PUBLIC DOCUMENT-
NOT PUBLIC DATA HAS BEEN EXCISED

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Katie Sieben	Chair
Joseph K. Sullivan	Vice Chair
Hwikwon Ham	Commissioner
John Tuma	Commissioner

In the Matter of Otter Tail Power Company's Petition for Approval of the Solway and Abercrombie Solar Projects	DOCKET NO. E-017/M-24-404

COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL— RESIDENTIAL UTILITIES DIVISION

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (OAG) respectfully submits the following comments in response to the petition of Otter Tail Power Company for approval of investments in North Dakota and Minnesota solar projects under Minnesota Statutes section 216B.1645. For the reasons explained below, the Commission should make changes to better align Otter Tail's proposals with Minnesota law and to protect ratepayers. Most importantly, the Commission should reject Otter Tail's proposal to charge Minnesota ratepayers for North Dakota's share of the solar-project costs and should cap cost recovery based on Otter Tail's current estimates of the projects' costs.

BACKGROUND

This proceeding stems from the Commission's recent approval of Otter Tail's integrated resource plan (IRP). That plan, as modified through several supplemental filings, included acquiring 200 to 300 megawatts (MW) of solar generation by the end of 2027.[1] Otter Tail conducted an informal procurement process, identifying potential solar projects by talking to

[1] *See In the Matter of Otter Tail Power's 2023–2037 Integrated Resource Plan*, Docket No. E-017/RP-21-339, Comprehensive Settlement Agreement at 2 (Apr. 2, 2024).

developers in the region.[2] In December 2024, the Company brought forward two proposed projects for Commission review. A 50 MW solar farm would be sited near a Minnesota peaking plant and make use of the plant's surplus interconnection rights.[3] And a nearly 300 MW project would be sited on private land in North Dakota, just across the border from Minnesota.[4] The process that led to Otter Trail proposing these projects is described in greater detail below.

I. THE COMMISSION APPROVES OTTER TAIL'S RESOURCE PLAN.

In July 2024, the Commission approved Otter Tail's integrated resource plan (IRP) with modifications. The Commission directed Otter Tail to acquire "[n]o less than 200 MWs and up to 300 MWs of solar resources with a commercial operation date of November 1, 2027, or as soon as practicable thereafter."[5] The Commission also outlined the acquisition process that Otter Tail must use to procure these solar resources and other approved resources.[6]

The Commission did not require Otter Tail to use a formal competitive-bidding process like those that other electric utilities, such as Xcel Energy, have typically used. Instead, the Commission approved an informal process whereby "Otter Tail's Development, Engineering & Construction . . . staff have on-going, iterative discussions with developers for projects in MISO Zone 1 that align with Otter Tail's resource needs."[7] As part of this informal process, Otter Tail was required to "evaluate at least five proposals" and to consider power-purchase agreements (PPAs) in addition to utility-owned projects.[8]

---

[2] Docket No. E-017/RP-21-339, Otter Tail Compliance Filing at 2 (Sept. 16, 2024) (hereinafter "Solar Compliance Filing").
[3] Petition for Approval of Solway and Abercombie Solar Projects at 6 (Dec. 9, 2024) (hereinafter "OTP Petition").
[4] *Id.* at 8.
[5] Docket No. E-017/RP-21-339, Order Modifying Otter Tail Power's 2023-2037 Integrated Resource Plan at 20 (July 22, 2024) (hereinafter "IRP Order").
[6] *See id.* at 20–21, Order Point 13 (outlining process).
[7] Solar Compliance Filing at 2.
[8] IRP Order at 20.

The Commission imposed two additional conditions to help ensure a fair process if Otter Tail or an affiliate proposes a project. First, the Commission required Otter Tail to ensure that its team evaluating and selecting developer proposals was separate from the team developing and submitting Otter Tail's own proposal.[9] Second, the Commission required the utility to engage an independent auditor, "if required to by the Department and the OAG," to oversee the process and provide a report.

The Commission also required Otter Tail to demonstrate, in any petition for a renewable-resource-eligibility finding under section 216B.1645, that the projects selected through its informal process were "competitively superior to other alternatives available to Otter Tail."[10] Otter Tail was to make this demonstration through a "full narrative description and financial analysis," with Otter Tail and the Department "jointly develop[ing] relevant data points and fields for this analysis."[11]

Finally, in affirming the need for new solar and other carbon-free resources, the Commission rejected a proposal by Otter Tail and certain other parties to allocate all costs and benefits of these resources to Minnesota ratepayers. This proposal would have excluded Otter Tail's North Dakota and South Dakota ratepayers from funding new solar projects. In rejecting this allocation proposal, the Commission indicated its intent to consider jurisdictional cost allocation for carbon-free resources as Otter Tail proposes each project.[12]

II. OTTER TAIL'S INFORMAL PROCUREMENT OF SOLAR RESOURCES

In September 2024, Otter Tail made a compliance filing describing the results of its informal procurement process for solar resources.

