

**Minnesota Public Utilities Commission**  
*Staff Briefing Papers*

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Meeting Date: October 26, 2017..... \*Agenda Item # 4

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Company: Otter Tail Power Company

Docket No. **E017/M-17-279**

In the Matter of Otter Tail Power Company’s Petition For Approval of  
Merricourt Wind Project

- Issue(s):
1. Should the Commission approve Otter Tail’s investment in the Merricourt Project?
  2. Should the Commission Determine that the proposed Merricourt Project qualifies as an eligible energy technology that can count towards the Minnesota Renewable Energy Statute (RES) requirements set forth in Minn. Stat. §216B.1691?
  3. Should the Commission authorize future cost recovery for the Merricourt Project through Otter Tail’s Renewable Rider, subject to Commission review and approval of specific costs to be presented by Otter Tail in a future petition under Minn. Stat. §216B.1645, subd. 2a.?
  4. Should the Commission Grant OTP’s requested variance to the filing requirements of Minn. Rules 7825.1800(B) and Minn. Rules 7825.1400 items (A)-(J)?
  5. Does the proposed Merricourt Project require a certificate of need pursuant to Minn. Stat. §216B.243?
  6. Should the Commission Require periodic informational reports on the Merricourt project’s Bird and Bat Conservation Strategy minimization and mitigation activity undertaken as outlined by the DOC?

Staff: Marc Fournier .....651-201-2214

Sundra Bender.....651-201-2247

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***Relevant Documents***

Initial Filing – Petition for Approval of the Merricourt Wind Project  
Otter Tail Power..... April 11, 2017

Comments of the Minnesota Department of Commerce ..... June 19, 2017

Reply Comments Otter Tail Power..... July 7, 2017

Response Comments of the Minnesota Department of Commerce ..... August 16, 2017

Additional Reply Comments Otter Tail Power.....October 5, 2017

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

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## **I. Background**

On April 11, 2017, pursuant to Minn. Stat. §216B.1645, Otter Tail Power Company (OTP or the Company) submitted a petition to the Minnesota Public Utilities Commission (Commission) requesting approval of OTP's investment in a proposed 150-MW Merricourt wind generation project (Merricourt Project).

Comments were filed by the Minnesota Department of Commerce (DOC) on June 19, 2017. Reply comments were filed by Otter Tail Power on July 7, 2017. On August 16, 2017 reply comments were filed by the DOC. On October 5, 2017, additional reply comments were filed by OTP.

The Merricourt Project is a wind generation project that will be located near the small town of Merricourt, North Dakota, approximately 15 miles south of Edgeley in McIntosh and Dickey Counties.

The Merricourt Project will consist of 75 V110-2.0 MW Vestas wind turbine generators with an aggregate nameplate capacity of 150 MW. The Project includes real property interests, tower foundations, operational equipment, electric collection circuit lines, a collector system with an on-site collector substation, and additional infrastructure such as communications systems, meteorological towers, operations and maintenance building, monitoring, safety, lighting and measuring systems. The Project's footprint is approximately 13,000 acres of land. The Project's energy output is expected to be approximately 666,000 megawatt hours (MWh) annually, at a projected net capacity rate of 50.7 percent.

The Project will interconnect to Montana-Dakota Utilities Company's Merricourt 230 kV substation located approximately 13 miles southwest of Kulm, North Dakota. The Project is in the Midcontinent Independent System Operator (MISO) interconnection queue and the August 2016 study group. Otter Tail currently estimates that studies for the August 2016 study group will begin in the summer of 2017 with initial identification of necessary network upgrades for interconnection of the Project becoming available in late fall of 2017.

The Merricourt Project will be developed and constructed by subsidiaries of EDF Renewable Energy, Inc. (EDF). On November 16, 2016, Otter Tail and EDF executed an Asset Purchase Agreement (APA) under which Otter Tail will purchase the development assets of the Project. Otter Tail and EDF also executed a corresponding Turnkey Engineering, Procurement, and Construction (TEPC) agreement, under which EDF will construct the Project on a turnkey basis.

