stated:

Ordinarily, the Commission would refer cases like this one, with contested material facts and significant issues that have not been satisfactorily resolved, to the Office of Administrative Hearings (OAH) for formal evidentiary proceedings. Rate cases are routinely referred to OAH for record development, with a Commission decision to follow – often after a year or more of detailed evidentiary proceedings and upon a record of thousands of pages of sworn expert testimony, supporting evidence, and arguments.

But the EITE statute requires that the Commission make a “final determination” within 90 days of a filing proposing an EITE rate schedule under Minn. Stat. § 216B.1696. No contested case proceeding could be reasonably conducted within 90 days.

Nothing in the statute, however, directs the Commission to constrain its evidentiary requirements. Ordinarily, rate adjustments of any magnitude must be supported by competent evidence and analytical rigor commensurate with the significance of the request. The statute requires the Commission to reach a decision in an expedited manner, but not to abandon or lower its standards for making reasoned decisions.

The Commission concludes that the Legislature did not intend to eliminate or minimize the Commission’s discretion to disapprove a proposed EITE rate. The plain language of the statute contains no such limitation. The Commission will therefore apply its ordinary standard, and will require that claims be proved by a preponderance of the evidence.¹

With respect to the determination of “net benefits” the Commission stated:

The statute is clear and unambiguous – the Commission must make a finding on the net benefit of the Company’s proposal. The Commission must give effect to the word “net,” and it will do so using the direction the Legislature has provided. ...

¹ Order in Docket 15-984, March 23, 2016, pp. 8-9, footnotes omitted.

The Commission concludes that the Legislature’s use of the phrase “net benefit” is distinct from uses of the word “benefit” alone. The benefit must be netted against something.

The natural and ordinary conclusion is that a “net benefit” is the benefit, net of corresponding negative consequences. The Legislature expects, and has required, that the Commission balance the benefits and the detriments of EITE rate proposals.

The Commission rejects the arguments that the “net benefit” test is meant to be a low threshold, easily satisfied, or that the Commission should seek the Legislature’s intent somewhere other than the statute itself. It is not necessary to look beyond the plain language of the statute to understand the test the Commission is meant to apply. A net benefit to the utility or the state – not only to EITE Customers – must be established.²

8. Staff Analysis: Preliminary Issues

This section does not address the net-benefits tests directly. Rather, it focuses on a collection of issues more or less related to the net-benefits analyses: (1) Otter Tail’s eligibility to offer an EITE rate, (2) the customer’s eligibility to receive EITE discounts, (3) Otter Tail’s low-income outreach deposit, (4) Otter Tail’s EITE tariff, (5) Otter Tail’s rate description, (6) relevant decision criteria, (7) competitive electric rates, and (8) the probability of EITE Customer closure.

8.1 Otter Tail’s Eligibility to Offer EITE Rate

The criteria determining whether a utility “may set terms of service to an individual or group of energy-intensive trade-exposed customers”³ are:

[A]n 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 within their service territory under an EITE rate schedule that include, but are not limited to, fixed-rates, market-based rates, and rates to encourage utilization of new clean energy technology.⁴

No party has challenged Otter Tail’s eligibility to offer EITE Rates.

² Order in Docket 15-984, March 23, 2016, pp. 9-10.

³ Minn. Stat. § 216B.1696, Subd. 1(d).

⁴ Minn. Stat. § 216B.1696, Subd. 2(a).

8.2 Eligibility to Receive EITE Rate

The statute defines EITE Customers “to include:”

- (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.⁵

No party has challenged the eligibility of any of the three customers to which Otter Tail has proposed to offer EITE Rates. Note, however, that Consumer Advocates, a party to the MP EITE Docket (16-564), but not to this docket, has argued that as a matter of statutory interpretation customers must satisfy the fourth criterion to be considered eligible for EITE discounts. Otter Tail did not claim that the three customers met the fourth criterion. If the Commission is persuaded by Consumer Advocates’ argument regarding statutory interpretation Staff recommends the Commission reject Otter Tail’s petition.

8.3 Low Income Outreach Deposit

The EITE statute requires that:

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.⁶

Otter Tail does not currently administer a Commission-approved affordability program under Minn. Stat. § 216B.16, subdivision 15. Within the Otter Tail service territory, however, Great Plains provides natural gas (for space heating) to many of Otter Tail’s electric customers.

⁵ Minn. Stat. § 216B.1696, Subd. 1(c).

⁶ Minn. Stat. § 216B.1696, Subd. 3.

Additionally, Great Plains administers an affordability program that has been approved by the Commission under subdivision 15. The Great Plains affordability program is administered by the Salvation Army, Roseville, Minnesota. To provide additional resources to allow the Salvation Army to increase awareness of the Gas Affordability Program, Otter Tail requests that the Commission approve of Otter Tail providing the \$10,000 currently in the EITE Deposit account to the Salvation Army. If approved, Otter Tail will work with Great Plains and the Salvation Army, Roseville, Minnesota to ensure the funds are expended for this purpose.

DOC argues that it is not clear that Otter Tail has met the basic filing requirement, and without clarity on this issue, it cannot recommend that the Commission approve the petition. The clear statutory requirement is that upon the filing of an EITE rate schedule Otter Tail must deposit \$10,000 into an account devoted to funding a program approved by the Commission under subdivision 15. The EITE Statute requires funding a program approved by the Commission upon filing. Furthermore, the funds should be designated to be used for customer outreach. While Great Plains provides natural gas service to some of Otter Tail's ratepayers, and Great Plains has an affordability program approved by the Commission, it is unclear: (1) whether Great Plains serves all of Otter Tail's low-income ratepayers, (2) how much of the \$10,000 would be used for non-Otter Tail ratepayers, and (3) whether Otter Tail's proposal meets the intent of the EITE Statute.

