BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF MINNESOTA
121 Seventh Plaza East, Suite 350
St. Paul, MN 55101-2147

In The Matter of the Application of Minnesota Power for Authority to Increase Rates for Electric Service in the State of Minnesota	PUC Docket No. E-015/GR-16-664 OAH Docket No. 5-2500-34078

PETITION FOR RECONSIDERATION

The Large Power Intervenors, an *ad hoc* consortium of large industrial end users of electric energy consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Enbridge Energy, Limited Partnership; Gerdau Ameristeel US Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; USG Interiors, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation (collectively, "LPI") submit this petition for reconsideration (the "Petition").

INTRODUCTION AND GENERAL BACKGROUND

On November 2, 2016, Minnesota Power ("MP" or the "Company") filed with the Minnesota Public Utilities Commission (the "Commission") this general rate case, seeking an annual rate increase of $55,123,680.[1] This rate case progressed in conjunction with MP's second attempt to provide rate relief to its Energy-Intensive Trade-Exposed ("EITE") customers pursuant to the EITE Statute.[2] The Commission's continual misinterpretation of the EITE Statute has both directly and indirectly impacted this rate case depriving LPI of its legally-entitled right to lower rates. The Commission's errors are compounded by its continued deviation from cost of service in revenue allocation, which impermissibly burdens LPI members with rates that are significantly above their cost of service. Lastly, the Commission refused to accept the Company's proposed adjustments to the Large Light and Power ("LLP") Time-of-Use ("TOU")

[1] Notice of Change in Rates (Nov. 2, 2016) (eDocket No. 201611-126215-02); *see also* FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 1 (Mar. 12, 2018) (eDocket No. 20183-140963-01) (the "*Commission's Rate Case Order*" or "*Order*").
[2] Minn. Stat. § 216B.1696 (the "EITE Statute").

Rider and Large Power Incremental Production Service ("LP-IPS") Rider. In rejecting the Company's proposals on these important rate design tools, the Commission ignores evidentiary support in the record and articulates potential risks that do not exist. Ultimately, the combined weight of the Commission's errors force LPI to bring the petition for reconsideration of the Commission's Rate Case Order. The relevant procedural posture preceding this Petition is set forth below.

On December 30, 2016, the Commission issued an order for hearing referring the case to the Office of Administrative Hearings (the "OAH") for a contested-case proceeding.[3] The OAH assigned the case to Administrative Law Judge James Mortenson (the "ALJ").[4] The parties filed direct, rebuttal, and surrebuttal testimony prior to the start of evidentiary hearings. Evidentiary hearings were held by the ALJ on August 8-11, 2017. Following evidentiary hearings, the parties filed opening and reply briefs.

On November 7, 2017 the ALJ filed his Findings of Fact, Conclusions of Law, and Recommendations (the "ALJ's Report").[5]

Following the filing of the ALJ's Report, parties including Minnesota Power, the Department of Commerce (the "Department"), the Office of the Attorney General (the "OAG"), LPI, and the Minnesota Chamber of Commerce (the "Chamber") filed exceptions pursuant to Minn. Stat. § 14.61 and Minn. R. 7829.2700.[6] The Commission heard oral arguments on January 11, 18, and 30, 2018. The record was closed on January 30, 2018, and the Commission issued its Findings of Fact, Conclusions, and Order on March 12, 2018.[7]

In its Order, the Commission erred in three meaningful ways, which LPI addresses in detail below. First, the Commission shifted revenue from the rate case to docket number

[3] NOTICE AND ORDER FOR HEARING (eDocket No. 201612-127717-01).
[4] *Id.* at 2.
[5] Findings of Fact, Conclusions of Law and Recommendations (Nov. 7, 2017) (eDocket No. 201711-137254-01) (the "ALJ's Report").
[6] *See generally* Large Power Intervenors Exceptions to ALJ (Nov. 22, 2017) (eDocket No. 201711-137659-02); The Department of Commerce Exceptions to ALJ (Nov. 22, 2017) (eDocket No. 201711-137656-01); Minnesota Power Exceptions to ALJ and Requested Clarifications (Nov. 22, 2017) (eDocket No. 201711-137651-01); Office of the Attorney General Exceptions to Findings of Fact (Nov. 22, 2017) (eDocket No. 201711-137633-02); Minnesota Chamber of Commerce Exceptions to ALJ (Nov. 22, 2017) (eDocket No. 201711-137614-01).
[7] *The Commission's Rate Case Order*.

E015/M-16-564[8] (the "EITE Docket"), an error which LPI has already noted in that corresponding docket.[9] Second, the Commission's revenue allocation deviated from cost without any reasonable explanation. And third, the Commission rejected the Company's reasonable rate design proposals in the form of the LLP TOU and LP-IPS Riders without sufficient reasoning.

ANALYSIS

A. Introduction

"A petition for rehearing, amendment, vacation, reconsideration or reargument must set forth specifically the grounds relied upon or the errors claimed."[10] The Commission typically reviews petitions to determine whether they (i) raise new issues, (ii) point to new and relevant evidence, (iii) expose errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it should rethink its previous order.[11] LPI submits this petition in response to errors in the Commission's rate design methodology as well as reiterate its concerns regarding the Commission's failure to properly implement the EITE statute as clearly defined by the Minnesota State Legislature.

B. The Commission Impermissibly Shifted Revenue from the Rate Case to the EITE Docket forcing EITE Customers to Share in the Cost of the Credit the Commission Approved

In both the EITE and rate case dockets, the Commission repeatedly misinterpreted the EITE statute. With regards to the rate case, LPI disagrees with the Commission's determination that the Company's excess sales revenue was shifted from the rate case to the EITE Docket, depriving ratepayers from the excess revenue being included in the Company's revenue requirement.[12]

---

[8] *See generally 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. E015/M-16-564.
[9] *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. E015/M-16-564, PETITION FOR RECONSIDERATION (Nov. 2, 2017).
[10] Minn. R. 7829.0300 Subp. 2.
[11] *See e.g., In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-13-868, ORDER DENYING PETITIONS FOR RECONSIDERATION, at 1 (July 13, 2015).
[12] *The Commission's Rate Case Order* at 52.

In the EITE Docket and of particular relevance in this matter, the Commission ordered that the EITE refund "should be calculated as the difference between the revenue Minnesota Power 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."[13] Additionally, the Commission ordered MP to refund to non-exempt EITE customers any net revenue increases resulting from increased sales to customers taking service under the EITE rate schedule, using the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable increases.[14] Both of these determinations immediately concerned LPI and are subject to a separate petition for reconsideration and appeal.[15] While LPI remains confident that the Commission's actions in the EITE Docket are contrary to the EITE statute, LPI notes its EITE appellate proceeding in this docket to preserve any and all appellate rights and avoid waiver of any issues related to the proper implementation of the EITE credit in either docket. Therefore, LPI's Petition for Reconsideration in E015/M-16-564 is incorporated and fully attached herein.[16]

