

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of the Petition by Otter Tail
Power Company for Approval of Energy-
Intensive Trade Exposed Customer Rate

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 support of Otter Tail Power Company’s Petition for Approval of Energy-Intensive Trade Exposed Customer Rate (the “Petition”).

I. INTRODUCTION

The EITE Statute, enacted during the 2015 legislative session, sets forth a clear and unambiguous energy policy directive for the Minnesota Public Utilities Commission (the “Commission”) to implement upon a utility’s request: namely, competitive electric rate alternatives for EITE customers. Otter Tail Power submitted the Petition pursuant to this policy directive, as well as the other terms and conditions set forth in the EITE Statute, after significant deliberation and discussion with the OTP-EITE members. To be sure, OTP-EITE and Otter Tail Power worked diligently to address the Commission’s concerns expressed in response to a similar filing by Minnesota Power. In light of these concerns, as well as comments by various stakeholders regarding an abbreviated timeframe, OTP-EITE is submitting this comment, as well as the attached affidavits, in conjunction with and in support of the Petition. As explained in detail below, OTP-EITE firmly believes that the proposed per-kWh 20% discount to OTP-EITE members appropriately reflects the State’s energy policy and results in a net benefit to both Otter Tail Power and the State. OTP-EITE reserves the right to supplement this Comment with additional information as appropriate.

II. ANALYSIS

A. **Statutory Overview**

The EITE Statute is clear and unambiguous in its direction and straightforward in its implementation. The legislature clearly stated that “It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers.”¹ To achieve this objective, the legislature authorized certain investor-owned electric utilities (those with between 50,000 and 200,000 retail customers) to propose various EITE rate options, provided the utility proposing such an option also deposits \$10,000 into an account devoted to funding a low-income program.² The term “EITE rate” is defined as “the rate or rates offered by the investor-owned electric utility under an EITE rate schedule.”³ The term “EITE rate schedule” is defined as “a rate schedule under which an investor-owned utility may set terms of service to an individual or group of energy-intensive trade-exposed customers.”⁴ If an EITE rate schedule and corresponding EITE rate are proposed by an eligible utility, the Commission is bound to approve the proposal, provided the Commission finds a “net benefit to the utility or the state.”⁵ The Commission is obligated to make this determination within 90 days of when the utility files for approval of its proposal.⁶

There are thus four questions with respect to any proposal for an EITE rate schedule and corresponding EITE rate. First, whether the utility is eligible to submit the proposal. Second, whether the proposed recipients of the EITE rate schedule and corresponding EITE rate are energy-intensive trade-exposed customers. Third, whether the utility’s proposed EITE rate schedule and corresponding EITE rate fall within the broad parameters of the EITE Statute. And finally, whether the Commission should approve the EITE rate schedule and any corresponding rate.

¹ MINN. STAT. § 216B.1696 subd. 2(a) (emphasis added).

² MINN. STAT. § 216B.1696 subd. 3.

³ MINN. STAT. § 216B.1696 subd. 1(e).

⁴ MINN. STAT. § 216B.1696 subd. 1(d).

⁵ MINN. STAT. § 216B.1696 subd. 2(b) (emphasis added).

⁶ MINN. STAT. § 216B.1696 subd. 2(c).

It is undisputed that, with respect to the Petition, each answer to the first three questions is a resounding “yes.” Otter Tail Power is an investor-owned electric utility that has approximately 131,000 retail electric customers, with over 61,000 retail electric customers located in Minnesota.⁷ And consistent with the EITE Statute, the Petition notes that Otter Tail Power will be depositing \$10,000 into the account of the Prairie Five Community Action Council.⁸ It is therefore one of the Minnesota utilities authorized to “propose various EITE rate options within [its] service territory under an EITE rate schedule...”⁹ The three members of OTP-EITE consist of two sawmills and an oriented strand board manufacturer, which are specifically listed EITE customers eligible for an EITE rate.¹⁰ Finally, the EITE rate option of a per-kWh discount of 20% off their respective electric rates, which Otter Tail Power proposes in the Petition, is within the broad parameters of the EITE Statute to help ensure competitive rates for EITE-eligible customers.¹¹

The only conceivable question before the Commission is whether the EITE rate schedule and corresponding EITE rate proposed in the Petition result in a net benefit to Otter Tail Power or the State.¹² For the reasons set forth below, OTP-EITE respectfully requests that the Commission answer that question in the affirmative and grant the relief sought in the Petition effective no later than September 26, 2016.