The structure of these transactions results in EDF developing and constructing the 150 MW Merricourt wind Project on Otter Tail's behalf. Under this transaction structure, EDF is responsible to take all the steps necessary to provide Otter Tail with a fully-developed Project, including obtaining all of the necessary land rights, ensuring that the Project qualifies for PTCs, and obtains all permits necessary for the Project to be implemented. Thereafter, EDF will be responsible to take the steps necessary to construct the Project and turn the completed Project over to Otter Tail upon satisfaction of the required milestones. This type of "turn-key"

transaction provides Otter Tail with a commercially-reasonable structure that provides long-term benefits of an advantageously priced Project while mitigating many of the commercial risks associated with development and construction of a major infrastructure project. Numerous conditions, including the Commission's approval of this Petition, must be satisfied prior to closing of the asset purchase under the APA. If regulatory approvals are not received, Otter Tail has the right to terminate the APA and end its involvement in the Project. The Merricourt Project is expected to be placed in service in 2019 ahead of the 2020 deadline required for capturing federal production tax credits.

## II. Issues

1. Should the Commission approve Otter Tail's investment in the Merricourt Project?

**Otter Tail:** This Petition is authorized by Minn. Stat. §216B.1645. Subdivision 1 of that statute authorizes the Commission to “approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.169, 216B.2423, and 216B.2424, and to satisfy the renewable energy objectives and standards set forth in section 216B.1691.

Otter Tail indicated that its discussion of the scope of applicability of Minn. Stat §216B.50 should not be an impediment to approval of the Merricourt project, as no party is arguing the project should be denied approval under the statute. However, if the Commission were to determine that Minn. Stat §216B.50 applies to the project under the DOC's interpretation, it may create a new compliance obligation for many projects to which it should not apply. As such, Otter Tail requests that the Commission either decide that Minn. Stat §216B.50 does not apply to the Merricourt Project, or decide that the statute applies, but not in the manner that increases the scope of the statute as may be the case under the DOC's analysis.

**DOC:** The DOC concludes that the Merricourt Project would be subject to Minn. Stat. §216B.50, based upon the Commission's application of this statute in recent dockets having similar transactions as referenced in the DOC's June 19, 2017 comments (pages 5-8). The DOC is not persuaded by OTP's reply argument that the cited Minn. Stat. §216B.50 clause, “This section does not apply to the purchase of property to replace or add to the plant of the public utility by construction”, applies to the Merricourt Project. When taking into account the prior form of this clause and the stated legislative purpose tied to its modification, the DOC interprets that this particular clause is intended to apply to existing plant already owned by the petitioning utility.

The DOC interprets the clause in Section 216B.50 to apply to existing plant based on the language in the prior version of that section, coupled with the stated legislative purpose at the time it was altered, the DOC is cognizant that in a recent petition (Docket No. E002/M-16-777), the Commission did not make a determination as to whether or not Minn. Stat. §216B.50 applied to Xcel Energy's petition to add wind generation facilities to its fleet. The DOC recognizes that

OTP's proposed addition of the Merricourt Project, despite being located in North Dakota, will serve Minnesota customers, thus affecting the operating system serving this state. In fact, OTP assigns the majority of its utility operating costs (approximately 53 percent) to Minnesota. Moreover, though the language in Minn. Stat. §216B.50, subd. 1 includes the phrase "plant as an operating unit or system in this state" the Commission has previously found that §216B.50 applies to facilities located outside the state of Minnesota when such facilities are used by the utility to provide service to Minnesota customers and the facilities' costs are included in customers' rates approved by the Commission.

The DOC recommends that the Commission find that the Merricourt project is in the public interest pursuant to Minn. Stat. §216B.50.

2. Should the Commission Determine that the proposed Merricourt Project qualifies as an eligible energy technology that can count towards the Minnesota Renewable Energy Statute (RES) requirements set forth in Minn. Stat. §216B.1691?

**Otter Tail:** In evaluating a project in relation to the utility's REO and RES obligations, the Commission has considered the following factors: (i) the size and output of the facilities relative to the utility's total needs; (ii) the timing of the facilities relative to those needs; and (iii) other considerations. Otter Tail needs the energy from the Merricourt Project to meet its RES and REO in light of these and other applicable criteria.