Because the Commission attempted to retrofit its implementation of Minn. Stat. § 216B.1696 with a rate-case-like representative test year, implementation of the EITE credit overlapped with this rate case docket. In particular, the Commission was forced use the rate case to address Minnesota Power's additional revenue related to the Keewatin mining facility ("Keetac") returning to service. In its briefing, LPI accurately predicted that the Company would seek to offset the cost of the approximately $13.5 million EITE discount by shifting excess Keetac sales revenue to the EITE Docket.[17] To avoid impermissibly shifting revenue out of the rate case and ensuring the accurate implementation of the EITE credit, LPI argued in its Exceptions to the ALJ that the Commission should include the full 12-month increased revenue

[13] *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. E015/M-16-564, ORDER AUTHORIZING COST RECOVERY WITH CONSIDERATIONS, at 7 (Apr. 20, 2017).
[14] *Id.* at 12.
[15] *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. E015/M-16-564, PETITION FOR RECONSIDERATION (Nov. 2, 2017); *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. E015/M-16-564, NOTICE (Feb. 2, 2018).
[16] The Large Power Intervenors Petition for Reconsideration in the EITE Docket is attached hereto as Exhibit A.
[17] Large Power Intervenors Post Hearing Br. at 7-8 (Sep. 12, 2017) (eDocket No. 20179-15470-02).

from Keetac in the rate case, and then calculate the difference between the total value of those increased sales and the value of the refund in the EITE Docket.[18] LPI specifically noted that:

> State law specifically provides that the cost of the EITE credit cannot be passed along to EITE customers. If the increased sales revenues from the Keetac facility are shifted to the EITE Docket, the benefit of those increased sales will be passed along as a credit to only the Company's non-EITE, non-low-income customers. As a direct result, the value of the EITE credit to EITE customers would be diminished. In other words, all customers, including EITE customers and low-income customers would be forced to bear a higher than necessary rate increase in this proceeding, of which only non-EITE, non-low-income customers would benefit.

Based on the Commission's Rate Case Order, these concerns remain as real today as they were when LPI initially raised them.

Despite the concerns raised by LPI in both dockets and notwithstanding its attempt to create a representative test year, the Commission's Order continues the unlawful interpretation of the EITE Statute. In the Commission's Order, it states

> the Commission agrees that (1) the Company's test year should reflect the full annualized amount of sales revenue for Keetac, *and* (2) the net test year revenue amount must also reflect that those revenues are subject to the requirement that certain increased revenues must be separately tracked and are subject to offset or refund under Minn. Stat. § 216B.1696 subd. 2(d).[19]

To be clear, LPI respectfully objects to the second adjustment.

The EITE Statute requires that the tracker in subdivision 2(d) 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. Using the tracker, the costs or refunds (not both) are measured by the difference in revenue between what "*would have been collected*" under the electric utility's applicable standard tariff and the EITE rate schedule. The language used by the Legislature demonstrates that it intended a comparison of revenue based on actual consumption,

[18] Large Power Intervenors Exceptions to the Findings of Fact, Conclusions and Recommendations of the Administrative Law Judge at 9-12 (Nov. 22, 2017) (eDocket No. 201711-137659-02) ("Exceptions").
[19] *The Commission's Rate Case Order* at 52 (emphasis in original).

not historical usage. The Legislature chose conditional language—would have been collected—to describe the baseline against which costs or savings are measured. The amount that "would have been collected" in 2017 under the standard tariff rate can only be determined by multiplying usage (including Keetac) by the standard tariff rate. It is not possible to calculate the amount that "would have been collected" in 2017 by ignoring Keetac's operations and simply repeating 2016 revenue. The Legislature did not instruct the utility to compare the amount "collected before the EITE rate schedule" or "in a prior year." By creating an unlegislated "baseline year" in the EITE Docket, the Commission created a false comparison between revenue in 2016 (a year when Keetac was idled) and 2017 when Keetac resumed operations. In so doing, the Commission is forcing an apples-to-oranges comparison, not the apples-to-apples tracker that the Legislature mandated. By continuing its error from the EITE Docket, the Commission's order overstates the Company's revenue requirement by approximately $15 million.

The Commission's actions in both dockets do not constitute minor errors of judgment: they violate Minnesota State law. As previously noted, the result of the Commission's error impacts several stakeholders. It harms EITE customers by manipulating the 2017 rate case test year and eliminating the benefit of a lower rate case revenue requirement directly caused by increased EITE customer sales volumes resulting from Keetac returning to service. It also harms low-income customers, a class the Commission consistently seeks to protect, because they will also not receive the benefit of the 2017 test year sales revenue increase. Finally, and contrary to the language of the EITE Statute, it benefits a group of customers whom neither the Commission nor the Legislature has ever found have less of an ability to pay than EITE or low-income customers, by shifting the cost of the EITE credit away from this class and back to EITE customers themselves, defying both the law and basic logic. Therefore, LPI respectfully requests that the Commission revisit and revise its previous decisions relating to the EITE credit to reach a result that comports with Minnesota State law.

C. The Commission Erred by Ignoring Cost-Based Principles in Allocating the Rate Increase

After reviewing the arguments of the parties, the ALJ recommended that the Commission "permit [the Company] to increase its revenues from each customer class with the possible

exception of large power customers…To comply with state policy driving the EITE credit, it is recommended that the large power class receive the smallest increase, *if any*."[20] The Commission ignored the ALJ's recommendations, because the ALJ relied "nearly entirely, on cost factors for its justification [which] would result in an unreasonable apportionment among the classes."[21] The Commission then reasoned that the ability to pay was an important non-cost factor that must be considered when determining revenue allocation.[22] Without acknowledging other non-cost factors and dismissing "imprecise" cost studies, the Commission arrived at its revenue allocation determination.[23]

In a recent decision, the Commission stated that it considers a variety of factors when allocating a rate increase, including:

- Equity, justice, and reasonableness, and avoidance of discrimination, unreasonable preference, and unreasonable prejudice;
- Continuity with prior rates to avoid rate shock;
- Revenue stability;
- Economic efficiency;
- Encouragement of energy conservation;
- Customers' ability to pay;
- Ease of understanding and administration; *and, in particular,*
- *Cost of service.*[24]

The particular weight given to cost of service is a long-standing principle. Indeed, the Commission specifically notes that a class cost of service study must be included in any rate case filing.[25] Yet the Commission's Order effectively renders cost of service irrelevant in its revenue allocation decision, which the Commission accomplishes in two steps. First, the Commission declined to approve any one class cost of service study. The Commission's Order states:

[20] The ALJ's Report at 127 (emphasis added).
[21] *The Commission's Rate Case Order* at 74-75.
[22] *Id.*
[23] *Id.*
[24] *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-017/GR-15-1033, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 57 (May 1, 2017) (emphasis added).
[25] *Commission's Rate Case Order* at 63 (quoting Minn. R. 7825.3400 (C)).

> The Commission concurs with Minnesota Power that the P&A method is consistent with the Company's cost characteristics and is recognized as a valid method by the *NARUC Manual* and will consider it. The Commission will also, however, consider the parties' proposed modifications, as well as the 3W 1S allocator advocated by LPI, in evaluating the Company's proposed revenue apportionment. The range of comments both supporting and opposing the Company's method further inform the record, as do the proposed modifications and alternative methods, all of which illustrate the broad nature of cost studies and difficulty in accurately determining cost causation.[26]

Second, the Commission pulls back from the historic weight it gives to cost of service. The Commission's Order states:

> In making this [revenue] apportionment, the Commission considers the totality of the evidence in the record, including evidence on cost causation and non-cost concerns such as: equity, justice, and reasonableness and the avoidance of discrimination, unreasonable preference and unreasonable prejudice; continuity with prior rates to avoid rate shock; revenue stability; economic efficiency; encouragement of energy conservation; customers' ability to pay; ease of understanding and administration; and cost of service.[27]

The Commission cannot simply make a revenue allocation decision that it believes looks about right. But that is precisely what the Commission did in this proceeding. Furthermore, and in so doing, the Commission misinterpreted the record before it.

