BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

In the Matter of Minnesota Power's Revised Petition for a Competitive Rate for Energy-Intensive Trade-Exposed (EITE) Customers and an EITE Cost Recovery Rider	PUC Docket No. E015/M-16-564 **PETITION FOR RECONSIDERATION**

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 ArcelorMittal USA (Minorca Mine); Blandin Paper Company; Boise Paper, a Packaging Corporation of America company, formerly known as Boise, Inc.; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation (collectively, "LPI-EITE"); submit this petition for reconsideration (the "Petition").

I. INTRODUCTION AND BACKGROUND

The current docket is the second docket to address Minnesota Power's attempts to provide rate relief to EITE customers pursuant to the EITE Statute. As of the date of this Petition, nearly two years after Minnesota Power's first petition consistent with the EITE Statute, EITE customers are not receiving an EITE rate because of the Minnesota Public Utilities Commission's (the "Commission's") misinterpretation of the EITE Statute. The procedural posture preceding this Petition is set forth below.

On November 13, 2015, Minnesota Power submitted its first petition to implement the EITE Statute in docket number E015/M-15-984 (the "Initial Petition"). On February 11, 2016, the Commission met to consider the matter.[1] After considering the arguments from the parties, the Commission voted to deny the Initial Petition without prejudice.[2] On June 30, 2016,

[1] *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*, Docket No. E015/M-15-984, ORDER DENYING PETITION WITHOUT PREJUDICE, at 2 (March 23, 2016) (hereinafter the "Initial Order").

[2] *Id*.

Minnesota Power submitted its second petition to implement the EITE Statute (the "Second Petition"), and LPI-EITE submitted supporting affidavits and information, in docket number E015/M-15-984, which the Minnesota Public Utilities Commission renumbered to E015/M-16-564. On September 15, 2016, the Commission met and orally approved Minnesota Power's proposed EITE rate. On December 21, 2016, the Commission issued its written order reflecting the decision more than 90 days earlier on September 15, 2016, approving Minnesota Power's EITE rate schedule and its corresponding rates, and specifically directing Minnesota Power to establish a tracker account to track the difference between what would have been collected under Minnesota Power's applicable tariff and the EITE rate schedule.[3] Multiple filings and hearings followed.

On December 30, 2016, consistent with the EITE Rate Approval Order, Minnesota Power submitted a compliance filing that included its cost-recovery proposal, various rate design alternatives, and an updated communications plan.[4] Multiple parties commented and the Commission met to consider the matter on March 9, 2017. At that time, the Commission orally approved a cost recovery mechanism, which was detailed in the April 2017 EITE Cost Recovery Approval Order as follows:

- Minnesota Power was authorized to collect a surcharge from non-EITE customers to recover the cost of providing credits to EITE customers, based upon a uniform per-kWh charge;
- Minnesota Power was directed to refund to non-EITE customers any revenue increases resulting from increased sales to customers taking service under the EITE rate schedule;
- Minnesota Power was required to report back on efforts to identify non-EITE customers who may be exempt from paying the EITE surcharge; and

[3] *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*, Docket No. E015/M-16-564, ORDER APPROVING EITE RATE, ESTABLISHING COST RECOVERY PROCEEDING, AND REQUIRING ADDITIONAL FILINGS, at 9, 12-13 (December 21, 2016) ("EITE Rate Approval Order").

[4] *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*, Docket No. E015/M-16-564, ORDER AUTHORIZING COST RECOVERY WITH CONDITIONS, at 2 (April 20, 2017) ("EITE Cost Recovery Approval Order").

- Minnesota Power was given the form and content of notice to non-EITE customers prior to collecting the EITE surcharge.[5]

On May 22, 2017, consistent with the EITE Cost Recovery Approval Order, Minnesota Power submitted its compliance filing.[6] Multiple parties commented and the Commission met to consider the matter on September 7, 2017. At that time, and as reflected in the EITE Rider Calculation Order, the Commission rejected Minnesota Power's compliance filing. In so doing, and as described in detail below, the Commission erred in two ways. First, the Commission directs a reading of the EITE Statute that fails to tie cost recovery to the tracker mandated by the EITE Statute and specifically approved by the Commission. The result of this interpretation is that Minnesota Power may either receive a windfall or under-recover costs associated with offering the EITE rate, contrary to the EITE Statute. Second, the Commission's decision effectively causes the EITE customers to pay for the cost of the EITE credit the Commission approved, in direct contradiction to the EITE Statute. As discussed below, the EITE Rider Calculation Order is contrary to the intent of the Minnesota Legislature not only as set forth in the plain language of the EITE Statute but also as confirmed by application of canons of construction. Therefore, LPI-EITE is forced to petition the Commission for reconsideration to allow the Commission to correct the errors.

