

July 6, 2020

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

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E017/M-19-530

Dear Mr. Wolf:

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

Petition of Otter Tail Power Company for Determination that Transmission Investments Are Eligible for Recovery through the Transmission Cost Recovery Rider.

The Petition was filed on August 16, 2019 by:

Lynn A. Wolters  
Rates Analyst, Regulatory Administration  
Otter Tail Power Company  
215 South Cascade Street  
Fergus Falls, Minnesota 56538-0496.

The Department recommends that the Minnesota Public Utilities Commission (Commission) **reject the petition**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ STEPHEN COLLINS  
Rates Analyst  
SC/ja  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E017/M-19-530

#### I. INTRODUCTION & SUMMARY OF DEPARTMENT ANALYSIS AND CONCLUSIONS

On August 16, 2019, Otter Tail Power Company (Otter Tail, OTP, or the Company) filed a petition requesting that the Minnesota Public Utilities Commission (Commission) determine that certain transmission projects are eligible for recovery through the Company's Transmission Cost Recovery (TCR) Rider (TCRR) under Minnesota Statutes section 216B.16, subdivision 7b (the TCR Statute), paragraph (a)(2). The petition also requests that the projects be deemed eligible for TCR Rider recovery as of January 1, 2020.

On September 9, 2019, the Minnesota Department of Commerce (Department) filed a request for an extension, noting in part that:

It is important to know whether the Minnesota Supreme Court will allow Otter Tail Power Company to "assign" any transmission project revenues away from the regulated utility to the Company's parent (shareholders), without requiring Otter Tail Power Company to demonstrate that such a transaction between affiliates meets the requirements of Minn. Stat. §216B.48, Relations with Affiliated Interest.<sup>1</sup> Understanding how this fundamental statute applies to Otter Tail Power Company and its TCRR is critical, particularly since an affiliated-interest petition is necessary even to understand how Otter Tail Power Company proposes to structure the relationship between the regulated retail component of the Company and the other part of its "corporation in which an operating division is a public utility."<sup>2</sup> Such information would affect cost and revenue allocations in the TCRR and Otter Tail Power Company's request as to whether transmission investments should be eligible to be charged to retail ratepayers in the TCRR.

<sup>1</sup> For example, Northern States Power, d/b/a Xcel Energy filed and received approval of an affiliated-interest agreement to establish a transmission affiliate that is not subject to the Commission's regulations in Docket No. E002/AI-14-759.

<sup>2</sup> Minnesota Statute §216B.48, subdivision 1 (9), defining an affiliated interest.<sup>1</sup>

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<sup>1</sup> Department's September 9, 2019 letter requesting an extension, page 2. The Department notes that the Minnesota Supreme Court made no determination regarding Minn. Stat. §216B.48.

On September 16, 2019, the Commission granted the Department's request for an extension of time until thirty days after the Minnesota Supreme Court rendered its opinion in Case No. A17-1300.

On April 22, 2020, the Minnesota Supreme Court issued its ruling, in Case No. A17-1300.

On May 7, 2020, in its reply comments in Docket No. E-017/M-18-748, OTP requested, among other things, that the procedural schedule for the TCRR and its request for a determination of eligibility for TCRR cost recovery for the projects in E017/M-19-539 be combined.

On May 22, 2020, the Commission granted the Department's request for a second extension of time until June 22, 2020 to file initial comments.

On June 4, 2020, the Commission issued a Notice of Combined and Extended Comment Period, stating that the due date for comments on the combined dockets was July 6, 2020.

On June 18, 2020, the Commission issued a Notice of Extended Comment period extending the deadline for filing initial comments in Docket No. E017/M-18-748 to August 14, 2020. The Department's comments in that docket will address the topics open for comment in the June 4, 2020 Notice of Combined and Extended Comment Period regarding the April 22, 2020 Minnesota Supreme Court ruling in Case No. A17-1300.

The Department provides below its analysis in E017/M-19-539. The Department notes that Otter Tail's request pertains only to the general nature of the projects, and not the exact amount to be recovered or the reasonableness of costs. The Company stated on page 1 of its petition that the Company would "seek approval to recover investments deemed eligible in this Docket in a separate filing." The Department will address this latter issue as needed in Docket No. E017/M-18-748.

