August 14, 2020

William Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota, 55101-2147

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E017/M-18-748

Dear Mr. Seuffert:

Attached please find the Minnesota Department of Commerce, Division of Energy Resources (Department) Response Comments to the Reply Comments of Otter Tail Power Company (OTP or the Company).

Based on our review of OTP's Reply Comments, the Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the Company's proposal with modifications, but requests further information from OTP**, as discussed in greater detail herein. The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ MARK A. JOHNSON
Financial Analyst Coordinator

MAJ/ar
Attachment

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce
Division of Energy Resources

Docket No. E017/M-18-748

I. BACKGROUND

On January 28, 2010, the Minnesota Public Utilities Commission (Commission) issued its Order approving Otter Tail Power Company's (OTP or the Company) first Transmission Cost Recovery Rider (TCRR) in Docket No. E017/M-09-881.

On March 26, 2012, the Commission issued its Order approving OTP's first annual update to its TCRR in Docket No. E017/M-10-1061 (10-1061). OTP eliminated the energy charge for the Large General Service Class, instead recovering costs from this class through the demand charge.

On March 15, 2013, the Commission issued its Order approving TCRR eligibility for three new projects in Docket No. E017/M-12-514 (12-514). OTP did not request a rate change in this proceeding.

On March 10, 2014, the Commission issued its Order approving OTP's second annual update to its TCRR in Docket No. E017/M-13-103 (13-103). However, in response to OTP's proposal in its April 30, 2014 Amended Compliance Filing, on June 26, 2014, the Commission issued its second Order in 13-103 approving OTP's request to keep its then-existing TCRR rates[1] in effect pending its next annual update to its TCRR.

On February 18, 2015, the Commission issued its Order approving OTP's third annual update to its TCRR in Docket No. E017/M-14-375 (14-375).

On March 9, 2016, the Commission issued its Order approving OTP's fourth annual update to its TCRR in Docket No. E017/M-15-874 (15-874).

On April 29, 2016, OTP filed a petition requesting approval of its fifth annual update to its TCRR in Docket No. E017/M-16-374 (2016 TCRR). Given that OTP proposed a reduction in rates, the Commission provisionally approved OTP's proposed reduction, with the understanding that the final decision would be made at a later date. Thus, on July 5, 2016, the Commission issued its Order granting provisional approval of OTP's fifth annual update to its TCRR.

On July 14, 2016, OTP filed its compliance filing as required by the Commission's July 5, 2016 Order. The compliance filing indicated that the effective date of the rider was September 1, 2016. OTP also included its updated Rate Schedule Section 13.05 for its TCRR as provisionally approved by the Commission.

[1] That is, the rates determined in 12-514.

On May 1, 2017, the Commission issued its *FINDINGS OF FACT, CONCLUSIONS, AND ORDER* in OTP's 2016 Rate Case in Docket No. E017/GR-15-1033 (2016 Rate Case Order). The Commission's 2016 Rate Case Order required OTP to incorporate costs and revenues of its Big Stone Area Transmission Project – Ellendale (BSAT-Ellendale) and the Big Stone Area Transmission Project – Brookings (BSAT-Brookings) (collectively the BSAT Projects) into OTP's TCRR using the all-in methodology.

On May 22, 2017, OTP requested that the Commission reconsider its decision on the BSAT Projects in OTP's 2016 Rate Case. The Commission denied OTP's request for reconsideration on July 21, 2017.

On August 18, 2017, OTP petitioned the Minnesota Court of Appeals seeking a reversal of the Commission's decision regarding the BSAT Projects.

On August 21, 2017, OTP made a compliance filing and provided updated TCRR rates including the BSAT Projects in accordance with the Commission's 2016 Rate Case Order.

On October 30, 2017, the Commission issued its *ORDER APPROVING COMPLIANCE FILING AND PROVISIONALLY APPROVING TRANSMISSION COST RECOVERY RIDER RATE* in OTP's 2016 Rate Case. OTP's updated, provisionally-approved TCRR rates went into effect on November 1, 2017.

On June 11, 2018, the Minnesota Court of Appeals issued its decision, which agreed with OTP and reversed the Commission's decision regarding the BSAT Projects.

On July 11, 2018, the Commission appealed the Minnesota Court of Appeals decision to the Minnesota Supreme Court.

On November 30, 2018, OTP filed the instant petition requesting approval of its sixth annual update to its TCRR in Docket No. E017/M-18-748 (Petition or 2018 TCRR). As explained therein, the Company calculated its Minnesota jurisdictional 2018 TCRR annual revenue requirement figures with and without the BSAT Projects to account for the Minnesota Supreme Court's forthcoming decision.

On March 11, 2019, oral arguments were held before the Minnesota Supreme Court regarding the BSAT issue.

On April 1, 2019, the Department filed its comments in the instant petition. The Department requested that OTP address the following in reply comments:

- whether any of the transmission projects included in its 2018 TCRR were over their respective cost caps;
- identify the specific amount of MISO Schedule 26 revenues and expenses associated with the Courtenay Wind Farm transmission project that was excluded from its 2018 TCRR;
- provide the excess accumulated deferred income taxes (ADIT) balance as of December 31, 2017 for its TCRR along with OTP's proposed amortization period using the average rate assumption method (ARAM); and
- explain whether OTP excluded its internal capital costs from recovery in its 2018 TCRR.

In addition, the Department recommended that in the event that the Minnesota Supreme Court agreed with OTP and concluded that it is appropriate for OTP to keep for shareholders all of the wholesale revenues and expenses from the BSAT Projects by removing $11,814,503[2] in net revenues from OTP's retail rates and the TCRR, the Commission should require OTP to remove all other MVP projects and their related MISO Schedule 26A revenues and expenses from base retail rates and the 2018 TCRR. In addition, the Department recommended that the Commission:

- approve OTP's proposed ADIT proration for the forecasted test year in the 2018 TCRR, subject to a true-up calculation in the following year using actual non-prorated ADIT amounts;
- require OTP to begin amortizing and refunding its excess ADIT balances in its revenue requirement calculations in its 2018 TCRR; and
- require OTP to continue to include its wholesale transmission revenues or net credit for any projects that are not included the Midcontinent Independent System Operator's (MISO) Regional Expansion and Cost Benefit (non-RECB) transmission projects included in future TCRR filings.

On April 22, 2020, the Minnesota Supreme Court issued its ruling determining that the Commission did not have the authority in OTP's 2015 Rate Case (Docket No. E107/GR-15-1033) to require OTP to file an amended TCRR that includes the costs and revenues associated with the BSAT Projects.[3]

On May 7, 2020, OTP filed its reply comments in the instant petition.

The Department notes that OTP's reply comments expanded its initial petition by including three new projects and related annual revenue requirements that were not included in the Company's initial filing on November 30, 2018. In addition, OTP's reply comments included updates to billings, revenues, and expenses with actual data through March 2020 and forecasts through December 2021. Due to these changes, the Department notes that OTP's reply comments result in a new TCRR proposal. In addition, the Department notes that OTP's reply comments did not address several of the issues raised by the Department in its April 1, 2019 comments. As a result, the Department discusses those issues, along with other issues in our analysis below.

---

[2] Per Department's April 1, 2019 Comments, Table 1: MISO Schedule 26A revenues of $11,964,283 less MISO Schedule 26A expenses of $149,780 = $11,814,503.

[3] Per Minnesota Supreme Court's April 22, 2020 ruling in Docket No. A17-1300, page 1; see Department Attachment 1 to these comments.

II. SUMMARY OF FILING

As shown in Attachment 2 of its reply comments, OTP estimated its Minnesota jurisdictional 2021 TCRR annual revenue requirement figures without the BSAT Projects. In addition, as explained on page 2 of its reply comments, OTP proposed to include half of its projected December 2020 tracker balance in calculating its 2021 annual revenue requirements in an attempt to mitigate the impact of the large tracker balance on customers. However, OTP also proposed to charge ratepayers for carrying costs (based on OTP's cost of capital) associated with the remaining half tracker balance beginning May 1, 2020. In addition, OTP proposed to collect the remaining half tracker balance in its next recovery filing along with all other tracker updates.

Similar to OTP's initial filing on November 30, 2018, which included summaries of annual revenue requirements with and without the BSAT Project, the Department asked OTP, in Department Information Request No. 4, to provide a summary of its annual revenue requirements with the BSAT Projects included, to aid our analysis of the TCRR impacts due to OTP's unilateral decision to exclude of the BSAT Projects. A copy of OTP's response to Department Information Request No. 4 is provided in Department Attachment 2 to these comments.