B. Recent Commission Decision and Burden of Proof

On March 23, 2016, the Commission released its ORDER DENYING PETITION WITHOUT PREJUDICE in Docket No. E015/M-15-984, *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* (Mar. 23, 2016) (the “MP-EITE Order”), which includes an explanation of the

⁷ *Petition*, at 8.

⁸ *Petition*, at 25-26.

⁹ MINN. STAT. § 216B.1696 subd. 2(a).

¹⁰ MINN. STAT. § 216B.1696 subd. 1(c)(2).

¹¹ MINN. STAT. § 216B.1696 subd. 2(a) (providing the utility with authority to “propose various EITE rate options within their service territory under an EITE rate schedule that include, but are not limited to, fixed-rates, market-based rates, and rates to encourage utilization of new clean energy technology.” (emphasis added)).

¹² In other words, having established that the answers to the first three questions is clearly “yes,” then the only remaining question under the EITE Statute is the net-benefits question, the resolution of which is independent of sections 216B.03, 216B.05, 216B.06, 216B.07, and 216B.16 of the Minnesota Statutes. MINN. STAT. § 216B.1696 subd. 2(b).

burden of proof for an EITE rate filing. Although that filing was made by a different utility, proposing a different rate structure with different impacts on non-EITE customers, OTP-EITE is taking its cues from the MP-EITE Order in structuring this Comment and supporting evidence. This Comment is filed in furtherance of two objectives. First, this Comment interprets the Commission's direction on the net benefits test and burden of proof in light of the MP-EITE Order, other Commission precedent, and comments made by Commissioners during the first hearing in the MP-EITE docket (the "MP-EITE Hearing").¹³ Second, this Comment explains and summarizes the additional evidence OTP-EITE believes the Commission was requesting in the MP-EITE Order.

Consistent with the statutory overview above the Commission concluded in its MP-EITE Order that, when evaluating petitions submitted under Minn. Stat. § 216B.1696, "the Commission's primary consideration must be whether the rate schedule results in a net benefit to the utility or the state." Providing additional detail on its view of net benefit, the Commission stated "To find a net benefit requires that the Commission examine relevant benefits, related offsetting detriments, and weigh them against one another. Only if the Commission is presented with a record that reflects relevant benefits in excess of relevant costs can it make the necessary finding."¹⁴ In applying a burden of proof to this test, the Commission noted in the MP-EITE Order that it will "apply its *ordinary standard*, and will require that claims be proved by a *preponderance of the evidence*."¹⁵ But it should be emphasized that the Commission further clarified this statement later in the MP-EITE Order when it stated that "Without a record that identifies potential benefits and costs, and quantifies both to *the extent practicable*, a net benefit cannot be established by a preponderance of the evidence."¹⁶ The Commission also requested that this record contain "verified pleadings or sworn expert testimony."¹⁷

OTP-EITE highlights the terms "ordinary standard," "preponderance of the evidence," and "to the extent practicable" in the MP-EITE Order because it assumes those phrases were

¹³ OTP-EITE acknowledges that the Commission "speaks only through written orders," *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 296 (Minn. Ct. App. 2010). But given the sensitivity of this issue, OTP-EITE is considering the MP-EITE order in light of Commission comments in an attempt to fully address the Commission's concerns in the MP-EITE Order, and the hearing leading up to it.

¹⁴ *MP-EITE Order*, at 10.

