

**BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION**

121 7th Place East, Suite 350

St. Paul, MN 55101-2147

---

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

PUC Docket No. E-017/M-16-533

**COMMENT**

---

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 forest products companies Cass Forest Products; Norbord, Inc.; and Potlatch Corporation (collectively, “OTP-EITE”); submit this comment in response to the Minnesota Public Utilities Commission’s (the “Commission’s”) Notice of Comment Period on EITE Rate Schedule for Otter Tail Power dated July 1, 2016 (the “Notice”), regarding the Petition by Otter Tail Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider (the “Petition”).

**I. INTRODUCTION**

Otter Tail Power submitted the Petition on June 27, 2016. In conjunction with the Petition, OTP-EITE submitted its supportive comment (the “OTP-EITE Initial Comment”) along with sworn affidavits of each OTP-EITE member expected to benefit from Otter Tail Power’s proposed EITE rate. These affidavits provide details of OTP-EITE members’ internal operations, energy usage and conservation efforts, competitiveness challenges, and significant contributions to the region and State. OTP-EITE now submits this supplemental comment in order to address the questions contained in the Notice.

## II. ANALYSIS

**A. Does Otter Tail Power’s proposed rate for EITE customers comply with Minn. Stat. § 216B.1696, including the types of customers eligible for the rate, the criteria for qualification for the rate, the individual design elements of the rate, and the specific rate option proposed?**

The proposed rate in Otter Tail Power’s Petition complies with all requirements of Minn. Stat. § 216B.1696. The EITE statute clearly enumerates the types of operations that are considered EITE customers, and all three OTP-EITE members are statutorily defined as EITE customers under Minn. Stat. § 216B.1696, subd. 1(c)(2). Otter Tail Power’s EITE rate offering also meets the qualifications for an EITE rate under the statute, which gives eligible utilities broad discretion to “propose various EITE rate options within their territory under an EITE rate schedule.”<sup>1</sup> While the statute lists several suggestions for possible EITE rate options, it in no way limits or restricts a utility’s authority to choose the EITE rate option that works best for the utility and its customers.<sup>2</sup> The proposed 20% discount to EITE customers thus completely conforms to the applicable statutory requirements.

**B. What criteria should the Commission use in determining whether electric rates are competitive?**

OTP-EITE submits that there are two ways to determine the competitiveness of electric rates in the EITE context. First, the Commission can compare the applicable utility’s rates and the rates paid by the EITE customers’ other similar facilities, because this comparison captures the risk that EITE customers will shift production from the applicable utility’s territory to areas with lower electric rates. OTP-EITE believes this approach was contemplated by the Commission during the previous Minnesota Power EITE proceeding, as well as other similar dockets. During the hearing in the previous Minnesota Power EITE proceeding, Commissioner Lipschultz suggested that in determining whether rates are competitive, one relevant consideration should be the rates paid by other similar facilities within the EITE customer companies, because that is where the EITE companies may be forced to shift production as a

---

<sup>1</sup> Minn. Stat. § 216B.1696, subd. 2(a).

<sup>2</sup>*Id.*

consequence of Minnesota Power's uncompetitive rates.<sup>3</sup> Furthermore, Commission decisions in similar proceedings also appear to follow the first approach. In a past docket concerning whether Gerdau Ameristeel US, Inc., was subject to effective competition in Xcel Energy's territory pursuant to Minn. Stat. § 216B.162, the Commission found in the affirmative because a similar Gerdau facility in a different area had lower electric rates, thus exposing Gerdau's Minnesota facility to the risk of relocating operations to the other facility.<sup>4</sup> The Commission accepted the Department's recommendation that it find that Gerdau was subject to effective competition because it could shift production to another one of its facilities with lower electric rates.<sup>5</sup> The Commission has thus considered the electric rates of other facilities in a Minnesota utility customer's company to determine whether the Minnesota customer's rates are competitive.

