

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 7th Place East, Suite 350
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In the Matter of the Petition by Otter Tail
Power Company for Approval of an Energy-
Intensive, Trade Exposed Customer Rate

PUC Docket No. E-017/M-16-533

REPLY COMMENT

An *ad hoc* consortium of large industrial end users of electric energy that meet the definition of energy-intensive trade-exposed (“EITE”) customers under section 216B.1696 of the Minnesota Statutes (the “EITE Statute”), consisting of forest products companies Cass Forest Products; Norbord, Inc.; and Potlatch Corporation (collectively, “OTP-EITE”); submit this comment in reply to the initial comments submitted in response to the Minnesota Public Utilities Commission’s (the “Commission’s”) Notice of Comment Period on EITE Rate Schedule for Otter Tail Power dated July 1, 2016 (the “Notice”), regarding the Petition by Otter Tail Power Company for Approval of an Energy-Intensive, Trade Exposed Customer Rate (the “Petition”).

I. INTRODUCTION

The Minnesota Department of Commerce – Division of Energy Resources (the “Department of Commerce”) and the Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division (the “OAG”) submitted comments recommending that the Commission deny the Petition. OTP-EITE appreciates the attention and work these parties invested to review the Petition. But OTP-EITE respectfully disagrees with the conclusions these parties reached. The Department of Commerce and OAG dispute whether Otter Tail Power’s proposed EITE rate provides a net benefit to the utility or the State. In so doing, it appears that these parties deviate from the standard for determining net benefit to the utility or the State and appear to apply a different standard than the one that the Commission outlined in a related docket with an EITE proposal filed by Minnesota Power. OTP-EITE therefore uses this reply comment to refocus on the proper issues. OTP-EITE reiterates that the standard for reviewing an EITE rate proposal appears to be as follows: an EITE rate proposal must be reasonably likely (not certain) to result in a net benefit to the utility or the State, as evidenced by verified pleadings or

sworn testimony which quantifies costs and benefits to the extent practicable, all of which is considered in light of the specific policy directive to ensure competitive electric rates for EITE customers. OTP-EITE notes that the only parties that submitted sworn testimony, which the Commission requested in its Order in Minnesota Power’s previous EITE proceeding (the “MP-EITE Order”),¹ are members of OTP-EITE and the Minnesota Forest Industries/Timber Producers Association (“MFI/TPA”). In other words, no party has submitted any verified pleadings or written testimony that refutes the testimony submitted by the members of OTP-EITE or MFI/TPA. Because the unrefuted evidence in the record demonstrates a net benefit to the utility and the State, OTP-EITE respectfully contends that Otter Tail Power has satisfied its burden of proof.²

II. ANALYSIS

A. **The OAG Applies a Net-Benefit Standard not Previously Contemplated by the Commission.**

In the MP-EITE Order, the Commission explained the net-benefit standard as follows: “The natural and ordinary conclusion is that a ‘net benefit’ is the benefit, net of corresponding negative consequences.”³ As the Commission further explained in the MP-EITE Order, “To find a net benefit requires that the Commission examine relevant benefits, related offsetting detriments, and weigh them against one another.”⁴ It should be axiomatic that if the costs of the proposed EITE rate are low, then the corresponding benefits can also be relatively low in order to offset the “negative consequences.” Recognizing that OTP-EITE members and the MFI/TPA have provided sworn testimony verifying the significant benefits they provide to the region and the State, as well as the very real threats their industry faces, OTP-EITE disagrees with the

¹ *In the Matter of a Petition by Minnesota Power for a Competitive Rate for Energy-Intensive Trade-Exposed Customers and an EITE Cost Recovery Rider*, Docket No. E015/M-15-984, ORDER DENYING PETITION WITHOUT PREJUDICE, at 11 (March 23, 2016) (“MP-EITE Order”).

² Given the Commission’s reference to a “preponderance of the evidence” standard in the MP-EITE Order, it is only fair to require that parties opposing the EITE rate counter the evidence submitted by members of OTP-EITE and the MFI/TPA with a greater weight of evidence via sworn testimony or verified pleadings. *See, e.g., In the Matter of the Quantification of Environmental Costs Pursuant to Laws of Minnesota 1993, Chapter 356, Section 3*, Docket No. E-999/CI-93-583, ORDER ESTABLISHING ENVIRONMENTAL COST VALUES, at 14 (January 3, 1997).

