STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0348

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

Filed November 12, 2019
Affirmed
Reilly, Judge

Minnesota Public Utilities Commission
File No. E-015/GR-16-664

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Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

U N P U B L I S H E D O P I N I O N

REILLY, Judge

In this rate-proceedings appeal, relator-energy-customers challenge respondent-commission's method of refunding excess interim rates under the energy-intensive trade-exposed (EITE) statute, Minn. Stat. § 216B.1696 (2018), following a final-rates

determination. Because the commission did not act arbitrarily or capriciously and relators' remaining arguments are untimely or outside the scope of our review on appeal, we affirm.

FACTS

I. Parties

Relators Large Power Intervenors (the LPIs) are a consortium of large industrial end-users of electric energy.[1]

Respondent Minnesota Power is a public utility that provides electric service to Minnesota customers located primarily in the north and north-central portions of the state. Large industrial consumers, including the LPIs, account for over sixty percent of Minnesota Power's retail service load.

Respondent Minnesota Public Utilities Commission (the commission) is authorized by statute to regulate Minnesota public utilities. Minn. Stat. § 216B.08 (2018).

II. Statutory and Regulatory Framework

In 2015, the Minnesota legislature declared that it was in the public's interest to regulate public utilities "to provide the retail consumers of natural gas and electric service in this state with adequate and reliable services at reasonable rates." Minn. Stat. § 216B.01 (2018). A public utility includes a corporation that operates, maintains, or controls "equipment or facilities for furnishing at retail natural, manufactured, or mixed

[1] Relators include ArcelorMittal USA; Blandin Paper Company; Boise Paper, a Packaging Corporation of America company (formerly known as Boise, Inc.); Enbridge Energy, Limited Partnership; Hibbing Taconite Company; Mesabi Nugget Delaware, LLC; Sappi Cloquet, LLC; USG Interiors, LLC; United States Steel Corporation (Keetac and Minntac Mines); United Taconite, LLC; and Verso Corporation.

gas or electric service to or for the public or [that] engage[s] in the production and retail sale" of such products. Minn. Stat. § 216B.02, subd. 4 (2018).

This appeal concerns energy-intensive trade-exposed (EITE) customers.[2] The Minnesota Legislature has established that "[i]t is the energy policy of the state of Minnesota to ensure competitive electric rates for [EITE] customers." Minn. Stat. § 216B.1696, subd. 2(a). To achieve this objective, investor-owned electric utilities with 50,000 to 200,000 retail electric customers are permitted "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." *Id*. An "EITE rate schedule" is "a rate schedule under which an investor-owned electric utility may set terms of service to an individual or group of [EITE] customers." *Id*., subd. 1(d). An "EITE rate" is "the rate or rates offered by the investor-owned electric utility under an EITE rate schedule." *Id*., subd. 1(e).

A public utility must seek approval from the commission to increase its rates. Minn. Stat. § 216B.16, subd. 1 (2018). The commission may suspend the utility's proposed final rate-change pending resolution in a contested case hearing. *Id*., subd. 2(b) (2018). If the commission suspends the proposed final rates, it must set interim rates within 60 days. *Id*., subd. 3(a) (2018). Unless exigent circumstances exist, the interim-rate schedule is

[2] EITE customers include iron mining extraction and processing facilities, paper mills, wood products manufacturers, sawmills, steel mills and related facilities, and retail customers of investor-owned electric utilities with facilities under a single electric service agreement. Minn. Stat. § 216B.1696, subd. 1(c) (2018). The LPIs are EITE customers under Minn. Stat. § 216B.1696, subd. 2(a).

calculated using a proposed "test year," based on "the 12-month period selected by the utility for the purpose of expressing its need for a change in rates." *Id*., subd. 3(b) (2018); Minn. R. 7825.3100, subp. 17 (2018). "If, at the time of its final determination, the commission finds that the interim rates are in excess of the rates in the final determination, the commission shall order the utility to refund the excess amount collected under the interim rate schedule." Minn. Stat. § 216B.16, subd. 3(c) (2016). "The Commission has great discretion in determining the method of refunding excess interim rates." *Petition of Inter-City Gas Corp*., 358 N.W.2d 692, 694 (Minn. App. 1984), *aff'd*, 389 N.W.2d 897 (Minn. 1986).