---

[9] *Id.* at 21.
[10] *Id.* at 20, Order Point 12.
[11] *Id.*
[12] *Id.* at 17.

Otter Tail presented a final list of eight "competitive projects" that it selected based on iterative conversations with developers.[13] Those eight projects represented only about 20 percent of the projects that Otter Tail had discussed with developers.[14] Of the eight competitive projects, six involved PPAs and two would be Otter Tail-owned projects. The two Otter Tail-owned projects had by far the lowest estimated costs. For example, the higher-cost project of these two projects had a levelized energy cost approximately **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]** lower than the lowest-cost of the six PPA proposals that made it into the final list.

Otter Tail did not engage the services of an independent auditor to oversee the procurement process. However, it noted in its filing that, under the Commission's IRP Order "the Department and OAG may request a third-party audit if both deem it necessary."[15]

In October 2024, the Department and the OAG filed a joint letter stating that they would not require an independent auditor for Otter Tail's solar procurement but would require one for future acquisition processes. The Department and OAG cited five reasons for not requiring an audit of the solar procurement:

> First, the projects Otter Tail selected are substantially cheaper than the other proposals, making it unlikely that errors in the evaluation process could have affected the outcome. Second, the [Department and OAG] will review the bidding process and results to ensure that they are in the public interest. Third, the Commission can and should hold Otter Tail accountable for its cost estimates by imposing caps on cost recovery. Fourth, retaining an auditor at this stage of the process—after Otter Tail has already solicited, evaluated, and selected projects—would have fewer benefits than retaining an auditor at the outset. And finally, requiring an audit at this stage carries some risk of delaying the acquisition and increasing costs.[16]

[13] Solar Compliance Filing at 2.
[14] *See id.*
[15] *Id.* at 1 n.4.
[16] Docket No. E-017/RP-21-339, OAG–DOC Joint Letter at 1–2 (October 18, 2024).

III. OTTER TAIL'S PETITION FOR APPROVAL OF SOLAR PROJECTS

In December 2024, Otter Tail filed a petition for approval of the two utility-owned solar projects selected through its informal procurement process (collectively, the "solar projects"). Combined, the two projects have a capacity substantially larger than the solar-capacity need that the Commission identified (approximately 345 MW instead of the 200–300 MW ordered). Moreover, the bulk of the solar capacity would come into service later than the timing that the Commission identified (by the end of 2028 instead of by the end of 2027 as ordered).

The 295.1 MW Abercrombie Solar Project would be located on approximately 3,464 acres in Abercrombie Township, Richland County, North Dakota near the Minnesota border.[17] The Abercrombie Project would consist of 550,000 solar panels and could power as many as 59,000 homes annually. Otter Tail estimates the total cost of the project to be **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]** and the levelized cost of energy for the project to be **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]**.[18]

The 50 MW Solway Solar Project would be located in Lammers Township in Beltrami County, Minnesota, near Otter Tail's gas-fired Solway Peaking Plant.[19] The Solway Solar Project would consist of 100,000 panels and could power approximately 9,000 homes annually.[20] Otter Tail estimates the total cost of the project to be **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]** and the levelized cost of energy for the project to be **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]**.[21]

[17] OTP Petition at 8.
[18] *Id.* at 11.
[19] *Id.* at 6.
[20] *Id.* at 6–7.
[21] *Id.* at 7–8.

Table 1, below, provides a side-by-side summary of the projects' key attributes.

Table 1 –
Summary of Abercrombie and Solway Solar Projects

	Abercrombie Solar	**Solway Solar**
Location	Richland County, North Dakota	Beltrami County, Minnesota
In-Service Date	December 2028	December 2026
Number of Panels	550,000	100,000
Total Capacity	295.1 MW	50 MW
Capacity Factor	25.5%	23.2%
Homes Powered	59,000	9,000
	[TRADE SECRET DATA BEGINS]	
Total Cost	[redacted]	[redacted]
Cost per MWh	[redacted]	[redacted]
	[TRADE SECRET DATA ENDS]	

Otter Tail seeks the Commission's approval of its investments in the solar projects. Specifically, Otter Tail asks the Commission to (1) approve Otter Tail's investment in the projects; (2) determine that the projects qualify for application toward Otter Tail's renewable-energy and carbon-free-energy obligations under section 216B.1691; and (3) "authorize future cost recovery" of the projects through Otter Tail's Renewable Resources Cost Recovery Rider, subject to Commission review and approval of specific costs presented in a future rider-recovery petition under section 216B.1645.[22]

Finally, Otter Tail states that it intends to recover 80 percent of the solar projects' cost from Minnesota customers and the remaining 20 percent from South Dakota customers. According to

[22] *Id.* at 23.