As part of its 2013 resource planning cycle, Otter Tail analyzed potential replacement scenarios in anticipation of the retirement of Hoot Lake Plant. This analysis indicated that market purchases should be made to meet Otter Tail's energy needs when wind was offered for selection by the model at \$45/MWh. When wind was offered to the model at \$30/MWh it was selected, which showed that at that price or below, acquiring 150 MW of wind in 2021 was the most economic choice to meet Otter Tail's energy needs. The Commission reviewed and approved with modifications Otter Tail's 2013 Integrated Resource Plan (IRP), authorizing Otter Tail to obtain up to 300 MW of wind in the 2017–2021 timeframe if cost-effective and to the extent consistent with reliable system operation. The Commission recently approved with modifications Otter Tail's 2016 IRP, that included a plan to add up to 200 MW of wind by 2020. The 150 MW Merricourt Project is the implementation of the resource additions authorized by the Commission. As a result of the Merricourt project, Otter Tail will have to-date acquired a total of 333 MW of nameplate capacity renewable resources.

With the addition of the Merricourt Project, approximately 28 percent of Otter Tail's total retail energy (system wide) will be generated by renewable generating resources. In Otter Tail's IRP proceedings, wind generation additions were determined to be an economic part of Otter Tail's least-cost resource plan and necessary to meet Otter Tail's customers' current energy needs, irrespective of any REO or RES obligations. Therefore, the Merricourt Project and Otter Tail's other wind additions have the double benefit for Otter Tail customers of economically meeting

current energy needs and allowing Otter Tail to meet its customers' REO and RES obligations well into the future.

**DOC:** Since the proposed Merricourt Project is a wind generation facility, the Minnesota Department of Commerce, Division of Energy Resources (DOC or Department) concurs that it qualifies as an eligible energy technology that can count towards the Minnesota Renewable Energy Standard (RES) requirements set forth in Minn. Stat. §216B.1691.

OTP indicated that it currently satisfies its renewable energy standard from energy produced by owned generation facilities and through Purchased Power Agreements (PPA). Although OTP currently satisfies its RES, OTP's renewable biennial compliance report (Docket E999/PR-16-83) reflects that the Company expects to remain compliant up through 2025 with its current renewable portfolio. Beyond 2025, OTP expects it will not have sufficient renewable energy credits to satisfy its RES obligations. The Commission's 16-386 Order statement acknowledged OTP's need for additional renewable energy:

With the addition of 200 MW of wind, the Company will be on track to meet the Renewable Energy Standard, which requires a public utility – such as Otter Tail – to generate or procure, by 2025, 25 percent of its total retail electric sales using renewable energy technologies.

In these recent reporting and IRP dockets, OTP has demonstrated a need for additional renewable energy resources.

3. Should the Commission authorize future cost recovery for the Merricourt Project through Otter Tail's Renewable Rider, subject to Commission review and approval of specific costs to be presented by Otter Tail in a future petition under Minn. Stat. §216B.1645, subd. 2a.?

**Otter Tail:** This petition does not request current rate recovery for Merricourt Project costs. However, Otter Tail requests authorization to include the costs of the Merricourt Project in the Renewable Rider rate calculation, subject to Commission review and approval of specific costs to be presented by Otter Tail in the updated filing pursuant to Minn. Stat. §216B.1645, subd. 2a.

When Otter Tail submits its petition to begin recovery of its investments in the Merricourt Project, Otter Tail will also provide additional information relative to impacts of incentives that are available for the Merricourt Project.

With respect to the DOC's proposed cap on total capital costs allowed for recovery through the rider mechanism, Otter Tail believes that Under the circumstances it is not reasonable to (1) cap Renewable Rider recovery based on the Merricourt Project capital budget, and (2) pre-emptively

deny Otter Tail deferred accounting status for amounts in excess of such a cap. Interconnection costs are not within Otter Tail's control and all generators now seeking interconnection face similar uncertainty by virtue of the amount of generation currently in MISO's queue. Otter Tail constructed several layers of customer protection from excessive interconnection costs, which the DOC deemed reasonable. The DOC's intent to hold utilities accountable for accurate capital budget estimates is not promoted in this situation. To the contrary, the DOC's cap recommendation may incent utilities to adopt the high end of the ranges for highly variable and unpredictable expenses like interconnection costs. The DOC's concern about Commission issuance of a blank check is also misplaced. Otter Tail's recovery of costs through its Renewable Rider is subject to Commission review and approval for specific costs presented in a future petition under Minn. Stat. §216B.1645, subd. 2a. The DOC and the Commission will have full opportunity to review all costs at that time. Implementation of a cap in this docket is both premature and unnecessary. The DOC's recommendation for a cap artificially limits Otter Tail's Renewable Rider recovery to an amount that may be less than the amount necessary "to recover prudently incurred investments, expenses, or costs associated with facilities constructed, owned, or operated by a utility." The cap in this instance is inconsistent with the rider recovery mechanism authorized under Minn. Stat. §216B.1645.