III. Factual and Procedural Background

a. EITE Docket

On June 30, 2016, Minnesota Power filed a petition with the commission to approve of an EITE rate (the EITE Docket[3]). In the EITE Docket, Minnesota Power proposed a modified-rate schedule and cost-recovery rider. The commission approved Minnesota Power's proposed EITE rate on December 21, 2016, and issued an order approving the EITE rate and establishing a cost-recovery proceeding. Minnesota Power began implementing the EITE Rate on February 1, 2017. On April 20, 2017, the commission issued an Order Authorizing Cost Recovery with Conditions (the EITE Conditional Cost-Recovery Order). This order authorized Minnesota Power to collect a surcharge from non-EITE customers to recover the cost of providing credits to EITE customers. The order

[3] A docket is defined as a "[a] formal record [containing] all the proceedings and filings in a court case." *Black's Law Dictionary* 584-85 (10th ed. 2014).

provided that these surcharges would be subject to offset or refund to the extent Minnesota Power received increased revenues from EITE customers under the new, discounted rate. The commission further directed Minnesota Power to "refund to non-EITE customers any revenue increases resulting from increased sales to customers taking service under the EITE rate schedule." The order also required Minnesota Power to submit a compliance filing "setting forth the surcharge and refund mechanisms in detail."

On May 22, 2017, Minnesota Power submitted a compliance filing and proposed three modifications to the EITE Conditional Cost-Recovery Order to: (1) exclude rider revenue from the 2016 baseline calculation; (2) recognize increased revenue due to EITE customer operations already accounted for in Minnesota Power's current rate case; and (3) use 2016 billing units, rather than revenue, as the measure of any increase above the baseline. The commission issued an order on October 13, 2017, accepting Minnesota Power's first proposed modification to exclude rider revenue from its 2016 baseline calculation but rejecting the other two proposals as inconsistent with the EITE Conditional Cost-Recovery Order. Instead, the commission ordered Minnesota Power "to use the actual 2016 calendar-year EITE-customer revenue as the baseline for calculating the extent of any refundable refund," and "to determine a refund using revenues, and not billing units," as Minnesota Power had suggested.

On November 2, 2017, Minnesota Power and the LPIs sought reconsideration of the commission's orders. The commission denied the parties' requests for reconsideration, determining that the petitions were untimely because "[t]he opportunity to ask for reconsideration of those decisions ended 20 days after the commission issued the April

2017 order." *See* Minn. Stat. § 216B.27, subd. 1 (2018) (instructing that requests for reconsideration be submitted within 20 days of service of order). The commission further determined that even if the petitions had been timely, they failed to raise new issues, point to new and relevant evidence, expose errors or ambiguities in the orders, or otherwise persuade the commission that the orders required reconsideration. The LPIs filed two appeals from the EITE Docket, both of which were dismissed by this court. *See In re Minnesota Power's Revised Petition for Competitive Rate for EITE Customers*, No. A18-0184 (Minn. App. Mar. 6, 2018) (order); *In re Minnesota Power's Revised Petition for Competitive Rate for EITE Customers*, No. A18-0382 (Minn. App. July 25, 2018) (order), *review denied* (Minn. Sept. 26, 2018).

b. Rate-Case Docket

On November 2, 2016, while the EITE Docket was proceeding, Minnesota Power filed a general rate case with the commission under Minn. Stat. § 216B.16, seeking an annual rate increase (the Rate-Case Docket). Approximately one month later, Minnesota Power sought to modify its interim-rate proposal based on a change in expectations for its sales forecast and increased demand from certain large-power customers. The commission issued an order in December 2016, approving Minnesota Power's modified interim-rates proposal and authorizing the collection of interim rates for services rendered on and after January 1, 2017. The order required Minnesota Power to file supplemental testimony reflecting any updated forecasting numbers, including new interim-rate calculations. On February 23, 2017, Minnesota Power submitted a supplemental filing and sought to reduce the interim rates because one of the LPIs, U.S. Steel, announced that its Keetac plant was

expected to resume operations early in the year. As a result of this change, Minnesota Power proposed that the interim rate be reduced on a prospective basis effective May 1, 2017. The commission approved Minnesota Power's request on April 13, 2017, and the interim rate increase was reduced, effective May 2, 2017.