II. ANALYSIS

A. Introduction

"A petition for rehearing, amendment, vacation, reconsideration or reargument must set forth specifically the grounds relied upon or errors claimed. A request for amendment must set forth the specific amendments desired and the reasons for amendment."[7] Generally, the Minnesota Public Utilities Commission (the "Commission") reviews such petitions to determine whether the petition (i) raises new issues, (ii) points to new and relevant evidence, (iii) exposes errors or ambiguities in the underlying order, or (iv) otherwise persuades the Commission that it

[5] *EITE Cost Recovery Approval Order* at 3.

[6] *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*, Docket No. E015/M-16-564, ORDER EXCLUDING RIDER REVENUE FROM 2016 BASELINE CALCULATION AND SETTING PARAMETERS TO IDENTIFY EXEMPT CUSTOMERS, at 2 (October 13, 2017) ("EITE Rider Calculation Order").

[7] MINN. R. 7829.0300 subp. 2.

should rethink its underlying order.[8] LPI submits this Petition to raise the issue of the diminished effectiveness of the EITE credit approved in the EITE Rate Approval Order, expose an error in the EITE Rider Calculation Order, and attempt to persuade the Commission that it should rethink its decision in the EITE Rate Calculation Order. Prior to addressing these issues, this Petition will provide an overview of applicable principles of statutory construction and the terms of the EITE Statute at issue.

B. General Principles of Statutory Interpretation

The goal of interpreting statutory provisions is to "ascertain and effectuate the intention of the legislature."[9] Minnesota law specifically provides that when a statute's application is "clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit."[10] In other words, "when the language of a statute is clear and unambiguous, statutory construction is neither necessary nor permitted."[11] As a result, interpretation of a statute proceeds in two steps. First, the reviewer must "look to see whether the statute's language, on its face, is clear or ambiguous."[12] If the meaning of a statute is unambiguous, the text must be interpreted "according to its plain language."[13] If, however, the meaning of the text of a statute is ambiguous, only then may a reviewer look beyond the text of the statute and "apply other cannons of construction to discern the legislature's intent."[14]

C. The Terms of the EITE Order are Clear and Unambiguous - the Legislature Directed Utilities and the Commission to Address Increasingly Uncompetitive Electric Rates for EITE Customers

The EITE Statute clearly states the intent of the Legislature: "It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed

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[8] *See e.g., In the Matter of the Application of Northern States Power Company for Authority to Increase Rates for Electric Service in the State of Minnesota*, Docket No. E-002/GR-13-868, ORDER DENYING PETITIONS FOR RECONSIDERATION, pg. 1 (July 13, 2015).

[9] *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (quoting MINN. STAT. § 645.16).

[10] MINN. STAT. § 645.16.

[11] *State ex rel. Beaulieu v. RSJ, Inc.*, 552 N.W.2d 695, 701 (Minn. 1996).

[12] *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (quotation and citation omitted).

[13] *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) ("If the meaning of a statute is unambiguous, we interpret the statute's text according to its plain language.") (citation omitted).

[14] *Brua v. Minn. Joint Underwriting Ass'n*, 778 N.W.2d 294, 300 (Minn. 2010) (citing MINN. STAT. § 645.16.

customers."[15] "To achieve that objective," certain utilities may offer "EITE rate" options to EITE customers, which rate options include, but are not limited to "fixed-rates, market-based rates, and rates to encourage utilization of new clean energy technology" under an "EITE rate schedule."[16] Subdivision 2(d) of the EITE Statute sets the procedure by which a utility offering EITE Rates under an EITE Rate Schedule may recover resulting costs or refund savings:

> 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.[17]

The first sentence in this subdivision creates the procedure for tracking revenue costs or savings, and it informs the interpretation of the next two sentences. In other words, in order to measure and set the utility's obligation to refund increased revenues and the utility's ability to recover any costs (including reduced revenues), the utility must look to the statutorily mandated tracker that measures "the difference in revenue between what would have been collected under the electric utility's applicable standard tariff and the EITE rate schedule." The plain language of the statute and the canons of construction both demonstrate that application of the tracker is the only way to calculate the amount of costs that the utility shall recover and savings that a utility shall refund "associated with providing service to a customer under an EITE rate schedule" consistent with Minnesota law. Those costs or refunds shall not be recovered from or refunded to any EITE customer, or low-income residential customer. The EITE Rider Calculation Order violates both the cost calculation and cost recovery portions of the EITE Statute.