OTP-EITE supports Otter Tail's proposal. The EITE statute plainly requires only that the funds be deposited in an account to be used to expand outreach of the applicable program, which Otter Tail Power has done. The EITE statute is silent as to whether that program must serve any of the utility's low-income ratepayers, let alone all of them. DOC appears to disregard the letter of the law under the pretext of pursuing what it identifies as the spirit, which is contrary to Minnesota Statutes and Commission precedent.

Otter Tail responded to DOC. The EITE Statute only requires that the funds shall be used to expand outreach of the Commission-approved affordability program. There is not, as DOC's comments imply, a requirement that the funds be used only for outreach to the filing-utility's customers. Additionally, the EITE Statute requires that the filing utility must deposit \$10,000 into an account devoted to funding a program approved by the Commission under Minn. Stat. § 216B.16, subdivision 15. Otter Tail has fulfilled this requirement of the EITE Statute by depositing \$10,000 into a separate account and recommending an appropriate Commission-approved affordability program to fund, pending Commission direction.

Staff believes that Great Plains has an affordability program approved by the Commission. And Otter Tail seeks to use that path to satisfy its EITE low-income deposit requirement. If the Commission is otherwise inclined to approve Otter Tail's petition it could seek further

information from Otter Tail in a compliance filing including, for example, the specific steps the Salvation Army will take to expand outreach in Great Plain's and Otter Tails' service areas.

8.4 Otter Tail's EITE Tariff

DOC notes that Otter Tail did not provide proposed tariff language explaining how the proposed 20% bill reduction would be applied to qualifying EITE Customers' bills. Without a draft of Otter Tail's tariff language, **DOC** argues, it is not possible to analyze the design elements of Otter Tail's rate nor the specific rate option proposed. **DOC** recommends that the Commission reject the petition without prejudice to allow Otter Tail to submit proposed tariff language, and once submitted **DOC** will work with Otter Tail on compliance issues.

Otter Tail responds that, while it is true that the tariff itself did not include the language explaining specifically how the proposed 20% rate discount would be applied to EITE Customers' bills, the Petition explained that the request was as follows:

- * EITE Customers would receive a 20% rate reduction as a "percent of bill," meaning 20% off the total bill before sales tax (as discounts traditionally are not taken off sales tax);
- * EITE Customers would only receive the EITE rate reduction if they consume at least 60% of normal consumption on an annualized basis;
- * The EITE Discount Rate is only valid for five years from the Commission's approval and must be renewed, and approved by the Commission, to continue beyond five years; and
- * The EITE rate reduction and the EITE Surcharge Factor would be calculated within one rider, not two separate riders.

It is incorrect for **DOC** to suggest that Otter Tail did not provide this information for analysis.

Staff believes that if the Commission is otherwise inclined to approve Otter Tail's petition, and seeks more clarity on this issue, it could do so in a compliance filing.

8.5 Otter Tail's Rate Description

DOC states that Otter Tail's petition does not identify the rates it intends to charge to non-EITE, non-exempt ratepayers. **DOC** recommends the Commission reject the petition.

Staff believes that any deficiency can be resolved in a compliance filing. In addition, there is no statutory requirement that implementation of the EITE rate reduction coincide with the start of

the cost recovery surcharge, only that Otter Tail is required to start a tracker account when the rate discount takes effect.

8.6 Relevant Decision Criteria

The statutory criterion that most explicitly guides the Commission's decision requires that, "upon a finding of net benefit to the utility or the state" the Commission "must approve an EITE rate schedule and any corresponding EITE rate."⁷ The EITE statute and other Commission statutes provide additional guidance for the Commission, in particular (1) the "notwithstanding" clause of the EITE statute and (2) the statutes directing the Commission to address environmental and conservation issues.

8.6.1 The Notwithstanding Clause

The EITE statute directs the Commission to apply "net benefits" tests, notwithstanding "Minnesota Statutes, section 216B.03, 216B.05, 216B.06, 216B.07, or 216B.16."⁸ Those statutes, in part, require rates to be just, reasonable and nondiscriminatory; sufficient, equitable and consistent in application; not unreasonably preferential or unreasonably prejudicial; and where there are doubts as to the reasonableness of rates the doubt must be resolved in favor of the consumer. Additionally, Minn. Stat. 216B.16 is a core energy regulatory statute that encompasses, among other subjects, general rate cases, rate design and cost recovery. This directive to step away from the Commission's long established rate-making practices suggests two main responses.

First, the notwithstanding clause appears to apply **only** to the EITE rate and rate schedule, and **not** to the issue of cost recovery which, if accurate, would allow the Commission to draw on its full range of decision criteria when addressing cost recovery.

Second, there are a number of statutes, excluded from the notwithstanding clause, that address the reasonableness of rates. Minn. Stat. § 216A.05, Subd. 2, states:

The commission shall, to the extent prescribed by law: ... (2) review and ascertain the reasonableness of tariffs of rates, fares, and charges, or any part or classification thereof

Minn. Stat. § 216B.01 states:

⁷ Minn. Stat. § 216B.1696, Subd. 2(b).

⁸ Minn. Stat. § 216B.1696, Subd. 2(b).

It is hereby declared to be in the public interest that public utilities be regulated as hereinafter provided in order to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates ...

Minn. Stat. § 216B.17, Subd. 1, states:

On its own motion or upon a complaint made against any public utility ... that any of the rates, tolls, tariffs, charges, or schedules or any joint rate or any regulation, measurement, practice, act, or omission affecting or relating to the production, transmission, delivery, or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient, or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed, with notice, to make such investigation as it may deem necessary.