## **II. DEPARTMENT ANALYSIS**

Otter Tail requested that the Commission determine TCR Rider eligibility for three projects, the Lake Norden Project, the Rugby Project, and the Granville Junction Project. The Department reviews each request below.

### *A. LAKE NORDEN PROJECT*

The Lake Norden project is 47 miles of new 115-kilovolt transmission line and associated upgrades to three existing substations, to accommodate increased demand at the Agropur cheese plant in Lake Norden, located in eastern South Dakota. The project was included in MISO's transmission expansion plan (MTEP) for 2018 (MTEP18), which was approved at the end of 2018. According to a MISO slide deck from August 29, 2018 for MISO's 3<sup>rd</sup> West Sub-Regional Planning Meeting, MISO found "no adverse system impact caused by the project" and that the project "can reliably serve the new load."

Otter Tail's petition states that "the current cost estimate for the Lake Norden Project is \$37.4 million (OTP Total), not including allowance for funds used during construction (AFUDC), with an estimated in-

service date of December 2020.” Otter Tail’s petition also states that the project has received the necessary permits from local authorities to construct the project. In addition, on February 20, 2019, the South Dakota Public Utilities Commission (SD PUC) issued an Order in Docket No. EL18-048 approving Otter Tail’s 2019 South Dakota TCR Rider. The Order approves Otter Tail’s request to recover 9.187% of the project’s revenue requirements from South Dakota ratepayers, based on the “D2” transmission demand jurisdictional allocation factor (see page 14 of Otter Tail’s October 31, 2018 petition in that docket). According to Exhibit SDT-1 of the February 16, 2016 Direct Testimony of Otter Tail witness Stuart D. Tommerdahl in Otter Tail’s most recent rate case (Docket No. E017/GR-15-1033), the D2 allocator “is determined based on contribution to Otter Tail’s average annual six-hour transmission peak kW [kilowatt] demand” and “any loads for which Otter Tail is responsible for providing transmission service are included in this factor.” Otter Tail uses the same D2 jurisdictional allocator to determine its proposed Minnesota recovery, which would result in a proposed 50.297% allocation of costs to Minnesota customers.

Otter Tail’s petition in the instant docket (E017/M-19-530) argues that “through these various approvals obtained from MISO and the several different agencies in South Dakota, the Lake Norden Project meets the requirements of Paragraph (a)(2) of the TCRR Statute and is therefore eligible for recovery through the TCRR.”

To determine the validity of Otter Tail’s argument, the Department reviewed paragraph (a)(2) of the TCR Statute, which states as follows:

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 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 to benefit the utility or integrated transmission system.** [emphasis added]

As stated in the paragraph cited above, the eligibility determination requested by Otter Tail depends on whether the project has “Minnesota jurisdictional costs net of associated revenues,” is for “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 the state,” and has been “determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system.”

The Department agrees with Otter Tail that the project has been approved by the regulatory commission of the state in which the new transmission facilities are to be constructed, evidently to the extent that approval is required by the laws of the state of South Dakota. Regarding any benefit to the integrated transmission system or Otter Tail’s Minnesota customers, the Department notes that MISO found “no adverse system impact caused by the project” but did not indicate that there would be any

benefit to the system as a whole or to Minnesota customers. Instead, MISO's determination said that the proposed facility "can reliably serve the new load" in South Dakota.

The lack of benefit to Minnesota customers is consistent with the purpose of the project being to serve increased load from a single large industrial customer in South Dakota. Based on this information, the Department concludes that MISO has not determined by that the Lake Norden Project benefits Otter Tail's Minnesota utility or integrated transmission system. Therefore, the project does not meet the requirements of Minn. Stat. §216B.16, subd. 7b to be eligible for TCR recovery.

### *B. RUGBY PROJECT*

The Rugby Project was included in the 2016 MTEP (MTEP16), which was approved in December 2016. Appendix D1 of the MTEP16 and Otter Tail's petition describe the project as the installation of new 41.6 kilovolt (kV) circuit breakers at the existing Rugby 230/115 kV substation, installed "to enhance reliability in the local area." Appendix D1 of the MTEP16 confirms this notion, stating, "the following projects [including the Rugby project as well as the Granville Junction project, which is discussed below] are being built to enhance reliability on the 41.6 kV system in North Dakota by adding sectionalizing capability, reducing exposure, and adding operational flexibility." Appendix D1 also states "while no MTEP modeling topology changes were required for these projects, the shifting of load from the BES [bulk electric system] perspective was reviewed by MISO and no system degradation was observed in the MTEP16 model series."

