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February 18, 2025

Mr. Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East  
Suite 350  
St. Paul, MN 55101-2147

**RE: In the Matter of Otter Tail Power Company's Petition for Approval of the  
Solway and Abercrombie Solar Projects  
Docket No. E017/M-24-404  
Reply Comments**

Dear Mr. Seuffert:

Otter Tail Power Company (Otter Tail Power) hereby submits to the Minnesota Public Utilities Commission (Commission) its Reply Comments in the above-referenced matter.

We have electronically filed this document with the Commission and copies have been served on all parties on the attached service list. A Certificate of Service is also enclosed.

Please contact me at 218-739-8956 or [cstephenson@otpc.com](mailto:cstephenson@otpc.com) if you have any questions regarding this filing.

Sincerely,

/s/ CARY STEPHENSON  
Cary Stephenson  
Associate General Counsel

sjw  
Enclosures  
By electronic filing  
c: Service List

**STATE OF MINNESOTA  
BEFORE THE  
MINNESOTA PUBLIC UTILITIES COMMISSION**

**In the Matter of Otter Tail Power  
Company's Petition for Approval of  
the Solway and Abercrombie Solar  
Projects**

**Docket No. E017/M-24-404  
REPLY COMMENTS**

**I. INTRODUCTION**

Otter Tail Power Company (Otter Tail Power) respectfully submits the following Reply Comments in the above-referenced matter. These Reply Comments respond to Comments submitted by the Minnesota Department of Commerce, Division of Energy Resources (Department) and the Minnesota Office of Attorney General, Residential Utilities Division (OAG).

Otter Tail Power initiated this docket on December 9, 2024, by submitting a petition to the Minnesota Public Utilities Commission (Commission) seeking approval of investments in two solar generation plants Otter Tail Power proposes to construct, own, and operate. The 50-megawatt (MW) Solway Solar Project is a solar generation facility to be constructed near Solway, Minnesota, with an anticipated in-service date of December 2026. The 295.1 MW Abercrombie Solar Project is a solar generation facility to be constructed in Richland County, North Dakota, with an anticipated in-service date of December 2028. Otter Tail Power selected these projects through a Commission-approved flexible, competitive resource acquisition process, where the next most competitive projects were significantly more costly on a levelized cost of energy (LCOE) basis.

On December 19, 2024, the Commission issued a Notice of Comment Period addressing the requests made in Otter Tail Power's petition:

- Should the Commission approve Otter Tail Power's investment in the Solway Solar and Abercrombie Solar Projects?
- Should the Commission determine that the Projects qualify for application toward Otter Tail Power's Eligible Energy Technology Standard and Carbon-Free Standard obligations?
- Should the Commission authorize future cost recovery of the Projects through the Renewable Resources Cost Recovery Rider, subject to Commission review and approval of specific costs to be presented by Otter Tail Power in a future petition under Minn. Stat. § 216B.1645, subd. 2a?

- Should the Commission find that the Project satisfies the criteria for exemption pursuant to Minn. Stat. § 216B.2422, subd. 5, and is therefore exempt from the notice and comment proceedings required under Minn. Stat. § 216B.243, subd. 9?

As discussed below the record supports answering the foregoing questions in the affirmative.

## II. OTTER TAIL RESPONSE TO COMMENTS

### A. Response to DOC Comments

Otter Tail Power appreciates the Department's analysis and comments supporting the Company's Solway and Abercrombie Projects. We agree with the Department's analysis and recommendations except for the Department's recommendation that cost recovery for the Projects be limited by an aggregate, symmetrical, cost cap, which the Department describes as follows:

The Department recommends that the Commission limit cost recovery to an aggregate, symmetrical capital cost cap for the Projects with the capital cost recovered being set at the costs bid by OTP for the Solway Project and the Abercrombie Project combined. This recommendation means that if up-front capital costs exceed the cap, the Company, not customers, bears the costs. If savings are achieved, however, the Company retains them. This treatment mirrors that of third-party bidders, so treating OTP in the same manner is reasonable and preserves the integrity of the bidding process. To not implement such a cap would give the Company a competitive advantage in that other bidders bear the risk of cost overruns—a risk which OTP would not face.<sup>1</sup>

The Department's proposal would allow OTP to request Commission approval to exceed the symmetrical cost-cap "if it can show that any cost it incurred above the cap are the result of a government action (e.g. tariff, trade investigation, etc.) that causes a meaningful disruption to solar panel supplies and market prices."<sup>2</sup>

Otter Tail Power understands the Commission has applied a symmetrical aggregate cost cap in Xcel Energy renewable resource acquisition dockets and appreciates the Department's proposal.<sup>3</sup> That being said, we are concerned that the only relief from

<sup>1</sup> Department Comments, pp. 4-5.

