

September 23, 2016

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7th Place East, Suite 350  
St. Paul, Minnesota 55101

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E017/PA-16-441

Dear Mr. Wolf:

Attached are the Response Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

A Petition of Otter Tail Power Company (Otter Tail, OTP or the Company) for Approval of Transfer of Property.

Reply Comments were filed on June 30, 2016 by:

Mark B. Bring  
Associate General Counsel  
Otter Tail Power Company  
215 South Cascade Street, PO Box 496  
Fergus Falls, MN 56538-0496

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve** the transfer of property and require Otter Tail to file its accounting entries for the purchase of the transmission facilities within 60 days of the close of the transaction.

Sincerely,

/s/ BEN KAMARA  
Financial Analyst

BK/lt  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

RESPONSE COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE  
DIVISION OF ENERGY RESOURCES

DOCKET NO. E017/PA-16-441

**I. BACKGROUND AND SUMMARY**

On May 20, 2016, Otter Tail Power Company (Otter Tail, OTP or the Company) filed a petition pursuant to Minnesota Statutes § 216B.50, and Minnesota Rules, parts 7825.1700 and 7825.1800, with the Minnesota Public Utilities Commission (Commission) requesting approval of transfer of property. Specifically, the Company seeks to acquire approximately 3.5 miles of electric transmission facilities in Moody County, South Dakota from Northern States Power Company (NSPM).

On June 20, 2016, the Department recommended denial of OTP's petition without prejudice due to lack of sufficient information in its initial filing to satisfy the requirements of the statutes and rules that govern such transactions. The Department identified the following missing information:

1. An agreed upon purchase price and the terms for payment;
2. A detailed description of the method, and all supporting documents, used in determining the original cost of such property, including the depreciation and amortization reserves, as required by Minnesota Rules, part 7825.1800, subpart C;
3. Supporting documents of the cost estimate for conductor removal; and
4. The reasons for the transaction.

Due to the missing information, the Department was not able to make a determination as to whether the proposed transaction would be consistent with the public interest.

On June 30, 2016, Otter Tail filed its Reply Comments providing additional details and supporting documents regarding its petition. The Department provides its analysis of OTP's proposal below.

## II. DEPARTMENT ANALYSIS

The Department's analysis focuses on the following:

- Statutes and Rules;
- Analysis of the transfer of property and estimated accounting entries; and,
- Public interest

### A. STATUTES AND RULES

#### 1. *Statutory Requirements*

Minnesota Statutes § 216B.50, subd. 1, governs the Commission's review of the proposed transfer of property petition. The applicable part of the statute reads:

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

The Department considers the transfer of property (transmission facilities) between OTP and NSPM to fall under the purview of the Commission, under Minnesota Statutes § 216B.50 and corresponding Minnesota Rules, parts 7825.1600 and 1800. The Department considers the primary issue in this petition to be whether the transfer of property between OTP and NSPM is consistent with the public interest.

The Department discusses this issue further below.

#### 2. *Filing Requirements*

Minnesota Rules, part 7825.1800 contains the filing requirements for petitions to acquire property, as follows:

- A. Petitions for approval of a merger or of a consolidation shall be accompanied by the following: the petition signed by all parties;

all information, for each public utility, as required in parts 7825.1400 and 7825.1500; the detailed reasons of the petitions and each party for entering into the proposed transaction, and all facts warranting the same; the full terms and conditions of the proposed merger or consolidation.

- B. Petitions for approval of a transfer of property shall be accompanied by the following: all information as required in part 7825.1400, items A to J; the agreed upon purchase price and the terms for payment and other considerations.
- C. A description of the property involved in the transaction including any franchises, permits, or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.
- D. Other pertinent facts or additional information that the commission may require.

Minnesota Rules, part 7825.1800, subparts B, C and D above specifically address the issue of transfer of property. Otter Tail has now provided the information required by Minnesota Rules, part 7825.1800 subparts B, C and D in its Reply Comments.

