

Staff Briefing Papers

Meeting Date January 9, 2019 Agenda Item **3

Company Minnesota Power

Docket No. **E-015/M-16-564**

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

Issues Should the Commission grant Minnesota Power’s request to extend the termination date of its Energy-Intensive Trade-Exposed (EITE) Rider?

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 **Relevant Documents**

Date

<i>Order Approving EITE Rate, Establishing Cost Recovery Proceeding, and Requiring Additional Filings</i>	December 21, 2016
Minnesota Power: Suspension Notification	September 29, 2017
Minnesota Power: Reactivation of EITE Rider	January 25, 2018
Minnesota Power: Compliance Filing	February 1, 2019
Minnesota Power: Petition	October 7, 2019
Comments: Large Power Intervenors (LPI)	November 25, 2019
Comments: Citizens Utility Board (CUB) & Energy CENTS Coalition (ECC)	November 25, 2019

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

 **Relevant Documents**

Date

Comments: Office of the Attorney General (OAG)

November 25, 2019

Comments: Department of Commerce (DOC)

November 25, 2019

Reply Comments: Large Power Intervenors (LPI)

December 10, 2019

Reply Comments: Minnesota Power (MP)

December 10, 2019

Reply Comments: Office of the Attorney General (OAG)

December 10, 2019

I. Statement of the Issues

Should the Commission grant Minnesota Power's request to extend the termination date of its Energy-Intensive Trade-Exposed (EITE) Rider?

II. Background

On November 13, 2015, Minnesota Power (MP) filed a petition under the EITE statute, which the Commission denied without prejudice (Docket 15-984). The Commission concluded that the Company's proposal did not demonstrate a net benefit to the utility or the state, as required by Minn. Stat. § 216B.1696.

On June 30, 2016, MP filed a revised petition, proposing a modified rate schedule and cost-recovery rider (Docket 16-564).

On December 21, 2016, the Commission issued its *Order Approving EITE Rate, Establishing Cost Recovery Proceeding, and Requiring Additional Filings*. That order approved the EITE Rider for a term of four years.

On February 1, 2017, MP implemented the EITE Rider.

On September 29, 2017, MP suspended the EITE Rider over concerns regarding the outcome of MP's General Rate Case (Docket 16-664).

On January 25, 2018, MP reactivated the Rider, effective January 1, 2018.

On October 7, 2019, MP filed its petition seeking an extension to continue the EITE Rider until new final rates in the 2020 rate case take effect.

On November 25, 2019, comments were filed by the Citizens Utility Board (CUB) and Energy CENTS (jointly), the Large Power Intervenors (LPI), the Office of the Attorney General (OAG) and the Department of Commerce (DOC).

On December 10, 2019, reply comments were filed by LPI, MP and DOC.

III. Minnesota Power's Petition

MP's petition is brief:

On September 27, 2019, Minnesota Power filed its sales forecast in anticipation of its upcoming general rate case filing ... to be submitted on November 1, 2019 for a 2020 test year. Minnesota Power will not be requesting any changes to the current [EITE] Rider In its EITE Order, the Commission approved Minnesota Power's revised proposal to limit the EITE Rider to a four-year term. The EITE Rider was

effective beginning February 1, 2017. Minnesota Power suspended the EITE Rider for three months from September 29, 2017 to January 1, 2018. If the suspension time period is not included, the EITE Rider will expire on February 1, 2021.

Due to the expected timing of Minnesota Power's 2020 rate case and the heavy Commission workload with other rate case and resource dockets, it is likely the Commission will hear oral arguments and deliberate in early 2021. This timing may cause misalignment [sic] between the Commission's decisions on new final rates and what impact, if any, the expiration of the current EITE Rider means for all Minnesota Power customers. Therefore, Minnesota Power respectfully requests the Commission grant a procedural extension to continue the EITE Rider until new final rates in the 2020 rate case are effective. To be clear, Minnesota Power is not requesting any modifications to the EITE Rider or any other aspect of the extensive EITE docket.¹

IV. Party Positions

Five parties filed comments in response to MP's petition: CUB and Energy CENTS (jointly), LPI, OAG and DOC.