<sup>2</sup> Id. at p. 5.

<sup>3</sup> The Department's Comments refer to two Xcel dockets: (1) *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. E002/M-16-777, Commission Order September 1, 2017. eDocket No. 20179- 135205-01; and (2) *In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of Sherco Solar 3 and the Apple River Solar Power Purchase Agreement*, Docket No. E002/M-22-403, Commission Order October 25, 2023. eDocket No. 202310-199871-01, at point 5.

the cap as proposed by the Department are additional costs that are the result of governmental action, such as tariffs and presumably changes in federal laws that have a material impact on the Projects. Likewise, the Company is concerned that additional costs resulting from governmental action are limited to solar panel supplies; racking, posts, inverters and other equipment could also be affected by governmental action such as tariffs on steel or aluminum.

The Company believes an aggregate, symmetrical cost cap would be more reasonable if a wider range of issues were considered by the Commission if capital costs exceed the Projects' aggregate budget. The scope of this relief would resemble force majeure events included in many contracts. This would include such things as a global pandemic directly impacting the availability and cost of materials or contractors. Wars and natural disasters are also commonly included. This does not shift risks to customers as it only permits the Company to petition the Commission, with the Commission as the final arbiter of whether the Company demonstrated prudence.

We believe this approach is also justified by the significant difference between (1) the Solway and Abercrombie Projects' levelized cost of energy (LCOE) and (2) the next most competitive projects' LCOE identified through the Company's competitive, flexible acquisition process. It seems incongruent for the Company to be held to a cap with a very narrow band of relief when any relief sought and granted by the Commission would still likely result in the Solway and Abercrombie Projects having a lower LCOE than the next most competitive projects. In fact, one might argue that the symmetrical cap should be set at the LCOE of the next most competitive projects because completing the Abercrombie and Solway Projects produces savings for our customers if the final aggregate LCOE is less than the LCOE of the next most competitive projects. The Company is not suggesting this approach – it simply demonstrates that a wider band of potential relief is not unreasonable.

None of the foregoing suggest the Company anticipates exceeding the capital budget of the Projects, whether in the aggregate or individually. The Commission can take notice of the Company's strong record of putting generation projects into commercial service on time, and at or under budget. This was the case for Otter Tail Power's 150 MW Merricourt wind project, the 49.9 MW Hoot Lake solar project, and the 250 MW Astoria Station simple cycle natural gas plant project, and the Big Stone Plant Air Quality Control System project. Using the soft cap methodology in these instances allowed our customers to participate in the cost savings the Company's strong project management record created for these projects. The Company's record belies the implicit concern in the Department's proposal that the Company may underbid or underestimate projects with the intent of obtaining additional recovery later.

In view of the Company's record it is reasonable for the Commission to adopt a traditional soft cap approach where the Company recovers the actual capital budget outlays required to put each project in commercial service if those outlays are at or below budget. If costs exceed budget, the Company will then simply have an opportunity to demonstrate to the Commission those costs were necessary and prudently incurred.

## **B. Response to OAG Comments**

The OAG makes three primary assertions. First, the OAG takes issue with the size of the Abercrombie and Solway Projects and demands an explanation of "why the amount of solar [the Company] is proposing is larger than the MW range the Commission identified in its IRP order and would come into service later than the timing that the Commission identified."<sup>4</sup>

Second, the OAG argues the Company's Petition should be rejected because it forces Minnesota customers "to pay for North Dakota's share of the solar projects" resulting in an unfair burden to Minnesota customers.<sup>5</sup> Related to this the OAG suggests the Company requested the North Dakota Public Service Commission (NDPSC) to reject the Projects, and that the Company should revisit this matter with the NDPSC.

