

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Dates: February 11, 2016.....**Agenda Item # 6

Company: Minnesota Power

Docket No. **E-015/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**

Issue: Should the Commission approve Minnesota Power's Proposed EITE rate
under Minn. Stat. §216B.1696?

Should the Commission allow Minnesota Power to implement a cost recovery
rider prior to its next general rate case?

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Relevant Documents

Minnesota Power Initial Filing-Corrected; Public & Trade Secret November 17, 2015¹
Commission Notice of Comment Period November 19, 2015
Minnesota Power Supplemental Filing- Resp. to IR 1 November 19, 2015
Minnesota Power Supplemental Filing- Magnetation Agrmt Pub & TS..... November 19, 2015
Minnesota Power Comments on Comment Period..... November 24, 2015
Large Power Intervenors Comments on Comment Period..... November 25, 2015
Minnesota Power Supplemental Filing-Payment to EEOA..... December 04, 2015
Minnesota Forest Industries Comments December 21, 2015
Department of Commerce DER Comments December 21, 2015
Mid-Minnesota Legal Aid Comments December 21, 2015
Large Power Intervenor Comments December 21, 2015
Iron Mining Association Comments Part 1 December 21, 2015
Iron Mining Association Comments Part 2..... December 21, 2015
Office of Attorney General Comments December 21, 2015
Minnesota Citizen's Federation Comments December 21, 2015
Sierra Club & MCEA Comments December 21, 2015

¹ MP's Initial Filing was made on November 13, 2015 and subsequently corrected for pagination errors

<i>Energy Cents Coalition</i> Comments	December 21, 2015
<i>AARP</i> Comments	December 22, 2015
<i>Minnesota Power</i> Reply Comments	December 30, 2015
<i>Minnesota Citizen's Federation</i> Reply Comments	December 31, 2015
<i>Save Our Sky Blue Waters</i> Reply Comments	December 31, 2015
<i>Public</i> Comments (multiple in one document)	January 4, 2016

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Statement of the Issue

Should the Commission approve Minnesota Power's Proposed EITE rate under Minn. Stat. §216B.1696?

Should the Commission allow Minnesota Power to implement a cost recovery rider prior to its next general rate case?

Introduction and Background

Minn. Stat. §216B.1696, Competitive Rate for Energy Intensive Trade Exposed Electric Utility Customer, was enacted in the 2015 Special Session and became effective July 1, 2015. (The full text of the statute is attached at the end of these briefing papers.)

The statute creates an energy-intensive trade-exposed (EITE) customer category, and states that it is the policy of the state of Minnesota to ensure competitive electric rates for EITE customers. To achieve this objective, it allows Minnesota Power and Otter Tail Power to propose special EITE rates options including fixed-rates, market-based rates, and rates to encourage use of new clean energy technology. The Commission is to approve an EITE rate “upon a finding of net benefit to the utility or the state”, notwithstanding a number of ratemaking provisions of Chapter 216B, and to do so within 90 days of the utility's filing.

The statute goes on to direct that upon Commission approval of any EITE rate schedule, the utility create an account to track the difference in revenue between what would have been collected under the standard tariff and the EITE rate schedule. The Commission is required to allow the utility to recover any costs or refund any savings in its next general rate case or through an EITE cost recovery rider between rate cases. Costs cannot be recovered from EITE customers or certain low-income residential customers.

On November 13, 2015², Minnesota Power submitted its *Petition to Ensure Competitive Electric Rates for Energy-Intensive Trade-Exposed Customers*. The Petition included a request for approval of two separate proposals: 1) an EITE Customer Rider to provide an energy charge credit to EITE-eligible customers who meet certain criteria, and 2) an EITE Current Cost Recovery Rider to allow Minnesota Power to recover from non-EITE customers the costs of providing the rate credit to EITE customers.

On November 19, 2015, the Commission issued a notice asking for comments on Minnesota Power's EITE Customer Rider and whether the utility should be allowed to implement a cost recovery rider prior to its next rate case. The notice stated that the Commission expected to issue a notice for comments on the proposed cost recovery rider in the future, likely after a decision on

² Minnesota Power submitted a filing to correct pagination errors on November 17, 2015

the EITE rate. Minnesota Power and the Large Power Intervenor filed letters on November 24 and 25, 2015 respectively, objecting to separating the comments periods.

On December 21, 2015 the following entities filed initial comments supporting Minnesota Power's proposed EITE rates: Large Power Intervenor (LPI), Minnesota Forest Industries, and the Iron Mining Association. The following entities filed initial comments recommending rejection of the proposal: Minnesota Department of Commerce, Division of Energy Resources (Department), the Office of Attorney General, Antitrust and Utilities Division (OAG), Mid-Minnesota Legal Aid, Minnesota Citizen's Federation, Energy Cents Coalition (ECC), American Association of Retired Persons (AARP), and the Sierra Club/Minnesota Center for Environmental Advocacy (MCEA). Reply comments were filed by: Minnesota Power, the Citizen's Federation, and Save Our Sky Blue Waters.