For example, the Commission stated that is was:

> unpersuaded by the arguments of LPI, the Chamber, and Wal-Mart that the Residential class should exclusively bear the cost of the rate increase…[t]heir arguments appear to exclude meaningful consideration of non-cost factors and are premised on the assertion that a rate decrease will correct historically and inappropriately high rates for these customers. There is, however, no error in the current rate structure. To the contrary the Commission's prior rate case decisions established just and reasonable rates after full consideration of the entire record in those proceedings. The Commission now considers rate design anew, informed by cost and

[26] *Commission's Rate Case Order* at 68.
[27] *Id.* at 72.

> non-cost factors and based on the entirety of the record in this proceeding.[28]

To be clear, State law requires emphasis on class cost of service when apportioning a rate increase. But the Commission's Order appears to effectively ignore cost of service in its revenue allocation decision while ignoring the non-cost factors developed in the record by certain parties, including LPI. These factors are detailed further below.

(i) Binding Precedent Requires the Commission to be Sensitive to Cost of Service

While generally deferring to the Commission's judgment, the Minnesota Supreme Court requires the Commission to firmly establish reasoning for deviating from cost of service. The Minnesota Supreme Court stated:

> Evidence could be introduced, for example, to establish that a difference in rates based on factors other than the cost of furnishing the service to the user would be unfair, inequitable, and unreasonable in a particular situation. *The commission would then be required to evaluate the evidence so offered* together with the facts commonly known.[29]

From a legal perspective, the Commission must evaluate and incorporate all of the evidence when it decides to deviate from cost. It failed to do so here. Indeed, the Commission effectively abandoned cost of service principles, allocating the rate increase based solely on non-cost factors for which there was little to no evidence in the record to support. Without record support, it is difficult to see how the rates set by the Commission in this proceeding satisfy the just and reasonable standard set forth in section 216B.03 of the Minnesota Statutes.

As noted in the Commission's Rate Case Order, the Commission acknowledged that multiple cost studies and factors inform the record and are worthy of consideration.[30] However, the Commission's Rate Case Order does not contain an analysis of the different cost studies introduced by the parties. Without an analysis of the cost of service studies introduced, it is

[28] *Id.*
[29] *St. Paul Area Chambers of Commerce v. Minn. Public Service Commission*, 251 N.W.2d 350, 355 (Minn. 1977).
[30] *The Commission's Rate Case Order* at 68, 72.

impossible to determine which study ultimately informed the Commission's brief consideration of cost of service when determining revenue allocation.

Not selecting a cost of service study allowed the Commission to acknowledge cost without giving it significant consideration in the Commission's ultimate revenue allocation determination. Rather than select a particular cost of service methodology to inform its reasoning, the Commission merely notes that the variety of cost of service studies offered by the parties "illustrate[s] the broad nature of cost studies and the difficulty in accurately determining cost causation."[31] While LPI recognizes the complexity of cost studies and the difficult task the Commission has in selecting which methodologies are credible, the Commission failed to complete an analysis of the studies presented by the parties. Because the Commission did not commit to a specific cost study, it is impossible to ascertain which cost factors the Commission ultimately considered in its Order. It seems that the Commission essentially ignored the complexity of cost-based factors and relied on a narrow set of non-cost factors instead. Ultimately, the Commission's reliance on non-cost factors caused a drastic deviation from cost. LPI respectfully requests the Commission reconsider revenue allocation to correct the impermissible and disproportionate deviation from cost of service.

(ii) Contrary to the Commission's Order, LPI Considered Non-Cost Factors in its Revenue Allocation Proposal

In the present rate case, LPI recommended that the Residential Class bear the entire rate increase because the Residential class pays disproportionately low rates in comparison to cost while LPI customers continue to be grossly overcharged for service in relation to the group's costs. LPI's recommendation was an attempt to move each customer class closer to cost, conforming with accepted policy goals of the Commission.[32] As it did in its post-hearing reply brief, LPI will address each of the non-cost factors listed in the Commission's order.

It is undisputed that, as a result of the Company's 2008 and 2009 rate cases, base rates for the Company's large power ("LP") class increased to a greater extent than the Residential Class,

[31] *Id.* at 68.
[32] *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-017/GR-15-1033, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 57 (May 1, 2017)

despite evidence in those cases that the rates for the Residential Class were well below cost of service.[33] And, looking more broadly at the overall average delivered cost of electric energy over a longer time period (since 2005), it is undisputed that rates for the LP class have increased by over 70%, whereas rates for the residential class have increased by approximately 50%.[34] This discrepancy has existed since before the Company's 1994 rate case. On its face, it is inequitable, unjust, and unreasonable, for electric rates to not make significant movement to cost over a 25-year period. These undisputed facts are precisely the type of evidence that the Commission must consider when making its revenue allocation determination.[35] On its face, it is inequitable, unjust, and unreasonable, for electric rates to not make significant movement to cost over a 25-year period.

As a matter of fundamental fairness, the rate shock principle should not be used in this case as a shield to protect one class of customers (in this case the Residential class) to avoid correcting the rate shock experienced by another class of customers (in this case the LP class) as a result of prior cases. Furthermore, no party has demonstrated that a significant increase to residential rates would in-fact result in rate shock to the Residential class and the Commission did not cite to any such evidence in its Order.

With respect to revenue stability, shifting the unfair and unjust revenue responsibility away from industrial customers towards residential and small commercial customers would help stabilize the Company's revenue. In other words, even if there is a risk associated with the concentration of large industrial customers on the Company's system (which LPI disputes), the Company agreed during cross-examination that setting rates at cost, using a reasonable cost of service study, would help alleviate that risk.[36]

As for economic efficiency, it should be clear that significant deviations from cost would be economically inefficient. As MCC witness Mr. William Blazar testified, uncompetitive rates reduce the likelihood that global companies will allocate production to new or existing facilities in the State, which would hinder "job growth, economic development, the prosperity of

[33] Tr. Vol. 2 at 112:9 - 113:3.
[34] Tr. Vol. 2 at 116:1-22.
[35] *St. Paul Area Chambers of Commerce v. Minn. Public Service Commission*, 251 N.W.2d at 355.
[36] Tr. Vol. 1 at 34:3-15.

individuals living in the region, and tax revenues for localities."[37] No party offered evidence refuting this testimony.

With respect to energy conservation, the Department agrees that "customers need to have reasonably accurate information about the cost of electricity so they can make informed decisions about how they use electricity, or what is commonly referred to as a price signal."[38] Without accurate price signals, due to significant deviations from cost of service, rates will not be set to encourage energy conservation.

