

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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In the Matter of Minnesota Power’s Revised
Petition for a Competitive Rate for Energy-
Intensive Trade-Exposed (EITE) Customers
and an EITE Cost Recovery Rider

ISSUE DATE: October 13, 2017

DOCKET NO. E-015/M-16-564

DOCKET NO. E-015/GR-16-664

In the Matter of the Application of Minnesota
Power for Authority to Increase Rates for
Electric Service in Minnesota

ORDER EXCLUDING RIDER
REVENUE FROM 2016 BASELINE
CALCULATION AND SETTING
PARAMETERS TO IDENTIFY
EXEMPT CUSTOMERS

PROCEDURAL HISTORY

Minn. Stat. § 216B.1696 allows utilities to propose alternative rate schedules designed to ensure competitive electric rates for energy-intensive trade-exposed (EITE) customers. On June 30, 2016, Minnesota Power submitted a revised petition for 1) approval of an EITE rate schedule that provides specified customers a discount based upon each customer site’s peak electric usage and total energy consumption, and 2) approval of an EITE cost recovery rider.

On December 21, 2016, the Commission acted on Minnesota Power’s revised petition, issuing an *Order Approving EITE Rate, Establishing Cost Recovery Proceeding, and Requiring Additional Filings*. The Commission found the Company’s proposed EITE rate schedule could be expected to yield a net benefit to the utility and therefore approved the rate schedule under Minn. Stat. § 216B.1696, subd. 2.

The Commission also ordered Minnesota Power to file rate-design proposals to recover the cost of the credits provided to EITE customers. And it directed Minnesota Power to file a revised communications plan addressing how the Company planned to notify ratepayers and local governing authorities of the surcharge it plans to impose on non-EITE customers.

On April 20, 2017, the Commission issued an *Order Authorizing Cost Recovery with Conditions*. The order allows Minnesota Power to collect a surcharge from non-EITE, non-exempt customers, and included directions and clarifications regarding refunds of revenue increases associated with the rate schedules, including requirements for:

- A compliance filing setting forth the surcharge and refund mechanisms in detail;
- Additional information about efforts to identify LIHEAP-eligible customers; and
- An insert in all customer bills explaining the EITE rate and surcharge.

On May 22, 2017, Minnesota Power filed its compliance filing.

On June 21, 2017, the Office of the Attorney General–Residential Utilities and Antitrust Division (the OAG) filed comments.

By July 12, 2017, two members of the public filed comments opposing the EITE rate, and the following parties filed reply comments:

- Minnesota Power
- Department of Commerce, Division of Energy Resource (the Department)
- Large Power Intervenors (LPI)¹
- Energy CENTS, the Minnesota Citizens Federation Northeast, and the Citizens Utility Board of Minnesota (the Consumer Advocates)

On September 7, 2017, the matter came before the Commission.

FINDINGS AND CONCLUSIONS

I. Summary of Commission Action

In this order the Commission excludes rider revenue from 2016 baseline calculations and establishes parameters for identification of low-income EITE-exempt customers.

II. April 20, 2017 Order Points Addressed

Minnesota Power filed comments addressing the following order points from the Commission’s April 20, 2017 order.

- *Order Point 5*: refund revenue increases associated with the EITE rate schedule as proposed by the OAG on page 13 of its January 13, 2017 comments, with the following additions/clarifications:
 - a. The Company shall use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable increases;

¹ LPI includes ArcelorMittal USA; Blandin Paper Company; Boise Paper, a Packaging Corporation of America company (formerly known as Boise, Inc.); Enbridge Energy, Limited Partnership; 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.

- b. The Company shall base the refund on net revenue increases; and
 - c. Minnesota Power shall make a compliance filing within 30 days setting forth the surcharge and refund mechanisms in detail, including the baseline gross revenue for 2016 and the methodology for determining net revenue increases.
- *Order Point 6*: provide more information about its efforts to identify LIHEAP-eligible customers, including a description of Company-directed outreach efforts and updated information from the Company's customer survey, in its 30-day compliance filing and annual reports.
 - *Order Points 8, 9, 10, and 11*: These order points require Minnesota Power to place an insert in all customer bills explaining the EITE rate and surcharge.

