

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

Nancy Lange	Chair
Dan Lipschultz	Vice Chair
Matt Schuerger	Commissioner
Katie Sieben	Commissioner
John Tuma	Commissioner

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

DOCKET NO. E-015/M-16-564

**OAG'S ANSWER TO  
PETITIONS FOR RECONSIDERATION**

**I. INTRODUCTION**

The Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG”) submits the following Answer to the Petitions for Reconsideration submitted by Minnesota Power and its Energy-Intensive Trade-Exposed (“EITE”) customers (“Petitioners”) pursuant to Minnesota Rules, part 7829.3000, subpart 4. The Commission should deny Petitioners’ request for reconsideration for several reasons.

First, while the Petitioners have styled their filings as requests for reconsideration of a recent Commission decision, their requests are in fact untimely requests for the Commission to reconsider decisions that it made on April 20, 2017. Second, Petitioners’ requests do not meet the established standards for granting reconsideration and do not show that either Minnesota Power or the EITE customers will be unfairly harmed by the cost recovery mechanism approved in this docket. Instead, Petitioners have each benefitted from the EITE rate authorized by the Commission. The Commission should deny the Petitions for Reconsideration as untimely challenges to decisions the Commission made in April. In the alternative, the OAG requests that the Commission deny the Petitions for Reconsideration because they fail on the merits.

## II. PROCEDURAL HISTORY

The Petitions for Reconsideration are limited to issues related to the cost recovery mechanism<sup>1</sup> for Minnesota Power's EITE rate. This matter was first addressed by the Commission in its December 21, 2016 Order Approving EITE Rate, Establishing Cost Recovery Proceeding, and Requiring Additional Filings ("December Order"). In the December Order, the Commission approved Minnesota Power's proposed EITE rate.<sup>2</sup> The Commission, however, did not establish a cost recovery mechanism. Rather, the Commission determined that it needed "more information in order to determine the reasonableness of the proposed EITE Cost Recovery Rider."<sup>3</sup> The Commission, therefore, ordered Minnesota Power 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 . . ." and to file additional cost recovery proposals for the Commission to consider.<sup>4</sup>

On December 30, 2016, Minnesota Power filed several cost recovery proposals. On January 10, 2017, the Commission requested comments on these proposals from other parties.

On January 30, 2017, the OAG filed comments on Minnesota Power's cost recovery proposals. The OAG's comments stated, among other things, that the method underlying all of the utility's proposals did not comply with the EITE Statute because it would not refund non-EITE customers for increased revenue associated with providing the EITE rate as required by the

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<sup>1</sup> The OAG recognizes that the use of the term "cost recovery" mechanism may cause confusion, since it implies that Minnesota Power can only surcharge customers to recover its costs and "recover the costs" of the program. As discussed in the OAG's previous comments and below, Minn. Stat. § 216B.1696, subd. 2(d) does not describe such a cost recovery mechanism, but rather a revenue true-up mechanism. Regardless, Minnesota Power has consistently referred to its proposal as a cost recovery mechanism, and this term has been used in Commission orders. Accordingly, the OAG will refer to the company's proposal as a cost recovery mechanism for the sake of consistency.

<sup>2</sup> December Order at Order Point 5.

<sup>3</sup> December Order at 11.

<sup>4</sup> *Id.* at Order Points 7 and 11.

statutory language.<sup>5</sup> The OAG recommended a cost recovery mechanism that would refund increased revenues resulting from higher sales to EITE customers.<sup>6</sup>

On February 1, 2017, Minnesota Power implemented the EITE rate.<sup>7</sup> Since the OAG's comments on the utility's proposed cost recovery mechanism were filed on January 30, 2017, Minnesota Power has been aware, even before it was implemented, that its cost recovery mechanism was disputed and that the OAG had proposed refunds for any increased revenues.<sup>8</sup> Minnesota Power responded to the OAG's proposed cost recovery mechanism in comments filed on February 10, 2017. On March 9, 2017, the Commission met to consider Minnesota Power's cost recovery proposal. During its meeting, the Commission verbally ordered Minnesota Power to establish a cost recovery mechanism that refunds non-EITE customers for increased sales.<sup>9</sup>

