

**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 the Petition by Otter Tail
Power Company for Approval of an EITE
Customer Rate

DOCKET NO. E-017/M-17-257

**COMMENTS OF THE OFFICE
OF THE ATTORNEY GENERAL**

I. INTRODUCTION

The Office of the Attorney General – Residential Utilities and Antitrust Division (“OAG”) submits the following response to the December 18, 2017 proposal by Otter Tail Power Company (“Otter Tail”) for a cost-recovery mechanism for its EITE Rate (“Cost Recovery Petition”).¹ Otter Tail proposes to apply a surcharge of \$0.00055 per-kWh to its non-EITE customers to cover the cost of providing the EITE discount.² The utility also proposes mechanisms for designating low-income customers, notifying customers of the surcharge, tracking lost revenues, and crediting non-EITE customers for any increased revenues from EITE facilities.³ The OAG addresses Otter Tail’s proposal to credit non-EITE customers for possible increased sales. While Otter Tail’s proposal differs from the mechanism used by Minnesota Power to refund its EITE customers for increased sales, the differences between the two mechanisms appear to be reasonable in light of Otter Tail’s circumstances.

¹ The OAG notes that the Commission’s November 17, 2017 Order in this docket authorized the Executive Secretary to “issue notices, establish procedures, and set timelines for the purpose of obtaining the information necessary to determine the reasonableness of Otter Tail’s proposed EITE cost-recovery mechanism.” Because those procedures have not yet been established, it is unclear why Otter Tail has filed its proposal.

² Cost Recovery Petition at 2.

³ *See id.* at 3-5.

II. ANALYSIS

OtterTail proposes to credit non-EITE customers for higher sales to its EITE customers, measured against the company's 2016 test-year EITE sales.⁴ The utility proposes to credit any net revenues that are above its 2016 baseline to non-EITE customers at the end of the four-year term of the EITE Rate.⁵

Otter Tail's proposed credit for non-EITE customers appears to be largely consistent with the credit mechanism that the Commission recently ordered for Minnesota Power's EITE rate,⁶ with two differences. The first difference is that Otter Tail proposes to use the sales included in its 2016 test year as the baseline for measuring any increased revenues. In Minnesota Power's case, the Commission ordered the utility to set a baseline using its actual 2016 calendar-year sales.⁷ The second difference is that Otter Tail proposes to credit any refund to customers after the full four-year term of its EITE rate. Minnesota Power credits increased revenues annually.⁸ Each of these differences from Minnesota Power's cost-recovery mechanism appear to be reasonable.

First, Otter Tail's use of its 2016 test-year sales—as opposed to actual sales—is reasonable because Otter Tail's EITE rate is not directed at increasing the electric consumption of the utility's EITE customers. This is because OtterTail's EITE customers are already operating at the full capacity.⁹ This differs from Minnesota Power's EITE rate, which is intended to increase electric consumption at facilities that have recently operated well below

⁴ *Id.* at 5.

⁵ *Id.*

⁶ See Order Authorizing Cost Recovery with Conditions, *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*, MPUC Docket No. E-015/M-16-564, at 11 (April 20, 2017).

⁷ *Id.*

⁸ See *id.*

⁹ See Cost Recovery Petition at 5.

their full capacity. Since Minnesota Power’s EITE rate is intended to increase depressed sales at its EITE facilities, it is important in that case to measure the specific, actual year-to-year change in electric consumption to ensure that the utility’s non-EITE customers are fairly credited for these benefits. It would not have been appropriate to use normalized test-year sales.¹⁰

This case is different. Here, Otter Tail’s EITE rate is directed at maintaining the consistently high EITE sales the utility has enjoyed over the past decade or so.¹¹ Otter Tail’s EITE rate is not likely to result in a substantial increase in electric sales. Otter Tail itself states that it “does not anticipate any sales growth due to the EITE Rate.”¹² In this context, it is reasonable to measure any increased sales against the test-year sales used to set the company’s just and reasonable rates, rather than against the company’s actual 2016 sales. This allows the utility and its ratepayers to rely on the same sales projection used to establish the company’s just and reasonable rates to set the company’s baseline, even if that baseline differs somewhat from the company’s actual sales in a given year. Importantly, because Otter Tail implemented the EITE rate in 2017, using the company’s 2016 test-year sales as a baseline will still ensure that its non-EITE customers benefit from any significant and sustained increase in electric sales that may result from the EITE rate.

