

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

Katie Sieben	Chair
Joseph Sullivan	Vice-Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of Otter Tail Power Company's
2022–2036 Integrated Resource Plan

DOCKET NO. E-017/RP-21-339

**REPLY COMMENTS OF THE OFFICE
OF THE ATTORNEY GENERAL**

INTRODUCTION

The Office of the Attorney General—Residential Utilities Division (“OAG”) respectfully submits these Reply Comments in response to the initial comments of the Minnesota Department of Commerce (“the Department”) and the Clean Energy Organizations (“CEOs”) on Otter Tail Power Company’s (“Otter Tail” or “the Company”) proposed resource plan. The OAG’s initial comments explained that Otter Tail has failed to establish the reasonableness of its proposals to (1) keep its ownership share of the Coyote Station power plant past 2028 and (2) develop the capability to store and burn liquified natural gas at its Astoria Station peaking plant (“Astoria dual-fuel proposal”). The purpose of these Reply Comments is twofold—first, to describe how the CEOs’ initial comments support the OAG’s recommendations regarding Coyote Station and Astoria Station and, second, to recommend that the Commission adopt the Department’s proposal for a competitive-bidding process.

ANALYSIS

I. THE CLEAN ENERGY ORGANIZATIONS SUPPORT EXITING COYOTE STATION BY 2028.

The CEOs’ experts conducted their own comprehensive modeling to explore alternative scenarios that could cost-effectively meet customers’ energy and capacity needs over the planning

period. The CEOs' analysis led them to recommend an alternative to the Company's plan. The CEOs developed their alternative plan in two steps. First, they made changes to Otter Tail's modeling to incorporate current information, correct errors, and use "more supportable methodological choices."¹ Then, they reran the model to develop a resource plan that could meet the energy and capacity requirements that Otter Tail used in its modeling, including consideration of MISO's seasonal capacity construct.² The CEOs dispatched their plan against the same 8,760-hour load profile as Otter Tail to ensure that it could economically meet these hourly energy requirements throughout the planning period.³

The CEOs' modeling underscores what Otter Tail's own modeling has already shown—that its customers' needs can be met cost-effectively without Coyote Station. The CEOs' plan would have Otter Tail exit both its coal-fired power plants—Coyote Station by 2028 and Big Stone by 2030—replacing their energy and capacity with new solar generation, wind generation, and battery storage.⁴ Thus, while the CEOs' recommendations are more expansive than the OAG's, their comments are consistent with the OAG's conclusion that it is not in the public interest for the Otter Tail to retain its share of Coyote Station beyond 2028.

The CEOs recommend that the Commission authorize Otter Tail to give contractual notice of its intent to withdraw to Coyote Station's co-owners without deciding whether the Company needs such authority. The OAG agrees with this recommendation. The OAG also supports two additional CEO recommendations related to Coyote Station—namely, that the Commission require Otter Tail to:

¹ See CEO Comments at 42–45 (Sept. 13, 2023).

² *Id.* at 42.

³ *Id.*

⁴ See *id.* at 49 tbl.4.

1. Request an Attachment Y-2 study from MISO and file it in this docket and with the Company's next Minnesota IRP or by March 1, 2026, at the latest; and
2. Assess the value of reusing the Company's interconnection rights at Coyote Station and submit that assessment in this docket within 12 months of the Commission's order.⁵

These requirements will be important if Otter Tail is unable to find a willing purchaser for its share of Coyote Station. In that event, the Company would need to give its co-owners notice of intent to terminate the plant's operating agreement, which may trigger the plant's retirement. When a generating facility is planned to be retired, an Attachment Y-2 study can provide important information about the transmission impacts of retiring the facility and whether it is needed as a system-support resource.⁶ Similarly, assessing the value of the interconnection rights at Coyote Station would help Otter Tail determine the best use of those rights when the facility retires.

II. THE CEOs SUPPORT DEFERRING A DECISION ON THE ASTORIA DUAL-FUEL PROPOSAL.

The OAG has recommended that the Commission not approve Otter Tail's Astoria dual-fuel proposal at this time. The CEOs likewise conclude that a decision on the proposal can wait until Otter Tail's next resource-plan proceeding, particularly given that the Company has two large, dispatchable coal plants with onsite fuel that it proposes to operate into the 2040s.⁷ These plants' continued presence on Otter Tail's system greatly lessens any need to enhance fuel assurance at Astoria Station.

