

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

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St. Paul, MN 55101-2147

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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

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

**LPI REPLY COMMENT**

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The Large Power Intervenors (“LPI”)<sup>1</sup> submit the following reply comment in response to the Commission’s Notice of Comment Period issued on October 10, 2019,<sup>2</sup> in the above-mentioned docket. LPI continues to support Minnesota Power’s procedural request<sup>3</sup> and appreciates the analysis and support provided by the Minnesota Department of Commerce, Division of Energy Resources (the “Department”).<sup>4</sup> In this reply, LPI responds to comments submitted by the Office of the Attorney General—Residential Utilities and Antitrust Division (the “OAG”)<sup>5</sup> as well as the Citizens Utility Board of Minnesota and Energy CENTS Coalition (“CUB”),<sup>6</sup> since LPI believes their concerns are unfounded based on previous Minnesota Public Utilities Commission (the “Commission”) decisions in this docket.

**I. INTRODUCTION AND BACKGROUND**

The current docket is the second docket to address Minnesota Power’s attempts to provide rate relief to EITE customers pursuant to the EITE Statute.<sup>7</sup> A general overview of the procedural posture of this docket is set forth below.

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<sup>1</sup> LPI is an ad hoc consortium of large industrial customers of Minnesota Power (a regulated utility), and for purposes of this docket consists of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Hibbing Taconite Company; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation, each meeting the definition of energy-intensive trade-exposed (“EITE”) customers under Minn. Stat. § 216B.1696.

<sup>2</sup> Notice of Comment Period (Oct. 10, 2019) (eDocket No. 201910-156471-01).

<sup>3</sup> Procedural Request (Oct. 7, 2019) (eDocket No. 201910-156389-01) (the “Procedural Request”).

<sup>4</sup> Comments by the Department (Nov. 25, 2019) (eDocket No. 201911-157815-01).

<sup>5</sup> Comments by the OAG (Nov. 25, 2019) (eDocket No. 201911-157834-01) (the “OAG Initial Comment”).

<sup>6</sup> Comment by CUB (Nov. 25, 2019) (eDocket No. 201911-157788-01).

<sup>7</sup> Minn. Stat. § 216B.1696.

On November 13, 2015, Minnesota Power submitted its first petition to implement the EITE Statute in docket number E-015/M-15-984. On February 11, 2016, the Commission met to consider the matter.<sup>8</sup> After considering arguments from the parties, the Commission voted to deny the petition without prejudice.<sup>9</sup>

After the original docket concluded,<sup>10</sup> this docket was initiated by Minnesota Power's revised petition filed on June 30, 2016, seeking "approval of a Petition for a Rider for Energy-Intensive, Trade-Exposed Customers and a Rider for Energy-Intensive, Trade Exposed Current Cost Recovery[,] [and the] Petition [was] intended to implement 'the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers.'"<sup>11</sup> Parties commented on Minnesota Power's 2016 Petition throughout the remainder of the year. Additionally, various groups offered opinions on the EITE credit, including multiple Minnesota elected officials who noted that "we need to do everything that we can to improve the competitive position of these industries ... [and] [w]e support this provision of law and urge the Public Utilities Commission to approve the above referenced EITE petition."<sup>12</sup> Ultimately, on December 21, 2016 (more than 90 days after its oral order), the Commission approved Minnesota Power's schedule and corresponding rates for EITE customers; however, cost recovery was deferred at that time.<sup>13</sup> The order did, however, specifically direct Minnesota Power to establish a tracker account to track the difference between what would have been collected under Minnesota Power's applicable tariff and the EITE rate schedule.<sup>14</sup>

As requested, Minnesota Power filed its compliance filing relating to cost recovery on December 30, 2016.<sup>15</sup> After multiple rounds of comments, the Commission issued two key orders.

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<sup>8</sup> *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, MPUC Docket No. E-015/M-15-984, Order Denying Petition Without Prejudice at 2 (Mar. 23, 2016).

<sup>9</sup> *Id.*

<sup>10</sup> *See In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider*, MPUC Docket No. E-015/M-15-984.

<sup>11</sup> Minnesota Power Initial Filing at 3 (June 30, 2016) (eDocket No. 20166-122819-01) (the "2016 Petition").

<sup>12</sup> Updated Letter by Senator Bakk (Sept. 15, 2016) (eDocket No. 20169-124888-01). The letter was signed by Senators Bakk, Saxhaug, and Tomassoni, as well as Representatives Ecklund, Lueck, and Metsa.

<sup>13</sup> Order Approving EITE Rate, Establishing Cost Recovery Proceeding, and Requiring Additional Filings at 12-13 (Dec. 21, 2016) (eDocket No. 201612-127495-01) ("December 2016 Order").

<sup>14</sup> *Id.* at 9, 12-13.

