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August 1, 2016

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E017/M-16-533

Dear Mr. Wolf:

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

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

The petition was filed on June 27, 2016 by:

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

Otter Tail Power Company's petition fails to demonstrate that its proposal meets the requirements of Minnesota Statutes section 216B.1696. Thus the Department recommends that the Commission **reject the petition without prejudice to allow Otter Tail Power to file a compliant petition** and is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ STEVE RAKOW
Rates Analyst

SR/ja
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE
MINNESOTA DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

DOCKET No. E017/M-16-533

I. INTRODUCTION

On June 27, 2016, Otter Tail Power Company (OTP or the Company) petitioned the Minnesota Public Utilities Commission (Commission) for approval of the Company's *Petition by Otter Tail Power Company for Approval of Energy-Intensive, Trade-Exposed Customer Rate* (Petition). The Petition proposes to implement Minnesota Statutes section 216B.1696 (EITE Statute), which deals with energy-intensive trade-exposed (EITE) customers. OTP proposes to create a new tariff offering a discount to EITE customers (EITE Discount Rider), recovering the lost revenues via a new tariff applied to non-EITE, non-low income customers (EITE Cost Recovery Rider).

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

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

On July 1, 2016, the Commission issued its *Notice of Comment Period on EITE Rate Schedule for Otter Tail Power* (Notice). The Notice requested comments on the following topics:

- Does OTP's proposed rate for EITE customers comply with Minn. Stat. § 216B.1696, including the types of customers eligible for the rate, the criteria for qualification for the rate, the individual design elements of the rate, and the specific rate option proposed?
- What criteria should the Commission use in determining whether electric rates are competitive?

- What criteria should the Commission use to evaluate whether OTP's proposed EITE rate schedule provides a net benefit to the utility or to the state as required by Minn. Stat. § 216B.1696, subd. 2(b)? Has OTP demonstrated that its proposed EITE rate schedule provides such net benefit?
- Are there additional or alternative rate options for EITE customers that would better meet the policy goals of the statute?
- Does OTP's action on the deposit of \$10,000 for low-income funding comply with Minn. Stat. § 216B.1696, subd. 3, and is it reasonable?
- Under Minn. Stat. § 216B.1696, subd. 2(d), the Commission shall allow recovery of costs in the next general rate case or through an EITE cost recovery rate rider between general rate cases. Should the Commission allow OTP to implement a cost recovery rider prior to its next general rate case?
 - How does this petition affect the current OTP rate case (Docket 15-1033)?
 - Should OTP be required to file additional comments in its rate case explaining how its EITE proposal will affect other customers and their rates?
 - Is it possible or reasonable to integrate OTP's EITE proposal into tariffs and base rates in its current rate case (Docket 15-1033)?
 - Should the Commission consider OTP's EITE petition as part of OTP's pending general rate case (Docket 15-1033), or as part of OTP's next general rate case?
- Please provide comments regarding any other issues relevant to the Commission's review of OTP's petition.

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

Below are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department or DOC-DER) regarding the Petition.

II. DEPARTMENT ANALYSIS

A. GOVERNING STATUTE

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

Subd. 2. (a) ... 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) ... the utility shall create a separate account to track the difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule. In its next general rate case or through an EITE cost recovery rate rider between general rate cases, the commission shall allow the utility to recover any costs, including reduced revenues, or refund any savings, including increased revenues, associated with providing service to a customer under an EITE rate schedule. The utility shall not recover any costs or refund any savings under this section from any energy-intensive trade-exposed customer or any low-income residential ratepayers as defined in Minnesota Statutes, section 216B.16, subdivision 15.

In summary, subdivisions 2(a) and 2(b) allow certain utilities to offer various rate options to EITE customers. Subdivision 2(c) creates a deadline for Commission action. Subdivision 2(d) requires an account to track the change in revenues caused by the rate offerings and allows the utility to charge non-EITE and non-low income customers (as defined in the EITE Statute noted above) the revenue deficiency caused by the EITE rates.¹ The EITE Statute places no limit on the amount of the discount offered to EITE customers nor, correspondingly, does the EITE Statute limit the amount that potentially could be charged to other customers to recover the lost revenues.

B. REQUIRED TESTS

The EITE Statute's subdivision 2 establishes four tests that must be applied to petitions proposing new tariff offerings for EITE customers. The Commission's Notice establishes questions regarding the Petition. The issues raised by the EITE Statute's tests and the Commission's Notice are addressed below.