The Commission also received 8 public comments via Speak Up! by the end of December 2015. Since that time, the Commission received 1 more public comment on Speak Up! and has been receiving a few hand-written letters and a larger number of e-mails, many of the forwarded by the AARP, opposing the proposed increase to residential customers from the EITE rate; see the February 3, 2016 updated Public Comment report in e-dockets. Also, the Minnesota Chamber of Commerce filed untimely comments on January 26, 2016 which consisted of a copy of an editorial by Bill Blazer of the Chamber, published in the Star Tribune on January 14, 2016.

The fundamental and most controversial issue for the Commission to decide in this phase of the proceeding is whether MP's proposed EITE rate schedule provides net benefits to the utility or the state. Under Minn. Stat. §216B.1696, subd. 2 (b), the Commission shall approve an EITE rate upon a finding of net benefit to the utility or the state. There is significant disagreement among parties as to what criteria the Commission should use to make that determination and whether the record contains adequate information to do so.

There is also strong concern and controversy about Minnesota Power's EITE cost recovery proposal, which could result in a more than 14.5% increase to residential customers. While the merits of the EITE cost recovery proposal is not directly before the Commission at this point, it is a focus of many of the comments.

Overview of Minnesota Power's EITE filings

EITE Customers Rider

Minnesota Power's proposed EITE Customers Rider provides an energy charge credit (discount) of \$11.50 per MWh (1.15 cents per kWh) for monthly usage in excess of 450 hours, multiplied by the customer's anticipated site peak electric usage. According to Minnesota Power, this has the effect of requiring an approximately 62 percent load factor before the credit kicks in. (See examples on page 13 of MP's initial filing.)

Minnesota Power is proposing offering this energy charge credit only to customers in the Large Power (LP) and Large Light and Power (LLP) classes eligible under the EITE statute who also meet the follow additional terms and conditions: have an Electric Service Agreement (ESA) with at least 2 years remaining, at least 2,000 kW (2 MW) power requirements, and sign a customer commitment letter. If a customer on the EITE rate subsequently has an ESA with less than 2 years to run, Minnesota Power proposes to place any benefits or credits into a tracker; if the customer does not enter into a new ESA, the customer forfeits the credits which would instead be credited to the EITE cost recovery tracker.

As of mid-November 2015, MP has EITE customer commitment letters from 9 customers: Verso Paper, Sappi Mill, Boise Paper, Blandin Paper, Mesabi Nugget, United States Steel (Minntac and Keetac facilities), Cliffs Natural Resources (United and Hibbing taconite facilities), Mining Resources, ArcelorMittal (Minorca Mine), and Magnetation. MP proposes to file future letter agreements as part of the information in periodic EITE cost recovery compliance filings.

Minnesota Power estimates the total annualized 2016 discount for the 9 customers who have signed commitment letters to-date would be \$17.8 million, an average 4.7% decrease. The decrease varies by EITE customer; MP claims the customer-specific amounts and impacts are trade secret. (See table on page 14 of 11/17/15 trade secret version).

Minnesota Power has structured its proposed tariff and customer commitment letters such that customers would begin receiving EITE credit the first of the month following Commission approval of both the EITE Customer Rider and the EITE cost recovery rider.

EITE Cost Recovery Rider

Minnesota Power proposed to implement an EITE current cost recovery rider simultaneously with its EITE Customers Rider. The estimated costs would be allocated to classes based on the number of customer service agreements (i.e. number of customer accounts in the class) of non-exempt customers. The monies would be collected from residential customers on a per kWh basis, and from other customer classes on a per service agreement basis. Based on the annualized estimated discounts to EITE customers of \$17.8 million, this would result in an \$11.45 a month increase for each non-exempt customer account.³ On a percentage basis, the proposal is estimated to result in a 14.53% increase for Residential customers, 4.07% for General Service, 0.07% for non-exempt Large Light and Power, and 1.86% for municipal pumping.

³ The amount would be higher for higher usage residential customers and lower for low use residential customers because it is proposed to be recovered on a per kWh basis. The \$11.45 amount would be a monthly fixed amount for all other classes.

Procedural Path for the EITE Current Cost Recovery Rider

The Commission's November 24, 2015 Notice of Comment Period solicited comments on Minnesota Power's proposed EITE Customers Rider (i.e. the proposed EITE rate and rate schedule), and whether the Commission should consider allowing implementation of a cost recovery rider prior to MP's next rate case. The notice stated that comments on the merits of the EITE cost recovery rider would be solicited at a later date, likely after a Commission decision on whether to approve MP's EITE discount rate.