The Commission will address the Company's compliance filing and how it meets these order points.

III. Surcharge/Refund Mechanism—Order Point 5

A. Minnesota Power's Proposal

Minnesota Power proposed three modifications to the baseline calculation addressed in order point 5. Each will be addressed separately.

- Exclude rider revenue from the 2016 baseline calculations;
- Recognize increased revenue due to EITE customer operations already accounted for in the Company's current rate case; and
- Use 2016 billing units, rather than revenue, as the measure of any increase above the baseline.

First, the Company proposed to exclude rider revenue from the 2016 baseline calculations. The Company explained that rider revenue is collected from EITE customers and was included in the 2016 EITE customer expected sales of \$329 million. The Company cautioned that increased sales to EITE customers do not result in increased rider revenue for Minnesota Power. The revenue is determined based on requirements related to specific projects approved in cost recovery filings.

Second, the Company proposed an adjustment to recognize increased revenue due to EITE customer operations that has already been accounted for in the 2017 test-year in the utility's current rate case.² On February 28, 2017, the Company filed an update in the rate case to reduce the requested revenue requirement by \$16.3 million due to increased MWh sales realized by EITE customers resuming operations.³

² *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Rates in the State of Minnesota*, Docket No. E-015/GR-16-664.

³ Minnesota Power reduced its requested increase in the rate case from \$55.1 million per year to \$38.8 million due to a large customer (Keetac) coming on line for part of the 2017 test year.

Third, the Company proposed to use 2016 billing units, rather than revenue, as the baseline. Minnesota Power argued that as rates increase over time due to increased rider rates or rate increases, using the 2016 revenue as the baseline would mean that the Company would potentially be providing refunds, even if EITE customer sales had decreased relative to the 2016 calendar year. Instead, the Company proposed to use a baseline measured as energy sales (MWh) to EITE customers whereby any refund would be determined by multiplying the incremental sales to EITE customers by the average gross revenue rate collected from EITE customers.

B. Comments of the Parties

The Department agreed with the Company's first proposal—to remove rider revenues from the determination of baseline revenues, reasoning that the rider should have individually determined revenue requirements that are subject to separate true-ups on an annual basis. Until the rider revenue requirements are rolled into base rates, they are not a part of any rate case consideration.

The Department agreed with the OAG's opposition (discussed below) to the Company's second proposal—because the Commission's April 20, 2017 order explicitly requires use of the actual 2016 calendar-year EITE-customer revenues as the baseline for calculating refunds. The Department therefore urged the Commission to reject the Company's proposal to adjust the EITE baseline to reflect the 2017 test-year sales to EITE customers. The Department also opposed the Company's third proposal because the Commission's April 20, 2017 order clearly requires the baseline for determining refunds to be EITE customer revenues, not MWh sales as proposed by the Company.

The Department summarized its recommendations as follows:

- Require Minnesota Power to use 2016 actual EITE revenues without other rider revenues as the baseline for determining customer refunds under its EITE rider; and
- Require Minnesota Power to adjust its 2017 test year revenue requirement to back-out increased revenues resulting from EITE customers coming back on-line.

The OAG filed comments regarding the Company's second proposal—to recognize increased revenue in the baseline calculation from the utility's rate case. The OAG argued that the Company's proposal to use a 2016 "adjusted baseline" is inconsistent with the Commission's April 20, 2017 order, in which the Commission unambiguously directed Minnesota Power to use its 2016 actual sales to EITE customers to set the baseline for measuring any increased revenues from the EITE rate.

The OAG asserted that the Company's proposed adjustment essentially camouflages the 2017 test year sales numbers in the rate case under a different name – the "adjusted 2016 baseline."

The Consumer Advocates agreed with the OAG that the Commission should reject the Company's 2016 adjusted baseline and require the Company to use 2016 actual sales data, as specified in the April 20, 2017 order.