While Otter Tail does not believe the Commission should adopt a cap on rider recovery in this proceeding, should the Commission be inclined to do so, Otter Tail believes a more appropriate soft cap of a slightly higher amount. A lower figure risks denying Otter Tail Renewable Rider recovery for least-cost, prudent investments that also address Minnesota's REO and RES policy objectives.

Finally, it is premature to deny Otter Tail deferred accounting treatment of expenses above a soft cap. Any decision on the deferred accounting treatment of Merricourt Project expenses in excess of a Commission-approved cap should be informed by the nature of the expenses. This information should be evaluated when Otter Tail seeks recovery through its Renewable Rider.

**DOC:** The DOC recommends that the Commission determine that the proposed Merricourt project qualifies for cost recovery under Minn. Stat. §216B.1645, subd. 2a and cap the total capital cost allowed for recovery through the rider mechanism. The cap should be equal to the total project cost which resulted in the lowest Levelized Cost of Energy plus Allowance for Funds Used During Construction (AFUDC), less the capitalized internal costs.

OTP needs to add renewable energy sources to its current renewable portfolio in order to remain compliant with renewable energy obligations. The DOC agrees that the Merricourt Project qualifies as an eligible investment that will help OTP satisfy its renewable requirements set forth in Minn. Stat. §216B.1691. The DOC also agrees that the proposed Merricourt Project offered the lowest levelized cost of energy of the ten proposals OTP received and therefore appears to be reasonably prudent. Therefore, the DOC concludes that the Merricourt Project qualifies for cost recovery under Minn. Stat. §216B.1645, subd. 2a.

Among the DOC's reasons stated in its June 19, 2017 comments (page 16), the DOC emphasizes use of the soft cap value because it is the cost estimate value input used by OTP's modelling that

lead the Company to select the Merricourt Project from the ten proposals evaluated. OTP pursued the proposed Merricourt Project alternative as having the lowest levelized cost of energy (LCOE). Although OTP's reply comments argued the Merricourt project remains prudent at a higher project cost, the DOC points out that under such cost assumption the Merricourt project LCOE increases significantly. When comparing the revised Merricourt project LCOE value to the LCOE's of the remaining nine proposals evaluated, a different alternative a purchased power agreement (PPA) which includes transmission interconnection costs borne fully by the developer, is shown to have a slightly lower LCOE, and another alternative has a lower LCOE, but OTP stated that this proposal did not include transmission costs. Consequently, a different alternative may have been pursued other than the currently proposed Merricourt Project if the modelled cost input was higher. Moreover, OTP does not propose even to be bound by this higher amount as a cap.

As such, the DOC maintains its recommendation of a soft cap applicable to the rider recovery mechanism using the project cost estimate to hold OTP accountable to their cost estimates and their evaluations of the alternatives. Alternatively, the DOC recommends that the Commission require OTP to select a lower or comparable-cost proposal with less risk.

With respect to capital cost overruns, OTP disagrees with the DOC's recommendation that any capital cost overruns should not be treated as deferred amounts for future rate recovery, with the understanding that the remaining balance may be presented by OTP in a future rate case to be considered for rate inclusion. The DOC's recommendation is fully consistent with the Commission's practices regarding requests for regulatory assets. The Commission has historically maintained rigorous standards for the granting of deferred accounting, including evaluation of the following conditions:

- related to utility operations;
- significant in amount;
- unforeseen, unusual or extraordinary items; and
- subject to review for reasonableness and prudence.

Should OTP incur an event it believes meets Commission standards, it could petition the Commission at that time.

As a result, the full cost of the investment is subject to amortization/depreciation once it is placed in service in accordance with generally accepted accounting principles and it is the DOC's recommendation that OTP should not book as a regulatory asset the portion of 1) depreciation, 2) return on investment, or 3) other capital-related costs attributed to the project's capital costs that exceed the soft cap. Making clear to OTP that it is to follow generally accepted accounting procedures with respect to the Merricourt Project is not premature; rather, it acts as a preventative measure to avoid incorrect assumptions and potential conflicts in future filings.