Minnesota Power and the LPI customers objected to the bifurcation of comments and the decision on the EITE rate and EITE cost recovery rider.⁴ Both MP and LPI argued that the requirement in Minn. Stat. §216B.1696, subd. 2 (c) that the Commission make a final determination within 90 days of a miscellaneous filing by the electric utility applied to MP's filing as a whole, not just the EITE rate. Both parties also argued that they relied on the 90 day provision when they agreed to condition the start of the EITE rate discount upon approval by the Commission of both the EITE rate and the EITE cost recovery rider. MP also contended that bifurcating the issues would make it more difficult to make a public interest and net benefits determination.

Staff sees no legal requirement under the statute for the Commission to make a determination on cost recovery in the 90 day period simply because Minnesota Power chose to file a cost recovery proposal at the same time as its EITE rate proposal nor because MP would like to link the implementation date for the EITE rate to the implementation date of the cost recovery rider proposal.

Minn. Stat. §216B.1696, subd. 2 (d), provides that upon Commission approval of an EITE rate schedule, the utility shall create an account to track the difference in revenue between what would have been collected under standard rates and the EITE rate. It then requires the Commission to allow the utility to recover costs and refund savings in the utility's next rate case or through an EITE cost recovery rider between rate cases. It seems quite clear that since the statute allows waiting to start cost recovery until the next rate case, the Commission is not required to decide on cost recovery at this time or to approve an immediate start to such recovery. It is also possible that the Commission could make decisions on the EITE rate that would affect the level of cost recovery or not approve an EITE rate at all.

In addition, staff notes there are a number of controversial aspects to MP's proposed cost recovery rider that are independent of whether an EITE rate should be implemented. These issues could not be adequately analyzed and decided in 90 days regardless of circumstances, and even less so given the large number of pending rate cases and other significant matters requiring the attention of state agencies and other parties. These potentially controversial issues include, but are not limited to:

⁴ No other party responded directly to the MP and LPI objections.

- Should MP be allowed to begin recovering costs based on estimates of costs that have not yet been incurred, or should recovery wait until actual costs are known?
- Is the proposed allocation of costs to classes reasonable? Most rider cost recovery starts from an "interim rates-like" premise, maintaining some semblance of existing rate design. The Commission should not be, and is not, limited to considering the class cost allocation proposed by Minnesota Power.
- Is MP's proposal to exclude all customers who may be EITE eligible under the broad outlines of the statute from paying for EITE cost recovery reasonable, or should the only customers actually on or eligible for MP's current EITE rate offering be exempt?
- Given the potential for significant rate impact on non-EITE customers, should the Commission hold public hearings, evidentiary hearings, and/or consider other types of outreach to receive more public input?
- Given that six years has passed since the Commission looked at Minnesota Power's overall rate design and underlying cost structure, is a new class cost of service study, revenue and demand forecasts, or other analysis needed before deciding on cost allocation?

Parties' Positions and Staff Analysis

Minnesota Power, LPI, Forest Industries, and the Iron Mining Association urge the Commission to approve MP's EITE proposals. Minn. Stat. §216B.1696, subd. 2 (a) provides that "It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers." The Commission is directed to approve an EITE rate if the Commission determines it provides net benefits to the utility or the state, notwithstanding several other ratemaking statutes. These parties emphasize the importance of the EITE industries to the economic health of Minnesota and claim that rates for these customers are currently uncompetitive. LPI argues that the net benefits test is met if the EITE rate is an improvement over the status quo.

The Department, OAG, Mid-Minnesota Legal Aid, Minnesota Citizen's Federation, ECC, AARP, Save Our Sky Blue Waters, and MCEA all recommend the Commission reject or dismiss without prejudice MP's EITE petition. These parties generally argued that the record does not demonstrate that the proposed EITE rate provides net benefits for the state or the utility. The question is not whether the rate may produce benefits to some, but whether there are overall net benefits. Many of these parties contended that much more important economic factors than electric rates are affecting these industries.

Does Minnesota Power's EITE filing meet the filing and information requirements of statute and rule?

The Department contended that MP's initial filing failed to provide basic information to show it met Minn. Stat. §216B.1696, and recommended that the Commission reject the petition without prejudice. MP did not provide information showing it meets the number of customers

requirements to make it eligible to file for an EITE rate or had actually paid the \$10,000 to the Arrowhead Economic Opportunity Agency (AEOA) required by subdivision 3. The Department stated, however, the Department then had taken the initiative to verify these two factors.

The Department also contended that MP did not offer evidence to demonstrate under what specific provisions of the statute customers who have signed commitment letters actually qualify for EITE status, nor how future customers would be verified. And MP did not clearly state how it applied additional terms and conditions to qualify customers for the EITE rate.

The Department opposed MP's request for a variance to Minnesota Rules, Part 7825.3600, which requires proposed changes to be shown on all affected tariff pages, claiming that complying would not be an excessive burden and granting the variance would adversely affect the public interest.

Minnesota Power responded that the statute was clear on its face as to MP being eligible to propose a rate, the types of customers eligible, and that MP had adequately described how and why it applied the additional terms and conditions.