Finally, the OAG proposes an asymmetric hard cap that would serve as an absolute cap on recovery, with minimal incentives or protections for the Company.<sup>6</sup> The OAG's assertions are not supported by the record, relevant law, or good sense.

### **1. The Abercrombie and Solway Projects' sizing and timing are appropriate and beneficial.**

While more than 300 MW, the aggregate size of the Abercrombie and Solway Projects is consistent with the Commission's IRP Order, is necessary for the Company's future compliance with Minnesota's Carbon Free Standard (CFS) and is beneficial for the Company's Minnesota customers. As noted in the Company's Petition, the Solway Project's nameplate capacity is projected to be 66 MW, even though the project operational capacity is limited to 50 MW based on Otter Tail Power's existing MISO interconnection rights. By sizing the project at 66 MW the Company will minimize the overall effects of electrical losses and maximize the amount of production delivered to the point of interconnection during solar production hours. This approach allows the Company to make optimal use of the surplus interconnection available at the Solway site.

The Abercrombie Project is sized at approximately 295 MW, which corresponds to the size of the project as it has been developed by Flickertail Solar Project, LLC

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<sup>4</sup> OAG Comments pp. 7-9.

<sup>5</sup> OAG Comments pp. 9-16.

<sup>6</sup> OAG Comments pp. 17-19.

(Flickertail). The Company and Flickertail are parties to an Asset Purchase Agreement (APA) whereby Otter Tail Power will purchase the project's development assets assuming numerous contingencies are satisfied. Sizing and operating the project in the manner it has been developed provides the most value for our customers. For example, the negotiated APA incorporates a price for the interconnection that has been secured by Flickertail. Sizing the project downward would preclude making full use of the interconnection rights, and result in less production, resulting in a higher LCOE. The same analysis can be applied to land rights that are part of the development assets.

As a practical matter it is difficult to acquire generation resources that fall neatly on a specific size or within a specific range. As noted by the Department “[i]t is common for actual resource acquisition to vary from the amount listed in a resource plan order based on the facts discovered by the acquisition process.”<sup>7</sup>

In this instance Otter Tail Power could have selected projects that fell within the 200-300 MW range had the Company selected several significantly more expensive resources in the place of the more cost-effective Solway and Abercrombie Projects. Moreover, the Company has demonstrated a need for the additional megawatts, as noted by the Department:

In terms of need, the IRP Order ordered OTP to pursue 200 MW to 300 MW of solar resources with a commercial operation date of November 1, 2027, or as soon as practicable thereafter. In addition, Table 5 of the First Petition demonstrated that OTP's current resources do not meet the EETS nor the CFS. As explained below the Department verified OTP's calculations. Therefore, the Department concludes that OTP has a need for solar generally and for new EETS- and CFS-qualifying resources in particular. While the combined size of the Projects exceeds the Commission's 300 MW solar target, the EETS and CFS energy needs identified by OTP in Table 5 along with the pricing of the various bids received by OTP indicate that exceeding the 300 MW solar target is reasonable in this instance.<sup>8</sup>

The projected in-service dates of the Projects are consistent with the Commission's IRP directive of “a commercial operation date of November 1, 2027 *or as soon as practicable thereafter*” (emphasis added). The Solway Project has a projected in-service date of December 2026. The significantly larger and more complex Abercrombie Project is anticipated to be in-service by the end of 2028, which is as soon as practicable after the Commission's target date of November 2027.

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<sup>7</sup> Department Comments, footnote 15, p. 4. Similarly, the OAG's assertion that Otter Tail Power should file a changed circumstances filing under Minn. Rule 7843.0500 is not supported by the record.

<sup>8</sup> DOC Comments p. 4.

**2. The OAG errs in asserting Otter Tail Power's proposal would unfairly burden Minnesotans and criticizing the Company's advocacy before the North Dakota Public Service Commission.**

The OAG is mistaken in asserting North Dakota customers are benefiting from the Projects to the detriment of the Company's Minnesota customers. Minnesota customers (and potentially South Dakota customers) will receive *all* the energy, capacity, and renewable energy credit benefits produced by the Projects. Further, the Xcel Energy cases cited by the OAG are not relevant to the Abercrombie and Solway Projects. Finally, the OAG's assertions about the Company's advocacy before the North Dakota Public Service Commission (NDPSC) are unfounded.