The commission met in January 2018 to consider multiple issues, including Minnesota Power's plan to account for increased Keetac sales revenue. The commission issued an order on March 12, 2018 (the Rate Case Order), in which it concluded that "[t]he test-year revenue from Keetac must be accounted for as an increase in utility revenue in a tracker established under Minn. Stat. § 216B.1696" and that "a portion of it must be used to offset the costs of the discounted EITE rate provided under that statute." The commission noted that "revenues from Keetac should only be recognized once" and recognized that the parallel proceedings in the EITE Docket case "make this accounting uniquely challenging." Accordingly, the commission required "reduction of net test year revenue by an amount equal to the revenue that must be used as an offset or refund in the section 216B.1696 tracker, on an annualized basis." The commission ordered Minnesota Power to make compliance filings demonstrating how the EITE tracker balance would be offset and specifically requested "a proposal to make refunds of interim rates" for the commission's review. The commission also agreed to accept comments from other parties. The LPIs filed a petition for reconsideration, which the commission partially granted with respect to an accounting adjustment, but otherwise denied.

Minnesota Power submitted a compliance filing in June 2018. In July and August 2018, other interested parties filed comments regarding Minnesota Power's plan for

refunding interim rates. On November 28, 2018, the commission issued a Revised Interim-Rate Refund-Plan Order (the Interim Rate Refund Order). The commission determined that Minnesota Power's compliance filing did not comply with the Rate Case Order, but that the calculation methodology presented by the Office of the Attorney General (the OAG) demonstrated a "proper understanding of the Commission's prior orders requir[ing] that the costs in the EITE tracker be offset by the increased Keetac revenues before interim-rate refunds are calculated." The order continued:

> The Commission did not intend by its March 12 order to undo the cost-recovery decisions made in that order and in prior orders, nor should the fact that Minnesota Power failed to properly account for EITE revenues in the EITE tracker result in a windfall for [the LPIs]. The intent of the March 12 order was to accommodate Minnesota Power's need to use interim-rate refund monies to zero out an EITE tracker balance accrued during the interim-rate period. The same result (zeroing out the tracker balance) is achieved using the OAG's refund-calculation methodology.
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> The Commission therefore clarifies that the OAG's refund plan accomplishes the goal set out in the Commission's March 12 order that Minnesota Power's test year must reflect the full, annualized amount of sales revenues for Keetac *and* also reflect that certain of those revenues must be tracked separately as subject to offset or refund under Minn. Stat. § 216B.1696, subd. 2(d). The OAG's refund plan does this by first accounting for $15.5 million of test-year Keetac revenues as EITE revenues that offset the 2017 and 2018 EITE discount costs in the EITE tracker, and then calculating the interim-rate refund. This effectively resolves the accounting problem created when Minnesota Power accounted for the expense of the EITE discount in the EITE tracker, while accounting for the increased Keetac EITE revenues through interim rates in the rate case rather than in the EITE tracker.

The LPIs sought reconsideration of the Interim Rate Refund Order and requested a stay of interim-rate refunds pending the outcome of a potential appeal. The commission denied the petition.

c. Judicial Review of Commission's Orders

On June 28, 2018, the LPIs petitioned for certiorari review of the commission's Rate Case Order and the order denying reconsideration. *In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in State*, 929 N.W.2d 1 (Minn. App. 2019) *review denied* (Minn. Aug. 6, 2019). The LPIs argued that the commission violated the EITE statute by accounting for additional EITE-customer sales revenue from Keetac in the EITE Docket, rather than in the Rate-Case Docket. *Id*. at 8. We affirmed the commission's orders and held that the commission's decision to account for additional sales revenue associated with providing electric service to EITE customers under an EITE rate was reasonable and in conformity with the plain statutory language. *Id*. at 12. We also rejected the LPIs' claim that the commission violated the plain language of the EITE statute because:

> (1) the plain language of [Minn. Stat. § 216B.1696,] subdivision 2(d) makes clear that the commission must allow Minnesota Power to "recover any costs" from, or "refund any savings" to, non-EITE, non-exempt customers associated with providing a discounted EITE rate to EITE customers; (2) subdivision 2(d) expressly prohibits Minnesota Power from "refund[ing] any savings" to EITE and low-income customers; and (3) the commission's accounting of the additional sales revenues from the rate case to the EITE case was a consequence of the surcharge-refund mechanism established in the April 20, 2017 order—an order that is beyond the scope of this appeal.