Staff shares the general concern, and the underlying frustration, expressed by the Department. It is the responsibility of the filing utility to assure initial filings are complete as to form, including that relevant statutory requirements are addressed, and even more so in a docket with such a tight statutory deadline. However, at this stage of the proceeding, it appears that the issues are addressed adequately (as to form, not necessarily as to substance), and it would be more fruitful to examine the merits of the net benefits analysis and other substantive issues. In the decision options, staff is suggesting certain information that should be filed in periodic EITE reports that go in part to the Department's concerns.

With respect to the requested variance to Minnesota Rules, Part 7825.3600, MP did provide the text that it proposes to include and a list of all tariff sheets to which it would be applied, fulfilling the spirit of the rule. It could be considered burdensome to provide a host of marked up tariff sheets for different rates that are going to all contain the same text. The issue of adversely affecting the public interest goes more to the merits of the filing and the need for outreach to potentially affected customers—filing marked up tariff sheets is unlikely to address that.

Which customers are eligible for an EITE rate?

Minnesota Power's petition is the first filing under the newly-enacted Minn. Stat. §216B.1696. There are a number of interpretation issues raised directly or indirectly by the parties that affect how they recommend the Commission evaluate the merits of Minnesota Power's EITE rate filing. One of these issues involves the qualifications for a customer to be eligible for an EITE rate. The definition of an EITE customer includes four factors:

Minn. Stat. §216B.1696, subd. 1 Definitions.

...

(c) "Energy-intensive trade-exposed customer" is defined to include:

(1) an iron mining extraction and processing facility, including a scam mining facility as defined in Minnesota Rules, part [6130.0100](#), subpart 16;

(2) a paper mill, wood products manufacturer, sawmill, or oriented strand board manufacturer;

(3) a steel mill and related facilities; and

(4) a retail customer of an investor-owned electric utility that has facilities under a single electric service agreement that: (i) collectively imposes a peak electrical demand of at least 10,000 kilowatts on the electric utility's system, (ii) has a combined annual average load factor in excess of 80 percent, and (iii) is subject to globally competitive pressures and whose electric energy costs are at least ten percent of the customer's overall cost of production.

Minnesota Power stated that (4) is intended to cover customers in industries not covered by the first three specific industry categories. Under this interpretation, customers in industries covered by the first three categories are by definition EITE eligible, and therefore there is not a requirement to demonstrate that they meet the size, globally competitive pressure, or cost of electricity to overall production criteria in (4). An alternative interpretation indirectly suggested by some comments is that customers in the first three industry categories also have to meet the criteria in (4) to be EITE eligible.

If the Commission disagrees with MP's interpretation, then the filing could be rejected without prejudice and direct that in any future filing MP provide the information in (4) for each customer to whom it proposes to offer an EITE rate.

Are the terms and conditions for qualification for the EITE rate, the individual design elements of the rate, and the specific rate option proposed by MP reasonable and compliance with the statute?

There was very little comment of the specifics of MP's proposed rate itself. The arguments for the most part focused on the net benefits analysis and effects on other customers. Staff sees little specific justification in MP's petition for proposing the \$1.15 per MWh credit—why not \$1.50? \$0.95? However, the proposed rate and terms appear to be within the broad parameters of the statute, and the Commission can judge whether the resulting costs and benefits result in net benefits to the utility or the state.

Staff is concerned, however, that MP's proposed EITE tariff and the customer letter agreements contain provisions that tie the approval of an EITE cost recovery rider to the implementation date of the EITE rate schedule. Staff has provided decision options that would require MP to revise the tariff and letters to exclude the requirement of cost recovery rider approval.

What criteria should be used to evaluate whether MP's proposed EITE rate schedule provides net benefit to the utility or the state? Does the record demonstrate such net benefits?

Minn. Stat. §216B.1696, subd. 2,(b) states . . . “the Commission shall, upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and any corresponding EITE rate.”

The arguments on the net benefits issues generally fall into two groups: those that argue the petition does not provide sufficient quantitative and other information to make a determination that there are positive net benefits, and those that argue the qualitative issues, such as the importance of the large customers to the economy in northern Minnesota, and potential impacts of losing those customers, are sufficient to find that there are net benefits. The majority of the parties did not provide a specific cost benefit analysis, but instead discussed: a) the importance of the mining and the forest product industries in northeastern Minnesota; b) the negative rate impact that the proposed EITE rate would have on other customers; and c) the adequacy or inadequacy of net benefit information in the record. Other than the specific dollar impact of the rates on customers, these discussions did not directly link rates to specific benefits or costs.

The Department provided some direction on the issue and recommended that the Commission compare the present value of the quantifiable costs and benefits of MP's proposed rate offering both under a utility test and under a societal test (limiting the definition of “society” to Minnesota). It argued that the Commission should also consider non-quantifiable benefits and costs in a manner similar to how the Commission evaluates alternatives in certificate of need proceedings.