A summary of OTP's proposed projects and related Minnesota jurisdictional revenue requirements with and without the BSAT Projects and half of its projected December 2020 tracker balance, for the period from January 1, 2021 to December 31, 2021 is included in Department Table 1 below.

The Department notes that OTP's representation that its proposal claimed to show revenue requirements "without BSAT Projects" is inaccurate. While OTP chooses to keep all of the revenues net of costs for the BSAT projects for its shareholders, OTP proposes to charge its ratepayers for charges for Northern States Power, d/b/a Xcel Energy's (Xcel) share of costs of the BSAT lines, resulting in a mismatch of costs and revenues for the BSAT projects and a violation of the fundamental matching principle in accounting and rates. This violation is particularly concerning, given OTP's proposal to "assign" the BSAT Projects to OTP's shareholders, without Commission approval required under Minn. Stat. §216B.48. The Department discusses this issue further below. For now, the Department notes that the figures in Table 1 below, Column B "without BSAT Projects" still includes costs of BSAT projects, and Column C reflects only partial removal of BSAT Projects.

Department Table 1, Column C below shows that excluding OTP's BSAT Projects in the TCRR decreases Minnesota's share of MISO Schedule 26A revenues by $10,178,682 and MISO Schedule 26A expenses by $117,126 (Lines 8 and 9). This reduction in MISO Schedule 26A revenues and expenses, along with the related tracker true-up changes and carrying charges (Lines 12 and 13), more than offset the exclusion of the Minnesota annual revenue requirements for the BSAT Projects (Lines 4 and 5), resulting in a net increase of $2,531,378 for Minnesota (Line 14).

Department Table 1: Summary of Proposed Projects and Revenue Requirements Including One-Half of the December 31, 2020 Tracker Balance.

	Project:	(A) 2021 Annual Revenue Requirements (with BSAT Projects):[4]	(B) 2021 Annual Revenue Requirements (without BSAT Projects):[5]	(C) Increase/(Decrease) in Annual Revenue Requirements Due to Removal of BSAT Projects[6]
1	*Lake Norden Area Transmission Project*[7]	*$901,313*	*$901,313*	*$0*
2	*Rugby 41.6 kV Breaker Station*	*$43,000*	*$43,000*	*$0*
3	*Granville Junction Breaker Station*	*$23,779*	*$23,779*	*$0*
4	BSAT-Brookings (MVP)	$3,353,753	$0	($3,353,753)
5	BSAT – Ellendale (MVP)	$5,997,956	$0	($5,997,956)
6	MISO Schedule 26 Revenues	($6,988,550)	($6,988,550)	$0
7	MISO Schedule 26 Expenses	$6,279,366	$6,279,366	$0
8	MISO Schedule 26A Revenues (MVPs)	($11,705,987)	($1,527,305)	$10,178,682
9	MISO Schedule 26A Expenses (MVPs)^	$4,327,935	$4,210,809	($117,126)
10	MISO Schedules 37 & 38 Revenues	($174,114)	($174,114)	$0
11	MVP ARR[8] Revenue	($15,693)	($15,693)	$0
12	Carrying Cost	$627,217	$821,891	$194,674
13	Tracker True-up (one-half)	$5,062,238	$6,689,095	$1,626,857
14	**Total**	**$7,732,214**	**$10,263,592**	**$2,531,378**

^Includes costs associated Xcel's share of BSAT lines.

The TCRR is applicable to electric service under all of OTP's retail rate schedules. OTP proposed to use the same allocations and rate design methods that are currently in place. Specifically, OTP proposed to use the transmission demand allocator (D2) to allocate total revenue requirements to the Minnesota jurisdiction and rate classes. In addition, OTP proposed to use a demand-only rate for the Large General Service class and an energy-only rate for all other customers. These issues are discussed in more detail in Section I below.

[4] Per OTP's Response to Department Information Request No. 4.
[5] Per OTP's Reply Comments, Attachment 2.
[6] Difference: Column (B) – Column (A).
[7] OTP newly introduced the italicized projects in its reply comments.
[8] "ARR" stands for auction revenue rights.

OTP's current and proposed rates with half and all of its December 2020 Tracker Balance are shown below in Table 2:

Department Table 2: OTP's Current and Proposed TCRR Rates[9]

Class	Current Provisionally Approved Rates[10]	Proposed w/o BSATs (includes one-half December 2020 Tracker Balance)	Proposed w/o BSATs (includes all of December 2020 Tracker Balance)
Large General Service	($0.650) per kW	$1.943 per kW	$3.170 per kW
Controlled Service	(0.032) ¢/kWh	0.099 ¢/kWh	0.161 ¢/kWh
Lighting	(0.113) ¢/kWh	0.418 ¢/kWh	0.682 ¢/kWh
All other service	(0.173) ¢/kWh	0.558 ¢/kWh	0.911 ¢/kWh

Proposed rate increases due to OTP's proposal not to credit ratepayers with net revenues from BSAT projects are material. For example, the Company acknowledges that, under its proposed rates without revenue from the BSAT projects,[11] the monthly bill impact for a residential customer using, on average, about 1,000 kWh per month would be $7.32 per month, [12] or about $88 per year compared to the current TCRR, with inclusion of only half of the December 2020 tracker balance at this time. Including the entire true-up would increase Residential customers' bills by $10.84 per month or over $130 per year.

Bill impacts for Farm customers using over 2,140 kWh per month[13] would be more than twice as high, at $15.64 per month and over $187 per year with only half of the true-up, and over $23 per month and over $278 per year if the entire true-up is included.

OTP requested that its proposed rates become effective January 1, 2021. OTP stated that this timeline is appropriate given the interaction with other dockets as well as current realities of the ongoing response to the coronavirus pandemic. OTP's proposed tariff schedule and customer notice are provided in Attachments 14 and 15, respectively, of OTP's reply comments.

---

[9] OTP Reply Comments, page 6.

[10] Effective November 1, 2017; Per the Commission's October 30, 2017 Order in Docket No. E017/GR-15-1033.

[11] Again, OTP's presentation of its proposal claimed to show revenue requirements "without BSAT Projects," OTP's proposal would still charge its ratepayers for Xcel's share of costs of the BSAT lines, even though OTP proposed to "assign" the BSAT Projects to OTP's shareholders, without Commission approval required under Minn. Stat. §216B.48. Thus, in Table 1 below, Column B "without BSAT Projects" still includes costs of BSAT projects, and Column C reflects only partial removal of BSAT Projects.

[12] OTP Reply Comments, page 6.

[13] Source: OTP's 8/21/2017 Compliance filing, Docket No. E017/GR-15-1033, Attachment 3A, Schedule E-2, page 1.

III. MINNESOTA DEPARTMENT OF COMMERCE (DEPARTMENT) ANALYSIS

A. STATUTORY REQUIREMENTS

The Transmission Cost Recovery (TCR) Statute, Minn. Stat. §216B.16, subd 7b states the following (Emphasis added):

> Subd. 7b. **Transmission cost adjustment.** (a) Notwithstanding any other provision of this chapter, the commission may approve a tariff mechanism for the automatic annual adjustment of charges for the Minnesota jurisdictional costs net of associated revenues of:
>
> (i) new transmission facilities that have been separately filed and reviewed and approved by the commission under section 216B.243 or are certified as a priority project or deemed to be a priority transmission project under section 216B.2425;
>
> (ii) new transmission facilities approved by the regulatory commission of the state in which the new transmission facilities are to be constructed, to the extent approval is required by the laws of that state, and determined by the Midcontinent Independent System Operator [MISO] to benefit the utility or integrated transmission system; and
>
> (iii) charges incurred by a utility under a federally approved tariff that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system.
>
> (b) Upon filing by a public utility or utilities providing transmission service, the commission may approve, reject, or modify, after notice and comment, a tariff that:
>
> (1) allows the utility to recover on a timely basis the costs net of revenues of facilities approved under section 216B.243 or certified or deemed to be certified under section 216B.2425 or exempt from the requirements of section 216B.243;
>
> **(2) allows the utility to recover charges incurred under a federally approved tariff that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system. These charges must be reduced or offset by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset;**

> (3) allows the utility to recover on a timely basis the costs net of revenues of facilities approved by the regulatory commission of the state in which the new transmission facilities are to be constructed and determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system;
>
> (4) allows a return on investment at the level approved in the utility's last general rate case, unless a different return is found to be consistent with the public interest;
>
> (5) provides a current return on construction work in progress, provided that recovery from Minnesota retail customers for the allowance for funds used during construction is not sought through any other mechanism;
>
> (6) allows for recovery of other expenses if shown to promote a least-cost project option or is otherwise in the public interest;
>
> (7) allocates project costs appropriately between wholesale and retail customers**;**
>
> (8) provides a mechanism for recovery above cost, if necessary to improve the overall economics of the project or projects or is otherwise in the public interest; and
>
> (9) terminates recovery once costs have been fully recovered or have otherwise been reflected in the utility's general rates. (Emphasis Added)

The Renewable Cost Recovery (RCR) Statute, Minn. Stat. §216B.1645, subd. 1 states that:

> 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, including reasonable investments and expenditures made to:
>
> (1) transmit the electricity generated from sources developed under those sections that is ultimately used to provide service to the utility's retail customers, including studies necessary to identify new transmission facilities needed to transmit electricity to Minnesota retail customers from generating facilities constructed to satisfy the renewable energy objectives and standards, provided that the costs of the studies have not been recovered previously under existing tariffs and the utility has filed an

> application for a certificate of need or for certification as a priority project under section 216B.2425 for the new transmission facilities identified in the studies;
>
> (2) provide storage facilities for renewable energy generation facilities that contribute to the reliability, efficiency, or cost-effectiveness of the renewable facilities; or
>
> (3) develop renewable energy sources from the account required in section 116C.779.