Otter Tail, "North Dakota will not participate in the Projects."[23] The proposed 80/20 split between Minnesota and South Dakota, moreover, is contingent on the South Dakota Public Utilities Commission authorizing cost recovery for that state's jurisdictional share.[24] If such authorization were not to occur, Otter Tail would seek to recover 100 percent of both projects' costs from Minnesota ratepayers.[25]

ANALYSIS

As an initial matter, Otter Tail should explain why the amount of solar it 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. Further, if the Commission grants Otter Tail's petition, it should modify it in two ways. First, the Commission should reject Otter Tail's proposal to make its Minnesota customers pay for North Dakota's share of the solar projects—particularly where most of the solar capacity would be located in North Dakota and where Otter Tail has asked the North Dakota commission to find that North Dakota will not participate. Second, the Commission should order that rate recovery for the projects will be capped based on Otter Tail's current estimates of the projects' costs. These recommendations are explained below.

I. OTTER TAIL HAS NOT SUFFICIENTLY EXPLAINED WHY IT IS PROPOSING AN AMOUNT AND TIMING OF SOLAR ACQUISITIONS THAT IS INCONSISTENT WITH THE COMMISSION'S IRP ORDER.

The Commission's IRP order found a need for "[n]o less than 200 MWs and up to 300 MWs of solar resources with a commercial operation date of November 1, 2027, or as soon as

[23] *Id.* at 11 & n.7. According to footnote seven, Otter Tail has received signals from the North Dakota Public Service Commission that the commission will not approve cost recovery for additional renewable projects through at least 2030. However, as discussed below, Otter Tail has not actually petitioned the North Dakota commission for approval of these projects and, in fact, has asked that commission to find that North Dakota will not participate.
[24] *Id.* at 11–12.
[25] *Id.* at 12.

practicable thereafter."[26] Compared to the need that the Commission found, Otter Tail's proposed solar projects are both too much solar generation and too late: Otter Tail proposes to acquire approximately 345 MW of solar, nearly 300 MW of which would come into service in December 2028, a year later than the Commission's order contemplates.

While changes in the size and timing of resources approved in IRP proceedings do occur, utilities are required to "inform the commission and other parties to the last resource plan proceeding of changed circumstances that may significantly influence the selection of resource plans."[27] The Commission must then determine "whether additional administrative proceedings are necessary before the utility's next regularly scheduled resource plan proceeding."[28] At minimum, Otter Tail needs to explain (1) its reasons for deviating from the approved IRP, (2) why that change is reasonable and in the public interest, and (3) whether the change in size and timing is the result of "changed circumstances" under Minn. R. 7843.0500 and what those changed circumstances are.

Otter Tail's petition acknowledges that the 345 MW of solar it is proposing "exceeds the 200-300 MW of new solar resources called for in the IRP Order" and argues that the additional megawatts "are warranted in part" by the projects' favorable energy cost and Otter Tail's need to meet the carbon-free standard.[29] While this partially addresses the size divergence, it does not address the timing difference. Otter Tail also does not explain why additional megawatts are needed for compliance with the carbon-free standard when that standard presumably factored into

[26] IRP Order at 20.
[27] Minn. R. 7843.0500, subp. 5.
[28] *Id.*
[29] OTP Petition at 14.

the Commission's decision to approve 200–300 MW. And Otter Tail does not expressly address any changed circumstances under Minn. R. 7843.0500.

II. THE COMMISSION SHOULD REJECT OTTER TAIL'S PROPOSAL TO CHARGE MINNESOTA RATEPAYERS FOR NORTH DAKOTA'S SHARE OF THE SOLAR PROJECTS, ESPECIALLY WHEN THE LARGER OF THE PROJECTS WOULD BE SITED IN NORTH DAKOTA AND OTTER TAIL HAS FORMALLY ADVOCATED AGAINST NORTH DAKOTA'S PARTICIPATION.

In Otter Tail's IRP, the Commission rejected Otter Tail's request to allocate all costs and benefits of the approved carbon-free resources to Minnesota ratepayers.[30] The Commission instead indicated that it would consider the interjurisdictional allocation of projects "as each project is proposed."[31]

In the current petition, Otter Tail states that it "intends to construct and operate the Solway and Abercrombie Solar Projects for the benefit of the Company's Minnesota and South Dakota customers" but that "North Dakota will not participate in the Projects."[32] Moreover, Otter Tail states that if South Dakota's commission does not authorize rider recovery of the projects' cost, it will seek to recover their full cost from Minnesota ratepayers.[33]

The Commission should reject Otter Tail's proposal for three main reasons. First, it would not be just or reasonable to ask Minnesota ratepayers to bear other states' share of the solar projects' cost when the projects benefit those states. Second, the Commission has rejected similar proposals from another utility for this very reason. Finally, the Commission should not assume that North Dakota will not participate in the projects when Otter Tail has not put an official request before that state's commission. On the contrary, Otter Tail's filings before the North Dakota commission have advocated *against* that commission's approval of its IRP and the solar projects.