**i. The OAG is mistaken in its claims North Dakota customers are benefiting at the expense of Minnesota customers.**

Otter Tail Power operates a largely integrated system. However, this does not mean North Dakota customers will receive benefits from the Abercrombie and Solway Projects paid for by Minnesota customers. The Commission can look to Otter Tail Power's Hoot Lake Solar Project as an example of this fact. Hoot Lake Solar is 100 percent allocated to Minnesota, with Minnesota customers receiving all of the capacity, energy, and renewable energy credits generated by the plant. This will be the case with the Abercrombie and Solway Projects. The Company explained how costs and benefits to Minnesota customers would be tracked to ensure this outcome in the IRP docket:

The MISO energy and capacity markets provide the tools necessary to accurately track the costs and benefits of individual resources. From a capacity perspective, Otter Tail will continue to have a system-wide capacity requirement referred to as its Planning Reserve Margin Requirement (PRMR). Minnesota customers will be responsible for paying for their share of the PRMR at the capacity auction clearing price as is currently the practice. Conversely, Minnesota customers will receive capacity payments for their allocated shares of existing resources and 100 percent of the new renewable resources identified in Otter Tail's Minnesota Preferred Plan with AME. Allocating all capacity revenue from these renewables directly to Minnesota customers through the Minnesota fuel clause will ensure that North and South Dakota customers do not receive any capacity benefits from resources they are not paying for. Similarly, energy revenues from all resources in MISO are transparently tracked through existing MISO processes. Each resource in MISO has its own generation pricing node that clears at its own unique locational marginal price (LMP) for each hour. All energy revenues received from resources that are wholly allocated to Minnesota will flow back to Minnesota customers through the Minnesota fuel clause. Energy costs and

revenues of existing resources will continue to be allocated to each jurisdiction through the same process already in place.<sup>9</sup>

The OAG further clouds these issues with references to Xcel Energy (Xcel) dockets involving purchase power agreements (PPAs). These dockets do not support the OAG's claims. In *In the Matter of the Petition of Xcel Energy for Approval of Cost Recovery of the Aurora Power Purchase Agreement*, Docket No. E-002/M-15-330, Xcel was using the Aurora Project to serve North Dakota customers and asked this Commission to authorize Xcel to collect from Minnesota customers the difference between a proxy price to be paid by North Dakota customers and the actual North Dakota share of the PPA costs. The Commission noted that the anticipated difference between the proxy price and actual costs would be greater than \$1 million.

Here, Otter Tail Power is not asking Minnesota customers to shoulder any costs incurred from serving North Dakotans because the Abercrombie and Solway Projects will not be serving North Dakota customers. There is no proxy price at issue in North Dakota. Rather, the NDPSC has made clear no benefit or costs are to be attributed to North Dakota. In other words, by this Petition, Otter Tail Power is seeking to allocate 100 percent of the costs and the benefits between Minnesota and South Dakota. Also of note is that the developer of the Aurora Project had agreed to reimburse Xcel any costs not recovered in North Dakota whereas, here, if Otter Tail Power cannot recover the "North Dakota share" of the Projects, the Company will have no choice but to not develop the Projects.

The OAG's reliance on the Xcel Aurora PPA matter also ignores the regulatory background driving Otter Tail Power's investments in the Abercrombie and Solway Projects. As the Commission knows and the OAG acknowledges, Otter Tail Power's proposal comes after a lengthy integrated resource planning process in both Minnesota and North Dakota, which resulted in (1) an order from this Commission that requires Otter Tail Power to construct new solar resources in large measure for CFS compliance and (2) the NDPSC rejecting the Company's Preferred Plan renewable resource additions, and prohibiting the allocation of either the costs or benefits of carbon-free projects to North Dakota customers between now and 2030.