Ability to pay, like rate shock, is a principle that should be taken seriously for all customer classes, residential and large industrial customers included. Two points are worth emphasizing that demonstrate LPI's proposed revenue allocation accounts for this principle. First, it is undisputed that the Company has not offered any evidence that large industrial customers have more of an ability to pay than residential customers.[39] Second, and to protect those customers that need the most assistance, a number of parties (including the Department, AARP, the Clean Energy Organizations, the Energy Cents Coalition ("ECC") and the Fond Du Lac Band of Lake Superior Chippewa) entered into a rate design settlement ("Residential Rate Design Settlement") to resolve rate design issues to protect low-income customers.[40] Of particular import is the following quote from the ECC's brief:

> The record in this case establishes the fact that energy usage increases with household income. Multiple sources confirm this causal relationship. The record also demonstrates that low-income customers that are eligible for, but do not receive LIHEAP, use even less electricity than their LIHEAP counterparts and represent about 26% of the Company's residential customers.[41]

The Residential Rate Design Settlement apparently addresses these concerns. The Residential Rate Design Settlement states the intent is "to ensure that rates for customers with average and below average usage are lower than for high usage customers and to provide a conservation

[37] Ex. 300 at 5:8-10 (Blazar Direct).
[38] Department Post-Hearing Brief at 193.
[39] Tr. Vol. 2 at 129:10-14.
[40] ECC Post-Hearing Brief, as an attachment.
[41] ECC Post-Hearing Brief at 2 (citations omitted).

incentive to higher usage customers."[42] By incorporating LPI's proposed revenue allocation into its approval of the Residential Rate Design Settlement, the Commission would be satisfying a number of the Commission's rate design principles, including ability to pay (for both large industrial customers and residential customers that need protection), energy conservation, and cost of service.

With respect to ease of understanding, no party has offered any evidence that one revenue allocation proposal is any easier (or more difficult) to understand than another.

As for the last consideration, even the Department concedes that perfectly matching cost allocations with cost of service would occur "in an ideal world."[43] Again LPI's proposal is not to make a perfect match, but instead to address the substantial inequity of the current deviation from cost of service.

Additionally, while the Commission stated that it "now considers rate design anew"[44] without consideration of historical precedent, this is contrary to previous Commission decisions. In MP's 2009 rate case, the Commission arrived at its revenue allocation determination by considering a "recent decision authorizing a 12% rate increase for the Residential and General Service classes while holding the Large Power class to a 2.2% increase, the Commission will decline to authorize another Residential rate increase of that magnitude at this time."[45]

While the Commission's Order dismisses LPI's revenue allocation proposal because the group failed to consider non-cost factors, it is the Commission that ignored the full extent of non-cost factors introduced by *all* parties involved in this rate case. As demonstrated above, LPI cited several non-cost factors and sensitivities its members face. Therefore, LPI's recommended revenue allocation considered both cost and non-cost factors. On the other hand and despite evidence of LPI's non-cost pricing sensitivities in the record, the Commission declined to address them. Instead, the Commission reached its revenue allocation without committing to a particular cost of service methodology and by self-selecting finite non-cost factors of which the

[42] ECC Post-Hearing Brief at Residential Rate Design Settlement.
[43] Department Post-Hearing Brief at 193.
[44] *The Commission's Rate Case Order* at 74.
[45] *In the Matter of the Application of Minnesota Power of Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E-015/GR-09-1151, FINDINGS OF FACT, CONCLUSIONS, AND ORDER, at 56 (Nov. 2, 2010).

Commission placed particular significance. The Commission's revenue allocation is contrary to Minnesota State law and the Commission's own precedent. LPI respectfully requests that the Commission reconsider its revenue allocation determination to correct its flawed reasoning.

D. The Commission Erred by Denying Reasonable Rate Design Proposals

The Commission further erred by ignoring reasonable rate design approaches proposed by MP and supported by LPI – specifically with respect to the Company's Large Light and Power LLP TOU Rider proposal and the Company's proposed changes to its Large Power Incremental Production Service.[46]

(i) Time of Use Rider

In an attempt to further incentivize customers to utilize the existing LLP TOU Rider, the Company proposed an increase to the on-peak rate by approximately the same percent as the overall rate increase for the standard LLP service schedule.[47] By shifting on- and off-peak rates, LLP customers are provided with additional motivation to shift their usage to off-peak times, which implicitly provides added benefits to energy usage patterns by consuming more power during low-cost periods and less power during high-cost periods.[48] Both the OAG and the Department opposed the Company's proposal, because they believe it would be ineffective in promoting conservation.[49] However, neither party appears to have had a strong enough position on these issues to include their opposition to the LLP TOU Rider changes in their closing briefs.[50] Ultimately, the ALJ determined that the "proposal is reasonably designed to incentivize use of the LLP TOU rider…[i]f LLP customers take advantage of the rider, the on- and off-peak periods of usage will flatten out -- a benefit to the overall electric system by making it more efficient."[51] Ultimately, the Commission rejected this recommendation without regard for the analysis provided by LPI, the Company, or the ALJ, because the proposed LLP TOU Rider

[46] *The Commission's Rate Case Order* at 85.
[47] The ALJ's Report at 135.
[48] *Id.*
[49] *The Commission's Rate Case Order* at 84.
[50] The ALJ's Report at 135.
[51] *Id.*

lacked record support and [t]he Commission concurs with the Department that the proposed change does not restructure the Rider to encourage conservation."[52]

Despite the Commission's failure to consider the ALJ's conclusions, LPI continues to recommend that the Department's proposed adjustments to the Company's LLP TOU Rider be rejected. In its initial brief, the Department repeated its concern that the LLP TOU Rider could benefit some LLP customers without requiring chances in their energy use patterns.[53] However, as described in LPI's initial brief, the Department witness on this issue Mr. Zajicek agreed that the LLP TOU Rider is designed to reflect temporal differences in the Company's costs.[54] And he further agreed that, to the extent certain customers already have load characteristics that will allow them to reduce their costs by buying power in a time-of-use manner, that would not diminish the effectiveness of the price signal to customers.[55] In other words, the Department agreed that the LLP TOU Rider will accomplish the goal of encouraging customers to consume more power during low-cost periods and less during high-cost periods, whether or not any particular customer has to shift its consumption patterns in order to benefit.[56] The Department's recommendation that the LLP TOU Rider must be changed to require a shift in usage patterns of all customers is both unreasonable for accomplishing the goals of the rider and inconsistent with the statements of its own witness. For these reasons, the LPI continues to believe that the proposed LLP TOU Rider should be reevaluated based on whether it encourages customers to make efficient consumption decisions, not whether it encourages any particular customer to change its consumption behavior.[57]

Additionally, as demonstrated by witness testimony and briefing, the LLP TOU Rider was well supported in the record.[58] The Commission's contention to the contrary is simply wrong.

---

[52] *The Commission's Rate Case Order* at 85.
[53] Department Post-Hearing Brief at 200.
[54] Tr. Vol. 4 at 15:18-21.
[55] Tr. Vol. 4 at 15:22-25 - 16:1-4.
[56] Ex. 107 at 12:1-6 (Gorman Rebuttal).
[57] Ex. 107 at 11:6-8 (Gorman Rebuttal).
[58] *See* The Large Power Intervenors Initial Br. at 44-45 (Sep. 12, 2017) (eDocket No. 20179-135470-02) (on pages 44-45 LPI provides specific citations to the record in support of the Company's proposed changes to the LLP TOU Rider).