Otter Tail's petition states that Otter Tail received a Certificate of Public Convenience and Necessity from the North Dakota Public Service Commission (ND PSC) for the Rugby project and that the ND PSC approved cost recovery for the project. Given the approval by the ND PSC and inclusion in the 2016 MTEP, Otter Tail argues that the Rugby Project is also eligible for TCR Rider recovery in Minnesota under paragraph (a)(2) of the TCR Statute. Otter Tail's petition states that the project had an in-service date of July 2017 and total cost of \$1.8 million, of which Otter Tail is proposing to allocate 50.297% to Minnesota customers, again using the D2 transmission demand jurisdictional allocation factor.

The information above indicates that purpose of the Rugby Project is to enhance reliability in the local area rather than in Minnesota or in Otter Tail's integrated transmission system. As a result, the Department concludes that there are no Minnesota jurisdictional costs or benefits from the Rugby Project and that MISO has not determined by that the project benefits Otter Tail's Minnesota utility or integrated transmission system. Therefore, the Rugby project is ineligible for TCR recovery.

### *C. GRANVILLE JUNCTION PROJECT*

Per Otter Tail's petition, the Granville Junction project, also located in North Dakota, is "a new 41.6 kV breaker station at ... Granville Junction ... a junction point of three existing 41.6 kV transmission lines that come from Dunning Substation, Rugby Substation, and the Voltaire Substation." As noted above, along with the Rugby project, the Granville Junction project was approved in MTEP16, which described the project in Appendix D1 as a "three circuit breaker addition." The discussion in Appendix D1 of

MTEP16 grouped the Granville project with the Rugby project, as the Rugby project also consisted of new 41.6 kV circuit breakers. As also noted above, MISO concluded:

The following projects [including both the Granville Junction project and the Rugby project] are being built to enhance reliability on the 41.6 kV system in North Dakota by adding sectionalizing capability, reducing exposure and adding operational flexibility. ... While no MTEP modeling topology changes were required for these projects, the shifting of load from the BES perspective was reviewed by MISO and no system degradation was observed in the MTEP16 model series.

The petition states that the Granville Junction project was approved for cost recovery by the ND PSC. Given the ND PSC cost recovery approval and inclusion in MTEP, Otter Tail argues the Granville Junction is eligible for cost recovery in Minnesota under Minnesota Statutes section paragraph (a)(2) of the TCR Statute. The petition states that the total cost of the Project was “approximately \$1.0 million” with an in-service date of July 2017. As with the other projects, Otter Tail proposes using the D2 jurisdictional allocator which results in a total allocation to Minnesota customers of \$0.51 million.

As the facts and conditions for the Granville Junction project are generally similar to those of the Rugby project, the Department’s conclusion is the same. The Department concludes that there are no Minnesota jurisdictional costs or benefits and that MISO has not determined that the project benefits Otter Tail’s Minnesota utility or integrated transmission system. Therefore, the Granville Junction project is ineligible for TCR recovery.

### **III. RECOMMENDATION**

The Department recommends that the Commission reject the petition requesting recovery in the TCR. This recommendation does not prohibit OTP from seeking recovery of any such costs in a future general rate case.

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, 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**  
**Comments**

**Docket No.E017/M-19-530**

Dated this **6<sup>th</sup>** day of **July 2020**

**/s/Sharon Ferguson**

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_19-530_M-19-530
Ray	Choquette	rchoquette@agp.com	Ag Processing Inc.	12700 West Dodge Road PO Box 2047 Omaha, NE 68103-2047	Electronic Service	No	OFF_SL_19-530_M-19-530
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_19-530_M-19-530
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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_19-530_M-19-530
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Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_19-530_M-19-530
Cary	Stephenson	cStephenson@otpc.com	Otter Tail Power Company	215 South Cascade Street  Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_19-530_M-19-530
Stuart	Tommerdahl	stommerdahl@otpc.com	Otter Tail Power Company	215 S Cascade St PO Box 496 Fergus Falls, MN 56537	Electronic Service	No	OFF_SL_19-530_M-19-530
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