Minn. Stat. § 216B.21, Subd. 1, states:

Whenever the commission has reason to believe that any rate or charge may be unreasonable or unjustly discriminatory or that any service is inadequate or cannot be obtained or that an investigation of any matter relating to any public utility should for any reason be made, it may on its own motion summarily investigate the same with or without notice.

And, Minn. Stat. § 216B.23, Subd. 1, states:

Whenever upon an investigation made under the provisions of Laws 1974, chapter 429, the commission shall find rates, tolls, charges, schedules or joint rates to be unjust, unreasonable, insufficient, or unjustly discriminatory or preferential or otherwise unreasonable or unlawful, the commission shall determine and by order fix reasonable rates, tolls, charges, schedules, or joint rates to be imposed, observed, and followed in the future in lieu of those found to be unreasonable or unlawful.

One way to read what might be considered a conflict between the EITE Statute the other statutes quoted above is to view the notwithstanding clause as way of focusing the Commission on the primacy of the net-benefits tests, as opposed to abandonment of the reasonable-rate criterion.

8.6.2 Environmental Criteria

Otter Tail's proposed EITE discount, arguably, will affect energy sales and, thus CO₂ emissions. Benefits and costs should be examined in light of state goals to reduce greenhouse gas

emissions,⁹ and Commission directives to consider environmental costs in industry planning.¹⁰

8.7 Competitive Electric Rates

Although the EITE statute seeks to “ensure competitive electric rates,” the statute provides no statement as to the nature of competitive rates, as to how any given electric rate can be determined to be competitive or not competitive. The record tends to blur the distinction between competitive electric rates and the competitiveness of the forest products industry in the world market. Staff believes they are distinct notions, although they may be in some instances related.

Staff believes that competitive electric rates may or may not allow an EITE Customer to survive market pressures. Indeed, a 100% rate discount may not allow an EITE Customer to survive in the market given that Otter Tail’s output is only one input to the EITE Customers’ production processes. Many factors beyond the Commission’s control and Minnesota’s borders will affect market survival, and whether those factors are “fair” or “unfair” is moot.

Although, the Commission may be able to reduce energy input costs to some extent, Staff believes that it should only go so far as to ensure competitive electric rates and that competitive electric rates are best viewed in the context of similarly situated industries. Some evidence has been placed into the record that other industries pay lower electric rates than Otter Tail’s EITE Customers. However, there is little to no information to indicate the context in which those rates have been established. The costs of generation, transmission and distribution can vary considerably within a state, let alone within the nation or the world. And, determination of whether rates are competitive can raise conceptual problems such as whether rates that are subsidized by a government, other ratepayers, or a state-owned utility, are an appropriate standard against which to measure Otter Tail’s current rates.

OTP-EITE provides a table of industrial electric rates for eight states over six years (2010-2015).¹¹ That table shows that Otter Tail’s rates have been lower than Minnesota average rates for all six years and that Otter Tail’s rates are in the mid-range of the eight states. OTP-EITE argues:

⁹ Minn. Stat. § 216H.

¹⁰ Minn. Stat. § 216B.2422.

¹¹ OTP-EITE Comments, July 27, 2016, Table 1, p. 10.

In order to be competitive, OTP-EITE's rates should be lower than a significant majority of its competitor states and provinces, meaning rates should be in at least the lower third.

Staff has several comments: (1) as mentioned above, there is little information in the record for the Commission to know if it is comparing "apples to apples" when viewing rates presented by OTP-EITE, (2) Staff believes the goal of the EITE statute is to ensure competitive electric rates, not to ensure that the EITE Customers are competitive in the world market, (3) there is no support for the notion that rate-competitiveness requires OTP-EITE's rates to be lower than the majority of its competitors, (4) Staff is unaware of any objective support for the desired "one-third" threshold, and (5) the rates presented by OTP-ETIE could be interpreted to indicate that Otter Tail's rates are already competitive.

8.8 Probability of EITE Customer Closure

Assessing benefits and costs requires at least a subjective sense of the probability of those benefits and costs accruing to the implementation of Otter Tail's proposed discount. And, the record offers little in the way of establishing probabilities. The likelihood that the EITE discount would prevent an EITE Customer from ceasing operation will depend on each EITE's individual decisions regarding their projections of numerous input costs and of the demands for their products. The entities most capable of answering these questions, the EITE Customers, offered this statement:

If the Potlach Mill receives a 20% rate reduction as a result of the EITE tariff, it is reasonably likely that this discount could be one of the factors that will keep the Potlach Mill viable.¹²

Norbord and Cass Forest Products make identical statements.

DOC attempts to put lower bounds on the probability of EITE Customer closure. However, those estimates are based on Otter Tail's assertions regarding the shuffling of customer rates to meet revenue requirements and have no bearing on EITE Customer behavior. DOC's estimates do not look to the best source of information, the EITE Customers themselves.

Staff believes the probability that any one EITE Customer will cease operations as a direct result of the absence of the EITE Rate, approaches zero (and perhaps not zero). The best sources in the record for information regarding probability of closure, the EITE Customers, are reluctant to

¹² Affidavit of Peter Aube.

offer more than weak assurance that the discount will be a significant factor in their operational decisions. There is little-to-no evidence in the record that addresses all the other factors that may influence an EITE Customer's decision to remain in operation, and these factors will likely play more of a role in operational decisions than electric rate discounts.