On April 20, 2017, the Commission ordered a cost recovery mechanism for Minnesota Power's EITE rate ("April Order"). The April Order was largely consistent with the OAG's January 30, 2017 recommendation. Specifically, the Commission required that Minnesota Power refund any increased revenues associated with providing the EITE rate to non-EITE customers. The Commission further explicitly ordered Minnesota Power to measure these increased revenues by comparing future EITE sales to a baseline of the company's actual 2016 sales:

5. Minnesota Power shall refund revenue increases associated with the EITE rate schedule as proposed by the Office of the Attorney General on page 13 of its January 31, 2017 comments in this docket, with the following additions/clarifications:

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<sup>5</sup> See OAG's January 30, 2017 Comments at 4-9; Minn. Stat. § 216B.1696, subd. 2(d) (2016).

<sup>6</sup> See OAG's January 30, 2017 Comments at 13.

<sup>7</sup> See Minnesota Power's Petition at 1.

<sup>8</sup> In fact, it is unclear whether Minnesota Power actually began providing EITE discounts as early as February 1, 2017. The utility's July 12, 2017 comments state that Minnesota Power submitted updated tariff sheets for the EITE rate on *March 1, 2017*, with an effective date of February 1, 2017. It is therefore unclear whether the EITE customers were receiving their discounts in February, or if the February discounts were received in the form of later refunds.

<sup>9</sup> March 9, 2017 Transcript at 196-200.

- a. *The Company shall use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable increases;*
- b. The Company shall base the refund on net revenue increases; and
- c. Minnesota Power shall make a compliance filing within 30 days setting forth the surcharge and refund mechanisms in detail, including the baseline gross revenue for 2016 and the methodology for determining net revenue increases.<sup>10</sup>

No party requested reconsideration of the Commission's April Order.<sup>11</sup> Minnesota Power also did not suspend the EITE rate following the April Order. Rather, Minnesota Power initially purported to seek to comply with the April Order. On May 22, 2017, Minnesota Power submitted a compliance filing in which it proposed to implement the cost recovery mechanism established in the April Order, albeit with three modifications. One proposed modification would have allowed Minnesota Power to adjust the 2016 calendar-year EITE customer revenue to account for "increased revenue due to EITE customer operations that ha[d] already been accounted for in Minnesota Power's current rate case."<sup>12</sup> In other words, Minnesota Power proposed a mechanism to refund increased revenues against a "2016" baseline year; the company's filing simply adjusted how the 2016 baseline would be calculated.

On June 21, 2017, the OAG filed comments objecting to Minnesota Power's compliance filing, stating that the utility's attempt to include higher 2017 EITE sales in its 2016 baseline did not comply with the April Order. On July 12, 2017, Minnesota Power and the LPI EITE customers responded to the OAG's comments. These comments did not argue that the Commission's April Order was flawed. They also did not argue that the Commission was not authorized to establish a baseline year to measure increased revenues from the EITE rate.

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<sup>10</sup> April Order at Order Point 5. (Emphasis added).

<sup>11</sup> Minn. R. 7829.3000 (providing 20 days to file a request for reconsideration).

<sup>12</sup> Minnesota Power's May 22, 2017 Compliance Filing at 2.

On September 7, 2017, the Commission orally rejected Minnesota Power’s proposal to include higher 2017 EITE sales in its 2016 baseline. On September 29, 2017, the utility notified the Commission that it was suspending the EITE rate. On October 13, 2017, the Commission issued its written order on Minnesota Power’s compliance filing (“October Order”). The Commission’s written order restated the following provision verbatim from its April Order:

2. Minnesota Power shall use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable increases.<sup>13</sup>

On November 2, 2017, Minnesota Power and the EITE customers requested reconsideration of the Commission’s October Order.

### **III. ANALYSIS**

Petitioners have not shown that the Commission should reconsider either its April or its October Order. Petitioners’ requests make an untimely challenge to the decisions made in the Commission’s April Order, while not addressing the issues decided in the October Order. And even if their requests were timely, Petitioners have not shown that the Commission’s standards for granting reconsideration have been met in this case, or that Petitioners face any unfair harm because of the Commission’s decisions. For these reasons, Petitioners’ requests should be rejected.