---

[30] IRP Order at 17.
[31] *Id.*
[32] OTP Petition at 11.
[33] *Id.* at 11–12.

A. Otter Tail's Proposal Would Unfairly Burden Minnesotans.

Otter Tail operates an integrated electric system serving areas of Minnesota, North Dakota, and South Dakota. Minnesota customers comprise a little less than half of Otter Tail's total load, and North and South Dakota customers make up the rest. The integrated nature of Otter Tail's system brings benefits for customers in all three states, due to the economies of scale and other efficiencies resulting from a larger system. And Otter Tail has traditionally planned for generation additions in the context of this larger system, including in its most recent IRP. Otter Tail's proposal to allocate the solar projects to a subset of states is inconsistent with traditional system planning. It also defies the laws of physics: Electricity does not observe state boundaries. So regardless of where a generator is sited on Otter Tail's system, the transmission and distribution systems will carry its electrical energy to customers in all three states.

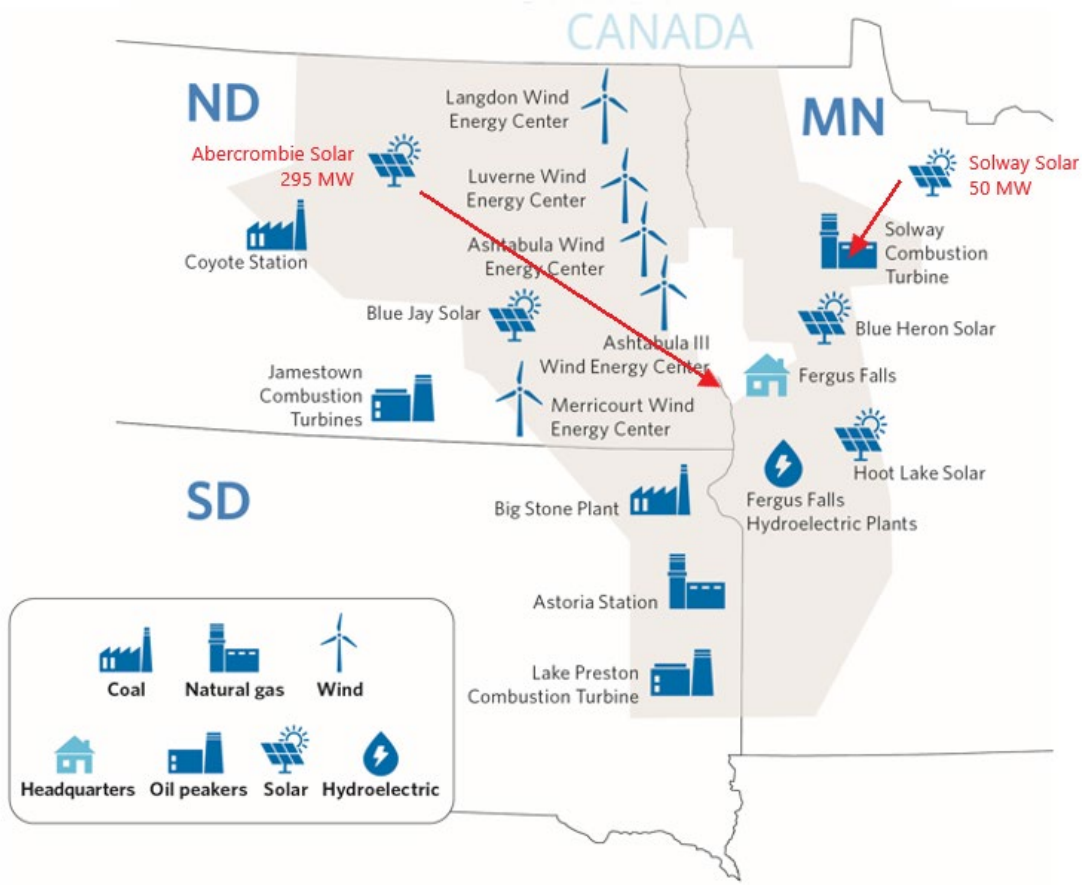
Because of the integrated nature of Otter Tail's system, excluding the customers of one or more states from "participating in" a generation resource would mean that customers in nonparticipating states would benefit from its presence on the system while bearing none of the costs. Otter Tail states that it would assign "the costs and output" of the solar projects to the participating states (potentially just Minnesota).[34] "Output" in this context presumably refers to a project's wholesale energy and capacity revenues, as well as its renewable-energy credits.[35] But Otter Tail has not established that wholesale revenues and renewable-energy credits account for all the benefits that the projects will have for Otter Tail's system.