9. Staff Analysis: State-Level Net-Benefits Test

9.1 Note on Benefit Cost Analysis

Focus on Effects of Discount. The lion's share of the record, at least in terms of pages, is devoted to arguments by Otter Tail, OTP-EITE Customers, and two trade associations as to the importance of the forest products industries to the economy of Minnesota. However, that importance, taken in isolation, does not necessarily inform the question derived directly from the Legislature: does Otter Tail's EITE discount yield a net benefit to the state or to the utility? A net-benefits test (Benefit Cost Analysis; BCA) requires the focus to be placed only on those benefits and costs directly attributable to Otter Tail's proposed discount. One element of that focus is to determine whether the EITE rate will actually affect an EITE Customer's decision to operate or to close shop, or will that decision depend on other factors? All may agree that the forest products industry is important to some Minnesotans, but the net benefit to be gained from Otter Tail's discount is another, narrower, question.

Focus on Resource Use, Not on Accounting. In conducting a BCA it is important to step back from standard accounting practices and appeals to revenue requirements and ratemaking principles. The focus of a BCA is to look at the change in resource use (gained or lost) that may arise from a specific, defined action (or non-action). For example, a utility's loss of a large customer today may, in some circumstances – but not necessarily all – adversely affect other ratepayers. Where a utility is planning to build (or purchase) capacity anyway, the loss of a customer may actually benefit the other ratepayers. If some of the additional capacity is no longer required the other ratepayers no longer need to pay for the additional capacity. Additionally, where a utility no longer needs to generate the energy to meet the needs of a lost customer, the remaining customers may or may not be better off depending upon the operation and maintenance costs required to meet the departing customer's needs.

Discerning Boundaries. A state-level BCA excludes all benefits and costs accruing to entities outside the boundaries of the state. Further, it does not generally make a judgement as to whom within the state will enjoy the benefits or suffer the costs of a proposed decision. Thus, if a

proposed activity (or discount) results in transferring income from one person to another within the state, a BCA would treat that transfer as one of zero net benefit. Typically, BCA treats tax revenues and employment in the same fashion. Taxes collected within the state typically go to state expenditures, moving the tax dollar from one person's pocket to another person's pocket. Hiring a new employee in one part of the state may be netted out by the transfer of an employee from elsewhere in the state. Although, such transfers may not always net out, a showing must be made to step away from the general presumption.

9.2 OTP-EITE's Argument

The central argument regarding the benefits of Otter Tail's discount focuses on the economic activity of the three EITE Customers:

OTP-EITE members are important to the Northwestern Minnesota and statewide economy, as demonstrated in the member affidavits attached to this Comment. The affidavit of Wayne Brandt confirms that Minnesota's forest products manufacturing industry is valued at \$8.5 billion and employs over 28,000 people. More specifically, OTP-EITE members employ or indirectly support the employment of roughly 900 individuals, with a total payroll of approximately \$23 million. Furthermore, OTP-EITE members pay around \$3.7 million a year in taxes and contribute a total of \$440,000 to the surrounding community, as well as nonmonetary contributions such as membership on community boards and volunteering. OTP-EITE members are also dedicated to sustainable forest management practices through participation in the Sustainable Forestry Initiative and forest cleanup efforts. Minnesota's forest industry is also a clean energy producer, converting more than 1.2 million tons of wood waste into electricity each year. In fact, 28% of the industry's total electricity consumption is met through self-generated biomass or hydroelectric facilities. Furthermore, by providing a market for Minnesota's timber, OTP-EITE members benefit Minnesota's forests. Thus, OTP-EITE members play an important role in Northwest Minnesota and the State as a whole.¹³

OTP-EITE argues that non-exempt ratepayers are also benefited by not having to bear increased costs if an EITE Customer leaves Otter Tail's system. OTP-EITE argues the costs of Otter Tail's rate discount are relatively minor: slightly increased rates for non-exempt ratepayers.

9.3 Economic Impact Analyses

The core element of OTP-EITE's state-level net-benefit analysis is an economic impact analysis conducted by the Labovitz School of Business and Economics at the University of Minnesota, Duluth: *The Economic Impact of Minnesota's Forestry-Related Industries on the State of*

¹³ OTP-EITE Comments, June 28, 2016, p. 8-9, footnotes omitted.

Minnesota (August 2010, updated June 2011).¹⁴ This study can be referred to as an Economic Impact Assessment, or a Regional Impact Study, and it employs an Input-Output (I-O) model of the economy. By their construction, I-O models focus on “impacts” as distinct from “benefits” and “costs” and blur the distinction between benefits and costs.

An I-O model, at its core, is an inter-industry expenditure tracking model, a type of accounting model that traces the flow (impacts) of economic activity through various sectors of a defined economy (i.e., region, state, nation). I-O models attempt to describe the structure of an economy: the linkages between sectors, financial flows, and transactions between various sectors of the economy. Expenditures on a particular project (say, a proposed stadium) or by a particular sector (say, wood products) can be tracked by industry sectors. Stadium construction requires expenditures that flow to architects and labor, and to suppliers of concrete, rebar, glass, chairs, heating, air conditioning, etc. In turn, the concrete supplier purchases trucks, tires, fuel, water, and labor. An I-O model tracks those purchases among industries through to the income of households, and further, through to household expenditures on housing, automobiles, dentists, ice cream, and taxes paid to local governments.

The foundation of an I-O model is a large collection of technical coefficients. Each coefficient tracks a dollar spent by one sector to the numerous sectors that receive a portion of that dollar: one dollar spent on highway construction will be distributed to the sectors from which it purchases inputs: ‘w’ cents to engineering, ‘x’ cents to asphalt, ‘y’ cents to heavy equipment, ‘z’ cents to labor, etc. These coefficients are typically estimated from a host of government data sources such as the US Bureau of Economic Analysis, the US Bureau of Labor Statistics, and the US Census Bureau.¹⁵

Building upon the coefficients, an I-O model can produce a number of “multipliers” that describe the ripple effects of expenditures by a local industry, including employment.¹⁶ The magnitude of the multipliers depends on the structure of the economy that is being modeled and the geographic region under examination. If the region of interest is small the multipliers are relatively small as economic activity more readily “leaks” out of the economy (“leakages” occur when inputs are purchased out-of-region and/or income is spent out-of-region).