#### **A. PETITIONERS IMPROPERLY SEEK RECONSIDERATION OF THE APRIL ORDER.**

As a threshold matter, Petitioners’ requests should be denied because they improperly seek reconsideration of the decisions made in the Commission’s April Order. A party seeking reconsideration of a Commission order must do so “within 20 days of the date the decision or

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<sup>13</sup> October 13, 2017 Order at 8.

order is served by the executive secretary.”<sup>14</sup> Since the April Order was issued on April 20, 2017, Petitioners had until May 10, 2017, to request reconsideration of the decisions made in that Order. Petitioners did not request reconsideration of the April Order, and the Commission should reject their untimely attempt to challenge it now.

The Petitions for Reconsideration are untimely because both Minnesota Power and the EITE customers are, in fact, seeking to undo decisions that the Commission made in its April Order. To understand why Petitioners’ requests are untimely, it is important to recognize the difference between the April Order and the October Order. The Commission’s April Order addressed the structure of Minnesota Power’s cost recovery proposal. Specifically, the Commission addressed disputes about whether the utility should simply recover the amount in its tracker account or whether the cost recovery mechanism should consider increased sales to EITE customers.<sup>15</sup> In addition, in the April Order, the Commission addressed whether the utility should measure any increased sales by using a “baseline” year, and, if so, what baseline year should apply.<sup>16</sup> The Commission resolved these issues and ordered that the cost recovery mechanism should consider increased sales to EITE customers, and that those increased sales should be measured against a baseline of the company’s 2016 actual sales.<sup>17</sup>

In contrast, the October Order addressed Minnesota Power’s attempt to comply with the April Order. Specifically, the October Order addressed Minnesota Power’s proposed “adjustment to recognize increased revenue due to EITE customer operations that has already

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<sup>14</sup> Minn. R. 7829.3000; Minnesota Power and the EITE customers could also have appealed the Commission’s April Order within 30 days of its issuance. Minn. Stat. § 14.64 (2017).

<sup>15</sup> See April Order at 7.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 12.

been accounted for in the 2017 test-year in the utility’s current rate case.”<sup>18</sup> The Commission rejected this specific adjustment because it did not reflect the Commission’s April decision that Minnesota Power set a baseline using its actual 2016 sales.

Petitioners’ requests here do not address the substance of the Commission’s October Order. Rather, they provide an untimely challenge to the Commission’s April Order. Petitioners do not argue, for instance, that Minnesota Power’s May 22, 2017 compliance filing was proper, or that the Commission erred in rejecting the utility’s proposed adjustment to its actual 2016 sales revenue. These were the issues decided in the October Order. Instead, Petitioners argue that the entire structure of the cost recovery mechanism *established in the Commission’s April Order* is flawed. Minnesota Power argues, for instance, that the EITE Statute “was violated *when the Commission adopted the OAG’s recommendation in its April 2017 Order* and affirmed in its October 2017 Order . . . .”<sup>19</sup> Minnesota Power further argues that the cost recovery mechanism is flawed because it does not allow the utility to recover the amount it accumulated in its tracker account.<sup>20</sup> Likewise, the EITE customers argue that decisions made in the Commission’s April Order were wrong: “The Legislature did not empower the Commission to create a ‘baseline year,’ from which rates, credits, and cost recovery over multiple time periods would be evaluated.”<sup>21</sup> These arguments are directed at decisions that the Commission made in its April Order, and, as such, the Petitioners were required to raise them by May 10, 2017, pursuant to the Commission’s Rules. Petitioners chose not to do so.

It is also important to note that, while Petitioners now challenge decisions made in Commission’s April Order, they initially acquiesced to them. In other words, not only did

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<sup>18</sup> October Order at 3.

<sup>19</sup> Minnesota Power’s Petition at 2. (Emphasis added).

<sup>20</sup> Minnesota Power’s Petition at 2-4.

<sup>21</sup> EITE Petition at 6.