A. Citizens Utility Board and Energy CENTS Coalition

CUB and Energy CENTS stated:

CUB's and Energy CENTS's primary concern related to the EITE rate continues to be its effect on other ratepayers, and on residential ratepayers in particular. To date, the cost of the EITE rate discount has been entirely offset by increased revenues from EITE customers and, therefore, has not required recovery through a rider to other customers. Minnesota Power has stated that it expects this situation to continue. ...

CUB and Energy CENTS respectfully request that the Commission prohibit the company from recovering any EITE-related costs from non-EITE customers beyond February 1, 2021. With that consumer protection in place, we do not object to the extension of the EITE rate.²

B. Large Power Intervenors

LPI supports MP's request:

¹ MP Petition.

² CUB/Energy CENTS Initial Comments, pp. 1-2.

LPI ... is in favor of the continuation of the EITE Rider to reflect the Commission's intended four-year term and account for the suspension of the EITE Rider during that four-year term.³

C. Department

DOC recommends approval of MP's request reasoning that the extension "will allow parties in the rate case to more fully evaluate the rate proposals and the impact on customers of the expiration of the EITE Rider."⁴

D. Office of the Attorney General

OAG opposes MP's request. It argued that the fact that MP is not currently charging non-EITE customers to support MP's discount that situation could change by the time final rates take effect. Further, if MP perceives a timing-misalignment problem, it is one of its own choosing, as it chose when it would file its rate case. OAG further argues that the ...

... Commission found a net benefit from the EITE rate in 2016, but that finding hinged on the specific facts and circumstances presented to the Commission at the time, including the four-year term proposed by the Company. Thus, although Minnesota Power styles its request as a procedural one, granting it would require an affirmative finding that a net benefit exists to support an extension. The Company's one-page, three-paragraph letter offers no proof that the EITE rate would provide any net benefit beyond its scheduled expiration date.⁵

OAG elaborated in its reply comments:

The reason EITE-paying customers would be harmed by extending the rider—even if they pay no EITE-related surcharges—is that Minnesota Power's current base rates are higher than they would otherwise be, due to the existence of the rider. In the Company's last rate case, the Commission ordered certain Large Power-customer revenues removed from the test year because those revenues were already being accounted for in a separate EITE tracker account. Removing these revenues from the test year resulted in higher base rates for all customers.⁶

E. Large Power Intervenors

LPI responds to CUB and OAG's concerns that non-EITE customers may yet incur a surcharge between now and the termination of the Rider. LPI states that the Commission has explicitly

³ LPI Comments, p. 1.

⁴ DOC Comments, p. 1.

⁵ OAG Initial Comments, p. 2, footnote omitted.

⁶ OAG Reply, p. 2, footnote omitted.

guaranteed there will be no such surcharge (via a statement in a press release) and, aside from that, MP's forecasts "do not demonstrate that a surcharge is likely in the future."⁷

LPI believes MP's request is a procedural one, not substantive, and that the Commission has already determined that the Rider provides a net benefit to MP. As such, no further investigation is warranted.

F. Minnesota Power

MP responded to CUB and Energy CENTS "request that the Commission prohibit the Company from recovering any EITE-related costs from non-EITE customers beyond February 1, 2021. The Company is supportive of this stipulation."⁸

In response to OAG, MP states that ...

... OAG claims that the Company is asking the Commission to "extend the EITE rider for an indeterminate period". This assertion is incorrect. The Company is asking the Commission to extend the EITE Rider only in the circumstance that final rates are not in place by February 1, 2021.⁹

MP does not believe a new net-benefits test is necessary, and if ...