¹ Under the EITE Statute the change could be either an increase or a decrease in revenues depending upon the specifics of the rate offerings made available by the utility and selected by EITE customers. However, OTP's proposal would only create a decrease in revenues from EITE customers and a corresponding increase in revenues from other OTP ratepayers.

1. *Requirements of the Utility*

i. *Number of Customers*

The EITE Statute's subdivision 2(a) establishes the criterion that an "investor-owned electric utility that has at least 50,000 retail electric customers, but no more than 200,000 retail electric customers" may propose new tariff offerings for EITE customers. Clearly, OTP is an investor-owned electric utility. OTP's Petition indicated that the Company has approximately 131,000 total retail electric customers with over 61,000 retail electric customers located in Minnesota. Therefore, OTP meets the criterion for proposing new tariff offerings for EITE customers.

ii. *Low-income funding*

The Commission's Notice indicates that the topics open for comment at this time include the question, "Does OTP's action on the deposit of \$10,000 for low-income funding comply with Minn. Stat. § 216B.1696, subd. 3, and is it reasonable?" The EITE Statute's subdivision 3 requires:

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.

In response to this requirement, the Petition at pages 25-26 states that:

Otter Tail has created an account payable in the amount of \$10,000 named "EITE deposit. To be used as Ordered by Commission".

Otter Tail does not currently administer a Commission-approved affordability program under Minnesota Statutes Section 216B.16, subdivision 15. Within the Otter Tail service territory, however, Great Plains Natural Gas Co. (Great Plains) provides natural gas heating to Otter Tail's electric customers. Additionally, Great Plains administers an affordability program that has been approved by the Commission under Minnesota Statutes Section 216B.16, subdivision 15. The Great Plains affordability program is administered by the Salvation Army, Roseville, Minnesota.²⁰ To provide additional resources to allow the Salvation Army to increase awareness of the Gas Affordability Program, Otter Tail requests that the Commission approve Otter Tail providing the \$10,000 currently in the EITE

Deposit account to the Salvation Army, Roseville, Minnesota.
²⁰ *In the Matter of the Petition for Approval of Great Plains Natural Gas Co. Annual Gas Affordability Program Report*, Docket No. G004/M-15-306, PETITION at 3 and 10 (Mar. 31, 2015).

Regarding OTP's statements, the clear statutory requirement is that upon the filing of an EITE rate schedule OTP must "deposit \$10,000 into an account devoted to funding a program approved by the Commission under Minnesota Statutes, section 216B.16, subdivision 15." Whether OTP administers a Commission-approved affordability program under Minnesota Statutes Section 216B.16, subdivision 15 is not relevant under the EITE Statute. The EITE Statute requires funding a program approved by the Commission upon filing. Furthermore, the funds should be designated to be used for customer outreach. While Great Plains provides natural gas service to some of OTP's ratepayers, and Great Plains has an affordability program approved by the Commission, it is unclear: 1) whether Great Plains serves all of OTP's low-income ratepayers, 2) how much of the \$10,000 would be used for non-OTP ratepayers, and 3) whether OTP's proposal meets the intent of the EITE Statute. If not, then the Company's Petition would not meet a basic filing requirement.

The Department notes that the OTP-EITE's Customers' comment at page 3 claims that:

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
⁸ *Petition*, at 25-26.

Regarding OTP-EITE's Customers' statements, Prairie Five Community Action Council is mentioned in Docket No. G004/M-15-306 as providing bill payment assistance in Great Plains Natural Gas Co.'s (Great Plains) service area. However, The Salvation Army, Roseville, Minnesota administers Great Plains' affordability program. Great Plains' petition in Docket No. G004/M-15-306 states that "along with The Salvation Army, Great Plains will continue to promote GAP [gas affordability program]." From this information it is not clear that Prairie Five Community Action Council would be the appropriate agency to receive funds designated to be used for the promotion of affordability programs. Therefore, if OTP-EITE's comment is correct, it is not clear if the Company has met a basic filing requirement.

In summary, the Department concludes that it is unclear whether OTP's Petition meets the requirements of the EITE Statute to deposit \$10,000 with an agency that promotes affordability programs and designate the funds to be used for outreach. Without clarity on this issue, the Department cannot recommend that the Commission approve the Petition.