³ *MP-EITE Order*, at 10.

⁴ *Id.*

OAG's emphasis on whether OTP-EITE members "need" the EITE discount.⁵ This focus is contrary to the specific policy directive in the EITE Statute that the Commission ensure competitive electric rates for EITE customers. Furthermore, when the benefits of helping ensure the continued operation of OTP-EITE members are weighed against the approximately 0.456 percent annual rate increase to Otter Tail Power ratepayers,⁶ the net benefit to the State from the EITE discount becomes clear, as evidenced by the uncontroverted testimony that Otter Tail Power's proposed EITE rate is reasonably likely to be one of the factors helping the OTP-EITE members' facilities remain viable.⁷

The OAG also criticizes OTP-EITE for providing multiple types of information on competitiveness of electric rates, but OTP-EITE members provided this variety in order to give the Commission a fuller picture of the competitiveness issue. The competitiveness information provided by OTP-EITE falls into both approaches to competitiveness discussed in OTP-EITE's August 1 comment in this proceeding (the "OTP-EITE August 1 Comment").⁸ This competitiveness information shows that the EITE discount would cause OTP-EITE members to improve their competitive standing when compared with similar facilities in the same company (in the case of Norbord), and amongst competitors in other states (in the case of Potlatch and Cass Forest Products).⁹ While a bigger discount would obviously improve competitiveness, OTP-EITE members worked with Otter Tail Power to arrive at an EITE rate that is believed to result in a net benefit to Otter Tail Power and the State. OTP-EITE further submits that its information conclusively shows that the EITE discount would help achieve the State's energy policy by making Otter Tail Power's electric rates more competitive for OTP-EITE members. For these reasons, OTP-EITE respectfully requests that the Commission disregard the OAG's objections as inconsistent with the Commission's direction in the MP-EITE Order.

⁵ *OAG Comment*, at 9-12. OTP-EITE notes that the OAG's suggestion that recent plant investments prove that there isn't a danger of shutdown or relocation misunderstands the calculus behind maintaining and operating an industrial facility.

⁶ *The Petition*, at Appendix 4.

⁷ *The Affidavit of David Goetz*, at ¶ 21; *The Affidavit of Jack Wallingford*, at ¶ 18; *The Affidavit of Peter Aube*, at ¶ 22.

⁸ *OTP-EITE August 1 Comment*, at 2-4. OTP-EITE notes that the OAG failed to provide any criteria for judging competitiveness. *OAG Comment*, at 12-14.

⁹ *OTP-EITE June 28 Comment*, at 9-12.

B. The Department of Commerce’s Analysis Imposes Additional Requirements.

The Department of Commerce identifies several “deficiencies” in the Petition that cause it to recommend denial of the Petition without prejudice. But these alleged deficiencies appear to stem from additional requirements that the Department of Commerce imposes on the Petition that have not been enumerated by the Commission or in the EITE Statute.

The Department of Commerce states that Otter Tail Power should verify whether OTP-EITE members are included in one of the North American Industry Classification System (“NAICS”) codes in order to be eligible for the EITE rate, despite the fact that each OTP-EITE member swore that the facility is either a sawmill or an oriented-strand-board facility, and therefore squarely within the definition of an EITE customer under the EITE Statute.¹⁰ Furthermore, the Affidavit of Wayne Brandt indirectly identifies these facilities as falling within the NAICS codes.¹¹ But OTP-EITE is happy to verify that each of its members fall under either 321113 (Potlatch and Cass Forest Products) or 321219 (Norbord) of the current NAICS code.