LPI raised concerns with the potential consequences of the OAG's cost recovery proposal, including the uncertainty of the effects of the OAG's proposal on electric rates for EITE customers, and the relative cost and benefits for EITE customers, non-EITE customers, and the Company under the proposal.

LPI also expressed concerns with the Department's comments, questioning the potential effects of higher EITE customer revenue on the EITE docket as well as on the revenue requirements in the pending rate case.

C. Commission Action

The Commission has carefully reviewed the Company's proposed modifications to its EITE baseline 2016 calendar-year revenues, and the comments of the parties.

First, the Commission will approve Minnesota Power's proposal to exclude rider revenue from its 2016 baseline calculation. No party objected to this proposal, which appears to be reasonable. The Commission agrees that increased sales to EITE customers do not necessarily result in increased rider revenue to the Company.⁴

Second, the Commission will require the Company to use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable refund. As recognized by the OAG and the Department, the Commission's April 20th order specified that the refund should be calculated as the difference between the revenue the company received from EITE customers in 2016, before the anticipated implementation of the EITE rate, and the revenue the Company receives from EITE customers after implementation of the EITE rate.⁵ To do as the Company now recommends would essentially deprive EITE customers of the full benefit of the EITE rate as intended by the statute.

Finally, the Commission will require Minnesota Power to determine a refund using revenues, and not billing units as proposed by the Company. The Commission accepts that there is a theoretical possibility that if rates go up and sales go down, EITE customers could be entitled to higher refunds even though sales to those customer have gone down. The Commission reaches its decision based on three considerations: 1) the statute uses the term revenues, and not billing units; 2) the two alternatives currently produce identical results; 3) at least until such time as the Company's rates change, there is no reason to make any changes to the April 20th order based on theoretical possibilities.

IV. Low-Income Customer Outreach

A. Minnesota Power

In its EITE compliance filing, Minnesota Power explained its efforts at outreach for low-income customers. The Company stated that the EITE statute prohibits utilities from recovering EITE costs from any low-income customers, defined as "ratepayer(s) who receive energy assistance from the low-income home energy assistance program (LIHEAP)."⁶ Minnesota Power explained that in addition to the 10 or 11 thousand customers receiving LIHEAP assistance, it also exempts

⁴ As calculated by the Company, this adjustment to the 2016 calendar year baseline should result in baseline numbers of 4,868,621 MWh and \$255,319,154.

⁵ April 20, 2017 order, at 7. Further, as argued by the OAG, the full transcript of the March 9, 2017 Commission hearing makes clear that the April 20th order correctly encapsulated the Commission's intent.

⁶ Minn. Stat. § 216B.16, subd. 15.

customers who are eligible for LIHEAP assistance and have met the income verification requirements of LIHEAP.⁷

The Company also explained its outreach efforts to educate a wider audience of potentially income-eligible customers, including: convening an internal cross-functional low-income customer task force, sending targeted communications through direct mailings, making mass outreach efforts through bill inserts, newsletters, brochures, online and social media channels, and holding community events with community partners. The Company stated that their recent efforts have included more targeted marketing and voice calls to customers who have missed payments.

At the Commission hearing, the Company acknowledged that of all the persons identified by it as eligible for LIHEAP, but not receiving it, only three additional persons actually ended up receiving LIHEAP assistance. Again, the Company stated that it does not verify the income of applicants, but relies on outside agencies to do so. The Company also stated that it grants Cold Weather Rule⁸ protection to any customer that requests it, regardless of income eligibility or verification. The Company does not tie income eligibility for LIHEAP to receipt of Cold Weather Rule protections.

B. Consumer Advocates

The Consumer Advocates argued that the Company presented essentially the same outreach methods for the EITE exemption process that have been proposed before, and that none of those efforts has resulted in any significant increase in the number of the Company's LIHEAP customers.