¹⁵ *MP-EITE Order*, at 9 (emphasis added).

¹⁶ *Id.* at 11 (emphasis added).

¹⁷ *Id.*

used deliberately to reflect, at least in part, prior Commission orders and precedent. The Commission's use of the phrase "ordinary standard" and reference to the procedure normally employed in a utility rate case seems to indicate the Commission's intent to apply an evidentiary standard in light of a policy directive. To be sure, the Commission explained in the MP-EITE Order that a rate case decision is based "upon a record of thousands of pages of sworn expert testimony, supporting evidence, and arguments."¹⁸ But the Commission is well aware that the thousands of pages of sworn expert testimony is not the only guiding factor it considers in rendering a rate case decision. The Minnesota Supreme Court has stated, with respect to a rate case:

[T]he task of the MPUC is not so much concerned with the sufficiency and credibility of the evidence, as it is concerned with whether the evidence submitted, even if true, justifies the conclusion sought by the petitioning utility when considered together with the Commission's statutory responsibility to enforce the state's public policy that retail consumers of utility services shall be furnished such services at reasonable rates. *See, e.g.*, Minn. Stat. § 216B.01 (1986). The burden of proof rests with public utility seeking the change to demonstrate that the rate change is just and reasonable. Minn. Stat. § 216B.16, subd. 4 (1986).¹⁹

The Court goes on to explain that, unlike a civil case, the "reliability of the facts themselves" is not a significant issue in rate cases because "evidence in the hearing record consists mostly of economic facts and the opinions of experts who have analyzed those facts rather than reports of sensorily perceived phenomena."²⁰ The Court concluded that "the logic and relevance of the facts to the ultimate determination of whether the rate request is reasonable is of substantially more importance than the quantum of proof needed."²¹ Thus, while the sufficiency of the evidence is a factor in the burden of proof in a rate case, the Supreme Court has made clear that the Commission should also focus on, and may place greater emphasis on, whether the evidence put forth in a rate case adequately supports the relevant policy consideration of just and reasonable rates. Here, like a rate case, the relevant policy consideration is set out in statute. "It is the energy policy of the state of Minnesota to ensure

¹⁸ *Id.* at 10.

¹⁹ *In re Northern States Power Co.*, 416 N.W.2d 719, 722 (Minn. 1987).

²⁰ *Id.* at 723.

²¹ *Id.*

competitive electric rates for energy-intensive trade-exposed customers.”²² But unlike a rate case, the normal ratemaking provisions for EITE customers—such as just and reasonable rates and prohibition on preferential rates—do not apply.²³

Added to these evidentiary and policy concerns in the MP-EITE Order are the words “to the extent practicable.” This language mirrors the language in Minn. Stat. § 216B.2422, subd. 3(a), and therefore OTP-EITE turns to the Commission’s guidance in that context to help further understand the burden of proof in this case. The Commission has stated that “the term ‘practicable,’ as used in the Environmental Costs Statute, means ‘feasible’ or ‘capable of being accomplished.’”²⁴ The Commission went on to describe the “continuum of uncertainty” involved in quantifying environmental costs.²⁵ The Commission distinguished between “reasonable uncertainty” where it is still practicable to quantify costs, and the “point on the uncertainty continuum where it becomes infeasible to quantify environmental costs even though the Commission is convinced that such costs exist.”²⁶

Based on the MP-EITE Order and the comments during the MP-EITE Hearing of Commissioner Lipschultz and Chair Heydinger, this logic appears to have been contemplated by the Commission. For example, the MP-EITE Order emphasizes the importance of “accounting for *reasonably likely* benefits” in conducting the net benefits test.²⁷ Furthermore, Commissioner Lipschultz asserted at the MP-EITE Hearing that the test was whether the record established a “reasonable likelihood” of net benefits.²⁸ After additional dialogue with counsel for the Office of the Attorney General, Chair Heydinger stated:

We really don’t know and probably can’t know how many jobs might be saved, how many jobs might be added. So it seems like we have to look more narrowly at what we can know...But I want to be careful, because I do think we can’t place the burden on

²² Minn. Stat. § 216B.1696 subd. 2.