[15] MINN. STAT. § 216B.1696 subd. 2(a).
[16] MINN. STAT. § 216B.1696 subd. 2(a).
[17] MINN. STAT. § 216B.1696 subd. 2(d) (emphasis added).

1. The Plain Meaning of the EITE Statute Requires Use of the Mandated Tracker to Determine Costs and Savings to the Utility, While Also Precluding Cost Recovery from EITE Customers

"The touchstone for statutory interpretation is the plain meaning of a statute's language."[18] When interpreting a statute, a reviewer must "first look to see whether the statute's language, on its face, is clear or ambiguous."[19] "A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation."[20] Words and phrases in a statute must be assigned "their plain and ordinary meanings" unless otherwise defined in the statute[21] Further, when interpreting the plain meaning of a statute, the reviewer must "read the statute as a whole and give effect to all of its provisions"[22] such that "no word, phrase, or sentence should be deemed superfluous, void, or insignificant."[23]

The EITE Rider Calculation Order, ignores the first sentence of subsection 2(d), which creates a mandatory tracker "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." The tracker sets forth a simple equation: the difference between revenue that would have been collected under the standard tariff (e.g., Minnesota Power's Large Power tariff) and revenue collected under the EITE rate schedule. Revenue means "gross income or gross receipts,"[24] which in the case of the sale of power means simply the purchaser's energy consumption multiplied by applicable tariff rate over a given time period. The Legislature did not empower the Commission to create a "baseline year," from which rates, credits, and cost recovery over multiple time periods would be evaluated. And it would be unreasonable for the Commission to interpret the EITE Statute in such a manner. The only reasonable interpretation is application of the simple equation set forth above.

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[18] *ILHC of Eagan, LLC v. Cnty. of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing MINN. STAT. § 645.16).

[19] *Am. Family Ins. Grp. v. Schroedl*, 616 N.W.2d 273, 277 (Minn. 2000) (citing *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)).

[20] *Lakes Area Bus. Ass'n v. City of Forest Lake*, 842 N.W.2d 320, 323 (Minn. Ct. App. 2014) (quoting *Amaral v. Saint Cloud Hosp.*, 598 N.W.2d 379, 384 (Minn. 1999)).

[21] *Sanchez v. Dahlke Trailer Sales, Inc.*, 897 N.W.2d 267, 273 (Minn. 2017) (citation omitted); *see* MINN. STAT. § 645.08(1).

[22] *Conga Corp. v. Comm'r of Revenue*, 868 N.W.2d 41, 46 (Minn. 2015) (citing *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 72 (Minn. 2012)).

[23] *Allan v. R.D. Offutt Co.*, 869 N.W.2d 31, 33 (Minn. 2015) (citations and alteration omitted).

[24] *Black's Law Dictionary* (10th ed. 2014).

Furthermore, the Legislature clearly expressed its intent that recovery of costs (and refund of increased revenues) "associated with providing service to a customer under an EITE rate schedule" cannot come from EITE customers. The term "associate" means "to connect or join together; combine; link"[25] and thus such costs and refunds are those costs and refunds connected to an EITE Rate Schedule, which under the EITE Statute's definitions, means the rate schedule setting forth the terms of service of a utility offering an EITE Rate. Here again, the EITE Statute is unambiguous—the only reasonable interpretation is to ensure both EITE customers and low-income customers do not pay "any costs" associated with an EITE rate.

The Commission cannot deviate from this plain language for two reasons. First, doing so would be an improper enlargement of its statutorily granted powers. Second, doing so would be inconsistent with canons of statutory interpretation.