The CEOs further recommend—consistent, again, with the OAG's comments⁸—that the Commission require Otter Tail to explore greater energy efficiency, demand flexibility, and

⁵ *Id.* at 41.

⁶ *Id.* at 39–40.

⁷ *See id.* at 91 (“It is conceivable that Otter Tail’s system may need or benefit from additional on-site fuel storage in the future once it no longer includes multiple large dispatchable generators. However, an assessment of the need for this ‘insurance policy’ is premature while Otter Tail still has multiple large dispatchable resources on its system—and plans to have these resources well into the 2040s.”).

⁸ *See* OAG Comments at 20 (Sept. 13, 2020) (recommending that Otter Tail explore energy-efficiency and weatherization investments as an alternative to the Astoria dual-fuel proposal).

energy-storage options before approving any major new investment in Astoria Station.⁹ Otter Tail is a leader among Minnesota utilities in demand-side management. As the CEOs state, however, there is always room for improvement, and Otter Tail did not consider potential expansions to its demand-side-management portfolio in evaluating alternatives to the dual-fuel proposal.¹⁰ Demand-side management is not a one-for-one replacement for the Astoria dual-fuel proposal, but it has many benefits, including reducing peak load and keeping customers safer for longer during extreme-weather power outages. Depending on specific parameters, moreover, demand-side management is likely to be lower cost than major supply-side investments. Accordingly, the Commission should require Otter Tail to assess, in any renewed proposal for dual-fuel upgrades at Astoria Station, the benefit-to-cost ratio of those dual-fuel upgrades and to compare it to the benefit-to-cost ratios of significantly increasing the Company's demand-side-management efforts.

III. THE DEPARTMENT'S COMPETITIVE-BIDDING RECOMMENDATION IS REASONABLE AND SHOULD BE APPROVED.

The resource-planning statute allows the Commission to authorize a competitive-bidding process for a utility to acquire resources to meet needs identified in its resource plan.¹¹ The Department recommends that the Commission approve a bidding process for Otter Tail's future resource acquisitions subject to eight conditions.¹² The Department's proposed conditions are consistent with those that the Commission has imposed on other utilities, and the Commission should likewise require them in any competitive-bidding process that Otter Tail uses to address resource needs identified in this case. Three of these conditions are particularly important to protect ratepayers and counter the incentives at play in utility resource acquisitions: (1) accepting

⁹ See CEO Comments at 92–93.

¹⁰ *Id.* at 93.

¹¹ See Minn. Stat. § 216B.2422, subd. 5.

¹² Department Comments at 35–36 (Sept. 13, 2023).

both power-purchase-agreement (“PPA”) and build–transfer proposals; (2) using a separate team and an independent auditor when a Company proposal is involved; and (3) capping the price of any offer Otter Tail makes under a right of first offer at net book value.

First, Otter Tail’s competitive resource-acquisition process should accept both PPA and build-transfer proposals. As profit-driven entities, investor-owned utilities have a natural incentive to increase the size of their rate base. Thus, all else equal, a utility will prefer to meet the needs identified in a resource plan through infrastructure investments rather than by purchasing an equivalent amount of energy and capacity through a PPA. Yet utility-owned generation is not always in ratepayers’ best interest. PPAs are often less expensive than utility-owned generation and they can include beneficial provisions that shift risks to the counterparty, typically an independent power producer.¹³ Therefore, to ensure the best possible price and most favorable terms for ratepayers, a competitive-bidding process should allow for both build–transfer proposals (projects whose ownership is transferred to the utility upon completion) and PPA proposals.