Id. at 11. The LPIs filed a petition for further review of this decision by the Minnesota Supreme Court, which was denied.

While our decision in *In re Application of Minnesota Power for Authority to Increase Rates for Electric Services in State* was pending, the LPIs filed a petition for a writ of certiorari with this court on February 28, 2019, challenging the commission's Interim Rate Refund Order. In the present appeal, the LPIs argue that the order unlawfully modified previous orders setting Minnesota Power's interim rates. It is this dispute to which we now turn.

D E C I S I O N

I. Standard of Review

We review the commission's decision under the Minnesota Administrative Procedure Act, Minn. Stat. §§ 14.63-.69 (2018). Minn. Stat. § 115.05, subd. 11; Minn. Stat. § 216B.52, subd. 1 (2018) (providing that any party aggrieved by commission's decision "may appeal from the decision and order of the commission in accordance with chapter 14"). We may affirm, modify, reverse, or remand the commission's decision if its findings, inferences, conclusions or decisions are:

> (a) in violation of constitutional provisions; or
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> (b) in excess of the statutory authority or jurisdiction of the agency; or
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> (c) made upon unlawful procedure; or
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> (d) affected by other error of law; or
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> (e) unsupported by substantial evidence in view of the entire record as submitted; or

(f) arbitrary or capricious.

Minn. Stat. § 14.69.

We afford an administrative agency's decision "a presumption of correctness" and defer to the agency's expertise. *In re N. Dakota Pipeline Co. LLC*, 869 N.W.2d 693, 696 (Minn. App. 2015) (citation omitted), *review denied* (Minn. Dec. 15, 2015). We defer to the agency's decision as long as it is reasonable and supported by substantial evidence, and we will not replace the agency's findings with our own. *In re Appeal of Rocheleau*, 686 N.W.2d 882, 891 (Minn. App. 2004), *review denied* (Minn. Dec. 22, 2004). With respect to matters of law, however, we are not bound by an agency's legal rulings and we review legal issues de novo. *Cable Commc'ns Bd. v. Nor-west Cable Commc'ns P'ship*, 356 N.W.2d 658, 668-69 (Minn. 1984). Whether an administrative agency acted within its statutory authority is a question of law subject to de novo review. *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010) (citation omitted). On appeal, the party challenging the agency's decision bears the burden of proof. *In re Reichmann Land & Cattle, LLP*, 847 N.W.2d 42, 46 (Minn. App. 2014), *aff'd*, 867 N.W.2d 502 (Minn. 2015).

II. The Commission's Interim Rate Refund Order Is Not Arbitrary and Capricious.

The commission is an administrative agency, and "[a]dministrative agencies are creatures of statute and they have only those powers given to them by the legislature." *In re Hubbard*, 778 N.W.2d at 318. "An agency's statutory authority may be either expressly stated in the legislation or implied from the expressed powers." *Id.* "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." *Minnegasco v. Minn. Pub. Utils. Comm'n*, 549 N.W.2d 904, 907 (Minn. 1996) (quoting *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985)).

Chapter 216B vests "extensive power" in the commission "to set and prospectively regulate rates for Minnesota's public utility companies." *Hoffman v. N. States Power Co*., 764 N.W.2d 34, 43 (Minn. 2009). The commission also "enjoys broad power to 'ascertain and fix just and reasonable' policies for all public utilities." *Id*. (citing Minn. Stat. § 216B.09, subds. 1 & 2 (2008)). Ratemaking is a legislative function delegated to government agencies and, "under separation-of-powers principles, courts should not second-guess the reasonableness or lawfulness of agency-approved rates." *Siewert v. N. States Power Co*., 793 N.W.2d 272, 278 (Minn. 2011) (citing *Schermer v. State Farm Fire & Cas. Co*., 721 N.W.2d 307, 314 (Minn. 2006) (declaring that our "precedent recogniz[es] that ratemaking is a legislative function")). Instead, the commission "actively regulates rate reasonableness" and "may adjust rates according to its own investigations and judgment." *Hoffman*, 764 N.W.2d at 43; Minn. Stat. § 216B.16 (2018); Minn. Stat. § 216B.23, subd. 1 (2018).