2. Longstanding Precedent Precludes the Commission from Enlarging its Power Under the Guise of Statutory Interpretation

The Supreme Court of Minnesota has long held that the Commission is a creature of statute, possessing only those powers expressly granted by the legislature. In 1985, the court noted:

> [i]t is elementary that the Commission, being a creature of statute, has only those powers given to it by the legislature. The legislature states what the agency is to do and how it is to do it. While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.[26]

Furthermore, "Neither agencies nor courts may under the guise of statutory interpretation enlarge the agency's power beyond that which was contemplated by the legislative body."[27] When there is no ambiguous language to construe, courts will look to the "necessity and logic" of the situation.[28] At the same time, the general rule of a reviewing court is to "resolve any doubt about

[25] The American Heritage Dictionary, Second College Ed. 1982

[26] *Peoples Natural Gas Co. v. Minn. Pub. Util. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985) (citation and internal quotation marks omitted).

[27] *Id*. (quoting *Waller v. Powers Dep't Store*, 343 N.W.2d 655, 657 (Minn. 1984)).

[28] *Id*.

the existence of an agency's authority *against* the exercise of such authority."[29] Here the Legislature set forth the specific mechanisms and criteria for cost recoveries and refunds; it did not vest the Commission with the authority to create a different method. For this additional reason, reconsideration of the EITE Rider Calculation Order is warranted.

3. Canons of Statutory Construction Confirm the Plain Meaning of the EITE Statute Consistent With LPI-EITE's Reading

Further, even if the Commission believes the language is ambiguous, longstanding canons of interpretation for ascertaining legislative intent in an ambiguous statute support LPI-EITE's reading. If, and only if, the meaning of a statute is ambiguous, a reviewer may "examine factors outside the language of the statute to determine legislative intent" provided that the reviewer examines "the statute as a whole so that no word or phrase is superfluous."[30] The Legislature has set forth a nonexclusive list of factors that a reviewer may consider to determine legislative intent: (1) the occasion and necessity for the law; (2) the circumstances under which it was enacted; (3) the mischief to be remedied; (4) the object to be attained; (5) the former law, if any, including other laws upon the same or similar subjects; (6) the consequences of a particular interpretation; (7) the contemporaneous legislative history; and (8) legislative and administrative interpretations of the statute.[31] Several are instructive here.

First, the occasion and necessity for the law and the circumstances under which it was enacted accord with the plain language and confirm that LPI-EITE's reading is correct. The law was passed in 2015 in the context of the idling of the Keetac mine in May 2015 and the closure of Magnetation's taconite-processing plant in April 2015, with additional idling and closures threatened. Because energy costs account for a substantial portion of costs for EITE customers (25% or more of the overall cost of production), the Legislature acted to assist those employers in remaining competitive—and open—in a global marketplace.

Second, the purpose of the EITE statute in light of the problem the Legislature sought to remedy and the object that the Legislature sought to obtain not only accord with LPI-EITE's

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[29] *In re Qwest's Wholesale Serv.*, 702 N.W.2d 246, 258 (Minn. 2005) (emphasis added) (citing *In re N. States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987)).

[30] *A.A.A. v. Minn. Dep't of Human Servs.*, 832 N.W.2d 816, 822 (Minn. 2013).

[31] *Sleiter v. Am. Family Mut. Ins. Co.*, 868 N.W.2d 21, 27 (Minn. 2015); *see* MINN. STAT. § 645.16.

reading but also are undermined by the EITE Rider Calculation Order. Courts have "routinely looked to enacted policy statements while interpreting statutes."[32] Indeed, "it is not merely appropriate to consider the legislature's policy statement when interpreting the recreational-use statute, but a court is specifically directed to give the policy statement reasonable meaning and not render it superfluous."[33] Here the Legislature expressed the policy of the State in clear and certain terms: "It is the energy policy of the state of Minnesota to ensure competitive electric rates for energy-intensive trade-exposed customers."[34] Thus, any construction of the statute must be in accordance with the stated policy. The statute gives effect to this policy by ensuring that any costs or refunds resulting from a difference in revenue between what EITE customers would have paid under the standard tariff and what EITE customers paid under the EITE rate schedule must not impact EITE customers (or low-income customers).