Minnesota Rules, part 7825.1400, items A to J are filing requirements for capital structure approval, however, as noted above, are also content requirements for property transfer proposals.

- A. A descriptive title.
- B. A table of contents.
- C. The exact name of the petitioner and address of its principal business office.
- D. Name, address, and telephone number of the person authorized to receive notices and communications with respect to the petition.
- E. A verified statement by a responsible officer of the petitioner attesting to the accuracy and completeness of the enclosed information.
- F. The purpose for which the securities are to be issued.
- G. Copies of resolutions by the directors authorizing the petition for the issue or assumption of liability in respect to which the petition is made; and if approval of stockholders has been obtained, copies of the resolution of the stockholders shall be furnished.
- H. A statement as to whether, at the time of filing of the petition, the petitioner knows of any person who is an "affiliated interest" within the meaning of Minnesota Statutes, section 216B.48, subdivision 1, who has received or is entitled to receive a fee for services in connection with the negotiations or consummation of the issuance of the securities, or

for services in securing underwriters, sellers, or purchasers of the securities.

- I. A signed copy of the opinion of counsel in respect to the legality of the issue or assumption of liability.
- J. A balance sheet dated no earlier than six months prior to the date of the petition together with an income statement and statement of changes in financial position covering the 12 months then ended. When the petitions include long-term securities, such statements shall show the effects of the issuance on such balance sheet and income statement.

Regarding the above filing requirements in parts A to J, the Department notes that not all of filing requirements are relevant in this case. Otter Tail addressed the applicable requirements by providing sufficient details in its Reply Comments.

Based on its review, the Department concludes that Otter Tail provided the substantial information required by Minnesota Rules, Part 7825.1800 in its filings.

### 3. *Other Required Regulatory Approvals*

On September 8, 2016, Otter Tail responded to the Department's informal requests for clarification on some items in its filing and reply comments.<sup>1</sup> As a result, the Department learned that the Federal Energy Regulatory Commission (FERC) approved the proposed transfer of property on July 22, 2016 in Docket No. EC16-120-0000<sup>2</sup> with the relevant requirement being FERC's order point 9 for purposes of Minnesota:

Otter Tail shall account for the Proposed Transaction in accordance with Electric Plant Instruction No. 5, Electric Plant Purchased or Sold and, Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. Otter Tail shall submit the final accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transfer along with narrative explanations describing the basis for the entries.

Based on the Department's review and confirmation by the Company, it appears that Otter Tail has made all necessary filings to state and federal agencies.<sup>3</sup>

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<sup>1</sup>See DOC Attachment No. 1.

<sup>2</sup> The Department has attached to these comments FERC's Order approving the transmission acquisition as DOC Attachment No. 2.

<sup>3</sup> Confirmed by the Company via email.

**B. ANALYSIS OF TRANSFER OF PROPERTY AND ESTIMATED ACCOUNTING ENTRIES**

On Page 6 of its Reply Comments, Exhibit A, the Asset Purchase Agreement entered into by Northern States Power Company and Otter Tail Power Company on December 22, 2015, identifies the terms and conditions of the transfer of property transaction. The agreement noted that, the purchase price “shall be based on the net book amount of the Purchased Assets, as of the date of closing, less Forty Thousand Dollars (\$40,000).”<sup>4</sup> Based on information provided in the Company’s original filing, as of December 31, 2015, the estimated payments are:<sup>5</sup>

Description	Amount
Electric Transmission Facilities	\$1,177,378.75
Easements	0 <sup>6</sup>
Depreciation & Amortization	-676,451.32
<b>Net Book Value</b>	<b>\$500,927.43</b>
Cost to Remove Xcel’s Conductor	-40,000.00
<b>Purchase Price</b>	<b>\$460,927.43</b>