As an accounting tool (a tracking tool), an I-O model can be useful in determining how a particular economic activity will affect other sectors of the economy, as well as household income and employment. Projects can be compared by the patterns and flows of their impacts. However, there are two main types of criticism of I-O models that are important to consider: (1)

¹⁴ Affidavit of Wayne Brandt.

¹⁵ Affidavit of Wayne Brandt, Exhibit A, p.5.

¹⁶ <http://aimag.ag.utk.edu/multipliers.html>

those focused on accuracy of the model (its structure and technical coefficients) and (2) those arising from misapplication of the model, that is, by equating (implicitly or explicitly) economic activity (impacts) with economic benefits.

Model Accuracy: The technical coefficients at the heart of I-O models reflect inter-industry production relations that are fixed at a particular point in time, and there can be a considerable time lag from the initial collection of data by a government reporting agency and the availability of that information to model builders. That lag can reduce confidence in a model's results where the economy is going through a structural change. Additionally, the coefficients are static in that they describe a fixed linear relationship. They will not reflect (1) changes in prices of products in response to demand, (2) economies of scale, and (3) the ability of an economic actor to choose substitute inputs in response to availability. In sum, due to these factors, I-O models tend to overestimate impacts, although the degree of overestimation will depend on the specific economy being modeled and the size of the project or industry under consideration (the larger the project or industry, the larger the potential overestimation).¹⁷

Model Misapplication: Although model accuracy is important, one of the main criticisms of I-O models is the interpretation of the results. I-O models estimate "economic impacts" but those results are often misinterpreted to mean "economic benefits." I-O models are tracking devices, not evaluative tools. Impacts may or may not be benefits. Consider a project or industry that reduces unemployment but also creates highway congestion or health risks that increase economic activity for the local jail, the local hospital or the local undertaker. Those expenditures would be considered as "impacts" by an I-O model, but arguably they are not "benefits."¹⁸ Determination of net benefits requires an evaluative process.¹⁹

There is often some confusion in public discussion on the use of the terms "impact" and "evaluation." Input-output analysis is concerned with measuring the impact or effect of a given stimulus on the economy in economic terms such as levels of output and employment. These impacts are represented simply as transactions; usually as increases or decreases in the value of gross regional product. Because of the growth-orientation of economics and the general belief that growth is the desired objective,

¹⁷ Richard Denniss. *The Use and Abuse of Economic Modelling in Australia*. The Australia Institute. Technical Brief No. 12, January 2012.

http://www.tai.org.au/sites/default/files/TB%2012%20The%20use%20and%20abuse%20of%20economic%20modeling%20in%20Australia_4.pdf. Guy R. West. *Notes on Some Common Misconceptions in Input-Output Impact Methodology*. Department of Economics, University of Queensland. <https://espace.library.uq.edu.au/view/UQ:11078/DP262Oct99.pdf>.

¹⁸ An I-O analysis of the cocaine industry could indicate that the industry has significant economic impacts. A BCA would evaluate and distinguish the benefits and costs of that activity.

¹⁹ For an applied comparison of I-O to BCA see Marijke Taks, Stefan Kesenne, Laurence Chalip and Christine B. Green. *Economic Impact Analysis versus Benefit Cost Analysis: The Case of a Medium-Sized Sport Event*. *International Journal of Sports Finance*, Volume 6, 2011. <http://scholar.uwindsor.ca/humankineticspub/20/>

there is some implication attached to input-output analysis that an addition to transactions through an expanded or new industry in the table is a desirable development or benefit to the economy. While this implication is common, it can be somewhat misleading.

The benefit/cost approach to project evaluation attempts to demonstrate the relationship between the benefits derived by society and the costs (monetary or otherwise) induced as a result of an action or investment, i.e. whether society as a whole benefits from the project in question, in comparison to alternative uses for the resources available. Part of these streams of benefits and costs would appear in the input-output table where they are not separated as benefits and costs per se, but are simply transactions within the economy.

While it is important to draw this conceptual distinction between impact and evaluation studies, it is not uncommon to observe impact statements used as justification for a course of action. In fact, impact statements are often seen as ends in themselves, negating the need for an evaluation. However, while impact statements should provide important input into evaluation studies, they do not in themselves provide evaluative guidance from a benefit/cost point of view.²⁰

Thus, by treating all impacts as benefits, costs are relabeled as benefits, thereby skewing the analysis in favor of the analyst's desired project (or discount).

Further, from the Benefit Cost Analysis perspective the impacts derived from I-O models typically result in double-counting. To illustrate, the sum of the impacts derived from individual I-O models of all sectors of an economy can be expected to exceed a single I-O model of all sectors taken together.

It is relatively easy to resolve this paradox. The purpose of the multipliers is to highlight the interactions between industries as money flows around the economy. Some of the output of the energy industry is used to create steel and some of the output of the steel industry is used by the energy industry. ... But when individual industries start using the input output multipliers to claim credit for employment and output in other industries they are guilty of "double counting." That is, when the mining industry tries to take credit for the size of the construction industry there is no offsetting "reduction" in the measured size of the construction industry.