Additionally, North Dakotans will benefit from the projects' benefits that are external to the utility's system, such as economic-development benefits, tax revenues, and avoiding pollution

[34] *Id.* at 12.
[35] *See id.* at 15–16 (discussing allocating project renewable-energy credits to satisfy Otter Tail's obligations under Minnesota's carbon-free and renewable-energy standards).

from fossil-fuel generation. A shown in Figure 1 below, the larger of the two solar projects, Abercrombie, would be sited in North Dakota. This means that many of the economic-development benefits, and the lion's share of the tax benefits, of the project would accrue to North Dakota. It would be unfair for Minnesotans to bear the entire burden of paying for the Abercrombie Solar Project while North Dakotans reap the great majority of the economic-development and tax benefits.

Figure 1 –
Otter Tail's Integrated System with Solar Additions



The cost burden associated with the solar projects would be significant, particularly if ratepayers in North Dakota, or in both North and South Dakota, do not help bear them. According to an estimate by Otter Tail, Minnesota's 47 percent share of the solar projects' lifetime revenue

requirements would total **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]** through 2063, or $162.7 million in present dollars.[36] If Minnesota ratepayers covered both North Dakota and South Dakota's shares, the lifetime revenue requirements would total **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]**, or $348.8 million discounted to today's dollars.[37] It would be unfair for Otter Tail's Minnesota ratepayers to cover the vast majority—and potentially all—of the projects' costs while residents of the other states enjoy the system benefits, environmental benefits, economic-development benefits, and tax benefits.[38]

B. The Commission Has Rejected Similar Jurisdictional Cost-Shifting Proposals in the Past.

The Commission has denied prior proposals by Xcel Energy to force Minnesota ratepayers to cover North and South Dakota's shares of a large solar project. Many of the Commission's reasons for doing so apply with equal force in this case.

In the prior case, Xcel filed a petition to recover a portion of the North Dakota-related costs of the Aurora Distributed Solar power-purchase agreement (PPA) from its Minnesota ratepayers.[39] Xcel explained that it had sought an advance determination of prudence from the North Dakota commission to allow it to recover the North Dakota-jurisdictional Aurora PPA costs through its North Dakota fuel cost rider, but the North Dakota commission had denied its request.[40] Xcel then argued that recovery from Minnesota ratepayers was appropriate because the Aurora PPA "is a

---

[36] Otter Tail Response to OAG IR 002, attach. 1, sheet "Request B3," attached hereto.
[37] *Id.*, sheet "Request B1."
[38] While utility-system benefits are most relevant to the jurisdictional allocation of utility-system costs, the substantial economic-development and tax benefits flowing to North Dakotans would add further insult to the injury of North Dakotans not sharing the system costs.
[39] *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, Order Denying Recovery of North Dakota-Related Purchased-Power Costs at 4 (Apr. 13, 2016).
[40] *Id.*

reasonable and prudent approach to meeting our obligations under Minnesota's Solar Energy Standard."[41]

This Commission concluded that Xcel's proposal would not result in just and reasonable rates. The Commission noted that Xcel "operates a single, integrated system covering portions of five states" and that "[t]he Aurora project was found to be a cost-effective resource addition in the context of Xcel's system as a whole," without regard to state-specific policies.[42] The Commission found that there was "no data to support a finding that the project is a reasonable way to meet the needs of only Minnesota ratepayers."[43] Furthermore, Xcel had failed to quantify the rate impact of its proposal, complicating any effort to determine the reasonableness of the resulting rates.[44]

Finally, the Commission found that "it is simply not just or reasonable for Xcel's Minnesota ratepayers to subsidize North Dakota ratepayers' consumption of solar energy."[45] This was because Aurora's energy would carry numerous benefits, including, but not limited to, "providing a hedge against rising fuel costs by supplying energy at a fixed price; avoiding the purchase of energy from other, polluting sources; avoiding the need to build additional power plant capacity to meet peak energy needs; and providing valuable experience integrating distributed solar into Xcel's system."[46]

The Commission applied a similar rationale in rejecting a request by Xcel in its 2021 rate case to recover Aurora's South Dakota-related costs from Minnesota ratepayers, concluding that "Xcel's request stands at odds with fundamental cost-causation and allocation principles."[47] The

---

[41] Docket No. E-002/M-15-330, Xcel Cost-Recovery Petition at 1 (Apr. 3, 2015).
[42] Order Denying Recovery of North Dakota-Related Purchased-Power Costs at 6.
[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] Docket No. E-002/GR-21-630, Findings of Fact, Conclusions, and Order at 38 (July 17, 2003).