Further, the Consumer Advocates urged the Commission to use Minnesota's Cold Weather Rule eligibility criteria (households at or below 50% of median income) as a tool to help identify those low-income customers who should be exempted from the imposition of EITE costs, in lieu of the Company's current use of LIHEAP or LIHEAP-eligible customers. The Consumer Advocates stated that while Minnesota Power has acknowledged that approximately 36,000 of its customers live at or below 50% of state median income, only some 10 or 11 thousand currently receive LIHEAP protection.

Finally, the Consumer Advocates recommended that the Commission take the following actions:

- Develop a specific method for tracking the number of exempt customers;
- Automatically exempt any customer who qualifies for Cold Weather Rule protection;
- Automatically exempt any customer identified on the Company's list of "likely eligible" customers;
- Develop an internal process for contacting payment-troubled customers and verifying eligibility for the EITE exemption;

⁷ Minnesota Power does not do its own income verification, instead relying on LIHEAP or other low income assistance programs.

⁸ Minn. Stat. § 216B.096.

- Provide EITE exemption applications to community-based organizations and appropriate agencies and implement a process so those agencies can return the applications to the Company; and
- Report the number of exemptions granted quarterly in the first year of the EITE rate and on a biannual basis thereafter.

C. Commission Action

After considering the discussion at the hearing, and the written submissions of the parties, the Commission is faced with a dilemma. The EITE statute requires an exemption for low income customers, and specifically defines low income for the purpose of EITE-exemption as receipt of LIHEAP assistance. But despite the varied outreach efforts by the Company, they have only secured EITE exemption for an additional three LIHEAP-eligible customers, largely due to the Company's reliance on an outside agency to verify income. Thus, the Company's efforts to broaden the number of EITE-exempted customers have been largely unsuccessful.

As a result, a large number of Minnesota Power's customers are eligible to receive energy assistance, but do not. As acknowledged by the Company at the hearing, Minnesota Power has some 36,000 low-income customers, based on a survey done in connection with its 2009 rate case. The Company also estimated that some 50 to 60 percent of customers who receive Cold Weather Rule protection are also LIHEAP-eligible. And there likely is another 40 percent who are eligible, but have not demonstrated eligibility through income verification.

While these numbers are estimates, the Commission finds that there is a reasonable basis to exempt Minnesota Power's Cold Weather Rule-protected customers from being charged for EITE recovery. These are low-income customers who are likely to be LIHEAP-eligible. It is reasonable for purposes of administering this exemption to presume that they are eligible and would receive LIHEAP energy assistance with appropriate outreach efforts. Accordingly, the Commission will require Minnesota Power to exempt from the EITE surcharge any customer who receives Cold Weather Rule protection.

The Commission will also require further actions by the Company to implement and assess low-income EITE-exemption. The Commission will require the Company to develop a specific method for tracking the number of exempt customers on its system. Further, the Company will be required to develop an internal process for contacting payment-troubled customers and verifying eligibility for the EITE exemption.

Finally, the Commission will require the Company to provide EITE exemption applications to community-based organizations and appropriate agencies and implement a process so those agencies can return the applications to the Company. And to assess the success of these efforts, the Company will be required to report the number of exemptions granted quarterly in the first year of the EITE rate and on a biannual basis thereafter.

ORDER

1. Minnesota Power's proposal to exclude rider revenue from its 2016 baseline calculation is approved.
2. Minnesota Power shall use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable increases.
3. Minnesota Power shall use revenues to determine the refund.
4. Minnesota Power shall develop a specific method for tracking the number of EITE exempt customers.
5. Minnesota Power shall automatically exempt any customer who receives Cold Weather Rule protection.
6. Minnesota Power shall develop an internal process for contacting payment-troubled customers and verifying eligibility for the EITE exemption.
7. Minnesota Power shall provide EITE exemption applications to community-based organizations and appropriate agencies and implement a process so those agencies can return the applications to the Company.
8. Minnesota Power shall report the number of exemptions granted quarterly in the first year of the EITE rate and on a biannual basis thereafter.
9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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