²³ *Id.*; see also *MP-EITE Order*, at 3.

²⁴ *In Re Quantification of Env’tl. Costs Pursuant to Laws of Minnesota 1993, Ch. 356, Sec. 3*, Docket No. E-999/CI-93-583, ORDER ESTABLISHING ENVIRONMENTAL COST VALUES at 10 (Jan. 3, 1997).

²⁵ *Id.* at 30.

²⁶ *Id.*

²⁷ *MP-EITE Order*, at 10 (emphasis added).

²⁸ *MP-EITE Hearing Transcript*, at 274.

anyone to come up with magic numbers that really none of us are in a position to predict, given all the variables we can't control.²⁹

Later in the MP-EITE Hearing, Commissioner Lipschultz added color to his view of the reasonableness test, stating:

I don't expect that a net benefit requires a showing that something will happen, but there has to be a standard of likelihood. And I think reasonable likelihood, at least for me, is a reasonable standard. And the real issue then is whether the record shows a reasonable likelihood of that net benefit, which would look at both the benefits and costs.³⁰

Reading the MP-EITE Order together with the above precedent and commissioner comments, OTP-EITE believes the standard can be distilled as follows: an 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 which 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. With this in mind, OTP-EITE has undertaken a significant effort to have each member explain under oath their respective operations, their respective contributions to the region and the State, and competitiveness challenges they each face. These customers are the experts on the operations of their respective facilities and therefore in the best position to comment on the unique challenges they each face, as well as provide sworn testimony on the potential benefit from the proposal in the Petition. As demonstrated below, the record is more than sufficient to demonstrate that the relief sought in the Petition is reasonably likely to result in a net benefit to the utility or the State and, if approved, is reasonably likely to help the OTP-EITE members achieve more competitive electric rates.

C. Commission Approval of the EITE Rate Schedule and Corresponding EITE Rate Will Result in a Net Benefit to Otter Tail Power and the State

Representatives from the Minnesota Forest Industries, Timber Producers Association, and OTP-EITE are submitting sworn affidavits attached to this Comment describing the myriad ways they contribute to the prosperity of Northwest Minnesota and the State. These affidavits also demonstrate that OTP-EITE members face difficult challenges due to heavy competition

²⁹ *MP-EITE Hearing Transcript*, at 275.

³⁰ *MP-EITE Hearing Transcript*, at 322.

from international entities coupled with uncompetitive electricity rates that continue to rise despite their best efforts to conserve energy and reduce costs. When the significant benefits of the EITE rate are netted against the relatively low costs of the proposal in the Petition, the evidence is undoubtedly sufficient to prove that the proposed EITE rate will result in a net benefit to Otter Tail Power and the State. These benefits come not in the form of increased production or economic development, but rather in retaining the existing economic benefits and jobs these EITE customers provide. This is consistent with the Legislature's intent for the EITE legislation. As was implied in the House Job Growth and Energy Affordability Policy and Finance Committee hearing on the bill, the Legislature passed the EITE legislation as a job retention measure.³¹ It was not considered an economic development bill, because the legislature recognized the need for protecting existing jobs in Northern Minnesota.

1. OTP-EITE Operations Are a Significant Component of the Regional and State Economy

OTP-EITE members are important to the Northwestern Minnesota and statewide economy, as demonstrated in the member affidavits attached to this Comment. The affidavit of Wayne Brandt confirms that Minnesota's forest products manufacturing industry is valued at \$8.5 billion and employs over 28,000 people.³² More specifically, OTP-EITE members employ or indirectly support the employment of roughly 900 individuals, with a total payroll of approximately \$23 million.³³ Furthermore, OTP-EITE members pay around \$3.7 million a year in taxes and contribute a total of \$440,000 to the surrounding community, as well as non-monetary contributions such as membership on community boards and volunteering.³⁴ OTP-EITE members are also dedicated to sustainable forest management practices through participation in the Sustainable Forestry Initiative and forest cleanup efforts.³⁵ Minnesota's forest industry is also a clean energy producer, converting more than 1.2 million tons of wood waste into electricity each year.³⁶ In fact, 28% of the industry's total electricity consumption is