Third, the mischief to be remedied is uncompetitive electric rates for EITE customers, which has been driven in part by State energy policy and in part by the Commission's decisions in utility rate cases. For too long, rates for large industrial customers on Minnesota Power's system have been set inappropriately high in order to subsidize rates for residential and smaller customers, making their respective rates too low. As of Minnesota Power's 1994 rate case, the Commission noted "[t]he Company's cost studies show that an 82.5% increase would be required to bring residential rates to cost; the Department's cost studies show that a 100% increase would be required."[35] Although the Commission did not come close to eliminating the subsidy in that case, it did acknowledge that its "ability to place more responsibility for total system costs on large ratepayers is at or near its limits."[36]

Not surprisingly, when Minnesota Power returned roughly 14 years later for its next rate case, rates for the residential class significantly deviated from cost of service. In its order in Minnesota Power's 2008 rate case, the Commission noted "the Company argued that its present

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[32] *Ouradnik v. Ouradnik*, 897 N.W.2d 300, 305 (Minn. Ct. App. 2017), review granted (July 18, 2017) (collecting cases).

[33] *Id.*

[34] MINN. STAT. § 216B.1696 subd. 2(a).

[35] *In the Matter of the Application of Minnesota Power for Authority to Change Its Schedule of Rates for Retail Electric Service in the State of Minnesota*, Docket No. E-015/GR-94-001, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 69 (Nov. 22, 1994).

[36] *Id*. at 70.

CCOSS showed that it would take a 42 percent rate increase for residential customers to eliminate the subsidy provided by the Large Power customers."[37] Although the Commission again made modest movement towards cost, the subsidy was not eliminated.

As a result, when Minnesota Power filed its 2009 rate case, the results of its CCOSS again showed a significant increase was warranted for the residential class. On the basis of its initial filing, Minnesota Power's CCOSS showed an increase of 29.5% was needed to conform to cost of service.[38] Rather than continuing to move towards cost of service, the Commission significantly deviated from cost and forced the LP class to pay $39.1 million of the ultimately approved $54.1 million increase, which was more than the cost of service increase at Minnesota Power's initial proposed rate increase at $70.5 million.[39] The result of these recent decisions, as well as those in cost recovery riders, is that electric rates for Minnesota Power's EITE customers have increased by over 70% since 2005.[40] The initial EITE rate approved by the Commission is a modest step forward in addressing this mischief. But uncompetitive electric rates for EITE customers are not even partially addressed if the effectiveness of the EITE rate is watered down in application or if Minnesota Power is forced to suspend/terminate the EITE rate because of cost recovery issues.

Fourth, the consequences of the Commission's particular interpretation of the statute lead to results inconsistent with the EITE Statute's language, purpose, and intent. As stated in detail above, any interpretation contrary to the plain meaning of the statute leads to consequences unintended by the Legislature.

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[37] *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota*, Docket No. E-015/GR-08-415, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 66 (May 4, 2009).

[38] *In the Matter of the Application of Minnesota Power for Authority to Increase Electric Service Rates in Minnesota*, Docket No. E-015/GR-09-1151, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER, at 52 (Nov. 2, 2010).

[39] *Id*. at 52, 57.

[40] Compare *In the Matter of Minnesota Power's Petition for Approval of the Boswell 3 Environmental Improvement Rider (Boswell 3 Rider)*, Docket No. E-015/M-06-1501, PETITION FOR APPROVAL, at 16 (Jan. 29, 2007) (noting average large power rate of 3.846 cents/kWh as of 2005); with *In the Matter of Minnesota Power's Renewable Resources Rider and 2017 Renewable Factor*, Docket No. E-015/M-16-776, INITIAL PETITION, at 24 (Nov. 2, 2016) (noting average large power rate of 6.603 cents/kWh). Moving from 3.846 cents/kWh to 6.603 cents/kWh is an increase of approximately 71.7%.

Finally, in light of the dire economic realities facing EITE customers in Minnesota and the Legislature's expressed intent to assist those large employers, without regard to effects on other ratepayers,[41] the canon of construction related to remedial statutes further weighs in favor of LPI-EITE's reading. Simply stated, "statutes which are remedial in nature are entitled to a liberal construction, in favor of the remedy provided by law, or in favor of those entitled to the benefits of the statute."[42] The EITE statute remedies non-competitive power rates for EITE customers and is designed to benefit and retain such large ratepayers, and thereby benefit the utility and State of Minnesota. As explained below, the EITE Rider Calculation Order harms two of the groups of customers the EITE Statute was designed to protect; the utility and the EITE customer.

D. The EITE Rider Calculation Order Erroneously Limits Minnesota Power's Cost Recovery and Impermissibly Requires the EITE Customers to Share in the Cost of the Credit the Commission Approved

The Commission stated that it was acting to avoid "depriv[ing] EITE customers of the full benefit of the EITE rate as intended by the statute"[43] by adopting the OAG and Department's alterations. In adopting those alterations, however, the Commission did just that: it deprived EITE customers of the full benefit of the EITE rate by impermissibly shifting onto EITE customers the cost recovery for the utility.

