

February 5, 2018

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E017/M-17-257

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

Petition by Otter Tail Power Company for Approval of an Energy-Intensive, Trade-Exposed Customer Rate: Cost Recovery.

The petition was filed on December 18, 2017 by:

Bryce C. Haugen
Senior Rates Analyst
Otter Tail Power Company
15 South Cascade Street
PO Box 496
Fergus Falls, MN 56538-0496

The Department recommends that the Minnesota Public Utilities Commission **reject the petition** and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEVE RAKOW
Analyst Coordinator

SR/lt
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E017/M-17-257

I. INTRODUCTION

A. FIRST PETITION

On June 27, 2016, in Docket No. E017/M-16-533 Otter Tail Power Company (OTP or the Company) petitioned the Minnesota Public Utilities Commission (Commission) for approval of the Company's *Petition by Otter Tail Power Company for Approval of Energy-Intensive, Trade-Exposed Customer Rate* (EITE Petition). The Petition proposed to implement Minnesota Statutes § 216B.1696 (EITE Statute), which deals with energy-intensive trade-exposed (EITE) customers. OTP proposed to create a new tariff offering a discount to EITE customers, recovering the lost revenues via a new tariff applied to non-EITE, non-low-income customers.

On June 28, 2016, Cass Forest Products Inc.; Norbord, Inc.; and Potlatch Corporation (collectively, OTP-EITE Customers) submitted comments in support of OTP's EITE Petition. Separately, the OTP-EITE Customers filed the Affidavit of Peter Aube for Potlatch Corporation, the Affidavit of David Goetz for Cass Forest Products Inc., and the Affidavit of Jack Wallingford of Norbord, Inc., all in support of OTP's EITE Petition.

On June 28, 2016, the OTP-EITE Customers submitted an amended Affidavit of Peter Aube, and an amended Affidavit of Jack Wallingford, still in support of OTP's EITE Petition.

On July 1, 2016, the Commission issued its *Notice of Comment Period on EITE Rate Schedule for Otter Tail Power*.

On July 21, 2016, OTP filed a response to the Commission's Notice above.

On August 1, 2016, comments were filed by:

- the Minnesota Department of Commerce, Division of Energy Resources (Department);
- Office of Attorney General – Residential Utilities and Antitrust Division (OAG); and
- the OTP-EITE Customers.

On August 11, 2016, reply comments were filed by OTP and the OTP-EITE Customers.

On September 13, 2016, OTP filed supplemental comments at the request of Commission Staff. On December 21, 2016, the Commission issued its *Order Denying Petition Without Prejudice* stating that “the Company’s petition lacked evidence and analysis adequate to sustain a net benefit finding” and “it is unclear whether the Company has satisfied Minn. Stat. § 216B.1696, subd. 3.”

B. SECOND PETITION

On April 3, 2017, in Docket No. E017/M-17-257, OTP petitioned the Commission for approval of the Company’s *Petition for Approval of an Energy-Intensive, Trade-Exposed Customer Rate* (Second EITE Petition). The Second EITE Petition proposed to implement the EITE Statute by creating a new tariff offering a discount to EITE customers.

On April 4, 2017, the OTP-EITE Customers submitted comments in support of OTP’s Second EITE Petition. Separately, the OTP-EITE Customers filed:

- the Affidavit of Wayne Brandt for the Minnesota Forest Industries;
- the Affidavit of David Goetz for Cass Forest Products Inc.;
- the Direct Testimony of Mark Rasmussen;
- the Affidavit of Wade Semeliss for Potlatch Corporation; and
- the Affidavit of Jack Wallingford of Norbord, Inc.

On May 5, 2017, the Department and the OAG filed comments on the Second EITE Petition.

On May 15, 2017, OTP and the OTP-EITE Customers filed reply comments.

On November 17, 2017, the Commission issued its *Order Approving EITE Rate and Establishing Cost-Recovery Proceeding* (Order). The Order:

- approved OTP’s EITE rate schedule and EITE rate as filed by the Company;
- suspended for 120 days OTP’s \$10,000 payment to the Roseville Salvation Army to give the Company the opportunity to apply for Commission approval of a low-income affordability program under Minn. Stat. § 216B.16, subd. 15;¹
- authorized the Executive Secretary to issue notices, establish procedures, and set timelines for the purposes of obtaining the information necessary to determine the reasonableness of OTP’s proposed EITE cost-recovery mechanism; and

¹ The suspension of the \$10,000 payment does not affect OTP’s ability to implement an EITE rate immediately.

- approved OTP's proposal to allow low-income customers to self-certify for exemption from the EITE surcharge.

Also, the Order stated that, "to narrow the scope of future proceedings, the Commission will provide guidance on three issues:

- (1) whether the cost-recovery surcharge should be calculated as a percent of bill or a flat per-kilowatt-hour rate;
 - a. "the Commission will direct Otter Tail to allocate the cost of the EITE discount using a flat per-kWh charge;"
- (2) whether the Company's outside attorney fees are recoverable through the surcharge;
 - a. "The Commission ... will approve Otter Tail's proposed EITE cost-recovery mechanism without the inclusion of outside attorney fees;" and
- (3) whether the Company's proposal for low-income customers to self-certify for exemption from the surcharge is reasonable;
 - a. "The Commission will approve Otter Tail's proposal to allow low-income customers to self-certify for exemption from the EITE surcharge."

C. COMPLIANCE FILING

On November 27, 2017 and November 30, 2017, OTP filed compliance filings in response to the Commission's Order. Although the Commission's Order did not address cost-recovery of the EITE surcharge, the tariff language included in the Company's November 27, 2017 compliance filing proposed a cost-recovery surcharge and specified how the surcharge would be calculated.