Second, the Commission can compare the applicable utility's rates and the rates paid by the EITE customers' competitors, because this comparison captures the risk that an EITE customer's competitor will be able to undercut them on price due to lower cost inputs, thereby increasing the risk of production curtailment in Minnesota. Commissioners also signaled at the previous Minnesota Power EITE hearing that they considered this approach to be relevant to the competitiveness question by asking Wayne Brandt, Executive Vice President of Minnesota Forest Industries and the Minnesota Timber Producers Association, about which states were the main competitors for Minnesota's forest industry.<sup>6</sup>

OTP-EITE members have provided detailed information on competitiveness under both approaches described above. Norbord has provided specific information about its similar North American facilities,<sup>7</sup> and Potlatch has provided a study of the electric rates of its main competitors, which also applies to Cass Forest Products.<sup>8</sup> The OTP-EITE Initial Comment also contains a detailed table showing Otter Tail Power's industrial rates since 2010 compared with

---

<sup>3</sup> *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E015/M-15-984, HEARING TRANSCRIPT at 49-54 (February 11, 2016).

<sup>4</sup> *In the Matter of the Petition of Northern States Power Company for Approval of a Competitive Market Rider with Gerdau and a Revised Competitive Market Rider Tariff*, Docket No. E-002/D-12-163, ORDER, at 4-5 (April 30, 2012).

<sup>5</sup> *Id.*

<sup>6</sup> *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E015/M-15-984, HEARING TRANSCRIPT at 149-152 (February 11, 2016).

<sup>7</sup> *The Affidavit of Jack Wallingford* at ¶10.

<sup>8</sup> *The Affidavit of Peter Aube* at ¶¶16-17.

several of the states where OTP-EITE's competitors are located.<sup>9</sup> OTP-EITE believes that this information demonstrates that while Otter Tail Power's industrial rates are competitive compared with other Minnesota utilities, its rates are increasingly uncompetitive with the utilities most relevant to OTP-EITE's operations.

**C. What criteria should the Commission use to evaluate whether Otter Tail Power's proposed EITE rate schedule provides a net benefit to the utility or to the state as required by Minn. Stat. § 216B.1696, subd. 2(b)? Has Otter Tail Power demonstrated that its proposed EITE rate schedule provides such net benefit?**

In the OTP-EITE Initial Comment and summarized below, OTP-EITE describes the criteria that the Commission should consider when conducting the net-benefits test.<sup>10</sup> Again, OTP-EITE believes the standard for the Commission is that the EITE rate proposal must be reasonably likely (not certain) to result in a net benefit to the utility or the State, as evidenced by verified pleadings or sworn testimony that quantifies costs and benefits to the extent practicable, all of which is considered in light of the specific policy directive to ensure competitive electric rates for EITE customers. Together, the Petition and OTP-EITE Initial Comment demonstrate that implementation of the Otter Tail Power's proposed EITE rate would result in a net benefit to both Otter Tail Power and the State.

As the OTP-EITE Initial Comment shows, the benefits of Otter Tail Power's EITE rate offering overwhelmingly outweigh the costs, thereby resulting in a net benefit to both the utility and the State. OTP-EITE lays out the relevant criteria for the net-benefits test in the OTP-EITE Initial Comment.<sup>11</sup> OTP-EITE members contribute to the employment of over 900 individuals, with tax payments of \$3.7 million and charitable contributions of \$440,000, not to mention the environmental and community stewardship exhibited by OTP-EITE members.<sup>12</sup> The EITE rate also benefits Otter Tail Power by increasing the likelihood that OTP-EITE members stay on the system, at a value of approximately \$2 million per year.<sup>13</sup> The sworn testimony from each OTP-EITE member is that the EITE rate proposed in the Petition is reasonably likely to be one of the

---

<sup>9</sup> *OTP-EITE Initial Comment* at Table 1.

<sup>10</sup> *OTP-EITE Initial Comment*, at 12-14.

<sup>11</sup> *Id.*

<sup>12</sup> *MFV/TPA Affidavit*, at 5 ¶20; *Potlatch Affidavit*, at 4-5 ¶¶10 & 12; *Cass Forest Products Affidavit*, at 2 ¶7; *Norbord Affidavit*, at 2-3 ¶8.