Thus, LPI requests that the Commission reconsider its Order on this matter, and reject the Department's proposal to change the LLP TOU Rider to require customer consumption changes.

(ii) Large Power Incremental Production Service Rider

The Company proposed an increase to its Large Power Incremental Production Service energy usage limit from 110 to 120 percent of each large power customer's IPS threshold.[59] The proposal would allow large power customers access to more market-based energy.[60] Additionally, it would double the quantity of demand and associated energy that may be taken without incurring demand charges.[61] The Department and OAG opposed the Company's proposed IPS tariff arguing that it unnecessarily provided the large power customers with an additional discount.[62] LPI supported the Company's proposed changes and disagreed with the notion that other customers would bear the cost burden of a discount to large power customers.[63]

The ALJ concluded that the Company's proposal was "just and reasonable."[64] In making that determination, the ALJ noted that "[e]nsuring some of [the Company's] large power customers have access to a supply of energy that assists their competitiveness in the international marketplace is one of the state's current policies. [And the Company's] proposal furthers that policy."[65] The ALJ also noted additional benefits by stating:

> There are also system benefits, which positively affect all customers. IPS is a curtailable product. As a result, the expansion of its use provides additional load curtailability on the electric grid. The impact of this is a reduction in the amount of capacity the utility must maintain to serve peak load and the associated cost of that capacity. In addition, this proposal reduces energy supply costs for many customers because IPS is served with the highest-cost energy on the system, and the cost of this energy is excluded from the firm supply used to determine the fuel clause cost for firm

[59] The ALJ's Report at 133.
[60] *Id.*
[61] *Id.*
[62] *The Commission's Rate Case Order* at 88.
[63] *Id.*
[64] The ALJ's Report at 134.
[65] *Id. citing* Minn. Stat. § 216B.1696, subd. 2.

> retail sales. As a result, the average cost for firm energy in reduced.[66]

Based on these benefits the ALJ recommended the Commission permit the Company's change.[67]

Despite the recommendation of the ALJ, the Commission rejected the Company's proposed changes to the LP-IPS Rider.[68] The proposal was rejected, because the Commission was not convinced that the LP-IPS Rider would achieve cost savings. Additionally, the Commission was "not persuaded that the combination of additional energy curtailment, along with increased consumption, achieves the goal of the LP-IPS Rider or Minnesota's energy policy goals concerning conservation and renewable energy.[69]

According the Company, the goal of the LP-IPS Rider is to encourage production among its LP customers to support "the Company's overall system with more revenues and more competitive regional industries."[70] For LP customers, the LP-IPS Rider provides for flexibility to respond to short-term opportunities.[71] All customers benefit from expansion of the LP-IPS Rider because it is a curtailable product that enables the Company to reduce the amount of capacity that it maintains to serve peak load.[72] And, as explained by both the Company and LPI, the entire cost of the LP-IPS Rider is paid for by LP customers.[73] As a result, any cost savings as a result of LP-IPS Rider expansion are to the benefit of all other customers, which the Commission's Order did not consider in its discussion of potential cost savings. Further, expanding a curtailable product like LP-IPS Rider is complimentary to broader renewable energy and efficiency goals because, as noted above, it helps avoid the need to build new capacity to serve peak load such as natural gas combustion turbines. Thus the Company, via the testimony of witnesses David McMillan and Martha Podratz, provided substantial evidence in the record that expansion of LP-IPS will have broad benefits that align with the Company's stated goals for

[66] *Id.*
[67] *Id.*
[68] *The Commission's Rate Case Order* at 89-90.
[69] *Id.* at 90.
[70] Ex. 32 at 29:2-9 (McMillan Direct).
[71] Ex. 86 at 37:10-18 (Podratz Rebuttal).
[72] Ex. 86 at 36:15-23(Podratz Rebuttal).
[73] Ex. 87 at 13-14 (Podratz Surrebuttal); Ex. 106 at 31 (Gorman Rebuttal).

the product. For these reasons, LPI believes the Commission's rejection of the LPI-IPS Rider expansion was in error and ignores the record evidence in support of this proposal.

CONCLUSION

In three principal ways, the Commission's Rate Case Order deviates from legislative intent, binding legal precedent, and the standard of just and reasonable rates. First, the Commission's action regarding the transfer of revenue from the rate case to the EITE Docket is contrary to the plain language of the statute. Second, although LPI offered substantial evidence supporting a reasonable revenue allocation determination, the Commission ignored both binding legal precedent and its own prior methodology to reach the present improper result. Finally, the Commission wrongly rejected reasonable rate design proposals made by the Company—changes to the LLP TOU Rider and the LP-IPS Rider—that would benefit specific customers enrolling in the programs and all customers generally by encouraging reductions to peak demand. Therefore, LPI respectfully requests the Commission reconsider and amend its rate case Order to comply with established legal precedent, its own prior methodology, and the general standard of just and reasonable rates.

Dated: March 30, 2018

Respectfully submitted,

STOEL RIVES LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka
Sarah Johnson Phillips
Riley A. Conlin
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402
Tele: 612-373-8800
Fax: 612-373-8881

Attorneys for Large Power Intervenors

EXHIBIT A

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

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. E015/M-16-564 **PETITION FOR RECONSIDERATION**

An *ad hoc* consortium of large industrial end users of electric energy that meet the definition of energy-intensive trade-exposed ("EITE") customers under section 216B.1696 of the Minnesota Statutes (the "EITE Statute"), consisting of ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation (collectively, "LPI-EITE"); submit this petition for reconsideration (the "Petition").

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. As of the date of this Petition, nearly two years after Minnesota Power's first petition consistent with the EITE Statute, EITE customers are not receiving an EITE rate because of the Minnesota Public Utilities Commission's (the "Commission's") misinterpretation of the EITE Statute. The procedural posture preceding this Petition is set forth below.

On November 13, 2015, Minnesota Power submitted its first petition to implement the EITE Statute in docket number E015/M-15-984 (the "Initial Petition"). On February 11, 2016, the Commission met to consider the matter.[1] After considering the arguments from the parties, the Commission voted to deny the Initial Petition without prejudice.[2] On June 30, 2016,

[1] *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*, Docket No. E015/M-15-984, ORDER DENYING PETITION WITHOUT PREJUDICE, at 2 (March 23, 2016) (hereinafter the "Initial Order").

[2] *Id*.

Minnesota Power submitted its second petition to implement the EITE Statute (the "Second Petition"), and LPI-EITE submitted supporting affidavits and information, in docket number E015/M-15-984, which the Minnesota Public Utilities Commission renumbered to E015/M-16-564. On September 15, 2016, the Commission met and orally approved Minnesota Power's proposed EITE rate. On December 21, 2016, the Commission issued its written order reflecting the decision more than 90 days earlier on September 15, 2016, approving Minnesota Power's EITE rate schedule and its corresponding rates, and specifically directing 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.[3] Multiple filings and hearings followed.