<sup>15</sup> Minnesota Power Compliance Filing Order Points 11 and 13 – Tariffs (Dec. 30, 2016) (eDocket No. 201612-127736-01).

First, on April 20, 2017, the Commission approved Minnesota Power’s proposed surcharge for non-EITE customers in a fashion consistent with the OAG’s recommendations in comments.<sup>16</sup> The OAG’s methodology contemplated an eight-step surcharge mechanism designed to track increased or decreased EITE revenues based on the EITE discount.<sup>17</sup> The Commission expanded on its April order in October 2017, by clarifying that it would

[r]equire the Company to use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable refund.... [T]he Commission’s April 20th order specified that the refund should be calculated as the difference between the revenue the company received from EITE customers in 2016, before the anticipated implementation of the EITE rate, and the revenue the Company receives from the EITE customers after implementation of the EITE rate.<sup>[18]</sup>

Concurrent to this docket at the time of the 2016 Petition, Minnesota Power also had an ongoing rate case (E-015/GR-16-664). Based on decisions in both dockets, the Commission confirmed that its “decisions in [the rate case and this docket] will ensure that there will be no surcharges on customer bills related to the Energy Intensive Trade Exposed (EITE) rate discounts previously approved by the Commission.”<sup>19</sup>

Now, Minnesota Power has filed its next rate case (E-015/GR-19-442, the “Rate-Case Docket”) and seeks to extend the Rider for EITE customers (“EITE Rider”) as approved by the Commission on December 21, 2016, via the Procedural Request. The Procedural Request notes that 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.”<sup>20</sup> And if the suspension period is not included, the Energy Charge Credit (“ECC”) will not have been in effect for the term set forth in Minnesota Power’s tariff book, which states “The ECC shall be applicable for a term of four years beginning on the effective date of the EITE Customers Rider.”<sup>21</sup> Because the

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<sup>16</sup> Order Authorizing Cost Recovery with Conditions at 12 (Apr. 20, 2017) (eDocket No. 20174-131015-01).

<sup>17</sup> See OAG Comments at 13 (Jan. 30, 2017) (eDocket No. 20171-128618-01).

<sup>18</sup> Order Excluding Rider Revenue from 2016 Baseline Calculation and Setting Parameters to Identify Exempt Customers at 5 (Oct. 13, 2017) (eDocket No. 201710-136464-02).

<sup>19</sup> See Commission Press Release (Jan. 30, 2018), <https://mn.gov/puc/newsroom/?id=14-325472> (“Commission January 2018 Press Release”).

<sup>20</sup> See Procedural Request.

<sup>21</sup> Minnesota Power Electric Rate Book, Vol. 1., Section V, Pg. No. 98.0, Rev. 2.

Company's rate case may not conclude until after February 1, 2021, Minnesota Power seeks an extension until final rates become effective in the Rate-Case Docket. Given the Commission's recent oral decision in the Rate-Case Docket, it appears the Commission's final decision will be made on or before December 1, 2020.<sup>22</sup> Although final rates may not take effect until a few months after, it also appears that, in light of the suspension, the ECC could be applicable for a period of four full years with final rates taking effect on or before April 1, 2021 (i.e., three-months after February 1, 2021, to account for the three-month EITE rate suspension).

The Department and LPI support the Procedural Request. The Department believes that "[e]xtending the EITE Rider until final rates from the Company's 2020 rate case are effective 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."<sup>23</sup> LPI's initial comment echoes the Department's as well as underscoring parties' continued right to comment in this or other dockets implicated by the EITE Rider.<sup>24</sup>

Conversely, CUB requests the Commission refuse to allow Minnesota Power to collect EITE-related costs from non-EITE customers beyond February 1, 2021.<sup>25</sup> The OAG also opposes Minnesota Power's request for multiple reasons. First, the OAG claims that the Procedural Request does not meet the statutory requirements of the EITE Statute, requiring the utility show a "net benefit" to the utility or the state before implementing the EITE rate. Second, based on the EITE Rider and current rate case "misalignment" Minnesota Power outlines in the Procedural Request, the OAG argues EITE-paying customers "should not be punished for a misalignment that they did not create, and they certainly should not be kept on the hook for further surcharges without proof of a net benefit."<sup>26</sup> For the reasons outlined in the forthcoming analysis, the concerns of the

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<sup>22</sup> See *In the Matter of the Application by Minnesota Power for Authority to Increase Rates for Electric Service in Minnesota*, MPUC Docket No. E-015/GR-19-442, December 5, 2019 Oral Argument. In response to Commission action at the December 5, 2019, Commission meeting on interim rates, Minnesota Power verbally informed the Commission that it would not agree to any extension of the rate case timeline beyond what is statutorily permitted.

<sup>23</sup> Comment by the Department (Nov. 25, 2019) (eDocket No. 201911-157815-01).