The crux of the dispute in this appeal is whether the commission's implementation of an accounting methodology to refund excess interim rates, as proposed by the OAG and adopted by the commission, violates the EITE statute. We review the commission's decision under the arbitrary-and-capricious standard. *See In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in State*, 929 N.W.2d at 9 (applying

arbitrary-and-capricious standard). The scope of judicial review under this standard is limited and we will only find that a decision is arbitrary and capricious if the agency (1) relied on factors the legislature had not intended it to consider, (2) entirely failed to consider an important aspect of the problem, (3) offered an explanation for the decision that runs counter to the evidence, or (4) rendered a decision that is too implausible to be ascribed to a difference in view or the product of agency expertise. *Trout Unlimited, Inc. v. Minn. Dep't of Agric.*, 528 N.W.2d 903, 907 (Minn. App. 1995), *review denied* (Minn. Apr. 27, 1995). An agency's decision is also arbitrary or capricious if it reflects the agency's will, rather than its judgment. *In re Excess Surplus Status of Blue Cross & Blue Shield of Minnesota*, 624 N.W.2d 264, 278 (Minn. 2001).

The commission's interim-rates decision was guided by Minnesota Statutes section 216B.16, which requires the commission "to set interim rates whenever it suspends the effective date of new rates noticed by a utility." *In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Servs. in Minn.*, 807 N.W.2d 484, 485 (Minn. App. 2011) (discussing section 216B.16). Subdivision 3 governs the calculation of interim rates using a proposed "test year." Minn. Stat. § 216B.16, subd. 3(b). If the interim-rate is larger than the final rates, as occurred in this case, then the commission must "order the utility to refund the excess amount collected under the interim rate schedule." Minn. Stat. § 216B.16, subd. 3(c).

While the commission could have adopted other methodologies for setting the interim-rate refund amounts, as the LPIs suggest, we cannot say that the commission violated the EITE statute by adopting the OAG's proposal and rejecting the LPIs' proposal.

An agency decision is not arbitrary or capricious if the agency, presented with opposing points of view, reaches a reasoned decision that rejects one point of view. *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W.2d 557, 562 (Minn. App. 2001). And a decision is not arbitrary and capricious if the agency can "explain on what evidence it is relying and how that evidence connects rationally to the rule involved." *Minn. Chamber of Commerce v. Minn. Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. App. 1991) (quotation omitted), *review denied* (Minn. July 24, 1991).

The Interim Rate Refund Order reflects the commission's well-reasoned decision here. The commission began its order by explaining the interplay between the EITE Case and the Rate Case:

> As a result of the Commission's EITE cost-recovery decision, approximately $15.5 million in new annual revenue from [Keetac] must be used to offset the cost of the discount. But Minnesota Power has already reduced interim rates to account for the new Keetac revenue.
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> Because Minnesota Power accounted for the Keetac revenue in interim rates rather than in the EITE tracker, and has not been surcharging EITE-paying customers for the discount costs, the EITE tracker has accrued a deficit equal to the cost of the EITE discounts provided during the interim-rate period. Minnesota Power currently estimates that the cost of the discount will reach $23.7 million by the time final rates go into effect.
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> In its March 12 order, the Commission authorized Minnesota Power to recover the $23.7 million EITE tracker balance by reducing the interim-rate refund to EITE-paying customers to the extent necessary to offset that balance.

Because the final rates established in the Rate Case Docket were lower than the interim rates, the commission determined that Minnesota Power customers were entitled

to a refund for the difference between the interim rates and the final rates. After reviewing submissions and comments from the parties, the commission, exercising its statutory authority, allowed Minnesota Power to offset the EITE surcharge balance with the interim-rate refund amount. The Interim Rate Refund Order provided that Minnesota Power's test year "must reflect the full, annualized amount of sales revenues for Keetac *and* also reflect that certain of those revenues must be tracked separately as subject to offset or refund." The commission reasoned that this could be accomplished "by first accounting for $15.5 million of test-year Keetac revenues as EITE revenues that offset the 2017 and 2018 EITE discount costs in the EITE tracker, and then calculating the interim-rate refund." The commission determined that this method "effectively resolve[d] the accounting problem created when Minnesota Power accounted for the expense of the EITE discount in the EITE tracker, while accounting for the increased Keetac EITE revenues through interim rates in the rate case rather than in the EITE tracker."