The Department of Commerce also concludes that it is unclear whether Otter Tail Power has complied with the requirement to “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.”¹² Otter Tail Power deposited \$10,000 into an account that it has designated for use in whatever way the Commission orders.¹³ Otter Tail Power suggested that it could donate the funds to the Great Plains affordability program, which is a Commission-approved program that is administered by the Salvation Army of Roseville, Minnesota.¹⁴ Otter Tail Power also stated that “If approved, Otter Tail will work with Great Plains and the Salvation Army, Roseville, Minnesota to ensure the funds are expended for [the purpose of increasing awareness of the gas affordability program].”¹⁵ The Department of Commerce claims that “While Great Plains provides natural gas service to some of OTP’s ratepayers, and Great Plains has an affordability

¹⁰ *The Affidavit of David Goetz*, at ¶ 1; *The Affidavit of Jack Wallingford*, at ¶ 1; *The Affidavit of Peter Aube*, at ¶ 1.

¹¹ *The Affidavit of Wayne Brandt*; at ¶¶ 9, 11.

¹² Minn. Stat. § 216B.1696, subd. 3.

¹³ *Petition*, at 25-26.

¹⁴ *Id.* at 26.

¹⁵ *Id.*

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."¹⁶ As the Commission stated in the MP-EITE Order: "When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."¹⁷ The EITE Statute plainly requires only that the funds be deposited in an account to be used to expand outreach of the applicable program, which Otter Tail Power has done. The EITE Statute is silent as to whether that program must serve any of the utility's low-income ratepayers, let alone all of them. The Department of Commerce thus appears to be disregarding the letter of the law under the pretext of pursuing what it identifies as the spirit, which is contrary to Minnesota Statutes and Commission precedent. In summary, Otter Tail Power has fulfilled the low-income deposit requirement in the EITE Statute.

The Department of Commerce also argues that the Petition does not comply with the statutory requirement to show a net-benefit because it does not contain a model for the net benefit.¹⁸ Again, in the MP-EITE Order, the Commission stated: "To find a net benefit requires that the Commission examine relevant benefits, related offsetting detriments, and weigh them against one another."¹⁹ While a model may be a helpful tool in analyzing the net benefit, it has not been previously imposed as a requirement by the Commission. OTP-EITE further submits that when the benefits of the EITE rate overwhelmingly outweigh the costs, as they do in the case of the Petition, a model for the net benefit is not necessary.

Lastly, although the Department of Commerce concedes that "the EITE Statute does not require consideration of ratepayer impacts," the Department of Commerce offers a ratepayer impact analysis using what it asserts are "expected values."²⁰ As part of its simplified analysis, the Department of Commerce assumes two choices before the Commission (approval or denial

¹⁶ *Department of Commerce Comment*, at 5.

¹⁷ *MP-EITE Order*, at 9 (quoting Minn. Stat. § 645.16).

¹⁸ *Department of Commerce Comment*, at 11.

¹⁹ *MP-EITE Order*, at 10.

²⁰ *Department of Commerce Comment*, at 12. OTP-EITE would also like to clarify that the term "investor-owned electric utility" as it used in the EITE Statute does not include the utility's ratepayers. An "investor-owned electric utility" is a subset of those entities fitting within the definition of "public utility" under Minn. Stat. § 216B.02, subd. 4. Because the definition of "public utility" contains an exclusive list of the components of a public utility, and because a public utility provides "service to or for the public," the Commission should not consider ratepayers to be a part of the definition of "public utility" and by extension "investor-owned electric utility."

of the Petition), two futures (all OTP-EITE members remain in business or all OTP-EITE members go out of business) and that all events take place in a single year.²¹ OTP-EITE appreciates the Department of Commerce’s attempt to offer a simple probabilistic analysis of the Petition. Unfortunately, OTP-EITE believes that the Department of Commerce’s ratepayer impact analysis, at least under the future in which all OTP-EITE cease Minnesota operations, seems to overlook significant and critical benefits that would also be lost. With respect to potential benefits, the MP-EITE Order lists the following categories of benefits from an EITE rate: “jobs and economic development, tax revenue, energy sales, system reliability, for example.”²² Here, if OTP-EITE members all go out of business, the State will lose millions of dollars in tax revenue and roughly 900 jobs.²³ Furthermore, for those directly employed by one of the OTP-EITE members (a portion of which are undoubtedly in Otter Tail Power’s service territory), the total loss in payroll of \$23 million would be extremely detrimental to the region. Of the several relevant costs described in the MP-EITE Order, including “increasing rates on other customers, the effect of the rate on the environment, increased generation and transmission costs, and others,”²⁴ only increased rates on other customers is relevant here, because the EITE discount is not expected to increase production.