<sup>13</sup> *Petition*, at 20.

factors that could protect the viability of these mills.<sup>14</sup> Therefore, approving the EITE rate is reasonably likely to result in the continued very significant contributions of EITE members to the State and Otter Tail Power.

By contrast, the costs to the State that could result from the EITE rate are relatively minor. Otter Tail Power's rates for non-EITE customers will not be significantly impacted as a result of the EITE rate. But the potential cost to customers if OTP-EITE members left Otter Tail Power's system is well over double the cost of the full 20% EITE rate discount. Lastly, the EITE rate is a job-retention measure and is not designed to incentivize increased production. Accordingly, there are no expected negative effects on the environment or increased generation and/or transmission costs. In sum, the considerable benefit of the full 20% EITE rate discount comes at a relatively small cost.

OTP-EITE acknowledges that increasing the rates of non-EITE customers is not to be taken lightly. But the clear and unambiguous policy directive is to ensure competitive electric rates for EITE customers, and the Legislature understood that costs would inevitably shift to other customers to achieve this goal.<sup>15</sup> Otter Tail Power and OTP-EITE balanced this policy directive, the proposed EITE rate, and the competitiveness concerns to achieve more competitive electric rates for OTP-EITE, rates which are reasonably likely to help their respective operations. Furthermore, the evidence submitted in the Petition and the OTP-EITE Initial Comment demonstrate that the millions of dollars in tax revenue and charitable contributions, hundreds of jobs, and revenue to Otter Tail Power are a benefit to the State and Otter Tail Power. Netted against the small rate increase for Otter Tail Power's non-EITE customers, it is abundantly clear that Otter Tail Power's full 20% EITE rate discount would result in a net benefit to the State and Otter Tail Power. Thus, the Commission should approve Otter Tail Power's full 20% EITE rate discount.

**D. Are there additional or alternative rate options for EITE customers that would better meet the policy goals of the statute?**

Otter Tail Power's proposed EITE rate option meets the policy goals of the statute, and no other rate options need to be considered at this time. The overriding policy goal of the EITE

---

<sup>14</sup> *Potlatch Affidavit*, at 8 ¶22; *Cass Forest Products Affidavit*, at 5 ¶21; *Norbord Affidavit* at 6 ¶18.

<sup>15</sup> Minn. Stat. § 216B.1696 subd. 2.

statute is clear: “to ensure competitive electric rates for energy-intensive trade-exposed customers.” As the OTP-EITE Initial Comment shows, Otter Tail Power’s proposed 20% discount for EITE customers furthers this goal by putting OTP-EITE members in a competitive position relative to similar facilities in other states.<sup>16</sup> Most importantly, Otter Tail Power’s proposed EITE rate provides a net benefit to the utility and the State, and therefore meets the standard set in the EITE statute.

OTP-EITE respectfully notes that the EITE statute is structured in such a way that it is the utility’s role to develop and support the particular rate offering it chooses to propose, and it is the Commission’s role to approve that rate offering if the Commission determines that the rate provides a net benefit to the utility or the State. To be sure, OTP-EITE welcomes suggestions for how Otter Tail Power’s rate offering could be improved in the future to meet other policy goals. But OTP-EITE submits that the focus at this stage should be on the net-benefit analysis for the EITE rate and not on other possible rate options. There are presumably myriad potential options that would fit within the spirit of the EITE Statute. But the existence of such alternatives is not a question presently before the Commission. Instead, if the Commission finds that the proposed rate provides a net benefit to the utility or the State, the EITE statute requires that the Commission approve the rate, regardless of other possible rate options.

**E. Does OTP’s action on the deposit of \$10,000 for low-income funding comply with Minn. Stat. § 216B.1696, subd. 3, and is it reasonable?**

Otter Tail Power’s deposit for low-income funding is reasonable and complies with the EITE statute. The EITE statute requires that a utility filing a petition for approval of an EITE rate schedule “must deposit \$10,000 into an account devoted to funding a program approved by the commission under Minnesota Statutes, section 216B.16, subdivision 15. The funds shall be used to expand the outreach of the commission-approved affordability program.”<sup>17</sup>

In its Petition, Otter Tail Power explains that it “does not currently administer a Commission-approved affordability program under Minnesota Statutes Section 216B.16,

---

<sup>16</sup> *OTP-EITE Initial Comment* at 9-12.