1. Requirements of the Customers

The Commission's Notice indicates that the topics open for comment at this time include "the types of customers eligible for the rate, the criteria for qualification for the rate." The EITE Statute's subdivision 1 (c) defines an EITE customer as including:

- (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.

The Petition states that OTP currently has three customers that meet the definition of an EITE customer:

- Potlach Corporation—operating a sawmill in Bemidji, Minnesota;
- Cass Forest Products—operating a sawmill and dimension plant in Cass Lake, Minnesota; and
- Norbord Corporation—operating an oriented strand board mill in Solway, Minnesota.

Regarding identifying customers that meet the one of the definitions in the EITE Statute's subdivision 1 (c), the Commission established a list of acceptable North American Industry Classification System ("NAICS") codes for customers statutorily exempt from the Solar Energy Standard ("SES") in its November 19, 2014 Order in Docket No. E-999/CI-13-542. Customers who are exempt from the SES are the same as two of the categories of customers eligible for and exempt from the costs of the EITE rate schedule, as outlined in Minn. Stat. § 216B.1696, subd. 1(c)(1) and 1(c)(2). The Commission's list of acceptable NAICS codes is as follows:

NAICS Code	Category
212210	Iron Ore Mining
321113	Sawmills
321114	Wood Preservation
321211	Hardwood Veneer and Plywood Manufacturing
321212	Softwood Veneer and Plywood Manufacturing
321213	Engineered Wood member (Except truss) Mfg.
321214	Truss Manufacturing
321219	Reconstituted Wood Product Mfg.
321911	Wood Window and Door Mfg.
321912	Cut Stock, Resawing Lumber and Planning
321918	Other Millwork (incl. flooring)
321920	Wood Container and Pallet Mfg.
321991	Manufactured Home (mobile Home) Mfg.
321992	Prefabricated Wood Building Mfg.
321999	All Other Misc. Wood Product Mfg.
322110	Pulp Mills
322121	Paper (except Newsprint) Mills
322122	Newsprint Mills
322130	Paperboard Mills
322211	Corrugated and Solid Fiber Box Mfg.
322212	Folding Paperboard Box Mfg.
322219	Other Paperboard Container Mfg.
322220	Paper Bag and Coated and Treated Paper Mfg.
322230	Stationery Product Mfg.
322291	Sanitary Paper Product Mfg.
322299	All Other Converted Paper Product Mfg.

Note that Minnesota Statutes §216B.1691, Subd. 2f (d) defines customers that are statutorily exempt from the Solar Energy Standard as:

- (1) an iron mining extraction and processing facility, including a scam mining facility as defined in Minnesota Rules, part 6130.0100, subpart 16; or
- (2) a paper mill, wood products manufacturer, sawmill, or oriented strand board manufacturer.

The Department recommends use of the list of NAICS codes² developed for SES exemption as a reasonable way to initially identify OTP-EITE Customers' potentially eligibility under the first two categories in the EITE Statute. For the third EITE customer category (a steel mill and related facilities), in Docket No. E015/M-15-984 Minnesota Power (MP) proposed to use the following NAICS codes:

² These codes are available at <http://www.census.gov/cgi-bin/sssd/naics/naicsrch>.

1. 332111 – Iron Mining and Steel Forging;³
2. 333511 – Industrial Mold Manufacturing;⁴ and
3. 423510 – Metal Service Centers and Wholesale.⁵

The Department concludes that, with the understanding that facilities must be related to a steel mill, MP's list of NAICS codes are reasonable to initially identify customers potentially eligible for EITE status under the third category. The Department notes that NAICS codes are self-reported by customers and that the code list may be under inclusive. Therefore, the Department concludes that, in the future, OTP should have the ability to petition the Commission to adjust the list of NAICS codes to determine eligibility for EITE status. Further, since the codes are self-reported, businesses may report inappropriate codes due to the financial incentives created by the EITE Statute. Therefore, the codes should be understood to only be a guideline. The actual determination of qualification for EITE status must be made by the Commission.

Regarding how EITE status will be verified on an ongoing basis in the future the Petition states "Otter Tail requests that the Commission require, with its approval of an EITE Rate, that any EITE Customer found eligible for the EITE Rate must request continued eligibility once every five years." The Department agrees with OTP that verification is important since the EITE Statute requires other OTP ratepayers to pay for the costs of EITE discounts. However, since factors affecting individual businesses could change year to year due to factors such as mergers or changes in the primary focus of the business, the Department recommends that, if the Commission approves OTP's EITE Petition, the Commission should require OTP to file annual verification and documentation that each EITE customer continues to meet all of the relevant qualifications for the EITE rate, including the primary focus of the businesses and, for certain eligible customers, strength of global competition, load factors, and size of electricity costs to total costs.