With respect to OTP's argument that it faces significant, unavoidable uncertainty concerning interconnection costs, the DOC points out that OTP has negotiated contract provisions with EDF Renewable Energy, Inc. (EDF) to automatically terminate the Asset Purchase



Agreement (APA) should interconnection costs identified in the final Generator Interconnection Agreement (GIA) exceed a non-public stated amount. This contract provision mitigates interconnection cost risks and provides OTP a means to opt out and avoid exceeding project cost estimates. Additionally, if the project cost exceeds OTP's estimate presented in this petition, the Company has the opportunity to file a rate case to make its case for rate recovery of the remaining balance of cost overruns. Therefore, the Company would need to demonstrate why it did not choose a project with less risk, or show that other projects face the same level of such risks.

In its comments, the DOC discussed the Internal Revenue Service (IRS) requirement for the proration of accumulated deferred income tax (ADIT) when using a forecasted test year and how this proration increases rate base which ultimately increases rates, despite that ratepayers prepaid the taxes. The DOC believed that rider mechanisms having true-up features could undo the harm to ratepayers by using actual ADIT balances for the now-historical months when determining tracker balances. The DOC also stated, however, that should the IRS determine that reversal of proration in a true-up is a violation of the IRS normalization requirements, use of a historical test year period would remain available to alleviate any harm to ratepayers. OTP's reply comments did not respond to the DOC's comments on the prorated ADIT issue.

OTP has recently received its Private Letter Ruling (PLR). OTP's PLR requested an IRS ruling on the use of ADIT proration specific to a rate case scenario that involved implementation of interim rates subject to refund. While this PLR request did not discuss rider rate mechanisms with true-up features, it appears that the IRS is focused on the date when rates are implemented as the determining factor for the need to prorate ADIT. Moreover, the IRS recently issued a PLR for an undisclosed utility regarding use of prorated ADIT in rider true-ups, and from the DOC's initial review, the IRS ruling did not appear to permit reversing proration in a true-up, even when the true-up is calculated after the end of the test period. What that ruling means is that OTP's ratepayers would be harmed in an ongoing manner, since they would not receive full credit to rate base for prepaying OTP's federal income taxes in the early years of the project, due to higher taxes under uniform rather than accelerated depreciation.

Given this information, the DOC recommends that the effective dates for recovery of costs of the Merricourt Project be set at the end of each then-historical test year period in OTP's Renewable Resource Cost Recovery rider. For example, if OTP uses a calendar-year test period, then recovery of estimated 2017 costs could not occur until January 1, 2018. If OTP can convince the IRS not to prorate ADIT in true-ups, then the effective date of riders could occur prior to the end of the test period. However, even if the IRS does not change its ruling, allowing OTP to recover costs of the Merricourt Project in the rider would still allow OTP to recover costs of the Merricourt Project far sooner than under traditional ratemaking, which delays recovery until the first rate case after a project is fully used and useful. By contrast, allowing recovery through a rider allows the utility to recover reasonably forecasted costs prior to when the project is fully used and useful and without the need for a rate case.

4. Should the Commission Grant OTP's requested variance to the filing requirements of Minn. Rules 7825.1800(B) and Minn. Rules 7825.1400 items (A)-(J)?

**Otter Tail:** A variance from the requirements of in Minn. Rule 7825.1800(B) is well justified. The Merricourt Project's details, including its pricing, assets and property, are set forth in Otter Tail's initial filing. At this time Otter Tail anticipates financing the Merricourt Project with some combination of unsecured debt, internal cash generation and an equity infusion from its parent company Otter Tail Corporation. The precise mix of financing has not yet been determined, and Otter Tail's plans are subject to change depending on other planned capital expenditures, internal cash generation, and market conditions.

Compliance with Minn. R. 7825.1400 (A)-(J) would also impose an excessive burden on Otter Tail and provide little if any useful information beyond what Otter Tail has already provided in its initial filing. Finally, a variance in these circumstances is not at odds with any statutory provisions or prejudicial to any parties or interested persons.

**DOC:** The DOC has no objection to OTP's request for variance to Minn. Rule 7825.1800(B) and by reference Minn. 7825.1400 (A)-(J). Many of the rule filing requirements are present in the initial filing; also, OTP's recent balance sheet and capital structure information corresponding to Minn. Rule 7825.1400 is available in OTP's currently pending capital structure filing, Docket E017/S-17-337, wherein the DOC recommends approval.