Petitioners not challenge the April Order, they affirmatively accepted it. For its part, Minnesota Power submitted a compliance filing that calculated refunds for non-EITE customers by comparing future EITE sales to a “2016 Adjusted Baseline” year.<sup>22</sup> This meant that, even in Minnesota Power’s compliance filing, the amount the utility would have collected from non-EITE customers would have differed from the amount included in its tracker account. Regardless, Minnesota Power now argues that its cost recovery mechanism is flawed because the company cannot recover the amount included in its tracker account.<sup>23</sup>

The EITE customers also acquiesced to the cost recovery structure provided in the Commission’s April Order. Like Minnesota Power, the EITE customers did not request reconsideration of the Commission’s April Order, which required Minnesota Power to refund non-EITE customers for increased sales compared to a 2016 baseline year. The EITE customers also did not object to Minnesota Power’s May 22, 2017 compliance filing that established a “2016 Adjusted Baseline” year. Rather, the EITE customers only challenged the OAG’s suggested modifications to the utility’s proposed 2016 baseline. In a letter dated July 12, 2017, the EITE customers stated they were “concerned with the potential consequences of the cost recovery proposal . . . submitted by the [OAG] in a comment filed in this docket on *June 21, 2017*.”<sup>24</sup> The EITE customers therefore accepted the 2016 adjusted baseline submitted by Minnesota Power on May 22, 2017. Despite this acceptance, the EITE customers now argue that the Commission was wrong to establish *any* baseline year.<sup>25</sup> These arguments are untimely, contradict the Petitioners’ previous filings, and should be rejected.

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<sup>22</sup> See Minnesota Power’s May 22, 2017 Compliance Filing at Attachment A. (Emphasis added).

<sup>23</sup> Minnesota Power’s Petition at 2-4.

<sup>24</sup> EITE Comments of July 12, 2017.

<sup>25</sup> EITE Petition at 6.



**B. PETITIONERS' REQUESTS SHOULD BE REJECTED ON THEIR MERITS.**

Even if the Petitioners had properly challenged either of the Commission's April or October Orders, their requests should be denied because they do not meet the established standards for granting reconsideration, and because they do not show that Minnesota Power or the EITE customers have been unfairly harmed. The Commission may reverse or change a decision it makes if it appears that the "original decision, order, or determination is in any respect unlawful or unreasonable."<sup>26</sup> In recent cases, the Commission has declined to consider requests for reconsideration because they "do[] not raise new issues, do[] not point to new and relevant evidence, [or do] not expose errors or ambiguities" in the Commission's decisions."<sup>27</sup>

Petitioners' requests do not meet these standards. They do not raise new issues; they do not point to new and relevant evidence; and they do not expose any errors or ambiguities in the Commission's April or October Orders. Rather, Petitioners simply continue to argue why they believe the Commission's decisions in its April Order were wrong. These are the same arguments Petitioners have previously made, which the Commission rejected for sound reasons. Petitioners have also failed to show that they have suffered any unfair harm that would require reconsideration of the Commission's decisions.

**1. Petitioners' Restate The Same Arguments That The Commission Previously Rejected.**

The Petitions filed by Minnesota Power and the EITE customers barely attempt to show that the standards for reconsideration have been met. For its part, Minnesota Power does not even list the standard of review for the Commission. The EITE customers list the standard, but

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<sup>26</sup> Minn. Stat. § 216B.27, subd. 2 (2017).

<sup>27</sup> See, e.g., Order Denying Reconsideration, *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of a Gas Utility Infrastructure Cost Rider*, Docket No. 14-336 (Apr. 10, 2015); Order Denying Reconsideration, *In the Matter of the Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, Docket No. 13-617 (Dec. 22, 2014).

then immediately dive into a ten-page discussion of why they believe the Commission misapplied the EITE Statute.<sup>28</sup> This discussion does not raise new issues, point to new evidence, or expose errors or ambiguities in either the Commission’s April or October Orders. Rather, both Petitioners simply repackage the same arguments that they previously made to the Commission, which were already rejected. There is no reason to re-open this discussion now.

Petitioners present two broad arguments for why they believe the Commission’s decisions were wrong. These arguments should both be rejected.

**a. The cost recovery mechanism ordered by the Commission is revenue neutral.**

Petitioners first argument is that the Commission’s decision violated the “concept” of “cost neutrality” for Minnesota Power contained in the EITE Statute.<sup>29</sup> To make this argument, Petitioners state that the Commission erred when it required the utility to consider increased revenues from higher EITE sales in its cost recovery mechanism.<sup>30</sup> This, according to Petitioners, wrongly prevents the utility from recovering all of the costs of providing the EITE discount. This argument does not provide sufficient grounds for reconsideration because (1) it is an argument that the Petitioners have raised repeatedly, and which the Commission has already rejected; and (2) the argument incorrectly interprets the plain language of the EITE Statute.