<sup>17</sup> Minn. Stat. § 216B.1696.

subdivision 15.”<sup>18</sup> To comply with the statutory requirement, Otter Tail Power proposes to provide \$10,000 to the Great Plains affordability program administered by the Salvation Army of Roseville, Minnesota, which is a qualifying program under Minn. Stat. 216B.16, subdivision 15.<sup>19</sup> Otter Tail Power’s deposit for low-income funding is thus reasonable and complies with the EITE statutory requirement.

**F. Should the Commission allow OTP to implement a cost recovery rider prior to its next general rate case? How does this petition affect the current OTP rate case (Docket 15-1033)? Should OTP be required to file additional comments in its rate case explaining how its EITE proposal will affect other customers and their rates? Is it possible or reasonable to integrate OTP’s EITE proposal into tariffs and base rates in its current rate case (Docket 15-1033)? Should the Commission consider OTP’s EITE petition as part of OTP’s pending general rate case (Docket 15-1033), or as part of OTP’s next general rate case?**

The Commission should allow Otter Tail Power to implement a Cost Recovery Rider prior to the resolution of its pending general rate case, because that is the only option that avoids confusion in the rate case and complies with the 90-day statutory deadline in the EITE statute.

As Otter Tail Power states in its letter filed in this docket and dated July 21, 2016 (the “OTP Letter”), the proposed EITE rate does not affect Otter Tail Power’s pending rate case because the discount is based on applicable rates, and the discount thus fluctuates with base rates. OTP-EITE strongly agrees with Otter Tail Power that “the rate discount and Rider recovery can be, and should be, set independently in this EITE proceeding.”<sup>20</sup> Requiring Otter Tail Power to file additional comments in the pending rate case or integrating the EITE rate into base rates will only serve to complicate and confuse the rate case, where intervenor direct testimony is due on August 16, 2016.

The EITE statute sets a statutory deadline of 90 days for a final determination of an EITE proposal.<sup>21</sup> As the OTP Letter points out, any effort to integrate the proposed EITE rate into the pending rate case “would delay the determination in this matter beyond the time requirements

---

<sup>18</sup> *Petition*, at 26.

<sup>19</sup> *Petition*, at 26. OTP-EITE mistakenly listed the incorrect affordability program in the OTP-EITE Initial Comment.

<sup>20</sup> *OTP Letter*, at 1.

<sup>21</sup> Minn. Stat. § 216B.1696, subd. 2(c).

specified in the statute.”<sup>22</sup> It would also clearly violate the 90-day statutory deadline to defer consideration of the proposed EITE rate to Otter Tail Power’s next rate case, which would delay a determination of this matter indefinitely. OTP-EITE agrees with Otter Tail Power that a cost recovery rate rider is the “appropriate” method for implementing the EITE rate, and that “EITE Petition should not in made part of [Otter Tail Power’s] pending general rate case and should not be deferred to Otter Tail’s next general rate case.”<sup>23</sup>

### **III. CONCLUSION**

The overwhelming benefits of potentially preserving the viability of OTP-EITE members far outweigh the relatively negligible costs of the 20% EITE rate discount as set forth in the Petition. OTP-EITE respectfully requests that the Commission approve Otter Tail Power’s full 20% EITE rate discount no later than September 26, 2016, because doing so would result in a net benefit to Otter Tail Power and the State of Minnesota.

---

<sup>22</sup> *Id.* at 2.

<sup>23</sup> *Id.* at 3.



Dated: August 1, 2016

Respectfully submitted,

STOEL RIVES LLP

/s/ Andrew P. Moratzka

Andrew P. Moratzka

Emma J. Fazio

33 South Sixth Street, Suite 4200

Minneapolis, MN 55402

Tele: 612-373-8800

Fax: 612-373-8881

Attorneys for OTP-EITE

87023143.2 0057064-00001