The Department recommended that the Commission generally limit its consideration to matters within the Department's and Commission's expertise. If the Commission determines to consider information requiring specialized tasks, MP should work with an independent consultant to produce such analysis if MP determines to continue to pursue action under the EITE Statute.

The OAG provided 12 questions that it thinks should be answered so that the Commission can analyze the responses in determining whether the utility's proposal will result in a “net benefit for the utility or the state.”

Minnesota Power

Minnesota Power essentially argued that the terms and conditions of its EITE rate provide the net benefit. It stated:

A customer must have a Commission-approved electric service agreement (“ESA”) with at least two years remaining on the term and no changes to ESA terms are contemplated under the EITE Customers Rider.

Customers taking service under the EITE Customers Rider shall have total power requirements of at least 2,000 kW as set forth in the customer's ESA.

To bring the new EITE customer benefits to the customer as soon as possible, Minnesota Power proposes that the customer shall begin to receive EITE Customers Rider benefits on the first of the month following Commission approval of this Rider.

When the EITE customers take the ECC, they provide a net benefit to the utility and the state through their employment levels, through related spin-off jobs and employment, through the utilization of regional infrastructure (such as the Port of Duluth and rail systems), use of local supplier products and services, and the development of the region's rich natural resource base.

While Minnesota Power has the opportunity to sell energy into the Midcontinent Independent System Operator (MISO) market, those sales are made with a greater level of uncertainty and at a lower net benefit to both the utility and the state when compared to the local energy sales in northern Minnesota that support the industries that represent the economic engines of the region.

MP stated that other ratepayers should not have to support the competitiveness of customers in the region who do not make a commitment to remain in the region, and Minnesota Power believes the connection between customer and commitment to the region to be a crucial ingredient in the determination of the "net benefit to the utility or the state."

MP argued that if an EITE Customer has less than two years remaining on its ESA, the net benefit to the utility or the state becomes difficult to quantify at a minimum and is nonexistent as a maximum. As such, Minnesota Power proposes that an EITE Customer that issues a cancellation notice related to the term of the ESA would forfeit any benefits or rate credits under the EITE Customers Rider in the final two years of the term of its ESA if the EITE Customer and Minnesota Power do not execute a new ESA prior to the expiration of the ESA's term and that new ESA is ultimately approved by the Commission.

LPI

The LPI's argument is essentially that Minnesota Power's Industrial Rates for LPI-EITE are currently uncompetitive and that the proposed EITE rates is a first step that provides a net benefit to Minnesota Power and the State. It argued that the net benefits standard is met upon a showing of improvement from the status quo if the status quo could lead to a detrimental impact.

The LPI noted that if EITE customers do not meet the threshold energy consumption, they do not receive the energy credit charge, which creates an incentive to operate as close to full load as possible. Thus, the utility receives a net benefit in customers operating at a higher load increased sales revenue and ability to spread fixed costs over a greater level of sales, and the State receives a net benefit in both a more productive EITE industry (jobs and continued tax revenue).

The LPI stated that the potential negative ramifications of the status quo are threefold:

- Increased electric rates for all other Minnesota Power customers.
- Decreased jobs in Northern Minnesota.
- Decreased tax revenue for the State and local governments.

Absent approval of the Petition, electric rates for all ratepayers (including EITE customers) could increase as a result of an EITE customer shifting production to a location outside of Minnesota or simply shutting down a facility in Minnesota.

The amount of demand and energy margins that would need to be spread to other customers at 100 MW of load is nearly \$26 million, and at 300 MW is nearly \$77million. Assuming the loss of only 100 MW, some portion of the roughly \$26 million would be spread to all ratepayers including the large power class, which has the potential for a domino effect on the large power class. There is the potential for the resulting increases in rates to the large power class from 100 MW of lost load to trigger additional production shut-downs, thereby creating a death spiral of the large power class. Losing a third or half of these customers (i.e. a third or half of over 60% of Minnesota Power's retail sales) would detrimentally impact Minnesota Power and significantly increase rates for customers remaining on Minnesota Power's system.

The LPI argued that there are similar potential negative impacts on the small business community, many of whom support the mining and forest products industries.

The LPI arguments do not link the EITE rate to specific impacts such as number of job and sales that would be directly linked to the rate.

The Iron Mining Association and the Forest Products group made similar arguments and provided more specific information on the conditions of their respective industries.

Department

Utility Benefit/Cost Test

A utility cost test measures cost-effectiveness from the viewpoint of the utility. In terms of energy conservation—a common application of the utility cost test, examples of the benefits are the avoided supply costs of energy and demand along with the reduction in transmission, distribution, generation, and capacity valued at marginal costs for the periods when there is a load reduction. In that context, the costs for the utility test are the program costs incurred by the utility, the incentives paid to the customers, and the increased supply costs for the periods in which load is increased. The Department stated that the transfer payment is not itself a benefit or cost to MP or the state.