On December 30, 2016, consistent with the EITE Rate Approval Order, Minnesota Power submitted a compliance filing that included its cost-recovery proposal, various rate design alternatives, and an updated communications plan.[4] Multiple parties commented and the Commission met to consider the matter on March 9, 2017. At that time, the Commission orally approved a cost recovery mechanism, which was detailed in the April 2017 EITE Cost Recovery Approval Order as follows:

- Minnesota Power was authorized to collect a surcharge from non-EITE customers to recover the cost of providing credits to EITE customers, based upon a uniform per-kWh charge;
- Minnesota Power was directed to refund to non-EITE customers any revenue increases resulting from increased sales to customers taking service under the EITE rate schedule;
- Minnesota Power was required to report back on efforts to identify non-EITE customers who may be exempt from paying the EITE surcharge; and

[3] *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*, Docket No. E015/M-16-564, ORDER APPROVING EITE RATE, ESTABLISHING COST RECOVERY PROCEEDING, AND REQUIRING ADDITIONAL FILINGS, at 9, 12-13 (December 21, 2016) ("EITE Rate Approval Order").

[4] *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*, Docket No. E015/M-16-564, ORDER AUTHORIZING COST RECOVERY WITH CONDITIONS, at 2 (April 20, 2017) ("EITE Cost Recovery Approval Order").

- Minnesota Power was given the form and content of notice to non-EITE customers prior to collecting the EITE surcharge.[5]

On May 22, 2017, consistent with the EITE Cost Recovery Approval Order, Minnesota Power submitted its compliance filing.[6] Multiple parties commented and the Commission met to consider the matter on September 7, 2017. At that time, and as reflected in the EITE Rider Calculation Order, the Commission rejected Minnesota Power's compliance filing. In so doing, and as described in detail below, the Commission erred in two ways. First, the Commission directs a reading of the EITE Statute that fails to tie cost recovery to the tracker mandated by the EITE Statute and specifically approved by the Commission. The result of this interpretation is that Minnesota Power may either receive a windfall or under-recover costs associated with offering the EITE rate, contrary to the EITE Statute. Second, the Commission's decision effectively causes the EITE customers to pay for the cost of the EITE credit the Commission approved, in direct contradiction to the EITE Statute. As discussed below, the EITE Rider Calculation Order is contrary to the intent of the Minnesota Legislature not only as set forth in the plain language of the EITE Statute but also as confirmed by application of canons of construction. Therefore, LPI-EITE is forced to petition the Commission for reconsideration to allow the Commission to correct the errors.

II. ANALYSIS

A. Introduction

"A petition for rehearing, amendment, vacation, reconsideration or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for amendment."[7] Generally, the Minnesota Public Utilities Commission (the "Commission") reviews such petitions to determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it

[5] *EITE Cost Recovery Approval Order* at 3.

[6] *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*, Docket No. E015/M-16-564, ORDER EXCLUDING RIDER REVENUE FROM 2016 BASELINE CALCULATION AND SETTING PARAMETERS TO IDENTIFY EXEMPT CUSTOMERS, at 2 (October 13, 2017) ("EITE Rider Calculation Order").

[7] MINN. R. 7829.0300 subp. 2.

should rethink its underlying order.[8] LPI submits this Petition to raise the issue of the diminished effectiveness of the EITE credit approved in the EITE Rate Approval Order, expose an error in the EITE Rider Calculation Order, and attempt to persuade the Commission that it should rethink its decision in the EITE Rate Calculation Order. Prior to addressing these issues, this Petition will provide an overview of applicable principles of statutory construction and the terms of the EITE Statute at issue.

B. General Principles of Statutory Interpretation

The goal of interpreting statutory provisions is to "ascertain and effectuate the intention of the legislature."[9] Minnesota law specifically provides that when a statute's application is "clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."[10] In other words, "when the language of a statute is clear and unambiguous, statutory construction is neither necessary nor permitted."[11] As a result, interpretation of a statute proceeds in two steps. First, the reviewer must "look to see whether the statute's language, on its face, is clear or ambiguous."[12] If the meaning of a statute is unambiguous, the text must be interpreted "according to its plain language."[13] If, however, the meaning of the text of a statute is ambiguous, only then may a reviewer look beyond the text of the statute and "apply other cannons of construction to discern the legislature's intent."[14]

C. The Terms of the EITE Order are Clear and Unambiguous - the Legislature Directed Utilities and the Commission to Address Increasingly Uncompetitive Electric Rates for EITE Customers

The EITE Statute clearly states the intent of the Legislature: "It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed

---

[8] *See e.g., In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-13-868, ORDER DENYING PETITIONS FOR RECONSIDERATION, pg. 1 (July 13, 2015).

[9] *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (quoting MINN. STAT. § 645.16).

[10] MINN. STAT. § 645.16.

[11] *State ex rel. Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

[12] *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted).

[13] *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) ("If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language.") (citation omitted).

[14] *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (citing MINN. STAT. § 645.16.

customers."[15] "To achieve that objective," certain utilities may offer "EITE rate" options to EITE customers, which rate options include, but are not limited to "fixed-rates, market-based rates, and rates to encourage utilization of new clean energy technology" under an "EITE rate schedule."[16] Subdivision 2(d) of the EITE Statute sets the procedure by which a utility offering EITE Rates under an EITE Rate Schedule may recover resulting costs or refund savings:

> Upon approval of any EITE rate schedule, the utility *shall* create 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*. In its next general rate case or through an EITE cost recovery rate rider between general rate cases, 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. The utility *shall not* recover any costs or refund any savings under this section from any energy-intensive trade-exposed customer or any low-income residential ratepayers as defined in Minnesota Statutes, section 216B.16, subdivision 15.[17]

The first sentence in this subdivision creates the procedure for tracking revenue costs or savings, and it informs the interpretation of the next two sentences. In other words, in order to measure and set the utility's obligation to refund increased revenues and the utility's ability to recover any costs (including reduced revenues), the utility must look to the statutorily mandated tracker that measures "the difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule." The plain language of the statute and the canons of construction both demonstrate that application of the tracker is the only way to calculate the amount of costs that the utility shall recover and savings that a utility shall refund "associated with providing service to a customer under an EITE rate schedule" consistent with Minnesota law. Those costs or refunds shall not be recovered from or refunded to any EITE customer, or low-income residential customer. The EITE Rider Calculation Order violates both the cost calculation and cost recovery portions of the EITE Statute.

[15] MINN. STAT. § 216B.1696 subd. 2(a).
[16] MINN. STAT. § 216B.1696 subd. 2(a).
[17] MINN. STAT. § 216B.1696 subd. 2(d) (emphasis added).

1. The Plain Meaning of the EITE Statute Requires Use of the Mandated Tracker to Determine Costs and Savings to the Utility, While Also Precluding Cost Recovery from EITE Customers

"The touchstone for statutory interpretation is the plain meaning of a statute's language."[18] When interpreting a statute, a reviewer must "first look to see whether the statute's language, on its face, is clear or ambiguous."[19] "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation."[20] Words and phrases in a statute must be assigned "their plain and ordinary meanings" unless otherwise defined in the statute[21] Further, when interpreting the plain meaning of a statute, the reviewer must "read the statute as a whole and give effect to all of its provisions"[22] such that "no word, phrase, or sentence should be deemed superfluous, void, or insignificant."[23]

The EITE Rider Calculation Order, ignores the first sentence of subsection 2(d), which creates a mandatory tracker "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." The tracker sets forth a simple equation: the difference between revenue that would have been collected under the standard tariff (e.g., Minnesota Power's Large Power tariff) and revenue collected under the EITE rate schedule. Revenue means "gross income or gross receipts,"[24] 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. 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. And it would be unreasonable for the Commission to interpret the EITE Statute in such a manner. The only reasonable interpretation is application of the simple equation set forth above.