Petitioners’ argument has been repeatedly raised and rejected by the Commission in this docket. In the April Order, for instance, the Commission noted that both Minnesota Power and the EITE customers argued that increased revenues must be ignored in the cost recovery mechanism to ensure that the utility remains revenue neutral:

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<sup>28</sup> See EITE Petition at 4-13.

<sup>29</sup> See Minnesota Power’s Petition at 2.

<sup>30</sup> See Minnesota Power’s Petition at 4; EITE Petition at 6.

While Minnesota Power and the Large Power Intervenors agreed that under the statute, an EITE rate schedule should be revenue neutral to the utility, they argued that the statute only requires the Company to track the difference between the revenue collected from EITE customers in a given year at the discounted rate and the revenue that would have been collected under standard rates at the same sales volume . . . [a]nd both parties maintained that the appropriate way to address increased or decreased revenues resulting from changes in sales to EITE customers would be through a rate case.<sup>31</sup>

The Commission rejected this argument and ordered Minnesota Power to account for increased revenues in its cost recovery mechanism. Specifically, the Commission stated that Minnesota Power “should be required to refund all or some of the surcharges paid by non-EITE customers based on the increased revenues that result from increased sales to EITE customers taking service under the EITE rate schedule.”<sup>32</sup> The Commission explained that, by providing these refunds, “the utility is neither harmed nor enriched by the EITE rate. As such, the refund mechanism ensures that the EITE rate is revenue neutral as applied to the utility.”<sup>33</sup>

Regardless, Minnesota Power raised this argument again as a reason to justify its May 22, 2017 compliance filing, stating the following:

While the statute expressly addresses cost neutrality for Minnesota Power, this concept would be violated if the OAG’s proposal was implemented and revenues from EITE customers were being captured in the form of a refund through reduced revenue requirements in the current rate case and a refund through the EITE surcharge and refund mechanism.<sup>34</sup>

The Commission again rejected this argument when it ordered Minnesota Power to comply with the April Order.<sup>35</sup> In short, the Commission has repeatedly rejected Petitioners’ argument that the utility would not be revenue neutral if increased sales are considered in the cost recovery

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<sup>31</sup> April Order at 7.

<sup>32</sup> *Id.*

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

<sup>34</sup> Minnesota Power’s July 12, 2017 comments at 4.

<sup>35</sup> *See* October Order at 8.

mechanism. By restating the same arguments they have made previously, the Petitioners have failed to raise new issues or arguments that would justify their requests for Reconsideration.

Even if the Petitioners had raised new arguments to support their statutory interpretation, the OAG's previous filings have explained why the Petitioners' interpretation of the statute is wrong. The plain language of the EITE Statute requires the utility to consider increased revenues from higher sales in its cost recovery mechanism to ensure revenue neutrality. Regardless, several portions of the Petitioners' filings undermine their argument that higher sales should not be considered in Minnesota Power's cost recovery mechanism. For its part, Minnesota Power's Petition waffles between arguing for "cost neutrality"<sup>36</sup> and "revenue neutrality."<sup>37</sup> This reflects the fact that, while Minnesota Power appears to recognize that the EITE Statute requires *revenue* neutrality—which would include higher sales—what the utility actually requests in this docket is *cost* neutrality that ignores the possibility of increased revenue from higher sales. This is not consistent with the EITE Statute's provision that "the commission shall allow the utility to recover any costs, including reduced revenues, or refund any savings, including increased revenues, associated with providing service to a customer under an EITE rate schedule."<sup>38</sup>

For instance, page 5 of Minnesota Power's Petition includes the heading that "Minnesota Power is not *Revenue* Neutral as a result of the Commission Order."<sup>39</sup> This heading therefore addresses the concept of revenue neutrality reflected in the EITE Statute. To make its argument, however, the company shifts to its own concept of cost neutrality, and provides an illustration that it claims shows that "Minnesota Power's filing [was] intended to recoup the '*costs*' of the

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<sup>36</sup> See Minnesota Power's Petition at 2.

<sup>37</sup> See Minnesota Power's Petition at 5.

<sup>38</sup> Minn Stat. § 216B.1696, subd. 2(d) (2017).

<sup>39</sup> Minnesota Power's Petition at 5. (Emphasis added).