Also, as noted more fully below, the Company submitted the details of the Abercrombie Project to the NDPSC under trade secret protections to ensure that that Commission was fully informed about the costs and benefits of the Abercrombie Project. By contrast, in 2016, Xcel did not have an order from either Commission mandating or rejecting costs from the project. Similarly, in this case, the Company is making an

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<sup>9</sup> Docket No. E017/RP-21-339, Otter Tail Power Company Comments, April 3, 2024, pp. 13-14.



affirmative request of the South Dakota Public Utilities Commission, which will provide regulatory certainty with respect to whether South Dakota will benefit from and pay for the Solway and Abercrombie projects.<sup>10</sup>

Finally, under the Aurora PPA, Xcel's North Dakota customers would have benefited, or at least would have had the possibility of benefiting from the agreement. The Commission criticized Xcel for the lack of evidence regarding the North Dakota share of the Aurora PPA. Here, on the other hand, the record is replete with evidence demonstrating that Minnesota customers bearing 100 percent of the costs of the Abercrombie Project would result in net benefits. Otter Tail Power has proposed to flow fuel and capacity revenues fully back to the states that approve the project. North Dakota customers will end up paying for capacity and energy based on the MISO market; they will not be paying for any of the Abercrombie and Solway Projects. Similarly, all capacity benefits will be obtained from the states that support the project through the receipt of Planning Resource Auction (PRA) revenue and capacity credit. Because of the MISO system, Otter Tail Power is able to ensure that energy and capacity costs and revenue from Abercrombie and Solway Projects are entirely diverted from North Dakota. Additionally, the IRP filings demonstrate the potential energy and capacity use each state would take from a generic solar resource.

Moreover, the OAG wrongly assumes that the Abercrombie Project will provide little or no economic development benefits for Minnesota. The Abercrombie Project will be constructed in Abercrombie Township, Richland County, North Dakota, approximately 35 miles away from Otter Tail Power's general office in Fergus Falls, Minnesota. The Abercrombie Project will be constructed approximately 20 miles from the sister communities of Breckenridge, Minnesota, and Wahpeton, North Dakota.

The Company anticipates the project will create up to 300 skilled and unskilled temporary jobs at the peak of Project construction. The contractors engaged to build and install the project will not be known until Otter Tail Power completes the bidding process for construction and installation work. Given the location of the project, it is very likely these contractors, and their subcontractors will be local or regional firms with many Minnesota employees. This was the case in prior generation projects managed by the Company, specifically the Hoot Lake Solar Project and the Astoria Station Natural Gas Project. In view of this construction activity, local communities including Breckenridge and Fergus Falls are likely to benefit from increased economic activity. The Company also anticipates that the Abercrombie Project will result in three to four new full time

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<sup>10</sup> The foregoing analysis demonstrating why the Aurora PPA matter as applied to North Dakota has little relevance also applies to the OAG's reference to the Commission's actions concerning South Dakota and the Aurora PPA in Docket No. E-002/GR-21-630.

Company positions when the project enters commercial service. Whether the employees hired for these positions will be Minnesota residents cannot be determined at this time.<sup>11</sup>

In sum, Minnesota (and potentially South Dakota) customers will retain all the benefits from the Abercrombie and Solway Projects. There is no issue of North Dakota not paying its share, and there will be substantial economic benefits for Minnesota businesses and residents during the construction of the Abercrombie Project notwithstanding its location in North Dakota.

## **ii. The Record Refutes the OAG's Claims Concerning Otter Tail Power's NDPSC Advocacy.**

Otter Tail Power has at no time urged the NDPSC to reject new renewable resources, including the Abercrombie and Solway Projects. To the contrary, the Initial and Supplemental IRPs the Company filed in North Dakota were the same as those filed in Minnesota, with the Company's Preferred Plan recommending significant solar and wind resource additions.<sup>12</sup> The Company pursued parallel proceedings in North Dakota and Minnesota recommending the Preferred Plan in both jurisdictions.

The NDPSC commissioned an investigation and analysis of Otter Tail Power's IRP that produced a report rejecting the Company's Preferred Plan.<sup>13</sup> The report specifically and expressly rejected the addition of new solar and wind resources to serve North Dakota customers.<sup>14</sup> That the NDPSC was not supportive of new solar, or wind additions was fully disclosed and discussed during the Company's Minnesota IRP filings and proceedings before the Commission.<sup>15</sup> In fact this jurisdictional divergence was

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<sup>11</sup> The Company detailed the economic benefits for Minnesota residents and communities in an IR response to the Department of Commerce.