Historically this attempt at double counting, an attempt typically designed to increase the apparent size and significance of an industry, has been relatively inconspicuous due to the simple fact that the technique was only used by small industries that needed to find a way to increase their relative status. ... Put simply, the whole point of the National Accounts is to remove the "double counting" of production associated

²⁰ Guy R. West, pp. 20-2.

with the fact that the output of the grain industry is included in the output of the bread industry. The whole point of using multipliers, however, is to put this double counting back into the public perception of the size of the economy.²¹

Consider, too that a key feature of I-O models is their focus on three categories of impacts: (1) direct effects – the initial spending in the study area, (2) indirect effects – the additional inter-industry spending caused by the direct effects, and (3) induced effects – the additional household expenditure resulting from the direct and indirect effects. It is the summation of these effects that yield multipliers greater than 1.0 and, consequently, yield the large impacts typical of I-O models. The implication of the use of multipliers is that any expenditure will always yield impacts larger than the expenditure itself because the direct impact (the expenditure) is included in the total impact; no matter what the nature of the expenditure, more is always better. In contrast to I-O, BCA typically excludes indirect and induced effects from the analysis viewing those effects, not as benefits, but rather as no more than a distributional accounting of who receives the initial expenditure.²²

I-O models typically ignore the opportunity cost of the resources used in the project (in this case, the discount surcharge on the bills of non-exempt ratepayers).²³ It is conceivable that an analyst could try to correct this defect by estimating the direct, indirect and induced impacts of reducing non-exempt ratepayer incomes, and treating those impacts as costs. But those costs would be overestimated, just as the benefits were overestimated by multipliers and by labeling all impacts as benefits, as discussed above. The analyst would be left with a collection of impacts called costs and one called benefits and each collection would be an undifferentiated jumble of benefits and costs.

9.4 Environmental Costs of Electric Generation

It can be expected that at least a portion of the energy sold to the EITE Customers by Otter Tail is generated using fossil fuels, fuels that impose an environmental cost. If the EITE Customers cease to operate in Minnesota some benefit would accrue to the state. Staff is unaware of how much energy used by the EITE Customers is derived from fossil fuels and, further, how much of that cost would fall within the boundaries of Minnesota. Staff understands that 2.16 pounds of

²¹ Richard Denniss, p. 6. See also Patrick Grady and R. Andrew Muller. *Of the Use and Misuse of Input-Output Based Impact Analysis in Evaluation*. Canadian Journal of Program Evaluation. Vol. 3, No. 2, 1988.

²² Jack C. Stabler, G.C. Van Kooten and Neil Meyer. *Methodological Issues in the Evaluation of Regional Resource Development Projects*. The Annals of Regional Science, Volume 22, Issue 2, July 1988.

²³ William J. Hunter. *Economic Impact Studies: Inaccurate, Misleading, and Unnecessary*. July 22, 1988. <https://www.heartland.org/template-assets/documents/publications/27010.pdf>.

CO₂ is emitted per kWh of electricity generated,²⁴ and that the cost of CO₂ is between \$9 and \$34 per ton emitted.²⁵

9.5 Costs/Benefits of Rate Discount

Otter Tail proposes to offer its EITE Customers approximately \$938,000 per year for five years. Although that discount represents a cost to all non-exempt ratepayers, it is also a benefit to the EITE Customers. At the state level, those costs net to zero (to the extent that the benefits of the discount stays within the state). BCA treats such cost/benefits as transfers of income within a region.

9.6 Contribution to Revenue Requirement

In Attachment 4 of its petition Otter Tail traces the effect on non-EITE ratepayers if all three EITE Customers ceased contributing to its revenue requirement. It calculates that all non-EITE ratepayers would experience a 1.133% increase in rates (larger than the 0.456% increase if the non-exempt ratepayers paid the discount to the EITE Customers). Staff believes this analysis is misplaced. It shows accounting transfers but not actual costs or benefits in terms of resources required. A utility's loss of a large customer today may, in some circumstances – but not necessarily all – adversely affect other ratepayers. Where a utility is planning to build (or purchase) capacity anyway, the loss of a customer may actually benefit the other ratepayers. If some of the additional capacity is no longer required the other ratepayers no longer need to pay for the additional capacity. Additionally, where a utility no longer needs to generate the energy to meet the needs of a lost customer, the remaining customers may or may not be better off depending upon the operation and maintenance costs required to meet the departing customer's needs.

The point to be made here is that the information in the record regarding the EITE Customers' contributions to Otter Tail's revenue requirement does not provide an indication of costs to ratepayers. However, Otter Tail's Integrated Resource Plan indicates that Otter Tail plans on building and/or purchasing significant capacity in the next few years.²⁶

²⁴ US EIA FAQ, <https://www.eia.gov/tools/faqs/faq.cfm?id=74&t=11>.

²⁵ MN PUC. *Order Establishing 2016 and 2017 Estimate of Future Carbon Dioxide Regulation Costs*, Docket 07-1199, August 5, 2016, p. 7.

²⁶ MN PUC Order, Docket 13-961, December 5, 2014.

9.7 Summary

Staff believes that Otter Tail has failed to show that its proposed EITE Rate meets the state-level net-benefits test, in large part because (1) Otter Tail's analysis does not account for possible environmental benefits of reduced fossil fuel generation, and (2) its empirical analysis employs analytical methods that fail to distinguish between benefits and costs, that inflate benefits, and that ignore the benefits to non-exempt ratepayers that are foregone by not accounting for the \$938,000 per year (estimated maximum) that those ratepayers could spend on something other than the EITE discount.

10. Staff Analysis: Utility-Level Net-Benefits Test

The chief difference between the state-level and utility-level net-benefits is the geographical boundary of the analysis. Minnesota's state boundaries set limits to the estimation of both benefits and costs, excluding benefits and costs that accrue to entities outside Minnesota. Perhaps the most obvious way to constrain the utility-level analysis is to consider only those benefits and costs accruing to Otter Tail and its customers.