Second, the bidding process should include measures that prevent Otter Tail from gaining an unfair competitive advantage if it submits its own proposal(s). When a utility submits a proposal in response to its own solicitation, a conflict of interest arises. Absent other arrangements, the utility would be serving both as the sole judge of the process and as a competitor in it, with an interest in seeing its own proposal succeed. Additionally, absent other arrangements, the utility employees submitting the proposal would have access to information about the utility’s system that may provide a competitive advantage. Therefore, if Otter Tail or an affiliate submits a

¹³ See *In the Matter of Xcel Energy’s Petition for Approval of the Sherco Solar Project*, Docket No. E-002/M-20-891, OAG Comments at 4 (Apr. 30, 2021) (“PPAs—as compared to utility-owned generation—benefit ratepayers because they reduce costs in the early years of a project, limit operational risks, and can often reduce overall ratepayer cost. Including PPA proposals in a solicitation thus protects ratepayers by requiring utility self-build proposals and build–transfer proposals to compete against PPAs.”).

proposal, the Commission should require the Company to create separate teams to develop and submit the Company's project and to run the competitive bidding process. Further, the Commission should require Otter Tail to engage a neutral, independent auditor to oversee the bid process and provide a report for the Commission.

Finally, the Commission should protect ratepayers in the event that any PPAs proposed in response to an Otter Tail solicitation include "right of first offer" provisions. A right of first offer, or "ROFO," would allow Otter Tail the first opportunity to purchase the asset that is the subject of the PPA. When a utility and an independent power producer are negotiating to transfer assets from the power producer to the utility, both seller and buyer have an incentive to maximize the price. The power producer naturally wants to obtain the highest price possible, but the utility also benefits from a higher price by capitalizing the cost and earning a return of and on that cost from ratepayers. To protect ratepayers from these misaligned incentives, the Commission should cap any offer Otter Tail might make pursuant to a ROFO at the asset's net book value, as recommended by the Department.

CONCLUSION AND RECOMMENDATIONS

For the foregoing reasons, the Commission should take the following actions:

1. With regard to Coyote Station:
 - a. Find that Otter Tail has not proven that its continued participation in Coyote Station is in the public interest;
 - b. Authorize Otter Tail to give contractual notice of its intent to withdraw to Coyote Station's co-owners without deciding that the Company needs such authority or that its failure to give notice sooner was prudent;
 - c. Require Otter Tail to request an Attachment Y-2 study with MISO, and perform any transmission and reliability analysis that may be needed to evaluate the impacts of a potential Coyote retirement and any potential mitigations that may be needed. The Y-2 study should be filed in this docket and with the Company's next Minnesota resource plan, or by March 1, 2026, at the latest; and

- d. Require Otter Tail to assess the value of reusing the Company's interconnection rights at Coyote, and submit that assessment in this docket within 12 months of the Commission's order.
 2. With regard to Astoria Station:
 - a. Find that Otter Tail has not proven that its Astoria dual-fuel proposal is in the public interest; and
 - b. Require Otter Tail to assess, in any renewed proposal for dual-fuel upgrades at Astoria Station, the benefit-to-cost ratio of those dual-fuel upgrades and to compare it to the benefit-to-cost ratios of significantly increasing the Company's demand-side-management efforts.
 3. Adopt the Department's recommended competitive-bidding process as set forth on pages 33–36 of the agency's September 13, 2023 comments in this docket.

Dated: October 30, 2023

Respectfully submitted,

KEITH ELLISON
Attorney General
State of Minnesota

/s/ **Peter G. Scholtz**

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October 30, 2023

Mr. Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

Re: *In the Matter of Otter Tail Power Company's 2022–2036 Integrated Resource Plan*
MPUC Docket No. E-017/RP-21-339

Dear Mr. Seuffert:

Enclosed and e-filed in the above-referenced matter please find Reply Comments of the Minnesota Office of the Attorney General—Residential Utilities Division.

By copy of this letter all parties have been served. A Certificate of Service is also enclosed.

Sincerely,

/s/ **Peter G. Scholtz**

PETER G. SCHOLTZ

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CERTIFICATE OF SERVICE

Re: *In the Matter of Otter Tail Power Company's 2022–2036 Integrated Resource Plan*
MPUC Docket No. E-017/RP-21-339

I, JUDY SIGAL, hereby certify that on the 30th day of October, 2023, I e-filed with eDockets *Reply Comments of the Minnesota Office of the Attorney General—Residential Utilities Division* and caused a true and correct copy of the same to be served upon all parties listed on the attached service list by e-mail, electronic submission, and/or United States Mail with postage prepaid, and deposited the same in a U.S. Post Office mail receptacle in the City of St. Paul, Minnesota.

/s/ Judy Sigal
JUDY SIGAL

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