In summary, the Department concludes that OTP should verify that the facilities of Potlatch Corporation, Cass Forest Products, and Norbord Corporation discussed in the Petition are included in one of the NAICS codes discussed above.

³ Defined as:

establishments primarily engaged in manufacturing iron and steel forgings from purchased iron and steel by hammering mill shapes. Establishments making iron and steel forgings and further manufacturing (e.g., machining, assembling) a specific manufactured product are classified in the industry of the finished product. Iron and steel forging establishments may perform surface finishing operations, such as cleaning and deburring, on the forgings they manufacture.

⁴ Defined as "establishments primarily engaged in manufacturing industrial molds for casting metals or forming other materials, such as plastics, glass, or rubber."

⁵ Defined as:

establishments primarily engaged in the merchant wholesale distribution of products of the primary metals industries. Service centers maintain inventory and may perform functions, such as sawing, shearing, bending, leveling, cleaning, or edging, on a custom basis as part of sales transactions.

3. *Rate Option Offered and Rate Design*

i. EITE Discount Rider

The Commission's Notice indicates that the topics open for comment at this time include "the individual design elements of the rate, and the specific rate option proposed." The Department notes that OTP did not provide any proposed tariff language explaining how the proposed 20 percent bill reduction would be applied to qualifying EITE customers' bills. Instead, the Petition states "As this Docket develops, Otter Tail will work with the Department to address language in proposed Electric Rate Schedule Section 13.09 to be sure it accurately reflects how the discount is applied to EITE Customer bills and incorporate appropriate language." While the Department does not object to working with a utility to ensure that proposed language accurately reflects the Commission's decision, it is OTP's responsibility to identify how the EITE discount would work.

Without a draft of OTP's view of the applicable tariff language it is not possible to analyze the design elements of OTP's rate nor the specific rate option proposed. The EITE Statute's subdivision 2 (b) requires Commission approval of an EITE rate schedule. Comparing the EITE Statute to the Petition, it is not even clear what the Commission would approve. Minnesota Rules 7829.1300 subpart 5 states that "The commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements." Since the item that the Commission by Statute must approve was not included in the Petition, the Department recommends that the Commission reject the Petition without prejudice to allow the Company to submit proposed tariff language, and once submitted the Department will work with OTP on compliance issues.

ii. EITE Cost Recovery Rider

Attachment 5 of the Petition includes OTP's Applicability Matrix, which indicates the tariffs subject to the EITE Cost Recovery Rider. The Applicability Matrix generally indicates that the EITE Cost Recovery Rider may apply to OTP's residential, farm, general, and other services tariffs along with the Company's voluntary riders with the exception of the Company's WAPA Bill Crediting Program rider. The Applicability Matrix also indicates that the EITE Cost Recovery Rider will not apply to the Company's riders.

Attachment 7 of the Petition includes the proposed language for OTP's EITE Cost Recovery Rider. The EITE Cost Recovery Rider:

- is applicable to any electric service under all of the Company's retail rate schedules except for those customers with Low-Income Home Energy Assistance Program (LIHEAP) designation in the Company's billing system at the time of billing and the EITE customers;
- will be added to each non-exempt Customer's bill based on the applicable EITE Surcharge Factor multiplied by the Customer's monthly bill. Note that:

- the EITE Surcharge Factor is calculated by dividing the forecasted recoverable EITE tracker balance by projected Minnesota non-exempt retail revenue;⁶
- the EITE Surcharge Factor may be adjusted annually by approval of the Commission; and
- the EITE Surcharge Factor will not apply to any mandatory riders or sales tax and any local assessments;
- will be subject to an annual true-up (any over/under recovery will be reflected as a carryover balance to be included in calculating subsequent EITE Surcharge Factors);
- eligibility will be determined by the Commission once every five years; and
- will expire five years after its effective date, unless otherwise extended by Order of the Commission.

OTP's Petition does not identify the rates the Company intends to charge to non-EITE, non-exempt ratepayers. Given the lack of clarity for both the EITE Discount Rider and EITE Cost Recovery Rider, along with numerous other deficiencies of the Petition, the Department recommends that the Commission reject the Petition and has no comment on the individual design elements of OTP's EITE Cost Recovery Rider.