Regarding cost recovery, the RCR Statute, Minn. Stat. §216B.1645, subd. 2 states that:

> The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section 116C.779 shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission under subdivision 1, which, in the case of transmission expenditures, are limited to the portion of actual transmission costs that are directly allocable to the need to transmit power from the renewable sources of energy. The commission may not approve recovery of the costs for that portion of the power generated from sources governed by this section that the utility sells into the wholesale market.

Regarding the highlighted language above, the Department discusses this issue further below in Section D.1 of these comments.

B. PROJECT ELIGIBLITY

1. New Transmission Projects

As explained on page 1 of its reply comments, OTP included three new transmission projects for the first time in its TCRR. The three new projects include OTP's Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station. The 2021 revenue requirements of these projects sums to just under $1 million, at $968,092.

On August 16, 2019 OTP made a separate filing in Docket No. E017/M-19-530 requesting that the Commission determine that these three projects are eligible for recovery in OTP's TCRR (19-530).

On July 6, 2020, the Department filed comments in 19-530. As explained therein, the Department concluded that the three new projects are not eligible for recovery in OTP's TCRR. However, the Department notes that 19-530 is still pending before the Commission. Thus, if the Commission agrees with the Department's conclusions and recommendations in 19-530, these three new transmission projects and their related revenue requirements and tracker balances should be removed from OTP's TCRR in this proceeding.

2. Projects Excluded from OTP's TCRR

Besides the BSAT Projects, which OTP proposed to exclude from its TCRR even while including costs charged for Xcel's share of the BSAT facilities, the Department asked OTP, in Department Information Request No. 5, if it had any other transmission projects that qualified for recovery but were not included its 2018 TCRR. OTP replied in part that:[14]

> The only eligible project that was not included in Attachments 2 and 4 is Otter Tail's share of the transmission portion of the Courtenay Wind Project. To clarify, Attachments 2 and 4 exclude the costs and revenues associated with Otter Tail's investment in the BSAT-Ellendale and BSAT-Brookings projects, consistent with the ruling of the Minnesota Supreme Court.
>
> Part B of Otter Tail's March 8, 2019 response to IR MN-DOC-001 identified four projects (Rugby 41.6 kV Breaker Station, Granville Junction 41.6 kV Breaker Station, Lake Norden Area Transmission Project, transmission portion of the Courtenay Wind Project) that were eligible for TCRR recovery for which Otter Tail did not seek TCRR recovery and the reasoning for not seeking recovery. Since submitting the response to IR MN-DOC-001, Otter Tail has requested three of the four projects (Rugby 41.6 kV Breaker Station, Granville Junction 41.6 kV Breaker Station, Lake Norden Area Transmission Project) be deemed eligible for TCRR recovery. That request is pending in Docket No. E017/M-19-530.
>
> Rugby 41.6 kV Breaker Station, Granville Junction 41.6 kV Breaker Station and the Lake Norden Area Transmission Project are included in Attachments 2 and 4. The transmission portion of the Courtenay Wind Project is not included in Attachments 2 and 4. As discussed in Attachment A to Otter Tail's April 10, 2019 request for extension in this Docket, including Courtenay Wind Project would have an immaterial impact (approximately $2,000) on the TCRR revenue requirement.

Based on the above, the Department concludes that OTP chose to exclude the Courtney Wind Farm transmission project and its related Minnesota jurisdictional revenue requirements from its TCRR. More importantly, the Department notes that the Courtney Wind Farm transmission project has

[14] A copy of OTP's Response to Department Information Request No. 4 is provided in Attachment 2 to these comments

related MISO Schedule 26 revenues and expenses that have also been excluded from OTP's TCRR. This issue is discussed in more detail below in Section D.

C. REASONABLENESS OF PROJECT REVENUE REQUIREMENTS AND COST RECOVERY CAPS

In Xcel Energy's TCRR filing in Docket No. E002/M-09-1048, the Commission stated the following in its April 7, 2010 Order:

> …the Commission finds that TCR project cost recovery through the rider should be limited to the amount of the initial cost estimates at the time the projects are approved as eligible projects, with the opportunity for the Company to seek recovery of excluded costs on a prospective basis in a subsequent rate case. A request to allow cost recovery for project costs above the amount of the initial estimate may be brought for Commission review only if unforeseen or extraordinary circumstances arise on a project.

The Commission applied this same approach to Otter Tail Power Company in its 2013 TCRR in 13-103, ordering that OTP should limit TCRR recovery of the Bemidji project to $74 million.

Since OTP's initial filing in this proceeding did not address this issue, the Department requested in its April 1, 2019 comments that the Company explain in reply comments whether any of the project costs included in its TCRR are over their respective cost caps. The Department notes that OTP did not respond to the Department's request in its May 7, 2020 reply comments. As a result, the Department recommends that OTP provide this information in additional reply comments. The Department intends to provide final comments after reviewing this information from OTP.

D. REGIONAL EXPANSION AND COST BENEFIT CHARGES (MISO SCHEDULES 26/26A, MISO AUCTION REVENUE RIGHTS, AND MISO SCHEDULES 37 & 38)

1. MISO Schedules 26/26A

During the 2008 Minnesota Legislative Session, Minn. Stat. 216B.16, subd, 7(b) (2) was amended to allow utilities providing transmission service to recover "the charges incurred by a utility that accrue from other transmission owners' regionally planned transmission projects that have been determined by MISO to benefit the utility, as provided for under a federally approved tariff," upon Commission approval. The Statute further requires that any such cost recovery "must be reduced or offset by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset." Thus, as stated and highlighted above, this entire portion of the law states the following requirement for the transmission cost recovery tariff, that it:

> **(2) allows the utility to recover charges incurred under a federally approved tariff that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system. These charges must be reduced or offset by revenues received by the received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset."**

Based on the language in the statute, the Department concludes that this statute does not allow OTP to charge its ratepayers for Xcel's costs of the BSAT facilities without the "revenues received by the utility" for the same transmission project that MISO has determined will "benefit the utility or the integrated transmission system."

As mentioned above, MISO's regionally planned transmission projects are also referred to as Regional Expansion and Cost Benefit (RECB) projects; RECB charges and revenues are generally reflected under MISO Schedules 26/26A. MISO Schedule 26 includes regionally shared projects such as Market Efficiency Projects and Generation Interconnection Projects. MISO Schedule 26A includes regionally shared projects that have been deemed to be Multi-Value Projects (MVPs).

OTP's MISO Schedule 26/26A revenue and expense calculations without the BSAT Projects are provided in Attachments 2 and 4 of the Company's reply comments.

The Department notes that Minnesota regulated electric utilities normally include in their TCRR's MISO Schedule 26/26A revenues and expenses for all of their qualifying projects, regardless of whether the transmission asset itself is included for recovery in base rates or in the TCRR. For example, even after accounting for OTP's proposed exclusion of the net revenues for the two BSAT Projects, OTP's TCRR still contains MISO Schedule 26A revenues of ($1,527,305)[15] that are associated with OTP's CAPX 2020 Brookings Project, which was moved into base rates in OTP's 2016 Rate Case. The Department notes that Xcel Energy and Minnesota Power include all of their MISO Schedule 26/26A revenues and expenses in their TCRRs regardless of whether the transmission assets themselves are included in base rates or the TCRRs.