... the Commission agrees with the OAG that a new net benefits test is required under statute to align the current EITE discount with new final rates, Minnesota Power respectfully requests the Commission allow Minnesota Power to withdraw this request and no further action is required.¹⁰

V. Staff Analysis

The Commission approved MP's EITE Rider for four years. During that period MP suspended the Rider for three months.

There appear to be four dates relevant to the discussion:

- The Commission is expected to issue a final order in MP's current general rate case by November 30, 2020 (Docket 19-442).
- The Rider is due to expire on February 1, 2021,

⁷ LPI Reply, pp. 5-6.

⁸ MP Reply, p. 2.

⁹ MP Reply p. 3.

¹⁰ MP Reply, p. 3.

- The Rider will expire on May 1, 2021, if the three months of suspension are appended to the original date, and
- The Rider will expire when final rates take effect.

The date that final rates take effect is uncertain and may depend upon the results of petitions for reconsiderations in MP's current rate case, possible court challenges and requests for stays. In approving MP's EITE Rider the Commission required MP to file a report by February 1st each year for the term of the Rider. The most recent report indicates that LPI's members, in total, received a discount of approximately \$16.8 million in 2018 (on average, approximately \$1.4 million per month).¹¹ New figures will be available with MP's annual compliance filing expected on February 1, 2020. As recipients of the EITE benefit, LPI's members would benefit substantially for every month the Rider is extended past its current expiration date of February 1, 2021 (given current discount levels). MP and LPI characterize the extension of this discount as a "procedural" question, and not "substantive."

Returning to the language of MP's request for approval of the Rider, MP stated that the "newly proposed ECC [Energy Charge Credit, i.e. discount] will have a four year term" and the "ECC as proposed will have a four-year initial term."¹² MP also stated:

A review of the business cycles in the taconite industry has indicated that a four-year cycle, from good times to bad and then back to better times, is appropriate, as demonstrated by the 1982-1985, 1986-1989 and the 2000-2003 corrections. A four-year term also seems reasonable to allow for a robust assessment of the impacts and the effects of the ECC and associated Cost Recovery Mechanism on the net benefit to the utility and the state.¹³

The Commission approved the Rider with the understanding that the "Energy Charge Credit [discount] for EITE customers would end after four years."¹⁴

MP's petition for approval of the EITE Rider presented the Commission with a four-year package designed to show, empirically, that the Rider would (per the EITE statute)¹⁵ yield a net benefit to the utility or the state. The Commission approved the Rider as providing a net benefit to the state. MP and LPI ask the Commission to extend that Rider without a showing that it meets the statutory net-benefit requirement. Their arguments beg the question of just how far a record can be stretched before it ceases to become relevant.

The Commission has the option of tabling this issue until a date closer to the end of 2020.

¹¹ Compliance Filing, February 1, 2019, section 3 and Attachment B.

¹² MP Revised Petition for Approval of Rider, June 30, 2016, pp. 3 and 13.

¹³ MP Revised Petition for Approval of Rider, June 30, 2016, p. 13.

¹⁴ Order Approving EITE Rider, December 21, 2016, p. 5.

¹⁵ Minn. Stat. § 216B.1696.

VI. Decision Options

1. Approve MP's request to extend the terms of the EITE Rider until final rates, as determined by the Commission in MP's current general rate case (Docket 19-442), take effect (supported by MP, LPI and DOC, and conditionally by CUB and Energy CENTS).
2. Approve an extension of the EITE Rider until the Commission issues its final order in MP's general rate case (expected to be November 30, 2020).
3. Approve an extension of the Rider until May 1, 2021.
4. Reject MP's request (supported by OAG).
5. Table the issue until a date later in 2020.
6. Take other action.

In the event the Commission extends the EITE Rider, it should consider the request of CUB and Energy CENTS to:

7. Prohibit MP from recovering any EITE-related costs from non-EITE customers beyond February 1, 2021 (supported by CUB)

If the Commission extends the term of EITE Rider:

8. Require MP to submit revised tariff language indicating the term of the EITE Rider within 10 days of the Commission issuing its order in this docket.