<sup>12</sup> The Company's Preferred Plan in its September 1, 2021 Initial Filing advocated for 150 MW of new solar generation to be in service in 2025. The Company's March 31, 2023 Supplemental IRP filing increased this amount to 200 MW of new solar generation in service in the 2027/2028 time frame.

<sup>13</sup> The Commission engaged CDC Engineers (CDC) to investigate the Company's IRP filings. CDC filed its initial report on March 1, 2024. See *Otter Tail Integrated Resource Plan (2021) and Supplemental Integrated Resource Plan (2023) Review and Analysis* (NDPSC Report):

<https://www.psc.nd.gov/database/documents/21-0380/025-010.pdf>. After the Company challenged certain modeling assumptions CDC issued an update on September 9, 2023. The update did not change the initial report's findings, conclusion and recommendations.

<sup>14</sup> "Through replicating Otter Tails modeling and performing its own modeling, CDC determined that the Otter Tail Preferred Plan adds more generation than is necessary to meet its PRMR and is more costly than the ND Alternate Preferred Plan. The Otter Tail Preferred Plan relies heavily on solar resources (earlier than even its base case), which provide little or no capacity towards its PRMR. These additions as well as the preparation of adding 200 MW of wind the year after its 5-year action plan is not economic. The ND Alternate Preferred Plan adds none of these resources and at a lower cost and with fewer LOLH in a reliability analysis." NDPSC Report, p. 26. The report recommended that "Otter Tail modify its Preferred Plan to remove the solar additions in the five-year action plan period, not take the initial steps to add 200 MW of wind in 2029 and modify its plan after 2029 to more closely align with the ND Alternate Preferred Plan." Id. The NDPSC Report is part of the IRP docket.

<sup>15</sup> See e.g. the Company's April 3, 2024, Comments in MNPUC Docket 21-339 discussing the reasons why jurisdictional planning is necessary: "In the past we have been able to identify resource options satisfying the differences between our jurisdictions. We do not believe we can do so in the present docket. The (1) fundamentally different approaches to externalities and (2) the Company's need to plan its resources for

addressed by the Joint Settlement Agreement the Commission ultimately declined to adopt.

After the Commission issued its IRP order directing Otter Tail Power to secure 200 to 300 MW of new solar resources, the Company sought the NDPSC's guidance as to whether the NDPSC investigative report would preclude support for a potential North Dakota-sited solar project with a very favorable LCOE.<sup>16</sup> The Company did so despite the fact that the (1) NDPSC report clearly rejected new renewable resources, and (2) the Abercrombie Project's pricing, while very favorable, fell within report's assumptions and modelling parameters. The Company nevertheless sought the NDPSC's guidance on whether it might still support the Abercrombie Project in view of a rebuttable presumption of prudence for projects sited in North Dakota in proceedings under the N.D.C.C. 49-05-16.<sup>17</sup> This was essentially a request that "we know you said no, but have you considered this wrinkle?" The Company's request noted the following:

We seek confirmation of the foregoing in part because we currently have an opportunity to secure a solar generation resource currently under development in North Dakota, the attributes of which fall within the Investigation Report's assumptions and parameters. Based on the Investigation Report, we understand that the Commission would not support Otter Tail serving our North Dakota customers with this resource and associated cost recovery. We understand this to be the case notwithstanding the potential project being sited in North Dakota. The key attributes of this potential resource are summarized in the non-public Attachment 2 included with this letter. We bring this to your attention to be transparent. We neither want to (1) burden the Commission with an unnecessary and costly ADP application, nor (2) make assumptions about the Investigation Report's application to renewable generation projects located in North Dakota.<sup>18</sup>

The trade-secret Attachment 2 included the Abercrombie Project's location, projected output, LCOE and other key details. The Company and the NDPSC discussed

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compliance with Minnesota's CFS produce significantly different modeling results and planning outcomes. This becomes clear when these differences are filtered through the different legal standards concerning the prudence of resource additions. This has altered and will continue to alter our planning framework. This point has become clear as we have progressed through parallel resource planning dockets in Minnesota and North Dakota." Id. at pp. 4-5.