4. *Net Benefit Tests*

Regarding the EITE Statute's net benefits test, the Commission's Notice indicates that there are two broad topics open for comment at this time. The first topic is "What criteria should the Commission use to evaluate whether OTP's proposed EITE rate schedule provides a net benefit to the utility or to the state" The second topic is "Has OTP demonstrated that its proposed EITE rate schedule provides such net benefit?"

i. Utility and State of Minnesota Tests—Criteria to use

Regarding the criteria the Commission should use to evaluate OTP's proposed EITE rate schedule the Department recommends that the Commission require a model with clearly defined inputs, calculation methods, and outputs. The Department recognizes that, to a certain extent, models are subjective. For example, there are often several sources with different values for various model inputs. However, a clearly defined model enables all parties to critique the case for approval. It also forces the party developing the model to make clear the assumptions that underlie the case being made. The Commission should not approve or reject a petition based solely on a series of ad hoc statements and anecdotes offered by parties.

The Department notes that, given the uncertainty regarding the future, economic models of the benefits and costs of an EITE rate schedule cannot reveal the truth. Such models are,

⁶ The Department notes the Company's other active, mandatory riders are calculated as follows:

- Conservation Improvement Project (CIP) Rider: per kWh amount;
- Energy Adjustment Rider: per kWh amount;
- Transmission Cost Recovery Rider: per kW and kWh amounts; and
- Environmental Cost Recovery Rider: percent of bill amount.

however, a way to make sure that the underlying arguments of a party are consistent. That is, a model enables other parties to determine if a petition's arguments involve plausible combinations of events and behaviors. Therefore, while models do not explain everything, the discipline, transparency, and accountability imposed by development and use of a model is critical in a successful public process.

ii. Utility and State of Minnesota Tests—Net Benefit Demonstration

The Commission's Notice indicates that the topics open for comment at this time include "What criteria should the Commission use to evaluate whether OTP's proposed EITE rate schedule provides a net benefit to the utility or to the state" and "Has OTP demonstrated that its proposed EITE rate schedule provides such net benefit?"

Regarding OTP's Petition, no clear model is presented. Similarly, the OTP-EITE Customers present a series of ad hoc statements and anecdotes and not a clear model for determining net benefits. Furthermore, without tariff language clarifying how the proposed EITE rate schedule is to be applied to any of OTP's ratepayers, it is not possible for any party to perform the cost-benefit analysis required by the Statute in order to determine if the proposed rate provides a net benefit to the utility or the state of Minnesota. Minnesota Rules 7829.1300 subpart 5 states that "The commission shall reject a filing found to be substantially out of compliance with this chapter or applicable statutory requirements." OTP's Petition is substantially out of compliance with the requirement to demonstrate a net benefit to the utility or the state, and therefore, the Department recommends that the Commission reject the Petition without prejudice

5. Alternative Rate Options

The Commission's Notice indicates that the topics open for comment at this time include "Are there additional or alternative rate options for EITE customers that would better meet the policy goals of the statute." The policy goal is clearly laid out in the EITE Statute: "it is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers." The Department notes that there may be alternative rate options for the OTP-EITE Customers that would better meet the policy goals of the EITE Statute. However, the EITE Statute clearly states that an investor-owned electric utility has the ability to propose EITE rate offerings and OTP has done so. The EITE Statute is silent on whether any other entity may propose EITE rate options. In any case, the Department does not propose alternative EITE rate options.

C. OTHER ISSUES

1. Ratepayer Impacts

The Commission's Notice indicates that the topics open for comment at this time include "comments regarding any other issues relevant to the Commission's review of OTP's

petition.” The Department notes that Attachment 4 of the Petition provides interesting data regarding ratepayer impact. While the EITE Statute does not require consideration of ratepayer impacts, the Department believes that further analysis of OTP’s data may be instructive regarding an overall policy of implementing load retention rates such as that requested by the Petition.

The Department analyzed OTP’s ratepayer impact data using expected values. An expected value is a statistical calculation that assumes that there are multiple futures with varying probabilities of occurring and outcomes. Here the expected value is the ratepayers’ cost under each future multiplied by that future’s probability of occurring. The futures involve approval or rejection of the EITE filing, each with a different probability of the EITE Customers remaining in business or closing.