The Department reviewed the information provided to OTP by NSPM, and concluded that the original cost of the 3.5 miles Electric Transmission Facilities was \$1,177,378.75 and the accumulated depreciation was \$676,451.32, resulting in a net book value of \$500,927.43. The Department notes that OTP’s initial filing indicated \$43,401.00 for Easements, however, in response to the Department’s informal information request, OTP clarified that Easement costs are not included in the acquisition cost. The reduction of \$40,000.00 is to cover the cost of Otter Tail to remove NSPM’s de-energized conductor. Due to accounting standards, accumulated depreciation will be adjusted based on the actual value as of the closing date of the transaction, as noted by the Company in response to informal information request no. 3.

As noted above, FERC required OTP to account for this purchase of transmission facilities in accordance with FERC Electric Plant Instruction No. 5, and FERC Account 102. The Department notes that this would require the Company to include the purchase of transmission facilities in FERC Account 101, Electric Plant in Service, the accumulated depreciation related to the transmission facilities in FERC Account 108, Accumulated Provision for Depreciation of Electric Utility Plant, and the net book value (Account 101 less 108) to Account 102, Electric Plant Purchased or Sold. The Department recommends that the Commission require that final journal entries and amounts related to the transfer, including narrative explanations describing the basis for the entries, be submitted by Otter Tail as a compliance filing within 60 days of the close of the transaction. The Department also recommends that OTP include proposed journal entries and clear descriptions of the purchase price in future purchase and sale of facilities filings.

<sup>4</sup> Reply Comments, Exhibit A Page 6.

<sup>5</sup> Pages 5 - 6 of Filing.

<sup>6</sup> See DOC Attachment 1.

**C. PUBLIC INTEREST**

Otter Tail asserted that the acquisition of the property is consistent with the public interest.”<sup>7</sup> According to the Company, NSPM’s conductor is de-energized therefore is no longer in use by NSPM. Otter Tail’s 41.6 kilovolt conductor is co-located on the NSPM facilities and is currently in use. The Company indicated that the purchase of NSPM’s facilities at a price of less than \$500,000 (the adjusted net book amount will be lower at closing) would allow Otter Tail to avoid the cost associated with acquiring new rights-of-way and building approximately six to eight miles of new 41.6 kilovolt facilities at a cost of approximately \$250,000 to \$300,000 per mile (\$1.5 to \$2.4 million) through the same general area (compared with the approximately 3.5 mile-length of the current facilities). The Company noted that additional mileage would be necessary for a new facility due to avoidance of wetland areas. For all these reasons, OTP concluded that the acquisition of the property is in the public interest.<sup>8</sup>

The Department agrees with the Company that building new transmission facilities would result in a higher cost impact to the Company’s customers therefore, purchasing these facilities will minimized such impact. Additionally, the Department has reviewed the reasons for the purchase of the transmission facilities and concludes that the purchase of transmission facilities in Moody, County South Dakota from NSPM is consistent with the public interest. Based on our review we recommend the Commission approve the transfer of property between OTP and NSPM.

**III. CONCLUSIONS AND RECOMMENDATIONS**

The Department concludes that Otter Tail Power Company has provided the information required by Minnesota Rules, part 7825.1800 subparts B, C and D in its filing and reply comments. As in past proceedings, the Department agrees that information required by Minnesota Rule 7825.1400 (as referenced by Minnesota Rule 7825.1800 subpart A) relates to capital structure filings and is not applicable to the Transfer of Property petition. As a result, the Department recommends that the Commission grant OTP a waiver, if needed, regarding the filing requirements of Minnesota Rules, part 7825.1400.

Based on the Department’s review it appears that Otter Tail has made all necessary filings with state and federal agencies.

Based on the Department’s review we consider the Asset Purchase Agreement to be reasonable and consistent with the public interest.

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<sup>7</sup> Reply Comments, Page 4.

<sup>8</sup> Reply Comments, Page 3.