OTP-EITE is not sure how to account for these facts in the Department of Commerce’s analysis, but suggests that there may be an alternative view of the net-benefits analysis that is consistent with the Commission’s direction and breaks out the benefit of retaining OTP-EITE members on a per ratepayer basis using evidence already in the record. For OTP-EITE members, using the value-added multipliers contained in the Labovitz Study,²⁵ the value added by OTP-EITE members’ annual budgets to the State is approximately \$80.8 million annually.²⁶ According to census data, the population of the State is approximately 5.485 million.²⁷ The

²¹ *Id.*

²² *MP-EITE Order*, at 10.

²³ *Affidavit of Wayne Brandt*, at ¶ 20.

²⁴ *MP-EITE Order*, at 10.

²⁵ *Affidavit of Wayne Brandt*, at Appendix A, pg. 30 (.81 total value added multiplier for sawmills and wood preservation and .78 value added multiplier for reconstituted wood manufacturing).

²⁶ See *Affidavit of Peter Aube*, ¶ 5; *Affidavit of Jack Wallingford*, ¶ 5; *Affidavit of David Goetz*, ¶ 6, using applicable value-added multipliers. Although one could add in the annual tax revenues for these three customers, as well as donations to support the regional community, we are deliberately excluding these benefits from this calculation to be conservative in our per customer calculation.

²⁷ See e.g., <http://mn.gov/admin/demography/data-by-topic/population-data/our-estimates/>.

value-added on a per resident basis (and thus per Otter Tail Power residential customer basis) of OTP-EITE members is therefore roughly \$14.73.²⁸

Again, the Commission directed parties to “examine relevant benefits, related offsetting detriments, and weigh them against one another.”²⁹ OTP-EITE believes that there are two ways (or “futures,” consistent with the Department of Commerce’s approach) to interpret the Commission’s direction, one in which the OTP-EITE members remain in business and another in which all OTP-EITE members cease Minnesota operations. With respect to the first, the simplest way to interpret the above information is to examine the relevant annual value-added benefit of \$14.73 per residential ratepayer and weigh it against the \$4.64 annual cost of the proposed EITE rate to the average Otter Tail Power residential ratepayer. Although admittedly simplistic, it seems fair to utilize this information and conclude that the \$4.64 per resident cost helps sustain value-added benefit of approximately over \$14.73 per resident. With respect to the second, OTP-EITE believes that the cost impact per residential customer of all OTP-EITE members ceasing Minnesota operations exceeds the impact of the proposed EITE rate on electric rates. In addition to the \$11.53 annual electric cost increase per residential ratepayer in this situation,³⁰ there would be a value-added loss of \$10.09 annually,³¹ for a total cost in excess of \$21 annually per residential ratepayer. Of course, even this cost would be understated for some of Otter Tail Power’s ratepayers because, if all of the OTP-EITE members were to cease Minnesota operations, there would be a significant reduction in employment in the northern part of the State, including Otter Tail Power residential ratepayers. In any event, OTP-EITE submits this analysis demonstrates that the cost of the proposed EITE rate is far outweighed by helping maintain existing value-added benefits and avoid increased costs. For these reasons, OTP-EITE respectfully requests that the Commission disregard the Department of Commerce’s objections and conclude that the Petition results in a net benefit to the State.

²⁸ \$80.8 million divided by 5.485 million people.

²⁹ *MP-EITE Order*, at 10.

³⁰ *The Petition*, at Table 6.

³¹ Loss of the \$14.73 value-added benefit less the \$4.64 annual cost of the EITE rate.

III. CONCLUSION

The overwhelming benefits of potentially preserving the viability of OTP-EITE members' operations and their valued-added contribution to the State far outweigh the relatively negligible costs of the 20% EITE rate discount as set forth in the Petition. OTP-EITE respectfully requests that the Commission approve Otter Tail Power's full 20% EITE rate discount no later than September 26, 2016, because doing so would result in a net benefit to Otter Tail Power and the State of Minnesota.

Dated: August 11, 2016

Respectfully submitted,

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