Second, Otter Tail’s proposal to credit non-EITE customers for higher sales after the full four-year term of the EITE rate is reasonable for similar reasons. Because Otter Tail does not expect the EITE rate to meaningfully increase its sales, it is likely that any credit for a given year—if one exists at all—would be exceedingly small. Rather, any sales increase to EITE

¹⁰ In Minnesota Power’s case, the Commission also did not have the benefit of a “pre-EITE” 2016 test year, since the utility’s most recent rate case used a 2017 test year.

¹¹ See OAG’s Initial Comments at 14-15; OAG’s Comments, *In the Matter of the Petition of Otter Tail Power Company for Approval of Energy-Intensive Trade Exposed Customer Rate*, at 9-10, Dkt. No. E-017/M-16-533 (Aug. 1, 2016).

¹² *Id.*

customers from Otter Tail's 2016 test-year amount would likely result from typical year-to-year variations in production, rather than a sustained or significant expansion at an EITE facility. These year-to-year variations have historically been small. For this reason, it is reasonable for Otter Tail to apply any credit for higher sales to customers at the end of the EITE rate's four-year term. It is possible that the cost of providing the credit each year could outweigh the amount of the credit itself. Providing the credit at the end of the four-year term ensures that non-EITE customers will still receive the benefit of increased revenues attributable to the EITE rate. The company, however, will not be required to apply insignificant annual credits to customers that result from typical fluctuations at EITE facilities.

With that said, it is possible that Otter Tail's EITE customers might substantially increase their electric consumption during the next four years. In that unlikely case, the utility's non-EITE customers may be entitled to a substantial credit for the increased revenues, and it may be appropriate to immediately refund this credit. Accordingly, the Commission should order Otter Tail to provide annual updates on the electric sales to its EITE customers. These updates should also provide the increased revenues, if any, associated with providing the EITE rate. These annual updates will allow the Commission to react to an unexpected rise in Otter Tail's revenues before the conclusion of the four-year term.

III. CONCLUSION

For these reasons, Otter Tail's proposed mechanism to credit non-EITE customers for any potential increased revenues from its EITE rate appears to be reasonable. If the Commission approves the mechanism as proposed by Otter Tail, the OAG recommends that it order the utility

to provide annual updates on its sales to EITE customers and the increased revenues for providing the EITE rate.

Dated: January 17, 2018

Respectfully submitted,

LORI SWANSON
Attorney General
State of Minnesota

s/ **Ian Dobson**

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January 17, 2018

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 the Petition by Otter Tail Power Company for Approval of an EITE Customer Rate*
MPUC DOCKET NO. E-017/M-17-257

Dear Mr. Wolf

Enclosed and e-filed in the above-referenced matter please find Comments of the Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division.

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

Sincerely,

s/ **Ian Dobson**

IAN DOBSON

Assistant Attorney General

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**RE: In the Matter of the Petition by Otter Tail Power Company for Approval of an EITE Customer Rate
MPUC DOCKET NO. E-017/M-17-257**

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, JUDY SIGAL, hereby state that on the 17th day of January, 2018, I e-filed with eDockets **Comments of the Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division** and served the same upon all parties, as indicated on the attached Service List via electronic submission and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

See Attached Service List

s/ Judy Sigal
Judy Sigal

Subscribed and sworn to before me
this 17th day of January 2018.

s/ Patricia Jotblad
Notary Public

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christopher	Anderson	canderson@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022191	Electronic Service	No	OFF_SL_17-257_M-17-257
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