EITE-discount from non-EITE customers.”<sup>40</sup> The following page then states that, under the utility’s proposal, “[t]he EITE discount equals the *cost* recovery from Non-EITE customers in this case. Minnesota Power is *revenue* neutral as is defined by the EITE Statute.”<sup>41</sup> By confusing the concept of revenue neutrality with cost neutrality, Minnesota Power attempts to show that its proposal is consistent with the EITE Statute, when it is not.

The EITE customers also undermine their argument that the Commission erred by requiring Minnesota Power to consider increased revenues from higher sales. Specifically, the EITE customers argue that “revenue” is defined as “‘gross income or gross receipts,’ which in the case of the sale of power means simply the purchaser’s energy consumption multiplied by applicable tariff rate over a given time period.”<sup>42</sup> Based on this definition, the EITE customers claim that the cost recovery mechanism cannot contemplate the potential for higher sales. This argument ignores, however, that the EITE Statute requires that the cost recovery mechanism account for both *reduced* revenues and *increased* revenues.<sup>43</sup> The Commission accounted for reduced revenues by including the costs of the discount. It accounted for increased revenues by including the benefits of higher sales. This is consistent with the EITE customers’ own argument, which would define “*increased* revenue” as “*increased* gross income or *increased* gross receipts, which in the case of the sale of power means simply the purchaser’s *increased* energy consumption multiplied by the applicable tariff rate over a given time period.” The EITE customers’ own argument shows why Commission must consider the increased energy consumption associated with providing the EITE rate.

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<sup>40</sup> *Id.* (Emphasis added).

<sup>41</sup> *Id.* at 6.

<sup>42</sup> EITE Petition at 6.

<sup>43</sup> Minn Stat. § 216B.1696, subd. 2(d) (2017).

**b. Minnesota Power has not included the correct amount to refund and surcharge non-EITE customers in its tracker account.**

Petitioners' second argument is that Minnesota Power is entitled to collect whatever amount it has accumulated in its tracker account, regardless of the Commission's decision on the cost recovery mechanism. Minnesota Power, for instance, argues that the Commission erred because its tracker account "is not able to function as intended," since the company cannot collect the amount it has tracked.<sup>44</sup> The EITE customers likewise argue that "the statute requires that the tracker . . . be the method for determining the amount that the utility may recover any costs or must refund any savings as a result of the EITE rate schedule."<sup>45</sup> This argument improperly presumes that the amount that Minnesota Power included in its tracker account is the same amount it is required to collect or to refund. The Petitioners' arguments do not provide a sufficient justification for reconsideration because the Commission already considered this argument and rejected it, and because the cost recovery mechanism is properly based on the plain language of the EITE Statute. During the Commission's March 9, 2017 hearing, Chair Lange acknowledged that the amount tracked by Minnesota Power may differ from the amount to be collected from or refunded to non-EITE customers:

CHAIR LANGE: Right. And I – and as I read the statute, I see that it's your responsibility to create a separate account to track the difference in revenue to what would have been collected under the pre-EITE rate and the EITE rates. *And I think the question that Commissioner Lipschultz is getting at is what is that difference in revenue?*<sup>46</sup>

By ordering the utility to consider the higher sales resulting from the EITE rate, the Commission determined that the amount Minnesota Power included in its tracker account is not the amount it

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<sup>44</sup> Minnesota Power's Petition at 2.

<sup>45</sup> EITE Petition at 11.

<sup>46</sup> March 9, 2017 Transcript at 34. (Emphasis added).

is authorized to recover under the EITE Statute. In short, the Commission heard this argument, considered it, and ultimately rejected it.<sup>47</sup>

The cost recovery mechanism ordered by the Commission is based on a sound application of the EITE Statute to Minnesota Power's specific EITE rate. The basis for this mechanism was thoroughly described in the OAG's January 30, 2017 comments, and the basis for rejecting Minnesota Power's proposed "2016 Adjusted Baseline" was thoroughly described in the OAG's June 21, 2017 comments. These decisions, at a high level, recognized that reducing the rate for EITE customers would likely increase sales to those customers, and that the plain language of the EITE Statute requires that the benefits of these increased sales must be accounted for in the cost recovery mechanism: "the commission shall allow the utility to recover any costs, including reduced revenues, or refund any savings, *including increased revenues*, associated with providing service to a customer under an EITE rate schedule."<sup>48</sup>