Staff believes that there is even less support for Otter Tail's proposed discount at the utility-level than there is at the state-level. First, the record is particularly unclear as it fails to differentiate Otter Tail's service area benefit and costs from state or regional level estimates (there are fewer Minnesotans in the "utility" than there are in the "state" to reap benefits or incur costs). Second, the analysis does not include externalized environmental costs (although they can be expected to be lower at the utility level because Otter Tail's service area is smaller than the area of Minnesota). Third, the regional impacts study relied upon by OTP-EITE suffers the same ills as described in the previous section. And, fourth, as discussed above, it is far from clear that decreased sales to EITE Customers would burden non-exempt customers.

11. Staff Analysis: Possible Modifications to Otter Tail's Discount

The record in this docket leaves much room for controversy, in particular surrounding the question of whether Otter Tail's discount is likely to increase the likelihood that none of the

EITE Customers will cease operating in Minnesota in the next five years. Such judgement calls are highly subjective. Staff believes that the probability that Otter Tail's EITE Rate Rider will benefit the state is highly unlikely ... but perhaps not zero.

Staff believes that, at the state-level, Otter Tail overestimates benefits and underestimates costs, but Staff does not have a reliable estimate of either costs or benefits. However, that said, Staff believes that the wood products does offer significant benefits to Minnesotans (at least to the extent there is a world market for those products). The loss of an EITE Customer could diminish those benefits.

Staff believes the EITE Statute does not prevent the Commission from modifying Otter Tail's proposed discount as long as the rate (1) can be considered "competitive" and (2) the rate will yield a net benefit to the state or the utility. There is much space within the concept of "competitive electric rates" and within a net-benefits test that would allow the Commission to look to other criteria.

There are myriad ways that Otter Tail's Rate Rider could be modified. Staff offers one simple alternative to the 20% and 10% discounts proposed by Otter Tail: a **5%** discount. Extrapolating from Otter Tail's 20% discount numbers, Staff believes that a four-fold reduction in the discount rate would result in an increased cost to non-exempt customers of approximately **0.114%**. Residential rates would rise by approximately **\$1.16** annually.

12. Staff Analysis: EITE Cost Recovery Rider

If the Commission finds that Otter Tail has not shown that its proposed EITE Rate Rider yields net benefits to the utility or to the state the Commission need not proceed with a review of Otter Tail's Cost Recovery Rider.

Otter Tail proposes to fund the discount by increasing rates to all other ratepayers by **0.456%** (excluding LIHEAP residential customers). Otter Tail states that its proposal would increase annual, non-LIHEAP, residential costs by **\$4.64**. In the event the Commission rejects Otter Tail's petition for a 20% rate reduction, Otter Tail estimates that a **10%** EITE discount would increase rates for Otter Tail's non-exempt customers by **0.230%**, representing an annual increase of **\$2.34** for residential customers.

While Otter Tail proposes a Surcharge that must be reallocated to non-EITE Customers, Otter Tail recognizes that the Commission may determine such treatment concurrently with its determination of whether or not to approve the EITE rate or at some other time either in this docket or in another rate proceeding. In the event the Commission decision on the EITE Surcharge is not made concurrently with the Commission's decision on the EITE Rate, Otter Tail requests that the Commission: (1) order that Otter Tail may account for uncollected revenues using deferred accounting until the EITE Surcharge is approved; or (2) order that the EITE Rate is not effective until the first of the month after a Commission decision on the EITE Surcharge.

Otter Tail does not recommend integrating this petition into the current rate case given the schedule of testimony and hearings in the rate case. Integration is not needed because the EITE discount (from existing rates) and corresponding recovery mechanism can be applied to rates in effect during the rate case and after the rate case is completed. Otter Tail believes filing additional comments in the rate case is unnecessary and more likely to create confusion than assist in a better understanding of the issues. Introducing a new rate design issue into the rate case at this stage of the case would not fit into the schedule for the rate case (with Intervenor Direct due on August 16, 2016), and would be likely to unnecessarily add complexity to the issues already being considered in the rate case.

OTP-EITE supports Otter Tail's position.

DOC states that Otter Tail's Petition does not identify the rates it intends to charge to non-EITE, non-exempt ratepayers. Given the lack of clarity for both the EITE Discount Rider and EITE Cost Recovery Rider, along with numerous other deficiencies of the Petition, DOC recommends that the Commission reject the petition and has no comment on the individual design elements of OTP's EITE Cost Recovery Rider.

OAG argues that EITE Customers have not shown that Otter Tail's proposed EITE rate reduction provides a net benefit to the state or the utility and recommends denial of the petition. OAG did not focus on the issue of cost recovery.

Staff believes that, in the event the Commission approves an EITE Rate and Schedule, it should also approve cost recovery, with or without some modification of Otter Tail's plan in terms of the timing and allocation of cost recovery. There is sufficient information in the record to determine the impacts on non-exempt customers. The burden borne by all non-exempt ratepayers would be shared equally (in terms of percentage increase) thus preserving the relative burden. The options listed below offer some alternatives and some options for addressing miscellaneous compliance issues.

13. Decision Options

Decision Options re: EITE Rate and Rate Schedule

Preliminary Matters

- A.1 Find that Otter Tail has the ability to propose for Commission approval various EITE rate options within its service territory under an EITE rate schedule pursuant to Minn. Stat. §216B.1696, subd. 2 (a), because it is an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers.
- A.2 Find that the three customers to whom Otter Tail seeks to offer EITE rate discounts are eligible to receive those discounts and, more specifically, that customers need only satisfy one of Minn. Stat. §216B.1696, subds. 1(c)(1) through 1(c)(4) to satisfy the definition of an EITE Customer.
- A.3 Find that Otter Tail has complied with Minn. Stat. §216B.1696, subd. 3, with its proposal to deposit \$10,000 with the Salvation Army, Roseville, Minnesota to increase low-income customer awareness of the Gas Affordability Program administered by Great Plains Natural Gas Co. and approved by the Commission under Minn. Stat. §216B.16, subd. 15. ... or ...
- A.4 Find that Otter Tail has not complied with Minn. Stat. §216B.1696, subd. 3, with its proposal to deposit \$10,000 with the Salvation Army, Roseville, Minnesota. Deny Otter Tail's petition without prejudice.