To simplify matters, the Department starts with the assumption that the Commission currently has two choices, approve OTP’s proposed 20 percent discount or reject OTP’s proposed 20 percent discount. The Department also assumes that there are two potential futures that ensue from each Commission decision. In one future the EITE customers all remain in business; in the second future all the EITE customers close. Finally, the analysis assumes that everything takes place in a single year.

First, the input data for the scenario where the Commission rejects OTP’s proposed 20 percent discount (using the data for the residential class):

- If the EITE customers remain in business—nothing has changed for the Company’s ratepayers, there is no extra payment to be made.
- If the EITE customers close—OTP estimates that residential ratepayers’ rates would increase by \$11.53 annually.

Second, the input data for the scenario where the Commission approves OTP’s proposed 20 percent discount (using the data for the residential class):

- If the EITE customers remain in business—OTP estimates that residential ratepayers’ rates would increase by \$4.64 annually.
- If the EITE customers close—OTP estimates that residential ratepayers’ rates would increase by \$11.53 annually.

As mentioned above, comparison of two such policy decisions can be done using expected values. An expected value is calculated by taking the cost of each future and multiplying it by the probability of that future’s occurring. First, the Department assumes that approving the Petition guarantees that the EITE customers will remain in business (the probability of remaining open is 100 percent and the probability of closure is 0 percent). Then the expected value of approval is:

$$[(100\% * \$4.64) + (0\% * \$11.53)] = \$4.64.$$

The question at this point is at what probability of closure would the expected value of rejecting the petition be higher than \$4.64 (indicating the approval of the petition is the least cost approach for ratepayers). The Department calculated that, if rejecting the Petition leads to a probability of closure of 40.24 percent then the expected value, the ratepayers' cost, is also \$4.64:

$$[(59.76\% * \$0.00) + (40.24\% * \$11.53)] = \$4.64.$$

Note that if rejecting the Petition leads to a probability of closure greater than 40.24 percent, then the expected value (the ratepayers' cost) also will be greater than \$4.64.

To demonstrate the impact of a lower probability of a successful outcome from approval, the Department re-calculated the expected values assuming approving the Petition leads to a very high probability (90 percent) that the EITE customers will remain in business (and thus the probability of closure is 10 percent). Then the expected value of approval is:

$$[(90\% * \$4.64) + (10\% * \$11.53)] = \$5.33.$$

The question at this point is at what probability of closure would the expected value of rejecting the petition be equal to or higher than \$5.33 (indicating that approval of the petition is the least cost approach for ratepayers). The Department calculated that, if rejecting the Petition leads to a probability of closure of 46.22 percent then the expected value is also \$5.33:

$$[(53.78\% * \$0.00) + (46.22\% * \$11.53)] = \$5.33.$$

This analysis demonstrates that the lower the probability of a successful outcome from approval, the greater the probability of closure following a rejection of the petition must be for approval to be cost-effective.

In summary, under a single year analysis, for approval of the Petition to represent the least cost approach for OTP's ratepayers the probability of the EITE customers closing has to be rather high—at least 40.24 percent.

2. *General Rate Case Considerations*

The Commission's Notice indicates that the several topics related to the Company's on-going rate case are open for comment. The first rate case-related topic is, "Should the Commission allow OTP to implement a cost recovery rider prior to its next general rate case?" The Department notes, generally, that the EITE Statute states "the utility shall create a separate account to track the difference in revenue" and "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." Since the EITE Statute requires OTP's non-EITE ratepayers to pay for the discount provided to OTP's EITE customers, whether now or in the future, it would be preferable for revenue decreases and increases to be offsetting to the extent possible to minimize the cost or benefit for subsequent generations of ratepayers and

also minimize the carrying charges on such a tracker, if any. Therefore, the Department recommends that, if the Commission approves a discount for the OTP-EITE Customers, the Commission allow OTP to implement a cost recovery rider prior to its next general rate case to offset the lost revenues.

The Department notes that the Petition states that OTP's customers will also receive information about this Petition with electricity bills sent July 1, 2016 through July 30, 2016. This approach provides non-EITE ratepayers an opportunity to comment on the proposed rate increases they would face under the proposal. However, OTP's notice does not identify the amounts that nonexempt, non-EITE ratepayers would pay under the Company's proposal. To be consistent with the notices given for rate increases, the Department recommends that, if the Commission approves a discount for the OTP-EITE Customers, the Commission require OTP to:

- include with each customer's first bill when rates change, a notice approved by the Commission's Executive Secretary,
- give written notice, as approved by the Commission, of the proposed change in rates to the governing body of each municipality and county in the area affected, pursuant to Minn. Stat. § 216B.16, subd. 1. and
- mail copies of the Commission's Order to all municipalities, counties, and local governing authorities within its Minnesota service area.