The Department stated that the proposed change in the cost of energy for customers may result in customers changing their behavior and the quantity of energy consumed. The Department reviewed the forecasting section of MP's 2015 integrated resource plan (IRP) to determine if changes in the price of electricity were included in MP's energy forecast process. The final customer class energy forecasts do not include the price of electricity as a variable. The Department concluded that MP's forecast process indicates that changes in the price of electricity should not be expected to have a significant impact on MP's energy sales to any particular customer class and thus should have no impact under the utility test.

The Department also noted that costs will be incurred by MP to administer the EITE Discount Rider and EITE Surcharge Rider. If these costs are significant, they could impact the utility test.

The Department's analysis indicated that, considering energy system impacts, MP's proposal cannot be expected to have a net benefit under the utility test. Thus, the Department concludes that the Company's proposal does not provide net benefits to the utility and fail's the EITE Statute's utility test.

State of Minnesota Benefit Test

The Department stated that a societal cost test, limited to the state of Minnesota, measures cost effectiveness from the point of view of society as a whole, including both the participants' and the utility's costs. In terms of energy conservation, the benefits are the avoided supply costs of energy and demand along with the reduction in transmission, distribution, generation, and capacity valued at marginal costs for the periods when there is a load reduction. The costs for the societal test are the costs paid by both the utility and the participants, including the effects of externalities.

Under a societal test the benefits and costs should include externalities. Thus, if a proposal results in an increase/decrease in energy consumption, it will likely result in increased/decreased pollution and thus externalities under a societal test.

As with the utility benefit/cost test, the immediate effect of the Petition results in a proposal with essentially no cost to Minnesota. Economically, all that happens is that the EITE Statute mandates transfer payments amongst customers. This transfer payment creates no immediate benefits or costs to Minnesota. Thus, the immediate effect of the Petition cannot be said to support a finding of net benefit to Minnesota.

The analysis of the secondary impact of the proposed transfer payments, the change in the cost of energy for customers, would be the same for society as for the utility. The Department concluded that the changes in the price of electricity should not be expected to have a significant impact on MP's sales to any particular customer class and thus should have no impact under the societal test.

The Department notes that the costs incurred by MP to administer the program would apply to the societal test.

In summary, the above analysis indicates that, considering energy system impacts, MP's proposal cannot be expected to have a net benefit under the societal test. The Department concluded that the Company's proposal does not provide net benefits to the state of Minnesota and fails the EITE Statute's societal test.

Non-energy Benefits and Costs

Overall, the largest potential impact the EITE Statute could be claimed to be addressing is the possibility of an EITE customer permanently shutting down. Continuing to think of the EITE Statute's benefit/cost test requirements in the framework of existing analysis, such an event would be similar to a new conservation project, albeit a conservation project that no one desires.

MP's 2015 IRP includes substantial additions of new resources. The reduction in energy and demand requirements implied by MP losing a large customer would lack the incentive payment costs of a similar conservation project and would eliminate the need for at least a portion of the new resources. Therefore, if the EITE Discount Rider successfully avoids a permanent shut down of a large customer that would imply that the EITE Discount Rider would impose net costs upon MP's system since new resources will be required to serve MP's existing customer base.

In terms of the analytical details, the potential economic development impacts (permanent shut downs of large customers) have two aspects. First, for the EITE customers, the Commission would have to determine two things:

- the expected impact of a permanent shut down of an EITE customer; and
- the incremental impact of the EITE Discount Rider upon the risk of a permanent shut down of the EITE customer.

Conceptually, once determined those two items can be multiplied by each other in order to determine the expected value of the payments under the EITE Discount Rider.

Second, for the non-EITE customers, the Commission again would have to determine two things:

- the expected impact of a permanent shut down or bankruptcy of a non-EITE customer; and
- the incremental impact of the increased payments under the EITE Surcharge Rider upon the risk of a permanent shut down or bankruptcy of a non-EITE customer.

Those two items can be multiplied by each other in order to determine the expected value of the payments under the EITE Surcharge Rider.

Then, the expected value of the risk of an EITE customer shutting down that may be avoided by the payments under the EITE Discount Rider could be compared to the expected value of the risk of a non-EITE customer shutting down that may be created by payments under the EITE Surcharge Rider, to determine the overall economic development impact of the Petition. The Department stated that such analysis is outside of its purview and the Petition offers no such analysis.

A further complication would be introduced by the limitation of the consideration of benefits and costs to the state of Minnesota. For example, not all of the impact of the permanent shut down of an EITE customer would be felt in Minnesota. Similarly, not all of the impact of the permanent shut down or bankruptcy of a non-EITE customer would be felt in Minnesota. Thus, for the state of Minnesota test, additional information would have to be obtained regarding the portion of the impact that would occur in Minnesota. The expected impact of a permanent shut down or bankruptcy filing would be multiplied by the percentage of costs that would impact Minnesota to determine the impact under the EITE Statute's state of Minnesota benefit/cost test.