<sup>16</sup> At the time it sought the NDPSC's guidance the Company had not yet entered into the Asset Purchase Agreement with Flickertail Solar Project, LLC. Therefore it was obligated to refrain from publicly disclosing its interest in the Abercrombie Project. As noted above the Company disclosed the details of the Abercrombie Project in a trade secret protected Attachment, which was discussed with the NDPSC in a closed session.

<sup>17</sup> N.D.C.C. 49-05-16 allows utilities to seek an advanced determination of prudence from the NDPSC for certain generation resource additions sited in North Dakota.

<sup>18</sup> Request for Commission Confirmation, September 23, 2024, *In the Matter of Otter Tail Power Company's 2022-2036 Integrated Resource Plan*, Case No. PU-21-380.  
<https://www.psc.nd.gov/database/documents/21-0380/027-010.pdf>

the Company's request for guidance in an informal hearing on October 18, 2024, a portion of which was in closed session to permit discussion of the merits of the Abercrombie Project, including the issue of whether the NDPSC would benefit from developing a record in an advanced prudency filing.<sup>19</sup> After due consideration the NDPSC issued its order on December 4, 2024, wherein it provided the following guidance:

Based upon the Investigative Report's findings and the record in this proceeding the Commission does not support the addition of new wind or solar generation or battery storage through 2030 on behalf of North Dakota customers regardless of where they may be sited including the potential North Dakota solar project OTP disclosed to the Commission during the October 18, 2024, Informal Hearing.<sup>20</sup>

Therefore, it is inaccurate at best to assert Otter Tail Power has advocated against North Dakota's participation in the Projects. Likewise, there is no basis to assert there is an insufficient record concerning the NDPSC's position on the Abercrombie Project. There is no basis for the Company to revisit the issue with the NDPSC. In fact, compelling the Company to revisit this matter with the NDPSC would likely compel the Company to terminate the Abercrombie Project's APA given negotiated time frames for closing the agreement.

Finally, the OAG's position is at odds with the fact that the Company's compliance with the CFS rests in large part on the Abercrombie and Solway Projects being fully or largely allocated to Minnesota. It makes little sense to argue for an additional allocation to North Dakota for such a favorably priced project. Even if it were possible to allocate a portion of the Projects to North Dakota, doing so would likely increase the cost of CFS compliance for Minnesota customers because the Company would then need to procure additional and likely more expensive carbon free resources in the near term to replace the portion of the Projects allocated to North Dakota.

### **3. The OAG's asymmetrical hard cap is unreasonable and unnecessary.**

The OAG advocates for an asymmetrical hard cap on each project. Such a cap serves as an absolute limit on recovery, with the Company bearing all risk of any costs above the cap, regardless of the reason for the additional costs. Therefore, a hard cap would preclude additional recovery for events that are indisputably outside the Company's control or ability to foresee, including federal law changes and tariffs. This

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<sup>19</sup> The Company also disclosed the Solway Project to the NDPSC but focused on the Abercrombie Project because of the potential application of N.D.C.C. 49-05-16. Given the NDPSC's report's finding there was no basis to seek guidance on the Solway Project.

<sup>20</sup> Order and Guidance on Integrated Resource Plan, December 4, 2024, p. 2.

extreme result is not mitigated by the OAG's proposal for a 90/10 split of savings should the Projects be completed under budget. The OAG described the split this way:

By way of example, if a project's cost cap were \$100 million, and capital costs for its construction came in at \$110 million, Otter Tail would forego recovery of the extra \$10 million. If the project's cost came in at \$90 million, Otter Tail would get to add \$91 million to rate base for the project—representing its \$90 million actual cost-plus ten percent of the \$10 million savings below the cap.

This approach is not reasonable. This is especially the case when, as noted above, the next most competitive proposals evaluated by the Company has higher LCOE. The Commission should reject the OAG's proposal in favor of the proposals discussed above.

### **III. CONCLUSION**

Otter Tail Power appreciates the opportunity to provide these Reply Comments in support of the proposed Abercrombie and Solway Solar Projects. We believe the record before the Commission strongly supports answering the topics open for comment in the affirmative, with the Commission approving these project as proposed by the Company.