The issues presented in the Rate Case Docket and the EITE Docket were technical in nature, factually intense, and required a high degree of expertise. And "[d]eference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in State*, 929 N.W.2d at 9 (citation omitted). We defer to an agency's expertise and special knowledge "when (1) the agency is interpreting a regulation that is unclear and susceptible to more than one interpretation; and (2) the agency's interpretation is reasonable." *Id*. (citation omitted). "We consider several factors when determining the level of judicial deference afforded to the agency's

interpretation," including "the nature of the regulation at issue," "whether the subject matter of the regulation is within the agency's technical training, education, and experience," and "whether the agency's interpretation of an unclear regulation is reasonable." *Id*. (citation omitted).

We determine that the commission, faced with opposing viewpoints from the OAG, Minnesota Power, and the LPIs, reached a reasoned decision that adopted the OAG's proposal to account for the excess revenue collected in interim rates. The commission's order relied on the relevant statutory provisions governing the creation of final- and interim-rates, and explained how its decision complied with those provisions. *See* Minn. Stat. § 216B.16, subd. 3 (mandating refunds when interim rates are in excess of final rates); § 216B.1696, subd. 2(d) (requiring utility offering EITE rate to create a separate tracker account). We therefore conclude that the commission did not err in its implementation of the accounting methodology, and the Interim Rate Refund Order is neither arbitrary nor capricious.[4]

[4] The LPIs characterize the OAG's comments as a request for reconsideration of the Rate Case Order and argue that such comments should have been rejected as statutorily time-barred. We disagree. The Rate Case Order required Minnesota Power to make compliance filings and requested an interim-rates refund proposal for the commission's review. The order also invited other parties to provide comments to the commission in response to Minnesota Power's compliance filing. Minnesota Power made its compliance filing on June 28, 2018, and the OAG timely filed responsive comments on July 30, 2018. *See* Minn. R. 7829.1400, subp. 1 (2018) (requiring comments to be submitted within 30 days). We discern no error in the commission's decision to consider comments from other parties responding to Minnesota Power's compliance filing.

III. We Decline to Consider Forfeited or Untimely Arguments.

The LPIs raise additional arguments, which are outside the scope of our review on appeal.

The LPIs argue that the Interim Rate Refund Order constitutes retroactive ratemaking. The LPIs forfeited this argument by failing to present it to the commission in the LPIs' petition for reconsideration. *See* Minn. Stat. § 216B.27, subd. 2 (2018) ("No cause of action arising out of any decision constituting an order or determination of the commission or any proceeding for the judicial review thereof shall accrue in any court" unless aggrieved party submits application for rehearing within 20 days of decision). The LPIs forfeited judicial review of this issue by failing to raise it to the commission.

The LPIs also contend that the Interim Rate Refund Order is unlawful because it double-counts Keetac sales revenue and compels EITE customers to pay a portion of the cost of the EITE discount in violation of the plain language of the EITE statute. *See* Minn. Stat. § 216B.1696, subd. 2 (mandating that utility "shall not recover any costs or refund any savings under this section from any [EITE] customer or any low-income residential ratepayers"). Because this argument seeks to relitigate an issue we rejected in our earlier decision, we decline to consider it now. *See In re Application of Minnesota Power for Auth. to Increase Rates for Elec. Serv. in State*, 929 N.W.2d at 8 ("The scope of the appeal does not extend to issues finally decided in the commission's [EITE Conditional Cost-Recovery Order], including the issue of whether the commission's requirement of a refund mechanism violates Minn. Stat. § 216B.1696.").

The LPIs also claim that the Interim Rate Refund Order is arbitrary and capricious because it resulted in a "windfall" to Minnesota Power. The EITE Conditional Cost-Recovery Order "required Minnesota Power to distribute the EITE surcharge as a uniform . . . charge applicable to all customer classes," and "directed Minnesota Power to refund to non-EITE customers any revenue increases resulting from increased sales to customers taking service under the EITE rate schedule." *Id*. at 5. This refund mechanism was structured in such a way that a refund would only issue "if and to the extent that sales to EITE customers increase to the point where the revenues under the EITE rate schedule exceed what the Company was collecting under the standard rate." Refunds were also "capped at the surcharges collected." The evidentiary record does not support a determination that Minnesota Power benefited from a windfall and, to the extent the LPIs seek to challenge the refund mechanism adopted in April 2017, that issue is outside the scope of appellate review now. *See Id*. at 8 (declining to consider issues finally decided in the commission's April 20, 2017 order).

Affirmed.