OAG

The OAG stated that among other things, the Commission should consider the following in analyzing Minnesota Power's proposal:

1. Which EITE facilities will likely close if the proposed rate is not approved and which will likely stay open because the proposal is approved?
2. Which EITE facilities will likely reduce production if the proposed rate is not approved and which will likely maintain production because the proposal is approved?
3. How many jobs will be added or saved at EITE facilities if the proposed rate is approved and how many will be lost if it is not approved?
4. What will be the revenue impact of approving Minnesota Power's proposal?
5. How will increasing rates for Minnesota Power's other individual and small business customers impact the regional economy and quality of life for these customers?
6. What impact will increasing rates have on Minnesota Power's most vulnerable and rate sensitive customers, such as senior citizens, people on fixed incomes, and people who are unemployed or underemployed?

7. How much will Minnesota Power's load decline if the proposed rate is not approved? What is the likely impact of that load decline on the utility?
8. How is the information provided by Minnesota Power to answer the questions above known? Is the information reliable?
9. Is Minnesota Power's proposed rate appropriately targeted to businesses that need a rate discount in order to sustain their operations?
10. Should the costs of the program be capped?
11. Should the utility provide a flat credit for production, or should it be graduated?
12. Should the Commission require periodic reporting to evaluate whether any discount that may ultimately be granted for EITE customers continues to be needed?

Other Comments

AARP, ECC, the Citizen's Federation, and the Mid-Minnesota Legal Aid generally argued that the impact of shifting costs from EITE customers to others, especially low-income and senior ratepayers, needs to be properly considered in any analysis. MCEA recommended that effects on customer energy efficiency be considered as part of the analysis.

Staff

As indicated by the Department's comments, net benefit is essentially total benefit from a change in a good or service as measured by the total benefits from the change less the total cost associated with the change. Although a fairly simple concept, in this docket, many parties have complicated the issue by making qualitative, rather than quantitative arguments. The question for the Commission is whether it requires more factual information before making a net benefit determination or if the qualitative and other arguments in the record are sufficient.

If the Commission finds that the record does not support a finding of net benefits to the utility or the state, then it could reject the petition without prejudice, set the matter for contested case hearing, or undertake some other sort of investigation.

Should the Commission allow MP to implement an EITE cost recovery rider prior to its next rate case?

Minnesota Power proposed implementing its cost recovery rider simultaneously with the EITE rate. The Department noted that since the statute requires other customers to pay for the EITE discount, it may be preferable to allow rider implementation at some point before large balances build up. However, the Department recommended that the Commission first require notice and allow opportunity for non-EITE customers to comment. ECC, the Senior Federation, AARP and

others also recommended that the Commission provide an expanded opportunity for potentially affected customers to be informed of, and comment on, any cost recovery proposal.

Staff notes that one advantage of waiting until MP's next rate case to address EITE cost recovery is that it would be examined in the context of the all investment, cost, and revenues, rather than as a single issue. However, as the Department pointed out, it may not be in the best interests of other ratepayers to build up a large tracker balance that needs to be collected in the future.

If the Commission approves an EITE rate schedule, staff would plan to issue a notice for comment on the merits of MP's proposed EITE current cost recovery rider, unless the Commission decides that this should wait until a future rate case.

Decision Alternatives

Preliminary Matters

1. Find that Minnesota Power has the ability to propose for Commission approval various EITE rate options within their service territory under an EITE rate schedule pursuant to Minn. Stat. §216B.1696, subd. 2 (a), because it is an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers.
2. Grant Minnesota Power a variance to Minn. Rules, Part 7825.3600, which requires identifying all tariff pages in its rate book that do not change, and showing the proposed changes on each affected tariff page. Find that enforcement of the rule would impose an excessive burden on MP, and that granting the variance would not adversely affect the public interest and would not conflict with standards imposed by law.
3. Do not grant a variance to Minn. Rules, Part 7825.3600. Require Minnesota Power to file the proposed tariff pages.
4. Find that Minnesota Power has complied with Minn. Stat. §216B.1696, subd. 3, by sending a check for \$10,000 to the Arrowhead Economic Opportunity Agency (AEOA) which administers its Customer Affordability of Residential Electricity (CARE) program approved by the Commission under Minn. Stat. §216B.16, subdivision 15.

Merits of the Proposed EITE Rate Schedule

5. Authorize Minnesota Power to implement its proposed EITE Customers Rider effective March 1, 2016, finding that the record demonstrates that the rate provides a net benefit to:
 - A. the utility,
 - B. the state, or
 - C. the utility and the state.