Commission reaffirmed that the Aurora PPA was a reasonable and cost-effective investment for Xcel's system as a whole, not just for Minnesota, and would have benefits "unrelated to Minnesota's renewable-energy and climate policies which benefit customers throughout the Company's multistate service area."[48] The Commission reasoned that the fact that Aurora has "environmental benefits recognized under Minnesota policy" does not "negate the other unrefuted benefits the PPA delivers to customers in other states within Xcel's integrated system."[49] Nor had Xcel shown that the South Dakota-related costs it sought to impose on Minnesotans was "a reasonable approximation of any incremental cost attributable to Minnesota policies or of any incremental value that Minnesota customers purportedly receive from this PPA over an alternative as a result of Minnesota-specific policies."[50]

The same rationale that the Commission applied in the Aurora case applies to the solar projects at issue here: it is simply unfair for Minnesota ratepayers to shoulder North Dakota's share of the cost of these resources while North Dakota ratepayers—and North Dakotans more generally—enjoy their benefits. Like Xcel, Otter Tail has not identified the rate impacts of its proposal or established that the costs it seeks to impose on Minnesota ratepayers represent the incremental cost attributable to Minnesota policies. Otter Tail's recent IRP found a need for 300 to 500 MW of solar between 2023 and 2032 even *without* accounting for environmental externalities or a potential early exit from the Coyote Station coal plant.[51] The pricing for the Abercrombie and Solway solar projects is consistent with the pricing assumed in Otter Tail's

[48] *Id.*
[49] *Id.*
[50] *Id.*
[51] *See* Docket No. E-017/RP-21-339, OTP Supp'l Resource Plan, app. I at 1–2 (Mar. 31, 2023) (summarizing the results of various sensitivities that all assumed "no externalities" and a 12/31/2040 exit from Coyote).

IRP.[52] Accordingly, there is no basis on this record to argue that paying for these projects would impose a Minnesota-related premium on North Dakota or South Dakota ratepayers.

For all these reasons, Otter Tail's allocation proposal for the solar projects stands at odds with fundamental cost-causation and allocation principles, and the Commission should reject it.[53]

C. Otter Tail Asked the North Dakota Commission to Confirm that North Dakota Will Not Participate in the Solar Projects.

Otter Tail's petition flatly states that "North Dakota will not participate in the Projects."[54] As support for this claim, Otter Tail cites to an "investigation report" produced by an engineering firm hired by the North Dakota commission that allegedly concludes that no new renewable resources are necessary to serve North Dakota customers.[55] Otter Tail also cites a December 4, 2024 "Order and Guidance on Integrated Resource Plan" from the North Dakota commission that finds that 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."[56] These documents do not support the categorical claim that North Dakota will not participate in the solar projects, and the Commission should not credit that claim on this record.

Otter Tail's description of the resource-planning proceedings before the North Dakota commission omits important context: Otter Tail asked the commission for the decision it now cites

---

[52] *Compare* OTP Petition at 8, 11 *with* OTP Supp'l Resource Plan, app. F at 5.
[53] The OAG acknowledges that the Commission allowed Otter Tail to recover 100 percent of the Hoot Lake Solar Project from Minnesota ratepayers. *See* Docket No. E-017/M-20-844, Order Approving Petition, Authorizing Allocation of Output and Costs, Authorizing Cost Recovery, and Requiring Compliance Filings (Apr. 29, 2021). Hoot Lake Solar, however, is factually distinct from the solar project here. Hoot Lake Solar is a 49.9 MW solar project located entirely within Minnesota, at the site of a retired coal plant, and therefore provides greater benefits to Minnesota than the current solar projects—and in particular Abercrombie—would.
[54] OTP Petition at 11.
[55] *Id.* n.7.
[56] *Id.*

as support for the claim that North Dakota will not participate in the solar projects. In a September 23, 2024 filing with the North Dakota commission, Otter Tail requested that the commission find:

> 1. That the Commission's Investigation Report is complete and that no material changes are pending or planned, and *that the Commission adopts and supports the Investigation Report's conclusions and recommendations* concerning new resource additions.
>
> 2. That based on the Investigation Report, *the Commission does not support the addition of new wind or solar generation or battery storage through 2030 on behalf of Otter Tail's North Dakota customers regardless of where these resources may be sited*. The foregoing confirmation assumes that new generation and battery storage fall within the Investigation Report's modeling parameters and assumptions and that these issues will be re-evaluated in OTP's next IRP.[57]

Otter Tail concluded, "We neither want to (1) burden the Commission with an unnecessary and costly [advance determination of prudence] application, nor (2) make assumptions about the Investigation Report's application to renewable generation projects located in North Dakota."[58] In other words, Otter Tail walked away from the IRP it had filed with the North Dakota commission, inviting the commission to reject the utility's own plan to avoid "burdening" the commission with having to evaluate the investigative report, Otter Tail's IRP, or proposed solar resources that would serve North Dakota customers.