The Department generally agrees with this approach since it is transparent, fair to ratepayers and utilities, and easier to follow and track a utility's total MISO Schedule 26/26A revenues and expenses if they are located in one place as opposed to being split between base rates and TCRRs.

As shown above in Department Table 1, Column C, Lines 8 and 9, OTP's proposal to exclude the BSAT Projects reduces OTP's Minnesota ratepayers' share of MISO Schedule 26A revenues by $10,178,682 and MISO Schedule 26A expenses by $117,126. The reduction in MISO Schedule 26A revenues and expenses along with the related true-up changes and carrying charges more than offsets the removal of the Minnesota jurisdictional annual revenue requirements for the BSAT Projects shown on

[15] See Department Table 1, Column B, Line 8.

Department Table 1, Column C, Lines 4 and 5. Specifically, under OTP's proposal, Minnesota ratepayers would be required to pay an additional $2,531,378 in annual revenue requirements due to OTP's proposed exclusion of the BSAT Projects from the TCRR.

The Department notes that OTP's TCRR proposal produces some concerning results. For example, under OTP's TCRR proposal, retail ratepayers would still be charged for costs of all other MVP projects located throughout the MISO footprint, including, as noted above, Xcel's costs for the same MVP facilities. As shown above in Department Table 1, Column B, OTP proposed to charge Minnesota retail ratepayers $4,210,809 in MISO Schedule 26A expenses that are associated with all other MVP projects in the MISO footprint. Moreover, this $4,210,809 figure includes OTP's share of MISO 26A expenses associated with Xcel's half ownership of the BSAT-Brookings MVP Project – *the same transmission line that OTP claims is only for wholesale purposes*.

Further, by choosing not to include the BSAT Projects in its TCRR, OTP proposes to increase the total amount of TCRR annual revenue requirements charged to ratepayers by $2,531,378 in this proceeding, with significant rate impacts as discussed above.[16] Moreover, the Department notes that OTP's decision to exclude the BSAT Projects from the TCRR allows OTP keep these net revenues for shareholders.

Also, as noted above in Section B of these comments, OTP has also excluded a small transmission project (Courtenay Wind Farm) and its related Minnesota jurisdictional revenue requirements and MISO Schedule 26 revenues and expenses from its TCRR. While this transmission project is neither reflected in base rates nor in the TCRR at this time, the Department is concerned about the exclusion of MISO Schedule 26 revenues and expenses for the reasons stated above.

Given OTP's decision not to include the BSAT Projects in its TCRR and the resulting harm to ratepayers and the extensive amount of time and resources spent analyzing and addressing complex facts associated with OTP's TCRR proposals, the Department recommends, as it did in OTP's last rate case, that the Commission consider cancelling OTP's TCRR and requiring OTP to include all of its transmission assets and their related MISO Schedule revenues and expenses in base rates in a general rate case proceeding.[17]

Regarding MISO Schedule 26/26A revenues and costs, the Department recommends that the Commission require OTP to remove MISO costs for Xcel's share of the BSAT transmission facilities.

---

[16] See Department Table 1, Column C, Line 14.
[17] Surrebuttal Testimony of Mr. Johnson in Docket No. E017/GR-15-1033, page26.

2. MISO's Auction Revenue Rights (ARRs)

In addition to costs and revenues from MISO's Schedules 26/26A, the Department understands that MISO annually allocates ARRs for MVPs. According to MISO, the revenue associated with these ARRs is to be distributed to those customers who pay for the MVP projects. MISO created a new charge type to distribute this revenue. The charge type name is Real Time MVP Distribution (RT_MVP_DIST) and appears on the Real Time settlement statement. The distribution occurs on the last Operating Day of each month.

The Commission's February 18, 2015 Order in 14-375 approved OTP's request to include as a true-up item in its 2015 TCRR the actual amount of ARRs that it receives for its MVPs with the understanding that OTP will incorporate estimates of all MVP ARRs in future TCRR updates beginning with its 2015 TCRR filing.

As shown above in Department Table 1, Column B, Line 11, OTP proposed to include $15,693 of ARR revenues in its TCRR. OTP's ARR calculations are found in Attachments 11A and 11B of its initial filing in this proceeding.

The Department reviewed OTP's ARR calculations and concludes that OTP's calculations appear reasonable and in compliance with the Commission's February 18, 2015 Order in 14-375.

3. MISO Schedules 37 & 38

In addition to MISO Schedule 26/26A charges and ARRs, OTP proposed to include revenues it receives under MISO Schedules 37/38. MISO Schedule 37 revenues represent a utility's share of contributions that MISO receives from the American Transmission Systems, Inc., which left MISO on June 1, 2011 to integrate with PJM. Likewise, MISO Schedule 38 revenues represent a utility's share of payments from Duke-Ohio and Duke-Kentucky, which left MISO on December 31, 2011, but have an ongoing obligation to pay for MISO projects due to their previous membership.

In its March 10, 2014 Order in 13-103, the Commission required OTP to separately identify its MISO Schedule 37/38 revenues included in its TCRR.

As shown above in Department Table 1, OTP proposed to include $182,739 of MISO Schedule 37/38 revenues in its 2018 TCRR. OTP's MISO Schedule 37/38 revenue calculations are shown in Attachments 9A and 9B of its Petition.

The Department reviewed OTP's MISO Schedule 37/38 calculations. Based on our review, the Department concludes that OTP's MISO Schedule 37/38 revenue calculations appear reasonable and in compliance with the Commission's March 10, 2014 Order in 13-103.

E. OTHER WHOLESALE TRANSMISSION REVENUES (NON-RECB)

The Department notes that the bulk of Minnesota regulated electric utilities' transmission assets over 100 kilovolts are considered to be non-RECB projects for MISO purposes and are included in the utilities' base rates rather than a transmission rider. As such, any wholesale transmission revenues and expenses (MISO Schedule 9 revenues and expenses) associated with these facilities are generally reflected in base rates set in a general rate case.

However, in addition to the wholesale transmission revenues and expenses through MISO Schedules 26/26A for RECB projects as discussed above, the Department understands that some utilities receive other wholesale transmission revenues from third-party transmission customers who are charged the utility's Federal Energy Regulatory Commission (FERC) jurisdictional MISO tariff[18] rate for the use of the utility's non-RECB transmission system. Similar to RECB charges that are reflected in MISO Schedules 26/26A, these non-RECB charges are reflected in MISO Schedule 9 revenues for the party that owns the transmission assets and in MISO Schedule 9 expenses for any party that uses the transmission assets (including the owner of the assets).

While most of these costs and revenues are reflected in utilities' base rates, sometimes Minnesota rate-regulated utilities have non-RECB transmission projects that qualify for TCRR recovery. In those instances, and consistent with Minn. Stat. §216B.16, subd 7(b)(2) noted above, the utility provides a <u>net credit</u>[19] in its TCRR to account for the amount of revenues it expects to receive from MISO for other utilities' use of the transmission asset. This net credit reflects the difference between what the utility pays MISO for using its own non-RECB transmission asset and what the utility receives from MISO for other utilities' use of the asset.

For example, if FERC determined that annual revenue requirements for a specific non-RECB project totaled $100 and OTP is the owner, the $100 would be allocated and charged under FERC-approved rates to all utilities located in OTP's transmission pricing zone, based on their respective loads in that zone. If OTP makes up approximately 80 percent of the load in its own transmission pricing zone, then OTP would be required to pay MISO $80 in Schedule 9 expenses (paying MISO for OTP's use of its own facilities). The remaining $20 in MISO Schedule 9 expenses would be paid by the other utilities with load in OTP's transmission pricing zone to reflect their reliance on OTP's facilities. MISO then pays OTP the entire $100 in MISO Schedule 9 revenues for its ownership of the project. The difference between what OTP pays and receives for its ownership of the non-RECB project is the $20 net credit.[20]

---

[18] Utility-specific rates are contained in Attachment O of MISO's Open Access Transmission Tariff (OATT).
[19] This net credit is as opposed to MISO Schedules 26/26A revenues and expenses, which are reflected at gross in Minnesota rate-regulated utilities TCRRs. The gross and net methods produce the same results. However, the Department generally prefers the gross method since it reflects all the MISO revenues and expenses associated with a specific project.
[20] Sometimes the net credit is presented in percentage terms. In this example, the net credit would equal 20 percent of the revenue requirements.

Thus, if the Commission allows OTP to include the three new transmission projects in its TCRR despite the Department's objections in 19-530, the Department recommends that the Commission require OTP to include any related wholesale transmission revenues or net credits associated with these projects in its TCRR.