6. Authorize Minnesota Power to implement an EITE Customer Rider with modifications the Commission finds appropriate, including revising the tariff and customer commitment letters to exclude the provision that the EITE Customer Rider is only effective after approval by the Commission of an EITE cost recovery rider.
Find that with these modifications, the record demonstrates that the rate provides a net benefit to:
 - A. the utility,
 - B. the state, or
 - C. the utility and the state.
7. Find that there is insufficient information in the record to determine whether Minnesota Power's proposed EITE rate provides net benefits to the state or the utility, and:
 - A. Request additional information and comments from Minnesota Power and/or other parties.
 - B. Send this matter to the Office of Administrative Hearings for a contested case hearing to develop a record on how to measure net benefits to the utility and to the state, whether Minnesota Power's proposed EITE Customers Rider provides such net benefits, and any other aspect of the Minnesota Power's EITE proposal the Commission deems appropriate.
8. Reject Minnesota Power's proposed EITE Customers Rider without prejudice, finding that the record does not demonstrate that the proposed rate schedule provides a net benefit to the utility or the state. The Commission may want indicate what type of information it would want to see in any future filing.

If the Commission approves an EITE rate schedule and rates, then:

9. Require Minnesota Power to establish 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, pursuant to §Minn. Stat. 216B.1696, subd. 2(d).
10. Require MP to file EITE reports with the first report due February 1, 2017 and annually thereafter, which includes a list of all customers on the rate, identifies which specific provision of the statute qualifies the customer for the EITE rate, the revenue difference between what would have been collected under the electric utility's applicable standard tariff by customer and in total,⁵ and the tracker activity and balance.

⁵ This report potentially could be combined with a cost-recovery rider report, should the Commission approve one in the future.

11. Require MP to establish and file within 10 days of the date of the order, for Commission approval, specific verification procedures for customers qualifying under Minn. Stat. §216B.1696, subd. 1 (c) (4) to assure customer eligibility for the EITE rate schedule.
12. Require MP to file for Commission approval of each customer qualifying under Minn. Stat. §216B.1696, subd. 1 (c) (4) before allowing them on the rate.
13. Require MP to file a revised communications plan consistent with the Commission's findings within 10 days of the Commission order. Delegate approval of any revised communications plan to the Executive Secretary.
14. Require MP to file revised tariff pages for the EITE customer rider consistent with the Commission's findings within 10 days of the Commission order. If no objections are received to the filing within 10 days, delegate authority to the Executive Secretary to approve the revised tariff pages.

Cost Recovery Issues:

15. Direct staff to issue a notice requesting comments on Minnesota Power's proposed Rider for EITE Current Cost Recovery.
16. Find that cost recovery issues should be decided in Minnesota Power's next general rate case.

Attachment

Minnesota Statutes 2015

216B.1696 COMPETITIVE RATE FOR ENERGY-INTENSIVE, TRADE-EXPOSED ELECTRIC UTILITY CUSTOMER.

Subdivision 1. Definitions.

(a) For purposes of this section, the following terms have the meanings given them.

(b) "Clean energy technology" is energy technology that generates electricity from a carbon neutral generating resource including, but not limited to, solar, wind, hydroelectric, and biomass.

(c) "Energy-intensive trade-exposed customer" is defined to include:

(1) an iron mining extraction and processing facility, including a scam mining facility as defined in Minnesota Rules, part 6130.0100, subpart 16;

(2) a paper mill, wood products manufacturer, sawmill, or oriented strand board manufacturer;

(3) a steel mill and related facilities; and

(4) a retail customer of an investor-owned electric utility that has facilities under a single electric service agreement that: (i) collectively imposes a peak electrical demand of at least 10,000 kilowatts on the electric utility's system, (ii) has a combined annual average load factor in excess of 80 percent, and (iii) is subject to globally competitive pressures and whose electric energy costs are at least ten percent of the customer's overall cost of production.

(d) "EITE rate schedule" means a rate schedule under which an investor-owned electric utility may set terms of service to an individual or group of energy-intensive trade-exposed customers.

(e) "EITE rate" means the rate or rates offered by the investor-owned electric utility under an EITE rate schedule.

Subd. 2. Rates and terms of EITE rate schedule.

(a) It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers. To achieve this objective, an investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers, shall have the ability 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.

(b) Notwithstanding Minnesota Statutes, section [216B.03](#), [216B.05](#), [216B.06](#), [216B.07](#), or [216B.16](#), the commission shall, upon a finding of net benefit to the utility or the state, approve an EITE rate schedule and any corresponding EITE rate.

(c) The commission shall make a final determination in a proceeding begun under this section within 90 days of a miscellaneous rate filing by the electric utility.

(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.

Subd. 3.Low-income funding.

Upon the filing of a utility for approval of an EITE rate schedule under this section, the filing utility 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.

Subd. 4.Assessment.

The commissioner of commerce shall assess reasonable costs it incurs for services it provides to implement this section to the utility proposing an EITE rate schedule to the commission. The department must not assess more than \$854,000 per biennium under this subdivision.

History:

[1Sp2015 c 1 art 3 s 26](#)