As further discussed above, the statute requires that the tracker in subdivision 2(d) be the method for determining the amount that the utility may recover any costs or must refund any savings as a result of the EITE rate schedule. Using the tracker, the costs and refunds are measured by the difference in revenue between what "*would have been collected*" under the electric utility's applicable standard tariff and the EITE rate schedule. The language used by the Legislature demonstrates that it intended a comparison of revenue based on actual consumption, not historical usage. The Legislature chose conditional language—would have been collected—to describe the baseline against which costs or savings are measured. The amount that "would have been collected" in 2017 under the standard tariff rate can only be determined by

[41] *See* MINN. STAT. § 216B.1696 subd. 2(b) (specifically precluding application of several sections of Chapter 216B, including sections 216B.02 and 216B.07).

[42] *Hansen v. Robert Half Int'l, Inc.*, 813 N.W.2d 906, 916 (Minn. 2012).

[43] Oct. 13, 2017 Order.

multiplying usage (including Keetac) by the standard tariff rate. It is not possible to calculate the amount that "would have been collected" in 2017 by ignoring Keetac's operations and simply repeating 2016 revenue. The Legislature did not instruct the utility to compare the amount "collected before the EITE rate schedule" or "in a prior year." By creating an unlegislated "baseline year" the Commission created a false comparison between revenue in 2016 (a year when Keetac was idled) and 2017 when Keetac resumed operations. In so doing, the Commission is forcing an apples-to-oranges comparison, not the apples-to-apples tracker that the Legislature mandated. As a result, the EITE Rider Calculation Order is in clear error and contrary to the statute.

Further, the EITE Rider Calculation Order has an impermissible effect of causing EITE customers to pay for the costs of the very EITE rate schedules that the Legislature enacted to bolster those customers' competitiveness through cost savings. As noted in its August 11, 2017, comment in this docket, Minnesota Power previously reduced its rate case revenue deficiency by $16.4 million to account for increased sales levels and revenues.[44] If all or a majority of that revenue is passed through to non-low-income, non-EITE customers in this docket, that will necessarily result in an increased revenue deficiency in the rate case (i.e., a reversal of the reduction previously applied) to avoid double counting. In other words, sales revenue to Minnesota Power that, because a rate case is currently pending, should flow to the benefit of all of Minnesota Power's customers, is now under the EITE Rider Calculation Order flowing through to the exclusive benefit of non-low-income non-EITE customers. Therefore, the credit that EITE customers are receiving in this docket is at least partially offset by the revenue deficiency increase in the rate case docket.

The result of this error is fourfold. First, it harms the utility by potentially limiting its ability to recover costs associated with providing service under the EITE Rate Schedule. Second, it harms EITE Customers by manipulating the 2017 rate case test year and eliminating the benefit of a lower rate case revenue requirement directly caused by increased EITE customer sales volumes. Third, it harms low-income customers because, as non-EITE credit paying

[44] *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*, Docket No. E015/M-16-564, MINNESOTA POWER SUPPLEMENTAL COMMENT (August 11, 2017).

customers, they will also not see the benefit of the 2017 test year sales revenue increase. Finally, it benefits a group of customers whom neither the Commission nor the Legislature has ever found have less of an ability to pay than EITE or low-income customers. There simply is no legal basis to support the Commission's interpretation of the EITE Statute in the EITE Rider Calculation Order.

III. CONCLUSION

The EITE Rider Calculation Order is contrary to the plain language of the EITE Statute, constitutes an impermissible enlargement of Commission power, and runs afoul of canons of construction. LPI respectfully requests the Commission reconsider and amend its EITE Rider Calculation Order to comply with the clear and unambiguous terms of the EITE Statute to implement the energy policy of the State to ensure competitive electric rates for EITE customers.

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Respectfully submitted,

STOEL RIVES LLP

/s/ Andrew P. Moratzka
Andrew P. Moratzka (0322131)
Sarah Johnson Phillips (0390166)
Todd M. Winter (0390324)
33 South Sixth Street, Suite 4200
Minneapolis, MN 55402
Tele: 612-373-8822
Fax: 612-373-8881

Attorneys for LPI-EITE

94501606.6 0064591-00013