## **2. Petitioners' Attempts To Show They Have Been Or Will Be Unfairly Harmed Are Flawed.**

Petitioners also argue that the cost recovery mechanism approved by the Commission should be reconsidered because both Minnesota Power and the EITE customers have or will be unfairly harmed. Minnesota Power argues that it has already lost approximately \$9 million in revenue that it would have otherwise collected from EITE customers.<sup>49</sup> The EITE customers

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<sup>47</sup> Minnesota Power also alleges that the Commission's April and October Orders were "outcome based decisions" that were somehow motivated by the restart of the Keetac Facility in February. *See* Minnesota Power's Petition at 3-4. Minnesota Power has not presented any evidence that the Commission's decision was motivated to achieve a pre-determined result, as it claims, or that the Commission's decision was not based on its application of the EITE Statute to the specific EITE rate. Since Minnesota Power has not provided any evidence to support this allegation, the OAG cannot respond. Regardless, in the midst of this argument, Minnesota Power acknowledged that the restart of Keetac occurred in part because of the Commission's approval of the EITE discount. Minnesota Power's Petition at 3. This supports the Commission's determination that the EITE rate could result in higher sales and higher revenues to EITE customers that must be accounted for in the company's cost recovery mechanism.

<sup>48</sup> Minn. Stat. § 216B.1696, subd. 2(d) (2017). (Emphasis added).

<sup>49</sup> Minnesota Power's Petition at 4. Notably, Minnesota Power suggests elsewhere that it could actually receive a \$3 million windfall based on the interaction of the cost recovery mechanism and the rate case. Minnesota Power's (Footnote Continued on Next Page)

argue that the cost recovery mechanism, combined with the presumed outcome of Minnesota Power's pending rate case, will harm EITE customers by making them pay for a portion of their own discount.<sup>50</sup> These arguments ignore the benefits that Minnesota Power and the EITE customers are receiving from the EITE rate; rely on speculative, hypothetical scenarios; and, in the case of Minnesota Power, ignore the utility's opportunity to mitigate any "harm" it claims to have suffered. These arguments do not provide a sufficient reason for the Commission to reconsider its decision for several reasons.

First, the Petitioners have not pointed to any new information that was not part of the record when the Commission made its decisions in the past. The robust record in this proceeding demonstrates that the Commission fully understood the facts, and decided that based upon those facts the cost recovery mechanism recommended by the OAG followed the statutory formula provided by the legislature.

Second, the Petitioners overstate the level of harm that they would face, while understating the potential benefits. For example, Minnesota Power's argument that it lost \$9 million in revenue ignores the benefits of the EITE discount and that the utility could have minimized this amount. This argument ignores the benefits Minnesota Power received from providing the discount because it does not account for any increased sales to EITE customers. As Minnesota Power itself admits, United States Steel attributed the restart of its Keetac facility in part to the Commission's approval of the EITE discount.<sup>51</sup> While the restart of this facility is

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Petition at 8. The fact that Minnesota Power casts this windfall as a problem with the EITE cost recovery mechanism suggests that the company does not believe the Commission would actually allow it to keep this amount. Accordingly, rather than arguing that it should keep this benefit, Minnesota Power suggests that this \$3 million "leakage" creates a problem that must be addressed in this docket.

<sup>50</sup> EITE Petition at 12.

<sup>51</sup> Minnesota Power's Petition at 3.



a clear benefit to Minnesota Power, the utility's argument here would actually cast the Keetac Restart as a detriment that *contributed* to the \$9 million in lost revenue. This is because the \$9 million amount referred to by Minnesota Power is simply the cost of providing the discount. Therefore, any discount Keetac received would be included in the lost revenues Minnesota Power seeks, while the increased sales from restarting the facility are ignored. To characterize the Keetac restart as a detriment to Minnesota Power that contributed to higher lost revenue is flatly absurd, and shows why this argument should be rejected.