5. Does the proposed Merricourt Project require a certificate of need pursuant to Minn. Stat. §216B.243?

**Otter Tail:** The Merricourt Project is located in North Dakota and therefore does not require a Minnesota Certificate of Need.

**DOC:** Determine that the proposed Merricourt Project, being built in North Dakota, is exempt from the certificate of need statute, Minn. Stat. §216B.243.

6. Should the Commission Require periodic informational reports on the Merricourt project's Bird and Bat Conservation Strategy minimization and mitigation activity undertaken as outlined by the DOC?

**Otter Tail:** It is not possible to wholly eliminate the potential consequences and environmental cost risks from avian issues at Merricourt or any other wind farm. However, by contractually requiring EDF to adopt a Bird and Bat Conservation Strategy (BBCS) incorporating elements of the U.S. Fish & Wildlife Service's (USFWS) Land-Based Wind Energy Guidelines and the

Programmatic Environmental Impact Statement jointly developed by USFWS and the Western Area Power Administration (WAPA), and making plans to fully implement the measures at the Merricourt project site, Otter Tail is adopting a conservative and prudent approach designed to minimize such risks. Indeed, adoption of the draft BBCS will render the prospect of a take insignificant or discountable.

It is important to note that acquiring an incidental take permit (ITP), which requires applicants to first prepare a Habitat Conservation Plan (HCP), likewise does not wholly eliminate such risks. Obtaining an ITP is a time-consuming and expensive proposition. It authorizes the permit holder only to “take” up to a specified number of specified species. The taking of a greater number of the specified species or the taking of a different protected species would nevertheless subject the permit holder to liability. Moreover, the HCP would likely include the same federal agency-supported minimization and mitigation measures found in EDF’s BBCS.

For a corporation that knowingly causes a “take,” the federal Endangered Species Act provides for a maximum civil penalty of \$49,467 per violation. The U.S. Department of Justice or private citizens may also seek an injunction to halt or bar any activity that causes a “take.” However, by requiring the adoption of a BBCS that is premised upon USFWS’s and WAPA’s own minimization and mitigation measures, and then fully implementing the measures at the Merricourt project site, Otter Tail is prudently establishing a record that would weigh in favor of leniency in the unlikely event of a future take. Otter Tail believes this approach is more prudent than obtaining an ITP.

**DOC:** The DOC believes that OTP’s BBCS for the Merricourt Project reasonably addresses the avian issues. However, to monitor the effectiveness of these strategies and the related operational impacts going forward, the DOC recommends that the Commission require OTP to provide periodic informational reports during the early years of the project’s operation. These reports should include the avian risk mitigation measures exercised and the related operational impacts. The DOC recommends that these informational periodic reports be provided 30 days after the end of each of the first two years (i.e., first two 12-month periods) of Merricourt’s operation, and 30 days after the end of each five-year interval of operation during the first ten years of operation; thus provide a total of at least four reports during the period production tax credits are earned. The DOC also recommends that OTP file with the Commission any post-construction fatality surveys conducted during the first two years of operation to allow the Commission to assess the effectiveness of the avoidance and minimization measures adopted.

### **III. Staff Discussion**

#### **Cost Recovery**

The issue for the Commission is whether to set a soft cap as recommended by the Department, or not set a cap as recommended by OTP.

The position of the Department is setting a soft cap makes the utility more accountable for accurate capital budget estimates which are the basis for selecting this project over other alternatives. If the Company had higher cost estimates, the project's LCOE might have been such that a different alternative would have been selected.

Otter Tail's position is that implementation of a cap on the Renewable Rider recovery is both premature and unnecessary. While the implementation of a cap on the surface might appear to hold the Company accountable for its capital costs, it may actually create a perverse incentive as pointed out by Otter Tail in their July 7, 2017 reply comments at page 9:

The DOC's intent to hold utilities accountable for accurate capital budget estimates is not promoted in this situation. To the contrary, the DOC's cap recommendation may incent utilities to adopt the high end of the ranges for highly variable and unpredictable expenses like interconnection costs. The DOC's concern about Commission issuance of a blank check is also misplaced. Otter Tail's recovery of costs through its Renewable Rider is subject to Commission review and approval for specific costs presented in a future petition under Minn. Stat. §216B.1645, subd. 2a.