F. PRORATED ACCUMULATED DEFERRED INCOME TAXES (ADIT)

OTP included the effects of proration on its forecasted ADIT balances in annual revenue requirement calculations as shown in Attachments 5 through 7 of its reply comments. OTP prorates the monthly accrual to ADIT for each forecasted month in the "test year" for this rider – January 2021 through December 2021. OTP's prorated ADIT calculations increased its annual revenue requirements by $1,681 for the Minnesota jurisdiction.[21]

Consistent with prior TCRRs, the Department notes that OTP replaces its forecasted prorated ADIT balances with actual non-prorated ADIT balances the following year in its TCRR. As a result, the Department concludes that OTP's forecasted prorated ADIT balances are subject to a true-up calculation in the following year using actual non-prorated ADIT amounts. The Department agrees with this approach.

Based on the above, the Department recommends that the Commission approve OTP's proposed ADIT proration for the forecasted test year in this proceeding, subject to a true-up calculation in the following year using actual non-prorated ADIT amounts. OTP's proposed true-up and tracker balance is discussed below in Section H.

G. TAX CUTS AND JOB ACT OF 2017 AND EXCESS ADIT

On December 22, 2017, the President of the United States signed into law Pub L. 115-97 (H.R. 1—115th Congress: An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018), which is referred to as the Tax Cuts and Jobs Act of 2017 (TCJA). Among other things, the TCJA lowered the federal corporate income tax rate from 35 percent to 21 percent, effective January 1, 2018. This enactment constituted a known and measurable change for Minnesota rate-regulated utility rates going forward.

On December 29, 2017, the Commission issued its *Notice of Commission Investigation into the Effect of the 2017 Federal Tax Act on Utility Rates and Services* in Docket No. E,G999/CI-17-895 (Tax Docket).

On December 4, 2018, the Commission issued its Order in the Tax Docket. The Commission required utilities to refund all impacts of the TCJA to ratepayers. This requirement included changes to current period tax expense of the income statement, changes to the tax gross-up on the revenue requirement deficiency, and amortization of excess ADIT balances. In addition, the Commission required utilities to address the effects of the TCJA in each rider.

---

[21] OTP Reply Comments, Attachment 12.

In our April 1, 2019 comments in this proceeding, the Department noted that OTP did not specifically address the effects of the TCJA on its TCRR, but it did use the updated tax rates to calculate its current period tax expense and the tax gross-up in its revenue requirement calculations shown on Attachments 5B and 6B of its initial filing. However, the Department noted that OTP did not provide its excess ADIT balance as of December 31, 2017 or its related amortization period associated with its excess ADIT balance using the Average Rate Assumption Method (ARAM). As a result, the Department requested that OTP provide its excess ADIT balance as of December 31, 2017 for its TCRR along with its proposed amortization period using the ARAM. In addition, consistent with the Commission's decision in the Tax Docket, the Department recommended that the Commission require OTP to begin amortizing and refunding its excess ADIT balances in its revenue requirement calculations in its TCRR.

The Department notes that OTP did not respond to the Department's request in its reply comments. Thus, the Department recommends that OTP provide this information in additional reply comments.

H. TRUE-UP AND TRACKER BALANCES

As shown on Attachments 4 of its reply comments, OTP's projected December 31, 2020 tracker balance totaled $13,378,191 (including carrying charges of $472,015). As explained on page 2 of its reply comments, OTP proposed to include only half of its projected December 2020 tracker balance or $6,689,095 in its proposed January 2021 through December 2021 annual revenue requirement calculations in an attempt to mitigate somewhat the impact of the large tracker balance on ratepayers. However, OTP proposed to charge ratepayers for the carrying costs based on OTP's cost of capital associated with the remaining half tracker balance beginning May 1, 2020. Thus, in addition to the $472,015 in carrying charges included in OTP's December 31, 2020 tracker balance, OTP included estimated 2021 carrying charges totaling $821,891 in its TCRR as shown on Department Table 1, Column B, Line 12.

The Department notes that OTP's proposal to include carrying charges on of its tracker balance ignores the Commission's March 10, 2014 Order in Docket No. E017/M-13-103, which stated in part that:

> Otter Tail shall not add a carrying charge to the tracker balance for the TCR rider and the Renewable Resource Cost Recovery Rider effective with the date of this Order.

The Department concludes that OTP's proposal to include carrying charges in its TCRR does not comply with the Commission's March 10, 2014 TCRR Order. As a result, the Department recommends that the Commission deny OTP's proposal to apply carrying charges to its TCRR tracker balance.

I. COST ALLOCATIONS AND RATE DESIGN

OTP's cost allocations and rate design are provided in Attachment 3 of its reply comments. As shown therein, OTP used its Minnesota jurisdictional transmission allocator and its current rate design from its most recent rate case to allocate costs to Minnesota and its various customer classes. In addition, and consistent with previous TCRR filings, OTP proposed to use a demand-only billing rate for the Large General Service Class (LGS) and an energy-only billing rate (cents/kWh) for all other customers. The Department reviewed and agrees with OTP's proposed allocations and rate design method.

In the Commission's Order issued March 26, 2012 in 10-1061, the Commission requested an analysis of the impact of a "percentage of revenue" rate design among and within its customer classes. OTP's analysis is provided in Attachment 3 of its reply comments.

The Department concludes that OTP complied with the Commission's March 26, 2012 Order in 10-1061 by providing an analysis in Attachment 3 of its reply comments showing the impact of using a percentage of revenue rate design method to allocate costs among and within customer classes.

J. RATE OF RETURN

The TCR Statute allows for a return on investment at the level approved in the utility's last general rate case, unless a different return is found to be consistent with the public interest. As shown in its annual revenue requirements contained in Attachments 5 through 7 of its reply comments, OTP used an overall rate of return of 7.51 percent as allowed by the Commission in the Company's last rate case in Docket No. E017/GR-15-1033.

K. INTERNAL CAPITALIZED COSTS

In Docket No. E017/M-13-103, the Commission determined that OTP's internal capitalized costs should be excluded from recovery under the Company's TCRR beginning March 2014. As explained on page 4 of its reply comments, OTP complied with the Commission's directive and excluded internal capitalized costs from its TCRR. The Department agrees with OTP and concludes that the Company has complied with the Commission's directive.

L. PROPERTY TAXES

As shown in Attachments 5 through 7 of OTP's reply comments, OTP included property taxes in its forecasted 2021 annual revenue requirements calculations for the three new transmission projects included in its TCRR.

As explained in the Department's April 17, 2020 response comments in Docket No. G011/M-19-608 and its comments in its June 12, 2020 response comments in Docket No. G008/M-19-840, since property taxes are not paid until the following year (*i.e.* 2021 property taxes are paid in 2022), there should be a reduction to rate base to reflect this timing difference. The Commission approved these needed adjustments to riders in both of these dockets.

Therefore, if the Commission allows OTP to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects in its TCRR despite the Department's objections in 19-530, the Department recommends a rate base reduction for the property taxes included in the 2021 revenue requirement, to recognize the time value of money for these ratepayer-supplied funds that the Company will collect and hold for a significant amount of time in advance of the actual tax payment. The inclusion of a rate base offset for property taxes is not new, but rather has been a long held practice, particularly when setting rates in general rate cases.

The Department reviewed OTP's most recent general rate case (Docket No. E017/GR-15-1033) and determined that the relative amount of the rate base reduction for property taxes was equivalent to approximately 72 percent of the property tax expense.[22] Therefore, if the Commission allows OTP to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects in its TCRR, the Department recommends that the Commission require OTP to include a downward adjustment to rate base of $95,354 to be reflected in OTP's proposed 2021 annual revenue requirements, which represents approximately 72 percent of the incremental amount of property tax expense of $132,436[23] included in OTP's proposed 2021 annual revenue requirement calculations shown in Attachment 5 through 7 of OTP's reply comments.

M. COMPLIANCE WITH MINN. STAT. §216B.48

While the Minnesota Supreme Court allowed OTP to pick and choose between rate cases which project to include in its TCRR filing to the detriment of ratepayers, it did not decide that a utility could "assign" net proceeds from an asset away from ratepayers to an unregulated affiliate, without written approval from the Commission. Specifically, Minn. Stat. §216B.48 subd 1(9) defines an affiliate as "every part of a corporation in which an operating division is a public utility."

Thus, the Department recommends that the Commission require OTP to provide in its initial filing in its next rate case a fully and complete justification for assigning any transmission projects to such an affiliate.