³¹ House Job Growth and Energy Affordability Policy and Finance Committee hearing (March 16, 2015), *audio available at* http://www.house.leg.state.mn.us/cmte/archiveAV/cmtearchives.aspx?comm=89016&ls_year=89.

³² *The Affidavit of Wayne Brandt*, at 2 ¶8 ("MFI/TPA Affidavit").

³³ *Id.* at 5 ¶20.

³⁴ *Id.*; See also *The Affidavit of Peter Aube*, at 4-5 ¶12 ("Potlatch Affidavit"); *The Affidavit of David Goetz* at 2 ¶7 ("Cass Forest Products Affidavit"); *The Affidavit of Jack Wallingford*, at 2 ¶7 ("Norbord Affidavit").

³⁵ See *Norbord Affidavit*, at 2-3 ¶8 ("Norbord Affidavit"); *Potlatch Affidavit* at 4 ¶10.

³⁶ *MFI/TPA Affidavit*, at 3 ¶13.

met through self-generated biomass or hydroelectric facilities.³⁷ Furthermore, by providing a market for Minnesota's timber, OTP-EITE members benefit Minnesota's forests.³⁸ Thus, OTP-EITE members play an important role in Northwest Minnesota and the State as a whole.

Unfortunately, Minnesota's forest products industry is under threat from intense domestic and international competition and forces beyond its control. The recent expiration of a trade agreement with Canada, coupled with the weak Canadian dollar, have given the Canadian competitors of OTP-EITE members a significant advantage in the market, creating serious challenges for OTP-EITE members.³⁹ The Affidavit of Wayne Brandt describes the following international trade issues OTP-EITE faces: 1) the expiration of the U.S. and Canadian Softwood Lumber Agreement has given Canada an unfair competitive advantage over sawmills like Potlatch and Cass Forest Products; 2) the decrease in the exchange rate of the Canadian to U.S. dollar has allowed Canadian mills to sell products in the U.S. at a much lower cost than U.S. mills; and 3) log and lumber exports to China have fallen in 2015, indicating a sharp decrease in demand for the products OTP-EITE manufactures.⁴⁰

2. Otter Tail Power's Proposed EITE Rate Would Enhance the Competitiveness of OTP-EITE Rates

While Otter Tail Power's industrial rates are competitive when compared with other utilities in Minnesota,⁴¹ Minnesota's rank in terms of competitiveness has significantly worsened in recent decades. Minnesota ranked 15th for industrial rates in 1990, but climbed to 29th in 2015.⁴² Recognizing that the Commission and stakeholders may be interested in more granular data, this Comment contains information on a more state-specific basis, as well as a customer-specific basis. Table 1 shows Otter Tail Power's rates compared with the industrial electricity

³⁷ *Id.*

³⁸ *Potlatch Affidavit*, at 3-4 ¶¶8-10.

³⁹ *MFI/TPA Affidavit*, at 4-5 ¶¶17-19.

⁴⁰ *Id.*

⁴¹ See Table 1, *infra*.