Therefore, the Department recommends that the Commission approve the transfer of property between Northern States Power Company and Otter Tail Power Company.

The Department also recommends that the Commission require final journal entries and amounts related to the transfer, including narrative explanations describing the basis for the entries, be submitted by Otter Tail as a compliance filing within 60 days of the close of the transaction.

/lt



**From:** [MBring@otpco.com](mailto:MBring@otpco.com)  
**To:** [Kamara, Ben \(COMM\)](#)  
**Cc:** [Campbell, Nancy \(COMM\)](#)  
**Subject:** RE: Otter Tail's docket# 16-441 Questions  
**Date:** Thursday, September 08, 2016 3:15:34 PM

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Dear Mr. Kamara,

Responses are provided in the body of your e-mail (below). Please let me know whether additional clarification or information is needed.

Thank you for your attention to this matter.

Sincerely,

Mark

**Mark B. Bring**

Otter Tail Power Company | Director of Legislative Affairs & Associate General Counsel  
p: 218.739.8922 | c: 701.306.0665 | f: 218.998.3165 | e: [mbring@otpco.com](mailto:mbring@otpco.com)



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**From:** Kamara, Ben (COMM) [<mailto:Ben.Kamara@state.mn.us>]  
**Sent:** Wednesday, September 07, 2016 11:45 AM  
**To:** Bring, Mark  
**Cc:** Campbell, Nancy (COMM)  
**Subject:** Otter Tail's docket# 16-441 Questions

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Dear Mr. Bring,

The Department would like to get some clarifications on couple of items related to Otter Tail's Request for Approval of Transfer of property in docket # 16-441.

1. Please complete the table below and clarify the differences between the Oct. 31 2015 numbers the Company provided in its reply comments and the Dec. 31 2015 numbers it provided in its original filing:

Description	10/31/2015 Amount	12/31/2015 Amount
Electric Trans Facilities	<b>\$1,177,378.75</b>	\$1,177,378.75
Easements	<b>\$0</b>	43,401.00
Depreciation & Amortization	<b>-\$673,697.33</b>	-676,451.32
Net Book Value	<b>\$503,681.42</b>	<b>\$544,328.43</b>

The aggregate purchase price of the property will be the net book value of the electric transmission facilities as of the date of closing, minus \$40,000 to cover the approximate cost of Otter Tail's removal of NSP's de-energized conductor. Under the agreement reached with NSP, the net book value of the electric transmission facilities does not include NSP's easement acquisition costs. This accounts for approximately \$43,000 of the difference in the table you provided. Depreciation over two months also factors into the difference in the table. There will be additional depreciation if and when the Commission approves the purchase and the transaction closes.

2. Please provide the docket number for Otter Tail's Federal Energy Regulatory Commission (FERC) proceeding and provide a brief description of the status of that proceeding at FERC.

The FERC docket number is EC16-120-0000. FERC authorized acquisition of the facilities by written order dated July 22, 2016.

3. What is the Company's expected closing date for this purchase, and will the valuation of the assets be based on the closing date?

Regulatory approvals by both FERC and the Commission are conditions precedent to Otter Tail's purchase obligation. The closing date is entirely dependent upon receipt of a Commission order authorizing acquisition of the facilities and the time frame such an order is issued. Closing would likely occur within 30 days of the Commission's order authorizing acquisition of the facilities.

The assets will be valued as of the date of closing. As reflected in section 2.03 of the Asset Purchase Agreement (attached as Exhibit A to Otter Tail's June 30, 2016 reply comments), the aggregate purchase price will be based upon the net book value of the purchased assets (i.e., the electric transmission facilities) as of the date of closing, less \$40,000 (i.e., the approximate cost to remove NSP's de-energized conductor).

The Department would appreciate the Company's reply by next Wednesday September 14<sup>th</sup> 2016 or sooner.

Thank you,

**Ben Kamara**

Public Utilities Financial Analyst  
Minnesota Department of Commerce

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