On December 6, 2017, the Minnesota Department of Commerce (Department) filed a letter regarding OTP's compliance filings noting that, per the Order, whether the cost-recovery surcharge should be calculated as a percent of bill or a flat per-kilowatt-hour rate was to be determined in a future proceeding.

On December 8, 2017, OTP filed a response to the Department.

On December 19, 2017, the Department filed supplemental comments regarding the compliance filings.

On January 25, 2018, the Commission issued its *Order Approving Compliance Filing with Conditions*. Specifically, the Commission approved OTP's compliance filing "on the condition that the utility re-files it after removing any language from the filing and proposed tariff indicating how the surcharge will be calculated."

On February 1, 2018, OTP refiled its compliance tariff.

D. COST-RECOVERY PETITION

On December 18, 2017, OTP filed the Company's *Petition by Otter Tail Power Company for Approval of an Energy-Intensive, Trade-Exposed Customer Rate: Cost Recovery* (Petition).

On January 5, 2018, the Commission issued its *Notice of Comment Period on EITE Cost Recovery Proposal by Otter Tail Power Company* (Notice) indicating that comments and reply comments on the Petition are due February 5, 2018 and February 15, 2018. The Notice states that the topics open for comment include OTP's December 18th submission including, in particular, its proposed cost recovery mechanism. Also, the Notice states that interested parties may offer alternative cost recovery proposals.

On January 17, 2018, the OAG filed comments on the Petition.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTE

OTP filed the Petition pursuant to the EITE Statute, which states in part:

Subd. 2. (d) 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.

In summary, subdivision 2(d) of the EITE Statute requires an account to track the change in revenues caused by the rate offerings and allows OTP to charge non-EITE and non-low-income customers (as defined in the EITE Statute) the revenue deficiency caused by the EITE rates. At this time the Commission has approved an EITE discount; the remaining issue is how to recover the discount.

B. ANALYSIS

The Department notes several potential errors in the Petition. First, Attachment 7 of the Petition contains the proposed EITE rider, which includes the proposed language for cost recovery. OTP's proposed language in Attachment 7 states:

DETERMINATION OF EITE SURCHARGE FACTOR: The EITE Surcharge shall be the quotient of the forecasted Recoverable EITE Tracker Balance, divided by projected Minnesota non-exempt retail revenue for a designated 12-month recovery period. The Surcharge shall be rounded to the nearest 0.001%.

In contrast, EITE cost recovery was recently addressed in the Commission's November 17, 2017 *Order Approving EITE Rate and Establishing Cost-Recovery Proceeding*, in Docket No. E017/M-17-257, which required that "Otter Tail's cost-recovery mechanism shall use a flat per-kWh charge." Since OTP's proposed tariff language describes a percent of retail revenue approach, the Department recommends that the Commission reject OTP's Petition for failure to comply with the Commission's order.²

Second, Attachment 3, page 1 of the Petition shows the calculated carrying charge dropping from \$2,359 in July, 2018 to \$178 in August, 2018. OTP did not demonstrate the basis for this calculation. Further, the Department was unable to even approximate this degree of change when calculating the monthly carrying charge. The Department recommends that the Commission reject OTP's Petition for failure to demonstrate the reasonableness of OTP's carrying charge calculations.

Third, the Petition indicates that a representative amount of sales to the OTP-EITE Customers was included in the Company's recent general rate case filing. OTP proposes that the baseline for the OTP-EITE Customers be set at the levels established in the rate case and indicates that the Company included those levels in the Petition's Attachment 6. In response, the Department notes that the Commission's May 1, 2017 *Findings of Fact, Conclusions, and Order* in Docket No. E017/GR-15-1033 stated:

The Commission concurs with the Department that the shortcomings in Otter Tail's sales analysis and forecasting, set forth in the attached supplementary findings, rendered the Company's testimony unreliable. And, consistent with the positions of Otter

² The Department notes that, while the Commission determined a need for further information before deciding all issues related to recovery of the EITE discount, the Commission made several determinations, including the finding that "a per-kWh charge is the most equitable means of distributing the cost of the EITE discount in this case." November 17, 2017 Order at 10.

Tail and the Department, the Commission will rely on the test-year sales and revenue analysis and figures set forth in the Department's corrected surrebuttal testimony instead.

So for purposes of this rate case, the Commission finds test-year sales of 2,640,367,131 kWh, resulting in base test-year revenues of \$173,461,633...

The Company provides no information regarding where in the rate case record the recommended baseline for the OTP-EITE Customers was taken from and why the chosen source is reasonable. The Department recommends that the Commission reject OTP's Petition for failure to demonstrate the reasonableness of the recommended baseline.

Fourth, Attachment 3, page 1 shows the inclusion of a \$10,000 Affordability Program Fee included in the tracker account as an amount to be recovered. The Department notes that Minnesota Statutes § 216B.1696 subd. 2 (d) states that:

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 EITE Statute is clear that the amount to be tracked is solely the "difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule." OTP's proposed affordability program fees have no relation to "the difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule." The Department recommends that the Commission reject OTP's Petition due to inclusion of amounts related to the affordability program fees that are not related to the difference in revenues.

III. DEPARTMENT RECOMMENDATION

The Department recommends that the Commission reject OTP's Petition; as discussed above, the petition does not comply with Commission Orders or Minnesota Statutes and does not provide a reliable basis on which to set rates.

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CERTIFICATE OF SERVICE

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce
Comments**

Docket No. E017/M-17-257

Dated this 5th day of February 2018

/s/Sharon Ferguson

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