---

[18] *ILHC of Eagan, LLC v. Cnty. of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing MINN. STAT. § 645.16).

[19] *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (citing *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)).

[20] *Lakes Area Bus. Ass'n v. City of Forest Lake*, 842 N.W.2d 320, 323 (Minn. Ct. App. 2014) (quoting *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)).

[21] *Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267, 273 (Minn. 2017) (citation omitted); *see* MINN. STAT. § 645.08(1).

[22] *Conga Corp. v. Comm'r of Revenue*, 868 N.W.2d 41, 46 (Minn. 2015) (citing *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012)).

[23] *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015) (citations and alteration omitted).

[24] *Black's Law Dictionary* (10th ed. 2014).

Furthermore, the Legislature clearly expressed its intent that recovery of costs (and refund of increased revenues) "associated with providing service to a customer under an EITE rate schedule" cannot come from EITE customers. The term "associate" means "to connect or join together; combine; link"[25] and thus such costs and refunds are those costs and refunds connected to an EITE Rate Schedule, which under the EITE Statute's definitions, means the rate schedule setting forth the terms of service of a utility offering an EITE Rate. Here again, the EITE Statute is unambiguous—the only reasonable interpretation is to ensure both EITE customers and low-income customers do not pay "any costs" associated with an EITE rate.

The Commission cannot deviate from this plain language for two reasons. First, doing so would be an improper enlargement of its statutorily granted powers. Second, doing so would be inconsistent with canons of statutory interpretation.

2. Longstanding Precedent Precludes the Commission from Enlarging its Power Under the Guise of Statutory Interpretation

The Supreme Court of Minnesota has long held that the Commission is a creature of statute, possessing only those powers expressly granted by the legislature. In 1985, the court noted:

> [i]t is elementary that the Commission, being a creature of statute, has only those powers given to it by the legislature. The legislature states what the agency is to do and how it is to do it. While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.[26]

Furthermore, "Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's power beyond that which was contemplated by the legislative body."[27] When there is no ambiguous language to construe, courts will look to the "necessity and logic" of the situation.[28] At the same time, the general rule of a reviewing court is to "resolve any doubt about

[25] The American Heritage Dictionary, Second College Ed. 1982

[26] *Peoples Natural Gas Co. v. Minn. Pub. Util. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985) (citation and internal quotation marks omitted).

[27] *Id*. (quoting *Waller v. Powers Dep't Store*, 343 N.W.2d 655, 657 (Minn. 1984)).

[28] *Id*.

the existence of an agency's authority *against* the exercise of such authority."[29] Here the Legislature set forth the specific mechanisms and criteria for cost recoveries and refunds; it did not vest the Commission with the authority to create a different method. For this additional reason, reconsideration of the EITE Rider Calculation Order is warranted.

3. Canons of Statutory Construction Confirm the Plain Meaning of the EITE Statute Consistent With LPI-EITE's Reading

Further, even if the Commission believes the language is ambiguous, longstanding canons of interpretation for ascertaining legislative intent in an ambiguous statute support LPI-EITE's reading. If, and only if, the meaning of a statute is ambiguous, a reviewer may "examine factors outside the language of the statute to determine legislative intent" provided that the reviewer examines "the statute as a whole so that no word or phrase is superfluous."[30] The Legislature has set forth a nonexclusive list of factors that a reviewer may consider to determine legislative intent: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute.[31] Several are instructive here.

First, the occasion and necessity for the law and the circumstances under which it was enacted accord with the plain language and confirm that LPI-EITE's reading is correct. The law was passed in 2015 in the context of the idling of the Keetac mine in May 2015 and the closure of Magnetation's taconite-processing plant in April 2015, with additional idling and closures threatened. Because energy costs account for a substantial portion of costs for EITE customers (25% or more of the overall cost of production), the Legislature acted to assist those employers in remaining competitive—and open—in a global marketplace.

Second, the purpose of the EITE statute in light of the problem the Legislature sought to remedy and the object that the Legislature sought to obtain not only accord with LPI-EITE's

---

[29] *In re Qwest's Wholesale Serv.*, 702 N.W.2d 246, 258 (Minn. 2005) (emphasis added) (citing *In re N. States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987)).

[30] *A.A.A. v. Minn. Dep't of Human Servs.*, 832 N.W.2d 816, 822 (Minn. 2013).

[31] *Sleiter v. Am. Family Mut. Ins. Co.*, 868 N.W.2d 21, 27 (Minn. 2015); *see* MINN. STAT. § 645.16.

reading but also are undermined by the EITE Rider Calculation Order. Courts have "routinely looked to enacted policy statements while interpreting statutes."[32] Indeed, "it is not merely appropriate to consider the legislature's policy statement when interpreting the recreational-use statute, but a court is specifically directed to give the policy statement reasonable meaning and not render it superfluous."[33] Here the Legislature expressed the policy of the State in clear and certain terms: "It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers."[34] Thus, any construction of the statute must be in accordance with the stated policy. The statute gives effect to this policy by ensuring that any costs or refunds resulting from a difference in revenue between what EITE customers would have paid under the standard tariff and what EITE customers paid under the EITE rate schedule must not impact EITE customers (or low-income customers).

Third, the mischief to be remedied is uncompetitive electric rates for EITE customers, which has been driven in part by State energy policy and in part by the Commission's decisions in utility rate cases. For too long, rates for large industrial customers on Minnesota Power's system have been set inappropriately high in order to subsidize rates for residential and smaller customers, making their respective rates too low. As of Minnesota Power's 1994 rate case, the Commission noted "[t]he Company's cost studies show that an 82.5% increase would be required to bring residential rates to cost; the Department's cost studies show that a 100% increase would be required."[35] Although the Commission did not come close to eliminating the subsidy in that case, it did acknowledge that its "ability to place more responsibility for total system costs on large ratepayers is at or near its limits."[36]

Not surprisingly, when Minnesota Power returned roughly 14 years later for its next rate case, rates for the residential class significantly deviated from cost of service. In its order in Minnesota Power's 2008 rate case, the Commission noted "the Company argued that its present

---

[32] *Ouradnik v. Ouradnik*, 897 N.W.2d 300, 305 (Minn. Ct. App. 2017), review granted (July 18, 2017) (collecting cases).

[33] *Id.*

[34] MINN. STAT. § 216B.1696 subd. 2(a).

[35] *In the Matter of the Application of Minnesota Power for Authority to Change Its Schedule of Rates for Retail Electric Service in the State of Minnesota*, Docket No. E-015/GR-94-001, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 69 (Nov. 22, 1994).

[36] *Id*. at 70.

CCOSS showed that it would take a 42 percent rate increase for residential customers to eliminate the subsidy provided by the Large Power customers."[37] Although the Commission again made modest movement towards cost, the subsidy was not eliminated.