⁴² <http://www.eia.gov/electricity/data.cfm> (XLS spreadsheet subset of Form EIA-861 for full-service providers).

rates in states where many of OTP-EITE members' competitors are located,⁴³ based on data from the U.S. Energy Information Administration.⁴⁴

Table 1. Industrial Electricity Rates in cents/kilowatt hour

2010	2011	2012	2013	2014	2015
Washington 4.08	Washington 4.09	Washington 4.13	Washington 4.23	Washington 4.32	Washington 4.42
Idaho 5.15	Idaho 5.10	Montana 5.10	Montana 5.43	Montana 5.49	Montana 5.52
Oregon 5.40	Montana 5.27	Idaho 5.48	Oregon 5.80	Oregon 5.97	Oregon 6.06
Otter Tail 5.54	Oregon 5.47	Oregon 5.59	Idaho 6.09	Otter Tail 6.29	N. Carolina 6.40
Montana 5.55	N. Carolina 6.01	N. Carolina 6.42	Otter Tail 6.43	Idaho 6.40	Idaho 6.62
N. Carolina 6.17	Otter Tail 6.25	Otter Tail 6.46	N. Carolina 6.45	N. Carolina 6.50	Otter Tail 6.75
Minnesota 6.29	Minnesota 6.47	Minnesota 6.54	Minnesota 6.98	Minnesota 6.72	Minnesota 7.13
Wisconsin 6.85	Michigan 7.32	Wisconsin 7.34	Wisconsin 7.40	Wisconsin 7.52	Michigan 7.16
Michigan 7.08	Wisconsin 7.73	Michigan 7.62	Michigan 7.72	Michigan 7.68	Wisconsin 7.77

When compared with states where many OTP-EITE competitors are located, Otter Tail Power's industrial rates over the past several years are in the middle of the group. OTP-EITE does not believe this placement is competitive for purposes of the EITE statute. In order to be competitive, OTP-EITE's rates should be lower than a significant majority of its competitor states and provinces, meaning rates should be in at least the lowest third.

OTP-EITE members' affidavits further illustrate the challenges they face in dealing with uncompetitive electric rates. For example, Potlatch's affidavit describes a competitiveness study in which it participated, showing that it ranked [TRADE SECRET DATA BEGINS...

⁴³ These states were chosen because they were either included in the Potlatch Competitiveness Study or are included in the Electric Rates Chart attached as Exhibit E to the MFI/TPA Affidavit.

⁴⁴ See Energy Information Administration, Electricity Data Browser, Average Retail Price of Electricity, Annual (last visited June 24, 2016), available at <http://www.eia.gov/electricity/data/browser/#/topic/7?agg=0.1&geo=vvvvvvvvvvvvo&endsec=vg&linechart=ELEC.PRICE.US-ALL.A&columnchart=ELEC.PRICE.US-ALL.A&map=ELEC.PRICE.US-ALL.A&freq=A&ctype=linechart<ype=pin&motype=0&rse=0&pin>.

...TRADE SECRET DATA ENDS] out of 17 mills in terms of electric rates.⁴⁵ Likewise, Norbord's rank among its other North American facilities puts it [TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS].⁴⁶ A graphical comparison of Norbord's Minnesota facilities with its other North American facilities is as follows:⁴⁷

[TRADE SECRET DATA BEGINS...

...TRADE SECRET DATA ENDS].

With the fierce competition in the forest products industry, these uncompetitive electric rates are untenable.

Because of this fierce competition, OTP-EITE members are constantly striving to reduce costs in all aspects of their business, especially electricity costs. For example, Potlatch recently invested [TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS] in a full modernization of its facility to improve energy efficiency by participating in Otter Tail Power's Conservation Improvement Program, reducing its electricity consumption by [TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS] per year.⁴⁸ Similarly, Cass Forest Products has undertaken several energy conservation projects, at a cost of approximately [TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]. In regards to Norbord's general operations, it has strived to reduce the costs of its raw materials, resulting in

⁴⁵ *Potlatch Affidavit*, at 6 ¶17. As a similar operation, Cass Forest Products is in a similar untenable position on electric rates.

⁴⁶ *Norbord Affidavit*, at 3 ¶10.

⁴⁷ *Norbord Affidavit*, at 3-4 ¶10

⁴⁸ *Potlatch Affidavit*, at 5-6 ¶15.

expected annual savings of [TRADE SECRET DATA BEGINS... ...TRADE SECRET DATA ENDS]. These significant efforts demonstrate OTP-EITE members' commitment to keeping costs down. However, these cost savings are increasingly offset by rising electricity rates.