It is not clear that charging Minnesotans for North Dakota's share of the Abercrombie and Solway projects would be just or reasonable under any circumstances. But it absolutely would be unreasonable to do so based on Otter Tail's North Dakota regulatory efforts to date, and the Commission should refuse to consider it.

---

[57] *In the Matter of Otter Tail Power Company's Submittal of Its 2022–2036 Integrated Resource Plan*, NDPSC Case No. PU-21-380, Request for Commission Confirmation (Sept. 23, 2024) (emphasis added).
[58] *Id.* at 3.

III. THE COMMISSION SHOULD CAP RATE RECOVERY OF THE SOLAR PROJECTS' COSTS AT OTTER TAIL'S CURRENT ESTIMATE.

The Abercrombie and Solway solar projects would bring substantial benefits to Otter Tail's system, but they also would come with substantial costs and risks. The estimated revenue requirements for all three of Otter Tail's jurisdictions total **[TRADE SECRET DATA BEGINS]** [redacted] **[TRADE SECRET DATA ENDS]** over the life of the projects.[59] The solar projects' risks include storm damage, changes to tax credits, and risks associated with suppliers, vendors, and on-site contractors.[60] To help protect Minnesota ratepayers from cost overruns, the Commission should order that rate recovery for the solar projects' capital costs will be limited to the estimates Otter Tail provides in its petition.

There are at least three ways in which the Commission could implement a cap: (1) a soft cap, (2) a symmetrical hard cap, or (3) an asymmetrical hard cap. Below, the OAG discusses the pros and cons of each approach and recommends that the Commission adopt an asymmetrical hard cap in this case.

A "soft cap" limits the project costs that can be recovered through a rider but allows the utility to request recovery of any overruns in a future rate case. A utility is typically held to a higher standard of proof when seeking to recover costs that exceed the cap. For example, the Commission might require a utility to establish by "clear and convincing evidence" that any costs it incurs in excess of the cap are reasonable and prudent. The advantage of a soft cap for the utility is that protects the utility from the risk of underestimating a project's costs and allows it an opportunity to recover its actual costs. The disadvantage of a soft cap is that it shifts the risks of cost overruns to ratepayers. In an extreme case, overruns could be so significant that a project

[59] Otter Tail Response to OAG IR 002, attach. 1, sheet "Request B3," attached hereto.
[60] *See* OTP Petition at 19–23.

would not have been selected had its true cost been known at the time of procurement. A soft cap—since it is not really a "cap" at all—undermines the benefit of a competitive procurement process by failing to hold the utility to its estimate that was the basis for comparing the utility's project to competing proposals.

A "symmetrical hard cap" serves as an absolute limit on the costs that may be recovered from ratepayers but is "symmetrical" in that it allows the utility to keep any savings below the cap.[61] The advantage of a symmetrical hard cap is that it both protects ratepayers from overruns and incentivizes a utility to drive costs below its estimate. The disadvantage of a symmetrical hard cap is that ratepayers are deprived of the benefit of any savings the utility achieves below the cap; if the project comes in below the cap, ratepayers will end up paying more than the actual cost of construction.

This type of two-way risk-sharing may be reasonable in many cases. But whether a fully symmetrical cap is fair to ratepayers largely depends on the reasonableness of the estimate used to set the cap, and specifically, the amount of contingency built into the estimate. If a utility's estimate has too much padding to account for unexpected cost increases, there may be very little risk that the utility will exceed a cap set based on that estimate. And if the cap is set too high based on an overinflated estimate, the utility may be able to realize savings below the cap without applying any meaningful skill or effort.

[61] *See, e.g.*, *In the Matter of the Petition of Xcel Energy for Approval of Sherco Solar 3 and the Apple River Solar Power Purchase Agreement*, Docket No. E-002/M-22-403, Order at 1 (Oct. 25, 2023) (limiting cost recovery to "aggregate, symmetrical capital cost cap" based on Xcel's bid and authorizing Xcel to request modification of cap if government action causes meaningful change to solar-panel supplies and market prices).