The numbers are well established in this proceeding. What the Commission needs to consider is how a cost cap will affect future filings of this nature. Will companies have the incentive to pad the capital budget estimates? As such, the imposition of a cap may have the opposite result from that which is desired.

In addition, because the numbers are well established in the record of this proceeding, the range of reasonableness has already been established. Because this range of reasonableness has already been established, the Company's future filing pursuant to Minn. Stat. §216B.1645, subd. 2a will have a boundary on capital costs.

### **Deferred Accounting**

This issue only arises if the Commission imposes a cap on costs recoverable under the rider.

The Department recommends that, in addition to setting a soft cap on the amount of costs recoverable through the rider, the Commission also deny deferred accounting of costs in excess of the cap.

Otter Tail indicated that it is premature to deny Otter Tail deferred accounting treatment of expenses above any cap, which may be imposed. As Otter Tail discussed, any decision on the deferred accounting treatment of Merricourt Project expenses in excess of a Commission-approved cap should be informed by the nature of the expenses. This information should be evaluated when Otter Tail seeks recovery through its Renewable Rider. As such, the Commission could defer any decision on this issue until Otter Tail files for renewable rider recovery pursuant to Minn. Stat. §216B.1645, subd. 2a.

### **Prorated ADIT**

Since recent IRS PLRs do not appear to permit reversing proration in a true-up, even when the true-up is calculated after the end of the test period, the Department recommended that the effective dates for recovery of costs of the Merricourt Project be set at the end of each then-historical test year period in OTP's Renewable Resource Cost Recovery rider. OTP did not respond to this recommendation. This issue may be better addressed when the Commission considers Otter Tail's renewable recovery petition pursuant to Minn. Stat. §216B.1645, subd. 2a.

### **Approval of Resource Acquisition**

Otter Tail filed this petition pursuant to Minn.Stat. §216B.1645,Subd. 1. Minn.Stat. §216B.1645,Subd. 1 provides the following:

#### **216B.1645 POWER PURCHASE CONTRACT OR INVESTMENT.**

##### **Subdivision 1. Commission authority.**

Upon the petition of a public utility, the Public Utilities Commission shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections [216B.169](#), [216B.2423](#), and [216B.2424](#), and to satisfy the renewable energy objectives and standards set forth in section [216B.1691](#),

It appears to staff that is the appropriate statute to consider Otter Tail's petition. However, the DOC recommends consideration under Minn. Stat. §216B.50. Minn. Stat. §216B.50 states the following:

#### **216B.50 RESTRICTIONS ON PROPERTY TRANSFER AND MERGER.**

##### **Subdivision 1. Commission approval required.**

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another public utility or transmission company operating in this state, without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission, the commission shall investigate, with or without public hearing. The commission shall hold a public hearing, upon such notice as the commission may require. If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing. In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

This section does not apply to the purchase of property to replace or add to the plant of the public utility by construction.

In a previous Commission Order in Docket numbers E-002/M-13-603 and E-002/M-13-716<sup>1</sup>, the Commission made the following determination:

This statute does not apply to the Courtenay and Odell projects – which would not involve Xcel acquiring the wind farms themselves – nor the Border Winds project – which would not be located within Minnesota. But the statute would apply to the Pleasant Valley project. Thus Xcel may not proceed to acquire that project until the Commission determines that doing so would be consistent with the public interest.

It would appear from the plain reading of the Commission's Order, that the Commission made the determination that Minn. Stat. §216B.50 does not apply to property that is not located in the state. Additionally, Staff notes that if this acquisition approval for is not done pursuant to Minn. Stat. §216B.50, there is no need to consider the variance to Minn.Rule 7825.1800(B).

Another approach the Commission may wish to consider is the approach taken by the Commission in docket E-002/M-16-777. In this docket, the Commission found that Xcel's petition was in the public interest without directly referencing a specific statute.<sup>2</sup> As part of this approach, the Commission granted the variance to Minn.Rule 7825.1800(B).

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<sup>1</sup> In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of 600 MW and 150 MW of Wind Generation, Docket Nos. E002/13-603 and 716 (December 13, 2013) at page 13.