<sup>24</sup> Comment by LPI (Nov. 25, 2019) (eDocket No. 201911-157836-01). LPI notes that its "letter comment serves to preserve LPI's right to advocate for other issues related to the EITE Rider, including but not limited to, continuation of the EITE Rider beyond final rates in Minnesota Power's rate case, either as part of this docket no. E-015/M-16-564, as part of the rate case docket no. E-015/GR-19-442, or as part of some other miscellaneous docket."

<sup>25</sup> CUB Initial Comment.

<sup>26</sup> OAG Initial Comment at 2-3.

OAG and CUB are unfounded. LPI continues to support Minnesota Power’s Procedural Request, and respectfully seeks Commission approval.

## **II. ANALYSIS**

### **A. Minnesota Power’s Petition Is Correctly Reviewed as a Procedural Request**

Minnesota Power’s October 7, 2019, filing is a procedural request, not a substantive request requiring a showing of a “net benefit.” As Minnesota Power explicitly outlines, the Procedural Request seeks an extension of the current EITE Rider only, which as noted above could be coterminous with final rates and four full years of the EITE rate, given the Commission’s recent oral decision in the Rate-Case Docket. Furthermore, “Minnesota Power is not requesting any modifications to the EITE Rider or any other aspect of the extensive EITE docket.”<sup>27</sup> The full net benefit language of the EITE Statute reads that “the commission shall, upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and any corresponding EITE rate.”<sup>28</sup> Here, as acknowledged by the Commission in the December 2016 Order and subsequent proceedings in this docket, there is a net benefit to Minnesota Power or Minnesota based on the current EITE rate and cost-recovery methodology. Minnesota Power merely seeks to continue that previously approved benefit until it can implement final rates in the Rate-Case Docket. Because Minnesota Power’s Procedural Request only seeks extension of the EITE Rider without any modification, the Commission should analyze it as a simple procedural matter. Therefore, the Commission may approve it without the EITE Statute analysis the OAG insists is required.

### **B. The OAG’s and CUB’s Surcharge Concerns Are Unfounded Based on Commission Action and Minnesota Power’s Previous Statements**

Both the OAG and CUB express concern of increased risk of EITE-paying customers incurring a surcharge based on an EITE Rider extension. For the following reasons, those concerns are unfounded. First, based on the Commission’s previous actions, EITE-paying customers have yet to incur a surcharge. To be sure, the Commission expressly confirmed that its previous decisions “*ensure* that there will be no surcharges on customer bills” related to the EITE Rider.<sup>29</sup>

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<sup>27</sup> Procedural Request.

<sup>28</sup> Minn. Stat. § 216B.1696, subd. 2(b).

<sup>29</sup> Commission January 2018 Press Release (emphasis added). LPI continues maintaining that the result of the Commission’s actions foisted EITE costs onto EITE customers in violation of Minn. Stat. § 216B.1696.

Based on this assurance, the OAG and CUB need not worry about EITE-paying customer surcharges, and the false alarm raised by those parties should not deprive EITE customers from the EITE rate.

In addition to the Commission's explicit guarantee, Minnesota Power's forecasts do not demonstrate that a surcharge is likely in the future. As CUB cites in initial comments, Minnesota Power expects

future comparisons in 2019 and 2020 of EITE customer revenues (excluding rider revenue) compared to the 2016 baseline, will likely show a large increase in EITE customer revenue, even without an EITE customer load increase. As a result, Minnesota Power does not expect to place a bill line for EITE cost recovery on customer bills during the four-year EITE term.<sup>[30]</sup>

Based on these projections, EITE-paying customers are not at any immediate risk of paying a surcharge. While the OAG contends that continuing the EITE Rider into 2021 increases that risk, LPI respectfully notes that no party, including the OAG, cites to any evidence indicating a higher likelihood of a surcharge. LPI understands that the EITE Rider and any potential surcharge is a topic of huge importance to residential-ratepayer advocates, but the record before the Commission should assuage those concerns. The Commission may extend the EITE Rider and do so with the comfort that there is little to no chance EITE-paying customers will receive a surcharge.

### **III. CONCLUSION**

LPI appreciates Minnesota Power's efforts to prepare the Procedural Request and is grateful to the other parties for their support and concerns; however, based on the Commission's previous decisions and Minnesota Power's projections, there is little to no risk to other ratepayers if the EITE Rider is extended until final rates are implemented in the Rate-Case Docket. Therefore, LPI respectfully seeks Commission approval of the Procedural Request.

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<sup>30</sup> Minnesota Power Compliance Filing at Section II, Subsection 6(B) (Feb. 1, 2019) (eDocket No. 20192-149923-01).

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Respectfully submitted,

STOEL RIVES LLP

*/s/ Andrew P. Moratzka*

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