[22] Per Mr. Johnson's Surrebuttal Testimony in Docket No. E017/GR-15-1033, DOC Ex.___ MAJ-S-7, Line 6; ($4,815,072)/$6,698,164 = 72%

[23] $117,518 + $9,595 + $5,323 = $132,436.

IV. SUMMARY AND RECOMMENDATIONS

The Department recommends that the Commission:

- require OTP to remove from its TCRR in this proceeding the costs of the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects and their related revenue requirements and tracker balances, if the Commission agrees with the Department's conclusions and recommendations in 19-530;
    - if, despite the Department's objections in 19-530, the Commission allows OTP to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects in its TCRR:
        - require OTP to include any related wholesale transmission revenues or net credits associated with these projects in its TCRR; and
        - include a downward adjustment to rate base of $95,354 to be reflected in OTP's proposed 2021 annual revenue requirements.
- deny OTP's proposal to apply carrying charges to its TCRR tracker balance;
- require OTP to begin amortizing and refunding its excess ADIT balances in its revenue requirement calculations in its TCRR; and
- require OTP to provide in its initial filing in its next rate case a full and complete justification for assigning any transmission projects to an affiliate as defined under Minn. Stat. §216B.48.

In addition, given the harm to OTP's ratepayers caused by the Company's choices regarding its TCRR, the Department recommends that the Commission consider cancelling OTP's TCRR and requiring OTP to include all of its transmission assets and their related MISO Schedule revenues and expenses in base rates in a general rate case proceeding.

Finally, the Department recommends that OTP provide the following information in its additional reply comments:

- explain whether any of the project costs included in its TCRR are over their respective cost caps;
- provide its excess ADIT balance as of December 31, 2017 for its TCRR along with its proposed amortization period using the ARAM.

The Department intends to provide final comments after reviewing this information from OTP.

/ar

STATE OF MINNESOTA

IN SUPREME COURT

A17-1300

Court of Appeals | Thissen, J.
Took no part, Anderson, J.

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

Filed: April 22, 2020
Office of Appellate Courts

Keith Ellison, Attorney General, Jeffrey K. Boman, Assistant Attorneys General, Saint Paul, Minnesota, for appellant Minnesota Public Utilities Commission.

Bruce Gerhardson, Otter Tail Power Company, Fergus Falls, Minnesota; and

Richard J. Johnson, Patrick T. Zomer, Moss & Barnett, P.A., Minneapolis, Minnesota, for respondent Otter Tail Power Company.

S Y L L A B U S

The Minnesota Public Utilities Commission does not have the authority in this general rate case to require Otter Tail Power Company to file an amended transmission cost-recovery rider under Minn. Stat. § 216B.16, subd. 7b(b) (2018), which includes the costs and revenues associated with the Big Stone Access Transmission Lines.

Affirmed.

O P I N I O N

THISSEN, Justice.

In this appeal, we must determine whether appellant Minnesota Public Utilities Commission (MPUC) can require respondent Otter Tail Power Company (Otter Tail) to amend an existing transmission cost-recovery rider approved under Minn. Stat. § 216B.16, subd. 7b(b) (2018), to include the costs and revenues associated with the two high-voltage interstate transmission lines known as the Big Stone Access Transmission Lines (Big Stone Lines). We conclude that the MPUC lacks such authority in this case. Further, because the MPUC considered but explicitly declined to include the costs and revenues of the Big Stone Lines in setting base rates in this general rate case, we need not consider, and we express no opinion on, whether federal law and a Federal Energy Regulatory Commission (FERC) tariff preempt the MPUC from considering the costs and revenues associated with the Big Stone Lines.

FACTS

Otter Tail is an electric utility company headquartered in Fergus Falls, Minnesota. It provides retail electric services to approximately 161,000 customers across Minnesota, North Dakota, and South Dakota. About 61,000 of those customers reside in Minnesota.

The Big Stone Lines are two large high-voltage transmission lines located in North Dakota and South Dakota. The Big Stone-Brookings segment runs south through South Dakota from the Big Stone South Substation to the Brookings County Substation. The Big Stone-Ellendale segment runs west and north from the Big Stone South Substation to the Ellendale Substation in Dickey County, North Dakota. The Big Stone Lines provide direct access from the resource-rich areas of North Dakota and South Dakota—particularly significant wind power—to the rest of the electric grid covering the middle of the North American continent and beyond. Although the two Big Stone Lines do not run through Otter Tail's Minnesota region, they connect into the regional grid and therefore benefit Otter Tail's Minnesota retail customers (and all retail customers in the region).

Otter Tail owns an approximate 50-percent interest in each of the Big Stone Lines. Otter Tail invested approximately $134.5 million in the Big Stone-Brookings line and approximately $182.5 million in the Big Stone-Ellendale line, for a total investment of approximately $317 million.

Operational control of the Big Stone Lines was turned over to the Midcontinent Independent System Operator (MISO).[1] Accordingly, the Big Stone Lines are subject to MISO's FERC-approved Open Access Transmission Tariff, which governs how Otter Tail and its co-owners are paid for construction and operation of the Big Stone Lines. At the time of these proceedings, MISO's tariff included a 10.32-percent base return on equity for owners of interstate transmission projects. *See Ass'n of Bus. Advocating Tariff Equity*

---

1 FERC authorized the formation of regional transmission organizations, which are "voluntary associations of utilities that own electrical transmission lines interconnected to form a regional grid and that agree to delegate operational control of the grid to the association." *Ill. Commerce Comm'n v. FERC*, 721 F.3d 764, 769 (7th Cir. 2013). FERC has encouraged the members of the regional transmission organizations to permit their regional power grids to be operated by "Independent System Operators," which are "not-for-profit entities that operate transmission facilities in a nondiscriminatory manner." *Id.* at 770 (citation omitted) (internal quotation marks omitted). MISO is one such regional transmission organization. MISO manages high-voltage electric transmission grids in 15 states, including Minnesota, and the Canadian province of Manitoba. Otter Tail is a member of MISO.

Coal. v. Midcontinent Indep. Sys. Operator, Inc., 156 FERC P 61,234, at ¶ 275, 2016 WL 5799957, at *75 (Sept. 28, 2016) (adopting 10.32 percent as an authorized rate of return on equity). In addition, Otter Tail is entitled to an additional 0.5-percent "adder" because of its membership in MISO. *See Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC P 61,004, at ¶ 39, 2015 WL 77424, at *10 (Jan. 5, 2015) ("We grant the MISO Transmission Owners' request for a 50-basis point adder to their base [return on equity] for their participation in MISO . . . ."); *see generally* 16 U.S.C. § 824s(c) (2018) (encouraging the Commission to "provide for incentives to each transmitting or electric utility that joins a Transmission Organization"). Consequently, the FERC-authorized rate of return on equity for the Big Stone Lines was at the time of these proceedings 10.82 percent.[2] Based on that rate of return on equity, Otter Tail expected to recover $67.8 million for the two Big Stone Lines between 2016 and 2020. The Big Stone-Brookings segment was completed in 2017 and the Big Stone-Ellendale segment was energized in 2019.

In 2012, Otter Tail filed a request with the MPUC for a transmission-cost recovery rider (TCRR) pursuant to Minn. Stat. § 216B.16, subd. 7b(b). A TCRR is a statutory mechanism through which a utility may petition the MPUC for recovery of transmission

[2] The actual rate of return on equity under the MISO tariff is subject to revision by FERC. In October 2018, FERC adopted a revised methodology for calculating return on equity. *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC P 61,030, 2018 WL 5075142 (Oct. 16, 2018) (proposing new methodologies for calculating return on equity for the New England Transmission Owners). On November 21, 2019, FERC issued an Order on Briefs, Rehearing and Initial Decision in *Association of Businesses Advocating Tariff Equity v. Midcontinent Independent System Operator, Inc.*, 169 FERC P 61,129, at PP 20–21, 2019 WL 6243026, at *8 (Nov. 21, 2019), which reduced the base return on equity for MISO transmission projects to 9.88 percent.

construction costs as they are incurred through a customer bill rider. Minn. Stat. § 216B.16, subd. 7b (2018). The costs and revenues of a new transmission line project typically are not included in a utility's general rate base until the transmission line has been put into service. *See* Minn. Stat. § 216B.16, subd. 6 (2018). A TCRR allows a utility to recover transmission construction costs before filing a new general retail rate case following the completion of construction and placement of the transmission line into service. *Id.* Otter Tail's 2012 petition for a TCRR listed 12 transmission projects, including the Big Stone Lines. Otter Tail subsequently amended the petition and removed nine of the transmission projects from consideration, including the Big Stone Lines. In 2013, the MPUC approved Otter Tail's request for a TCRR for the three remaining transmission projects.