Merits of the Proposed EITE Rate Schedule

Options re: Otter Tail's EITE Rate Rider without Modification

- A.5 Find that Otter Tail's Proposed EITE Rate Schedule and EITE Rate, as filed by Otter Tail, discounting current rates by 20%, can be expected to yield a net benefit to the state. Approve Otter Tail's Schedule and its corresponding EITE Rate effective November 1, 2016. Or ...

- A.6 Find that Otter Tail's Proposed EITE Rate Schedule and EITE Rate, as filed by Otter Tail, discounting current rates by 20%, can be expected to yield a net benefit to the utility. Approve Otter Tail's Schedule and its corresponding EITE Rate effective November 1, 2016. Or ...
- A.7 Find that Otter Tail's Proposed EITE Rate Schedule and EITE Rate, as filed by Otter Tail, discounting current rates by 10%, can be expected to yield a net benefit to the state. Approve Otter Tail's Schedule and its corresponding EITE Rate effective November 1, 2016. Or ...
- A.8 Find that Otter Tail's Proposed EITE Rate Schedule and EITE Rate, as filed by Otter Tail, discounting current rates by 10%, can be expected to yield a net benefit to the utility. Approve Otter Tail's Schedule and its corresponding EITE Rate effective November 1, 2016. Or ...
- A.9 Find that Otter Tail's Proposed EITE Rate Schedule and EITE Rate, as filed by Otter Tail, cannot be expected to yield a net benefit to either the utility or the state. Reject Otter Tail's Schedule and its corresponding EITE Rate.

Options re: Otter Tail's EITE Rate Rider with Modifications

- A.10 Find that Otter Tail's Proposed EITE Rate Schedule and EITE Rate, discounting current rates by 5%, can be expected to yield a net benefit to the state. Approve Otter Tail's Schedule and its corresponding EITE Rate effective November 1, 2016. Or ...
- A.11 Find that Otter Tail's Proposed EITE Rate Schedule and EITE Rate, discounting current rates by 5%, can be expected to yield a net benefit to the utility. Approve Otter Tail's Schedule and its corresponding EITE Rate effective November 1, 2016. Or ...
- A.12 Take other action.

If the Commission approves an EITE Customer Rate Schedule and Rider, then:

- A.13 Require Otter Tail to establish a separate account to track the difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule, pursuant to Minn. Stat. § 216B.1696, subd. 2(d).

- A.14 Require Otter Tail to file EITE reports with the first report due February 1, 2018 and annually thereafter, which includes a list of all customers on the rate, identifies which specific provision of the statute qualifies the customer for the EITE rate, the revenue difference between what would have been collected under the electric utility's applicable standard tariff by customer and in total, and the tracker activity and balance.
- A.15 Require Otter Tail to file revised tariff pages for the EITE Customer rider consistent with the Commission's findings within 10 days of the Commission order. If no objections are received to the filing within 10 days, delegate authority to the Executive Secretary to approve the revised tariff pages.

Decision Options re: EITE Cost Recovery

Cost Recovery Rider

- B.1 Approve Otter Tail's EITE Cost Recovery language, as filed.
- B.2 Approve Otter Tail's EITE Cost Recovery language, as filed, adjusted as needed to reflect Commission decisions on other issues.
- B.3 Find that the Commission needs more information in order to determine the reasonableness of the EITE Cost Recovery Rider. Delegate to the Executive Secretary the authority to issue notices, establish procedures, and set timelines.
- B.4 Defer review of the EITE Cost Recovery Rider to Otter Tail's current rate case.
- B.5 Defer review of the EITE Cost Recovery Rider to Otter Tail's next rate case.

Timing of Implementation of Cost Recovery Adjustment

- B.6 Allow cost recovery to begin under the rider simultaneously with the EITE Rider discount on the first of the month after the Commission approval.
- B.7 Do not allow cost recovery to begin until the EITE Rider discount has been in effect for at least one year.

- B.8 Do not allow cost recovery to begin pending further review. Require Otter Tail to account for uncollected revenues using deferred accounting until cost recovery is approved.
- B.9 Do not allow cost recovery to begin pending further review. Require Otter Tail to account for uncollected revenues using deferred accounting

Allocation of cost recovery to classes of non-exempt customers

- B.10 Allow allocation of costs to classes based on Otter Tail's proposal.
- B.11 After the order is final in the current rate case, adjust the allocation to comport with the revenue allocation adopted in the rate case.

Notice to Customers and Local Government

- B.12 If the Commission allows recovery to begin under the Cost Recovery Rider in the near-term, require Otter Tail to file a revised communications plan consistent with the Commission's findings within 10 days of the Commission order that shall, at a minimum:
- a. include with each customer's first bill when rates change, a notice approved by the Commission's Executive Secretary,
 - b. give written notice, as approved by the Commission, of the proposed change in rates to the governing body of each municipality and county in the area affected, pursuant to Minn. Stat. § 216B.16, subd. 1, and
 - c. mail copies of the Commission's Order to all municipalities, counties, and local governing authorities within its Minnesota service area.

Delegate approval of any revised communications plan to the Executive Secretary.

- B.13 Require additional or different notice.

Compliance Filings

B.14 Within 10 days of the date of the order, file new tariff pages for the EITE Cost Recovery Rider to reflect Commission decisions herein.