The second rate case-related topic open for comment at this time is "How does this petition affect the current OTP rate case (Docket 15-1033)?" Since Minnesota Statute Section 216B.16 gives authority for OTP's general rate case and Minnesota Statute Section 216B.1696 gives authority for the EITE rider, Minnesota Statutes treats these two matters separately.

More importantly, OTP's general rate case is subject to the following important regulatory principles, from which EITE rates are evidently exempt (according to the language in subdivision 2b of Minnesota Statute Section 216B.1696):

- **216B.03, Reasonable Rates;** apparently EITE rate offerings do not need to result in reasonable rates, encourage energy conservation; encourage renewable energy use, or treat customer classes in a non-discriminatory manner.
- **216B.05, Filing Schedules, Rules, and Service Agreements;** apparently EITE offerings do not require utilities to file all materials related to the EITE discounts with the Commission.
- **216B.06, Receiving Different Compensation;** apparently it is not necessary under EITE rates that the utility must charge EITE Customers the rates approved by and on file with the Commission; the only way to know the actual rates charged to the EITE Customers would be to review individual bills.
- **216B.07, Rate Preference Prohibited;** apparently utilities with EITE rates can provide any preference or advantage it desires to EITE Customers (and consequently, any prejudice or disadvantage to non-EITE Customers).

- **216B.16, Rate Change; Procedure; Hearing;** apparently utilities with EITE rates can change EITE rates without any notice to the Commission.

Thus, for example, Minnesota Statute Section 216B.16 requires reasonable rates to be set in Otter Tail Power's current rate case, but Minnesota Statute Section 216B.1696 does not impose that same requirement on EITE rates.

The third rate case-related topic open for comment at this time is "Should OTP be required to file additional comments in its rate case explaining how its EITE proposal will affect other customers and their rates?" The Department agrees and recommends that the Commission require OTP to file additional comments in its rate case explaining how its EITE proposal will affect other customers and their rates.

The fourth rate case-related topic open for comment at this time is "Is it possible or reasonable to integrate OTP's EITE proposal into tariffs and base rates in its current rate case (Docket 15-1033)?" Given the schedule of OTP's current rate case, the likely timing of a Commission decision regarding the Petition, and different standards set out in the two statutes as identified above, the Department recommends that the Commission not integrate Commission approval of OTP's EITE proposal into tariffs and instead base rates in OTP's currently pending rate case on the decisions made in the rate case.

The fifth rate case-related topic open for comment at this time is "Should the Commission consider OTP's EITE petition as part of OTP's pending general rate case (Docket 15-1033), or as part of OTP's next general rate case?" Given the schedule of OTP's current rate case and the EITE Statute's requirement that the Commission make a final determination in a proceeding begun under the EITE Statute within 90 days of filing the Department recommends that the Commission not consider OTP's Petition as part of OTP's pending general rate case. The Department takes no position at this time regarding the appropriate treatment of OTP's Petition in OTP's next general rate case.

3. *Competitive Rates*

The Commission's Notice indicates that the topics open for comment at this time include "What criteria should the Commission use in determining whether electric rates are competitive?" Generally, in reaching determinations about rate competitiveness, the Commission has considered whether a customer "has the ability to obtain its energy requirements from an energy supplier that is not regulated by the Commission under section 216B.16" based on the definition of effective competition in Minnesota Statute section 216B.162, Competitive Rate for an Electric Utility. If the Commission elects to determine whether electric rates are competitive, the Department notes that this definition may be instructive. However, the Department notes that a decision regarding whether electric rates are competitive does not appear to be necessary under Minnesota Statute section 216B.1696.

III. DEPARTMENT RECOMMENDATION

Based upon the numerous substantial deficiencies in the Petition discussed above, the Department recommends that, per Minnesota Rules 7829.1300 subpart 5, the Commission deny OTP's Petition. Nonetheless, given the newness of the Statute, the Department recommends that the denial be without prejudice to allow OTP the opportunity to file a compliant petition at a later date.

/ja

CERTIFICATE OF SERVICE

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

**Minnesota Department of Commerce
Comments**

Docket No. E017/M-16-533

Dated this 1st day of August 2016

/s/Sharon Ferguson

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