As a result, when Minnesota Power filed its 2009 rate case, the results of its CCOSS again showed a significant increase was warranted for the residential class. On the basis of its initial filing, Minnesota Power's CCOSS showed an increase of 29.5% was needed to conform to cost of service.[38] Rather than continuing to move towards cost of service, the Commission significantly deviated from cost and forced the LP class to pay $39.1 million of the ultimately approved $54.1 million increase, which was more than the cost of service increase at Minnesota Power's initial proposed rate increase at $70.5 million.[39] The result of these recent decisions, as well as those in cost recovery riders, is that electric rates for Minnesota Power's EITE customers have increased by over 70% since 2005.[40] The initial EITE rate approved by the Commission is a modest step forward in addressing this mischief. But uncompetitive electric rates for EITE customers are not even partially addressed if the effectiveness of the EITE rate is watered down in application or if Minnesota Power is forced to suspend/terminate the EITE rate because of cost recovery issues.

Fourth, the consequences of the Commission's particular interpretation of the statute lead to results inconsistent with the EITE Statute's language, purpose, and intent. As stated in detail above, any interpretation contrary to the plain meaning of the statute leads to consequences unintended by the Legislature.

---

[37] *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota*, Docket No. E-015/GR-08-415, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 66 (May 4, 2009).

[38] *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota*, Docket No. E-015/GR-09-1151, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 52 (Nov. 2, 2010).

[39] *Id*. at 52, 57.

[40] Compare *In the Matter of Minnesota Power's Petition for Approval of the Boswell 3 Environmental Improvement Rider (Boswell 3 Rider)*, Docket No. E-015/M-06-1501, PETITION FOR APPROVAL, at 16 (Jan. 29, 2007) (noting average large power rate of 3.846 cents/kWh as of 2005); with *In the Matter of Minnesota Power's Renewable Resources Rider and 2017 Renewable Factor*, Docket No. E-015/M-16-776, INITIAL PETITION, at 24 (Nov. 2, 2016) (noting average large power rate of 6.603 cents/kWh). Moving from 3.846 cents/kWh to 6.603 cents/kWh is an increase of approximately 71.7%.

Finally, in light of the dire economic realities facing EITE customers in Minnesota and the Legislature's expressed intent to assist those large employers, without regard to effects on other ratepayers,[41] the canon of construction related to remedial statutes further weighs in favor of LPI-EITE's reading. Simply stated, "statutes which are remedial in nature are entitled to a liberal construction, in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute."[42] The EITE statute remedies non-competitive power rates for EITE customers and is designed to benefit and retain such large ratepayers, and thereby benefit the utility and State of Minnesota. As explained below, the EITE Rider Calculation Order harms two of the groups of customers the EITE Statute was designed to protect; the utility and the EITE customer.

D. The EITE Rider Calculation Order Erroneously Limits Minnesota Power's Cost Recovery and Impermissibly Requires the EITE Customers to Share in the Cost of the Credit the Commission Approved

The Commission stated that it was acting to avoid "depriv[ing] EITE customers of the full benefit of the EITE rate as intended by the statute"[43] by adopting the OAG and Department's alterations. In adopting those alterations, however, the Commission did just that: it deprived EITE customers of the full benefit of the EITE rate by impermissibly shifting onto EITE customers the cost recovery for the utility.

As further discussed above, the statute requires that the tracker in subdivision 2(d) 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. Using the tracker, the costs and refunds are measured by the difference in revenue between what "*would have been collected*" under the electric utility's applicable standard tariff and the EITE rate schedule. The language used by the Legislature demonstrates that it intended a comparison of revenue based on actual consumption, not historical usage. The Legislature chose conditional language—would have been collected—to describe the baseline against which costs or savings are measured. The amount that "would have been collected" in 2017 under the standard tariff rate can only be determined by

[41] *See* MINN. STAT. § 216B.1696 subd. 2(b) (specifically precluding application of several sections of Chapter 216B, including sections 216B.02 and 216B.07).

[42] *Hansen v. Robert Half Int'l, Inc.*, 813 N.W.2d 906, 916 (Minn. 2012).

[43] Oct. 13, 2017 Order.

multiplying usage (including Keetac) by the standard tariff rate. It is not possible to calculate the amount that "would have been collected" in 2017 by ignoring Keetac's operations and simply repeating 2016 revenue. The Legislature did not instruct the utility to compare the amount "collected before the EITE rate schedule" or "in a prior year." By creating an unlegislated "baseline year" the Commission created a false comparison between revenue in 2016 (a year when Keetac was idled) and 2017 when Keetac resumed operations. In so doing, the Commission is forcing an apples-to-oranges comparison, not the apples-to-apples tracker that the Legislature mandated. As a result, the EITE Rider Calculation Order is in clear error and contrary to the statute.

Further, the EITE Rider Calculation Order has an impermissible effect of causing EITE customers to pay for the costs of the very EITE rate schedules that the Legislature enacted to bolster those customers' competitiveness through cost savings. As noted in its August 11, 2017, comment in this docket, Minnesota Power previously reduced its rate case revenue deficiency by $16.4 million to account for increased sales levels and revenues.[44] If all or a majority of that revenue is passed through to non-low-income, non-EITE customers in this docket, that will necessarily result in an increased revenue deficiency in the rate case (i.e., a reversal of the reduction previously applied) to avoid double counting. In other words, sales revenue to Minnesota Power that, because a rate case is currently pending, should flow to the benefit of all of Minnesota Power's customers, is now under the EITE Rider Calculation Order flowing through to the exclusive benefit of non-low-income non-EITE customers. Therefore, the credit that EITE customers are receiving in this docket is at least partially offset by the revenue deficiency increase in the rate case docket.

The result of this error is fourfold. First, it harms the utility by potentially limiting its ability to recover costs associated with providing service under the EITE Rate Schedule. Second, it harms EITE Customers by manipulating the 2017 rate case test year and eliminating the benefit of a lower rate case revenue requirement directly caused by increased EITE customer sales volumes. Third, it harms low-income customers because, as non-EITE credit paying

[44] *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*, Docket No. E015/M-16-564, MINNESOTA POWER SUPPLEMENTAL COMMENT (August 11, 2017).

customers, they will also not see the benefit of the 2017 test year sales revenue increase. Finally, it benefits a group of customers whom neither the Commission nor the Legislature has ever found have less of an ability to pay than EITE or low-income customers. There simply is no legal basis to support the Commission's interpretation of the EITE Statute in the EITE Rider Calculation Order.

III. CONCLUSION

The EITE Rider Calculation Order is contrary to the plain language of the EITE Statute, constitutes an impermissible enlargement of Commission power, and runs afoul of canons of construction. LPI respectfully requests the Commission reconsider and amend its EITE Rider Calculation Order to comply with the clear and unambiguous terms of the EITE Statute to implement the energy policy of the State to ensure competitive electric rates for EITE customers.

Date: November 2, 2017

Respectfully submitted,

STOEL RIVES LLP

/s/ Andrew P. Moratzka
Andrew P. Moratzka (0322131)
Sarah Johnson Phillips (0390166)
Todd M. Winter (0390324)
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402
Tele: 612-373-8822
Fax: 612-373-8881

Attorneys for LPI-EITE

94501606.6 0064591-00013