Dated: February 18, 2025

Respectfully submitted,

**OTTER TAIL POWER COMPANY**

/s/ CARY STEPHENSON

Cary Stephenson

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## **CERTIFICATE OF SERVICE**

**RE: In the Matter of Otter Tail Power Company's Petition for Approval  
of the Solway and Abercrombie Solar Projects  
Docket No. E017/M-24-404**

I, Stacy Wahlund, hereby certify that I have this day served a copy of the following, or a summary thereof, on Will Seuffert and Sharon Ferguson by e-filing, and to all other persons on the attached service list by electronic service or by First Class Mail.

**Otter Tail Power Company  
Reply Comments**

Dated this **18th** day of **February, 2025**.

/s/ STACY WAHLUND  
Stacy Wahlund  
Regulatory Filing Coordinator  
Otter Tail Power Company  
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2	Generic	Commerce Attorneys	commerce.attorneys@ag.state.mn.us		Office of the Attorney General - Department of Commerce	445 Minnesota Street Suite 1400 St. Paul MN, 55101 United States	Electronic Service		Yes	M-24-404
3	Sharon	Ferguson	sharon.ferguson@state.mn.us		Department of Commerce	85 7th Place E Ste 280 Saint Paul MN, 55101-2198 United States	Electronic Service		No	M-24-404
4	Paula	Foster	pfoster@otpc.com	Otter Tail Power Company		215 S Cascade St PO Box 496 Fergus Falls MN, 56538-0496 United States	Electronic Service		Yes	M-24-404
5	Jessica	Fyhrie	jfyhrie@otpc.com	Otter Tail Power Company		PO Box 496 Fergus Falls MN, 56538-0496 United States	Electronic Service		No	M-24-404
6	Amber	Grenier	agrenier@otpc.com	Otter Tail Power Company		215 S. Cascade St. Fergus Falls MN, 56537 United States	Electronic Service		Yes	M-24-404
7	Derek	Haugen	dhaugen@otpc.com	Otter Tail Power Company		215 South Cascade Street PO Box 496 Fergus Falls MN, 56538-0496 United States	Electronic Service		Yes	M-24-404
8	Adam	Heinen	aheinen@dakotaelectric.com	Dakota Electric Association		4300 220th St W Farmington MN, 55024 United States	Electronic Service		No	M-24-404
9	Nick	Kaneski	nick.kaneski@enbridge.com	Enbridge Energy Company, Inc.		11 East Superior St Ste 125 Duluth MN, 55802 United States	Electronic Service		No	M-24-404
10	James D.	Larson	james.larson@avantenergy.com	Avant Energy Services		220 S 6th St Ste 1300 Minneapolis MN, 55402 United States	Electronic Service		No	M-24-404
11	Kavita	Maini	kmaini@wi.rr.com	KM Energy Consulting, LLC		961 N Lost Woods Rd Oconomowoc WI, 53066 United States	Electronic Service		No	M-24-404
12	Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP		33 South Sixth St Ste 4200 Minneapolis MN, 55402 United States	Electronic Service		No	M-24-404
13	Matthew	Olsen	molsen@otpc.com	Otter Tail Power Company		215 South Cascade Street Fergus Falls	Electronic Service		No	M-24-404

#	First Name	Last Name	Email	Organization	Agency	Address	Delivery Method	Alternate Delivery Method	View Trade Secret	Service List Name
						MN, 56537 United States				
14	Generic Notice	Regulatory	regulatory_filing_coordinators@otpco.com	Otter Tail Power Company		215 S. Cascade Street Fergus Falls MN, 56537 United States	Electronic Service		No	M-24-404
15	Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us		Office of the Attorney General - Residential Utilities Division	1400 BRM Tower 445 Minnesota St St. Paul MN, 55101-2131 United States	Electronic Service		Yes	M-24-404
16	Will	Seuffert	will.seuffert@state.mn.us		Public Utilities Commission	121 7th PI E Ste 350 Saint Paul MN, 55101 United States	Electronic Service		Yes	M-24-404
17	Cary	Stephenson	cstephenson@otpco.com	Otter Tail Power Company		215 South Cascade Street Fergus Falls MN, 56537 United States	Electronic Service		Yes	M-24-404
18	Stuart	Tommerdahl	stommerdahl@otpco.com	Otter Tail Power Company		215 S Cascade St PO Box 496 Fergus Falls MN, 56537 United States	Electronic Service		No	M-24-404