Finally, an "asymmetrical hard cap" would serve as an absolute limit on recovery of overruns while awarding the utility a portion of any savings achieved below the cap.[62] The advantage of an asymmetrical hard cap compared to a symmetrical one is that ratepayers share in any capital-cost savings the utility achieves relative to the cap. And although there is still a risk of the cap being set too high, the resulting harm to ratepayers is mitigated because the utility does not get to keep the full benefit of overestimating the project's cost.

Considering the benefits and drawbacks of the foregoing cap mechanisms, the OAG recommends an asymmetrical hard cap, with a 90/10 sharing of any savings below the cap. The OAG recommends that a separate cap be applied to each project based on Otter Tail's current estimate for the projects (which have not changed since Otter Tail's September 16 filing). 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. The OAG recommends allocating 90 percent of the savings to ratepayers to maximize ratepayer benefits. However, it may be reasonable to increase the utility's savings share to appropriately incentivize it to pursue savings.

---

[62] The OAG is aware of at least one case, involving Xcel Energy's Colorado affiliate, where a commission used an asymmetrical hard cap. *See In the Matter of the Application of Public Service Company of Colorado for Approval of the 600 MW Rush Creek Wind Project Pursuant to Rule 3660(H)*, Colo. PUC Docket No. 16A-0117E, Decision Approving Settlement Agreement at 15, attach. A at 16–17 (Oct. 20, 2016). The Colorado PUC approved an agreement to "instate a hard cost cap . . . with a sharing of capital cost savings between customers and the Company" if overall capital costs were less than cap. The approved agreement states that "[f]or each $10 million in capital cost savings" below the cap, "the parties agree that the Company and the customers will share the capital cost savings, with 82.5% retained by customers, and 17.5% retained by the Company." *Id.*, attach. A at 16.

CONCLUSION AND RECOMMENDATIONS

For the foregoing reasons, the Commission should modify Otter Tail's petition as follows:

1. The Commission should reject Otter Tail's proposal to charge its Minnesota ratepayers for North Dakota's share of the solar projects; and
2. The Commission should order an asymmetrical hard cap on recovery of the costs of each project based on Otter Tail's current estimates, with a 90/10 sharing of any savings below the cap.

Dated: February 4, 2025

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ **Peter G. Scholtz**
PETER G. SCHOLTZ
Assistant Attorney General
Atty. Reg. No. 0389936

445 Minnesota Street, Suite 600
St. Paul, Minnesota 55101-2131
(651) 757-1473 (Voice)
(651) 296-9663 (Fax)
peter.scholtz@ag.state.mn.us

ATTORNEYS FOR MINNESOTA OFFICE OF THE ATTORNEY GENERAL—RESIDENTIAL UTILITIES DIVISION

OTTER TAIL POWER COMPANY
Docket No: E017-M-24-404

Response to: MN Office of the Attorney General
Analyst: Peter Scholtz
Date Received: January 14, 2025
Date Due: January 27, 2025
Date of Response: January 27, 2025
Responding Witness: Nathan Jensen, Manager, Resource Planning - (218) 739-8989

Information Request:
Reference: Dec. 9, 2024 Petition at 11-12.

The Petition states that Otter Tail "intends to construct and operate the Solway and Abercrombie Solar Projects for the benefit of the Company's Minnesota and South Dakota customers," that "[c]urrent allocations would result in approximately 80 percent of the Projects' costs and output being allocated to Otter Tail Power's Minnesota customers and 20 percent to South Dakota customers," and that "[i]f the SDPUC does not approve recovery of these Projects, Otter Tail Power would then allocate 100 percent of the Projects' cost and output to Minnesota customers."

Request:

A. Assuming North Dakota, South Dakota, and Minnesota all participated in the Solway and Abercrombie Solar Projects, what would be the current percentage allocations among the three jurisdictions?

B. Provide the annual Minnesota-jurisdictional revenue requirement for the projects under the following assumptions:

    1. Minnesota pays 100%
    2. Minnesota pays 80%
    3. Minnesota pays the percentage identified in response to A.

Attachments: 1
Attachment 1 to IR MN-OAG-002_PUBLIC.pdf

Response:

Attachment 1 to IR MN-OAG-002 contains financial data related Abercrombie and Solway Solar Projects (the "Protected Data"). The Protected Data has economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts by OTP to protect the information from public disclosure. The Protected Data therefore: (1) constitutes trade secret information, as defined in Minn. Stat. § 13.37, subd. 1(b); (2) is classified as nonpublic data pursuant to Minn. Stat. § 13.37, subd. 2; (3)

is also not public data, as defined in Minn. Stat. § 13.02, subd. 8a; and (4) is protected data under Minn. R. 7829.0100, subp. 19a(A).

Please see Attachment 1 to IR MN-OAG-002.