In 2016, Otter Tail filed this general rate case with the MPUC, seeking an annual-rate increase on its retail electricity rates of 9.8 percent per year to help offset company-wide investment costs. Otter Tail asserted that the costs and revenues associated with the Big Stone Lines should not be considered when setting the retail rates.

During the course of the administrative proceedings, the MPUC took a position that differed from Ottertail's position with regard to the Big Stone Lines. Because the lines had not yet become used and useful during the test year of the current rate case (2016), the MPUC declined to incorporate the costs and revenues of the Big Stone Lines into Otter Tail's retail base rates. *See generally* Minn. Stat. § 216B.16, subd. 6 (providing that "the commission shall give due consideration to evidence of the cost of the property when first devoted to public use" and that until a new transmission line is put into service, it is not considered "utility property used and useful in rendering service to the public" and so cannot be put into the retail base rate to earn a "fair and reasonable return on investment"). The MPUC, however, claimed that it could require Otter Tail to amend the TCRR approved in 2013 to include the costs and revenues of the Big Stone Lines.

The MPUC referred the rate case to the Office of Administrative Hearings. On January 5, 2017, an administrative law judge concluded that Minnesota's TCRR statute does not authorize the MPUC to direct Otter Tail to include the Big Stone Lines in the existing TCRR.[3] The administrative law judge determined that "the statutory text [of the TCRR statute] makes clear that development of [transmission] cost adjustments is a voluntary process, initiated by formal request from the utility. The statute cannot be fairly read to authorize TCRR coverage of projects over a utility's objection."

On review, the MPUC disagreed with the administrative law judge's recommendation and concluded that it had statutory authority to compel Otter Tail to account for the costs and revenues of the Big Stone Lines under Minn. Stat. § 216B.16, subd. 7b(b)(2)–(3). The MPUC reasoned that, by filing a general rate case, Otter Tail "invite[d]" the MPUC to evaluate all the utility's costs and revenues and that it could use

[3] The administrative law judge also concluded that the Federal Power Act preempted the MPUC from including costs and revenues of the Big Stone Lines in the base rate and recommended that the MPUC exclude those costs and revenues from Otter Tail's retail ratemaking case. But the MPUC disagreed with the administrative law judge's recommendation, asserting that it retains the express and exclusive authority to set retail rates for the intrastate sale of electricity. On certiorari review, the court of appeals reversed the MPUC's order and held that section 219 of the Federal Power Act preempts the MPUC from considering the Big Stone Lines' costs and revenues in the retail ratemaking proceeding. *See In re Otter Tail Power Co.*, No. A17-1300, 2018 WL 2770388, at *5 (Minn. App. June 11, 2018). We do not express an opinion on preemption for the reasons stated in this opinion.

all rate setting mechanisms—retail base rate authority and riders including the TCRR—to accomplish that purpose. Accordingly, the MPUC directed Otter Tail "to amend its petition in the currently pending TCRR docket to incorporate into its filing the costs and revenues related to the [Big Stone] Lines."

The court of appeals reversed the MPUC and held that Minnesota's TCRR statute limits the MPUC's authority to regulating "Minnesota jurisdictional costs net of associated revenues," a category to which the Big Stone Lines do not belong. *See In re Otter Tail Power Co.*, No. A17-1300, 2018 WL 2770388, at *6 (Minn. App. June 11, 2018) (citation omitted) (internal quotation marks omitted). We granted the MPUC's petition for review.

ANALYSIS

A.

The question before us is whether the MPUC has authority to order Otter Tail to include the costs and revenues of the Big Stone Lines in its existing TCRR in this proceeding. "Whether an administrative agency has acted within its statutory authority is a question of law that we review de novo." *In re Hubbard*, 778 N.W.2d 313, 318 (Minn. 2010).

"The MPUC, as a creature of statute, only has the authority given it by the legislature. 'The legislature states what the agency is to do and how it is to do it.' " *Minnegasco v. Minn. Pub. Utils. Comm'n*, 549 N.W.2d 904, 907 (Minn. 1996) (quoting *Peoples Nat. Gas Co. v. Minn. Pub. Utils. Comm'n*, 369 N.W.2d 530, 534 (Minn. 1985)). An agency's authority may be stated either expressly in statute or implied from the express powers given to the MPUC by the Legislature. *See Hubbard*, 778 N.W.2d at 318. Express authority exists only where a statute unambiguously grants the MPUC such authority. *See id*. at 320. " 'While express statutory authority need not be given a cramped reading, any enlargement of express powers by implication must be fairly drawn and fairly evident from the agency objectives and powers expressly given by the legislature.' " *Minnegasco,* 549 N.W.2d at 906–07 (quoting *Peoples Nat. Gas Co.,* 369 N.W.2d at 534).

The MPUC claims authority under Minn. Stat. § 216B.16, subd. 7b(b), to force Otter Tail to amend its 2013 TCRR to include the Big Stone Lines. But the plain language of section 216B.16, subdivision 7b(b), does not expressly grant such power. Instead, the statute provides that, *"[u]pon filing by a public utility or utilities providing transmission service*, the commission may approve, reject, *or modify* . . . a tariff." Minn. Stat. § 216B.16, subd. 7b(b) (emphasis added). Further, Minn. Stat. § 216B.16, subd. 7b(c), states that "[a] public utility *may* file annual rate adjustments to be applied to customer bills paid under the tariff approved in [section 216B.16, subdivision 7b(b)]." *See also* Minn. Stat. § 645.44, subd. 15 (2018) (" 'May' is permissive."). Based on the plain language of the statute, we conclude that the Minnesota Legislature created the TCRR as an optional financial tool available to a utility upon request. Certainly, nothing in Minn. Stat. § 216B.16, subd. 7b, expressly authorizes the MPUC to compel or require a utility to use or modify a TCRR.

The MPUC also claims broad authority under Minn. Stat. § 216A.05, subd. 5 (2018), to require Otter Tail as part of the current general rate case to amend its existing TCRR to include the Big Stone Lines. Section 216A.05, subd. 5, provides:

> With respect to those matters within its jurisdiction the commission shall receive, hear, and determine all petitions filed with it in accordance with the rules of practice and procedure promulgated by the commission, and may

> investigate, hold hearings, and make determinations upon its own motion to the same extent, and in every instance, in which it may do so upon petition.

Otter Tail responds that the specific and later-adopted TCRR provision in Minn. Stat. § 216B.16, subd. 7b, which expressly leaves modification of the TCRR to the discretion of the utility, controls over the general language of section 216A.05, subdivision 5. *See Connexus Energy v. Comm'r of Revenue*, 868 N.W.2d 234, 242–43 (Minn. 2015) (applying the canon that, when a conflict exists between two statutory provisions, the specific provisions in a statute control the general provisions to hold that the statutory limitations period specific to erroneous refunds applied rather than the more general statutory limitations period).

We agree with Otter Tail. Once again, the TCRR statute, first enacted in 2005, is a voluntary mechanism designed by the Legislature to allow a utility to request the recovery of construction costs before a transmission asset is placed into service. The express language of the statute gives the utility the discretion to seek early recovery of the costs for a particular transmission line. Section 216A.05, subdivision 5, was enacted in 1967, long before the TCRR statute was enacted, and on its face does not address TCRRs. We conclude that the MPUC's generic powers in section 216A.05, subdivision 5, do not control over the specific legislative directive in the TCRR statute. *Connexus Energy*, 868 N.W.2d at 242–43; *see also* Minn. Stat. § 645.26, subd. 4 (2018) ("When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail.”).[4]

We find further support in our precedent on implied statutory authority, where we state that we are “reluctant to find implied statutory authority.” *In re N. States Power Co.*, 414 N.W.2d 383, 387 (Minn. 1987). As we explained in *In re Qwest's Wholesale Service Quality Standards*, “if nothing more than a broad grant of authority were needed to show that implied authority could be fairly drawn from the statutory scheme, the implied authority would be present in all cases in which the agency had a broad grant of authority,” and we declined to adopt such a “sweeping rule.” 702 N.W.2d 246, 261 (Minn. 2005). We also stated that “any doubt about the existence of an agency's authority [is resolved] against the exercise of such authority.” *Id.* at 259. For the reasons stated above, broad general authority under Minn. Stat. § 216A.05, subd. 5, to “make determinations upon its own motion” does not grant the MPUC implied authority to compel the use of a TCRR over a utility's objection.