<sup>2</sup> In the Matter of the Petition of Xcel Energy for Approval of the Acquisition of Wind Generation from the Company's 2016-2030 Integrated Resource Plan, Docket No. E-002/M-16-777 (September 1, 2017).

#### **IV. Commission Options**

1. Should the Commission approve Otter Tail's investment in the Merricourt Project?
  - A. Determine that the proposed Merricourt Project is subject to Minn. Stat. §216B.1645, Subd. 1 and find that the project is in the public interest.
  - B. Find that the project is in the public interest.
  - C. Determine that the proposed Merricourt Project is subject to Minn. Stat. §216B.50 and find that the project is in the public interest.
  
2. Should the Commission Determine that the proposed Merricourt Project qualifies as an eligible energy technology that can count towards the Minnesota Renewable Energy Statute (RES) requirements set forth in Minn. Stat. §216B.1691?
  - A. Determine that the Merricourt Project qualifies for application toward Otter Tail's renewable energy objectives and obligations pursuant to Minn Stat. §216B.1691.
  - B. Do not determine that the Merricourt Project qualifies for application toward Otter Tail's renewable energy objectives and obligations pursuant to Minn Stat. §216B.1691.

3. Should the Commission authorize future cost recovery for the Merricourt Project through Otter Tail's Renewable Rider, subject to Commission review and approval of specific costs to be presented by Otter Tail in a future petition under Minn. Stat. §216B.1645, subd. 2a.?
  - A. determine that the proposed Merricourt project qualifies for cost recovery under Minn.Stat. .§216B.1645, subd. 2a. and
    - a. Do not impose the DOC recommended soft cap on capital costs allowed for recovery through the rider mechanism;
    - b. Defer action on the effective date for Otter Tail's renewable resource recovery rider until the Commission considers Otter Tail's future petition.
  - B. determine that the proposed Merricourt project qualifies for cost recovery under Minn.Stat. .§216B.1645, subd. 2a. and
    - a. Impose the soft cap on capital costs allowed for recovery<sup>3</sup> through the rider mechanism as recommended by the DOC<sup>4</sup>;
    - b 1. Defer any action on the DOC recommendation that any Merricourt project capital and capital-related costs excluded from the rider recovery mechanism, including the return of and return on these excluded capital costs, shall not be treated as deferred amounts held for future rate recovery until the Commission considers Otter Tail's future petition; or
    - b 2. Direct that any Merricourt project capital and capital-related costs excluded from the rider recovery mechanism, including the return of and return on these excluded capital costs, shall not be treated as deferred amounts held for future rate recovery as recommended by the DOC; and
    - c. Adopt effective dates for OTP's Renewable Resource Cost Recovery rider rate to be set at the end of the test year period to alleviate harm to ratepayers that arises from prorated Accumulated Deferred Income Tax.
  - C. determine that the proposed Merricourt project does not qualify for cost recovery under Minn.Stat. .§216B.1645, subd. 2a.

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<sup>3</sup> The exact dollar amount can be found on page 10 of the DOC August 16, 2017 reply comments.

<sup>4</sup> While Otter Tail does not believe the Commission should adopt a cap on rider recovery in this proceeding, should the Commission be inclined to do so, Otter Tail believes a more appropriate soft cap is a larger amount found on page 10 of the Company's July 7, 2017 reply comments.



4. Should the Commission Grant OTP's requested variance to the filing requirements of Minn. Rules 7825.1800(B) and Minn. Rules 7825.1400 items (A)-(J)?
  - A. Determine that there is no need to grant the variance of the rule.
  - B. Grant the variance if the Commission deems it appropriate.
  - C. Do not grant the variance.
  
5. Does the proposed Merricourt Project require a certificate of need pursuant to Minn. Stat. §216B.243?
  - A. Confirm that the Merricourt Wind Project is exempt from the requirement to obtain a certificate of need pursuant to §216B.243, Subd. 5.
  - B. Find that a certificate of need is required pursuant to §216B.243, Subd. 5.
  
6. Should the Commission Require periodic informational reports on the Merricourt project's Bird and Bat Conservation Strategy minimization and mitigation activity undertaken as outlined by the DOC?
  - A. Require periodic informational reports on the Merricourt project's Bird and Bat Conservation Strategy minimization and mitigation activity undertaken as outlined by the DOC.
  - B. Do not require periodic informational reports on the Merricourt project's Bird and Bat Conservation Strategy.