Fortunately, Otter Tail Power's EITE rate will be a factor in helping OTP-EITE members regain a competitive advantage in electric rates. If the EITE rate is approved and OTP-EITE members receive a 20% discount per kWh, Otter Tail Power's cost per kWh compared to 7 of OTP-EITE's competitor states will improve from 6th to 2nd, which is a competitive position.⁴⁹ Of course, Otter Tail Power has a pending rate increase, which could bump OTP-EITE's rates back down the list of competitor states. This does not, however, mitigate the need to act. To the contrary, the pending rate case demonstrates the need to act aggressively in this docket to help ensure competitive electric rates for OTP-EITE members. Doing so will help give OTP-EITE members an edge in cost margins against their competitors, and it will help mitigate future projected increases in electricity rates. According to OTP-EITE members, it is reasonably likely that the EITE rate could be one of the factors that will keep their facilities viable.⁵⁰

3. The Benefits of the EITE Rate Overwhelmingly Outweigh the Costs and Result in a Net Benefit to the Utility and the State

Again, based on the MP-EITE Order, Commissioner comments during the MP-EITE hearing, and other Commission precedent, the test for approval of an EITE rate appears to be whether the proposal is reasonably likely (not certain) to result in a net benefit to the utility or the state, as evidenced by verified pleadings or sworn testimony which quantifies costs and benefits to the extent practicable, all evidence of which is considered in light of the specific policy directive in the EITE statute to ensure competitive electric rates for EITE customers.

The MP-EITE Order enumerates the following categories of potential benefits from an EITE rate: "jobs and economic development, tax revenue, energy sales, system reliability, for example." The relevant benefits to the State and Otter Tail Power that are reasonably likely to result from the EITE rate are significant. Job retention and continued tax revenue are a benefit to

⁴⁹ See Table 1, *supra*.

⁵⁰ *Potlatch Affidavit*, at 8 ¶22; *Cass Forest Products Affidavit*, at 5 ¶21; *Norbord Affidavit* at 6 ¶18.

the State. Maintenance of existing energy sales is a benefit to the utility and its customers. All three benefits are present with respect to the Petition.

As stated above, 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.⁵¹ 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.⁵² 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 factors that could protect the viability of these mills.⁵³ 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. The MP-EITE Order enumerates the following categories of potential costs from an EITE rate: “the detriment to the utility or the state caused by increasing rates on other customers, the effect of the rate on the environment, increased generation and transmission costs, and others.”⁵⁴ Otter Tail Power’s rates for non-EITE customers will not be significantly impacted as a result of the EITE rate. For example, the average residential customer’s bill is expected to increase roughly \$4.64 per year, or less than \$0.40 per month, if the 20% EITE rate discount is approved.⁵⁵ Impacts on other customers are similarly minor relative to their annual electricity payments.⁵⁶ By contrast, 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. For example, residential customers would see an annual increase of \$11.43 if Otter Tail Power lost OTP-EITE members as customers.⁵⁷ 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

⁵¹ *MFI/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.

⁵² *Petition*, at 20.

⁵³ *Potlatch Affidavit*, at 8 ¶22; *Cass Forest Products Affidavit*, at 5 ¶21; *Norbord Affidavit* at 6 ¶18.

⁵⁴ *MP-EITE Order*, at 10.

⁵⁵ *Petition*, at 21 Table 6.

⁵⁶ *Id.*

⁵⁷ *Id.*

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.

This is not, however, to say or imply that cost increases on non-EITE customers are not felt by those customers. OTP-EITE is cognizant of this fact, as is the Commission. But the clear and unambiguous policy directive is to ensure competitive electric rates for EITE customers.⁵⁸ 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 this 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.

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.

⁵⁸ Minn. Stat. § 216B.1696 subd. 2.

Dated: June 28, 2016

Respectfully submitted,

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