Accordingly, the MPUC's order requiring Otter Tail to include its costs and revenues from the Big Stone Lines in the existing TCRR must be reversed.

B.

Otter Tail also argues that the MPUC is preempted by federal statute and FERC tariffs from considering the costs and revenues of the Big Stone Lines when setting Otter

---

4 It seems an odd result procedurally to use in the proceeding before us the TCRR statute to achieve through the backdoor the capture of the costs and revenues of the Big Stone Lines for retail rate calculations when the agency itself disavowed any such power under its general ratemaking authority in this very proceeding

Tail's Minnesota retail rates. We have just held that the MPUC does not have authority in this proceeding to compel Otter Tail to include the Big Stone Lines in the TCRR. Further, the MPUC expressly declined to incorporate the Big Stone Lines' costs and revenues in setting base rates in this proceeding, noting that the Big Stone Lines had not yet become used and useful during the test year of the current rate case. Accordingly, the MPUC lacks statutory authority to include the costs and revenues of the Big Stone Lines in the current general retail rate case. We need not consider whether federal law preempts state authority that does not exist under the circumstances presented in this case. Accordingly, we express no opinion on whether the MPUC is preempted by federal statute and FERC tariffs from considering the costs and revenues of the Big Stone Lines when setting Otter Tail's Minnesota retail rates.[5]

---

[5] Otter Tail moved to strike portions of the MPUC's reply brief under Minn. R. Civ. App. P. 127 and 128.02, subd. 4. Specifically, Otter Tail takes issue with the MPUC's reference and argument regarding a jurisdictional cost of service study (JCOSS); it argues that because neither Otter Tail nor the MPUC relied on the JCOSS in its opening briefs, and because the MPUC had not referenced the JCOSS before, it should be stricken from its reply brief. The MPUC, in response, contends that the arguments in its reply brief are in its opening brief (albeit indirectly) and that the JCOSS is record evidence rebutting Otter Tail's claims.

We have held that when a party fails to raise an argument in its opening brief, and the responding party does not do so in its own brief, the initial party is precluded under Minn. R. Civ. App. P. 128.02, subd. 4, from raising that issue in its reply brief. *See State v. Yang*, 774 N.W.2d 539, 558 (Minn. 2009). Here, the JCOSS is referenced by testimony in the record, and the MPUC cites to that testimony indirectly and in a footnote in its opening brief (although it does not identify it as JCOSS testimony). Moreover, none of our conclusions relies on the materials that Otter Tail seeks to strike. Therefore, we deny Otter Tail's motion to strike.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

ANDERSON, J., took no part in the consideration or decision of this case.

OTTER TAIL POWER COMPANY
Docket No: E017/M-18-748

Response to: MN Department of Commerce
Analyst: Mark Johnson
Date Received: May 28, 2020
Date Due: June 8, 2020
Date of Response: June 8, 2020
Responding Witness: Bryce C. Haugen, Supervisor Regulatory Analysis, 218 739-8385

Information Request:

In its initial filing on November 30, 2018, OTP provided summaries of its proposed annual revenue requirements with and without the BSAT projects in Attachments 2B and 2A. In the May 7, 2020 filing, OTP only provided a summary of its proposed annual revenue requirements without the BSAT projects in Attachment 2. Please provide a summary of the annual revenue requirements with the BSAT projects in the same format as provided in Attachment 2 of the May 7, 2020 filing. Please be sure to include half the tracker balance just as OTP did in Attachment 2.

Attachments: 1

Attachment 1 to IR MN-DOC-004.pdf

Response:

Otter Tail provides Attachment 1 to IR MN-DOC-004, which includes the BSAT projects in the tracker as well as one-half of the $10.1 million December 2020 tracker balance[1] for the 2021 recovery period.

---

[1] As noted on page 3 and as shown in Attachment 4, Page 5 of 6, Line 29 of Otter Tail's May 7, 2020 Reply Comments, the forecasted December 2020 tracker balance after implementing the Supreme Court's ruling is projected to be $13.4 million. The difference between the forecasted December 2020 tracker balance shown in Attachment 4 to Otter Tail's May 7, 2020 Reply Comments and the amount used to prepare Attachment 1 to IR MN-DOC-004 ($3.25 million) is attributable to the removal of the BSAT Project revenue requirement and MISO revenues and expenses associated with Otter Tail's investments in the projects from January 1, 2016 forward.

Otter Tail Power Company
Transmission Cost Recovery Rider
Minnesota

Summary of Revenue Requirements
Includes one-half of Dec 2020 tracker balance

Line No.	Revenue Requirements	January 2021 - December 2021
1	Lake Norden Area Transmission Project	901,313
2	Rugby 41.6 kV Breaker Station	43,000
3	Granville Junction Breaker Station	23,779
4	MVP: Big Stone Area Transmission - Brookings	$3,353,753
5	MVP: Ellendale to Big Stone South	$5,997,956
6	Schedule 26 Expense	6,279,366
7	Schedule 26A Expense	4,327,935
8	Schedule 26 Revenue	(6,988,550)
9	Schedule 37 & 38 Revenue	(174,114)
10	Schedule 26A Revenue	(11,705,987)
11	MVP ARR Revenue	(15,693)
12	Carrying Cost	627,217
13	True-Up	5,062,238 [1]
14	Net Revenue Requirement	$7,732,214

[1] One-half of the December 2020 true-up balance of $10,124,476

CERTIFICATE OF SERVICE

I, Linda Chavez, hereby certify that I have this day served copies of the following document on the attached list of persons by electronic filing, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

MINNESOTA DEPARTMENT OF COMMERCE – RESPONSE COMMENTS TO REPLY COMMENTS

Docket Nos. **E017/M-18-748**

Dated this **14th** day of **August, 2020**.

/s/Linda Chavez
____

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Christopher	Anderson	canderson@allete.com	Minnesota Power	30 W Superior St Duluth, MN 558022191	Electronic Service	No	OFF_SL_18-748_M-18-748
Ray	Choquette	rchoquette@agp.com	Ag Processing Inc.	12700 West Dodge Road PO Box 2047 Omaha, NE 68103-2047	Electronic Service	No	OFF_SL_18-748_M-18-748
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-748_M-18-748
James C.	Erickson	jericksonkbc@gmail.com	Kelly Bay Consulting	17 Quechee St Superior, WI 54880-4421	Electronic Service	No	OFF_SL_18-748_M-18-748
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_18-748_M-18-748
Jessica	Fyhrie	jfyhrie@otpco.com	Otter Tail Power Company	PO Box 496 Fergus Falls, MN 56538-0496	Electronic Service	Yes	OFF_SL_18-748_M-18-748
Bruce	Gerhardson	bgerhardson@otpco.com	Otter Tail Power Company	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_18-748_M-18-748
Bryce	Haugen	bhaugen@otpco.com	Otter Tail Power Company	215 S Cascade St P.O. Box 496 Fergus Falls, MN 56538	Electronic Service	No	OFF_SL_18-748_M-18-748
Shane	Henriksen	shane.henriksen@enbridge.com	Enbridge Energy Company, Inc.	1409 Hammond Ave FL 2 Superior, WI 54880	Electronic Service	No	OFF_SL_18-748_M-18-748
Richard	Johnson	Rick.Johnson@lawmoss.com	Moss & Barnett	150 S. 5th Street Suite 1200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-748_M-18-748

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W Farmington, MN 55024	Electronic Service	No	OFF_SL_18-748_M-18-748
James D.	Larson	james.larson@avantenergy.com	Avant Energy Services	220 S 6th St Ste 1300 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-748_M-18-748
Kavita	Maini	kmaini@wi.rr.com	KM Energy Consulting, LLC	961 N Lost Woods Rd Oconomowoc, WI 53066	Electronic Service	No	OFF_SL_18-748_M-18-748
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-748_M-18-748
David G.	Prazak	dprazak@otpco.com	Otter Tail Power Company	P.O. Box 496 215 South Cascade Street Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_18-748_M-18-748
Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_18-748_M-18-748
Larry L.	Schedin	Larry@LLSResources.com	LLS Resources, LLC	332 Minnesota St, Ste W1390 St. Paul, MN 55101	Electronic Service	No	OFF_SL_18-748_M-18-748
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th Pl E Ste 350 Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-748_M-18-748
Cary	Stephenson	cStephenson@otpco.com	Otter Tail Power Company	215 South Cascade Street Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_18-748_M-18-748
Stuart	Tommerdahl	stommerdahl@otpco.com	Otter Tail Power Company	215 S Cascade St PO Box 496 Fergus Falls, MN 56537	Electronic Service	Yes	OFF_SL_18-748_M-18-748