In addition, even if Minnesota Power's argument that it lost \$9 million in revenue was a fair characterization, it ignores that the utility could have minimized this amount by withdrawing the EITE rate earlier than it did. Minnesota Power implemented the EITE rate on February 1, 2017, two days *after* the OAG first proposed the structure of the cost recovery mechanism that the Commission adopted. Minnesota Power was therefore aware of the OAG's proposal to refund increased revenues from higher sales, and could have delayed implementing the rate.<sup>52</sup> The Commission then made its oral decision adopting the OAG's proposal on March 9, 2017, and issued its written decision on April 20, 2017. The April Order stated clearly that Minnesota Power should refund increased revenues using a baseline of its 2016 actual sales. Petitioners cannot plausibly claim that they were not aware of this provision at the time—it is Minnesota Power's responsibility as a regulated utility to follow the Commission's Order. If it were concerned about lost revenue, Minnesota Power surely could have suspended the EITE discount *sometime* during these months. Instead, the utility elected to continue providing the rate and benefiting from possible increased sales, knowing that the OAG had recommended incorporating those increased sales into the cost recovery mechanism, and that the Commission had adopted

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<sup>52</sup> Minnesota Power responded to the OAG's January 30, 2017 comments on February 10, 2017.

that recommendation. Minnesota Power's attempt to argue that it has been harmed when it knowingly chose to provide the EITE discount should be rejected.

The EITE customers' argument that they will pay for the cost of their own discount should also be rejected because it ignores the clear benefits they are receiving, and relies on a speculative side-by-side comparison of two hypothetical rate case outcomes. Essentially, the EITE customers argue that, if the Commission increases the revenue deficiency in the rate case to account for the EITE discount, it might also authorize a higher rate increase for the EITE customers than it would have otherwise.<sup>53</sup> At this time, the EITE customers' argument is moot because Minnesota Power has suspended the EITE rider and the only place for the increased sales to be reflected is the rate case.

Even if that were not the case, the argument fails because it relies on the premise that the Commission might do something in this rate case that is different than what the Commission might do in another rate case with another cost recovery mechanism. The argument is pure speculation that compares the future results of the company's pending rate case to the future results of a different pending rate case in a parallel universe. This is impossible to seriously evaluate, and does not sufficiently justify any reconsideration of the Commission's decisions.

The EITE customers benefited from the EITE discount authorized by the Commission, and their argument ignores this simple fact. These benefits are separate from the Commission's unrelated decisions in the company's pending rate case. The cost recovery mechanism authorized by the Commission does not surcharge EITE customers for this discount and it is therefore consistent with the EITE Statute. The Commission will determine what rates are just

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<sup>53</sup> See EITE Petition at 12.

and reasonable in the context of Minnesota Power's rate case, using the appropriate standard for the rate case. The EITE customers' attempts to conflate these dockets should be rejected.

The Commission's April Order was grounded on a sound application of the plain language of the EITE Statute to the specific EITE rate approved for Minnesota Power. As the Commission explained, the cost recovery mechanism it approved benefits the EITE customers, while ensuring that the utility is not unfairly enriched at the expense of its non-EITE customers.<sup>54</sup> The Petitions do not raise new issues, point to new evidence, or expose errors or ambiguities in the Commission's decisions. They also do not show that the Commission's decisions are contrary to the EITE Statute, or that Petitioners have been unfairly harmed. For these reasons, the Petitions should be rejected.

#### **IV. CONCLUSION**

For the reasons set forth above, the Commission should affirmatively deny Petitioners' requests for reconsideration. Petitioners have each made untimely requests for the Commission to reconsider portions of the Commission's April Order. In addition, Petitioners' requests do not meet the established standards for reconsideration and do not show that either Minnesota Power

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<sup>54</sup> April Order at 7.

or the EITE customers will be unfairly harmed by the cost recovery mechanism approved in this docket.

Dated: November 13, 2017

Respectfully submitted,

LORI SWANSON  
Attorney General  
State of Minnesota

s/ **Ian Dobson**

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November 13, 2017

Mr. Daniel Wolf, Executive Secretary  
Minnesota Public Utilities Commission  
121 Seventh Place East, Suite 350  
St. Paul, MN 55101-2147

**RE:** *In the Matter of a Revised Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*  
**MPUC DOCKET NO. E-015/M-16-564**

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matter please find the Answer of the Minnesota Office of the Attorney General to Minnesota Power and its Energy-Intensive Trade-Exposed Customers' Petitions for Reconsideration.

By copy of this letter all parties have been served. An Affidavit of Service is also enclosed.

Sincerely,

s/ **Ian Dobson**

---

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Enclosures

cc: Service List



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