

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange  
Dan Lipschultz  
Matthew Schuenger  
Katie J. Sieben  
John A. Tuma

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

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

ISSUE DATE: October 30, 2017

DOCKET NO. E-017/GR-15-1033

ORDER APPROVING COMPLIANCE  
FILING AND PROVISIONALLY  
APPROVING TRANSMISSION COST  
RECOVERY RIDER RATE

**PROCEDURAL HISTORY**

On August 21, 2017, Otter Tail Power Company (Otter Tail or the Company) submitted a compliance filing consistent with the Commission’s directives in its May 1, 2017 Findings of Fact, Conclusions, and Order in this docket. On September 18, 2017, the Company submitted a second filing with corrections to the original filing.

On September 20, 2017, the Department of Commerce, Division of Energy Resource (the Department) filed comments generally recommending that the Company’s filing be approved, with two exceptions. The Department reserved its assessment of the Internal Revenue Service’s (IRS’s) July 7, 2017 Private Letter Ruling (PLR) regarding the appropriate treatment of Otter Tail’s prorated accumulated deferred income taxes (ADIT) balances in the rate case.

On September 25, 2017, the Department filed comments addressing the effect of the PLR on rates. On October 13, 2017, the Department filed supplemental comments regarding Otter Tail’s recommendation that the Commission “provisionally” approve the Company’s rider rates to be moved into base rates.

On September 20, 2017, the Office of the Attorney General–Division of Energy Resources (OAG) filed comments addressing the interim rate refund.

On October 4, 2017, Otter Tail filed supplemental reply comments.

On October 19, 2017, the Commission met to consider the matter.

## FINDINGS AND CONCLUSIONS

### **I. Otter Tail's Compliance Filing**

Otter Tail's compliance filing contained the items required under paragraph 30 of the Commission's May 1, 2017 order, including the following:

- A. Revised schedules of rates and charges reflecting the revenue requirement and the rate design decisions herein, along with the proposed effective date, and including the following information:
  - i. Breakdown of Total Operating Revenues by type;
  - ii. Schedules showing all billing determinants for the retail sales (and sale for resale) of electricity. These schedules shall include but not be limited to:
    - 1. Total revenue by customer class;
    - 2. Total number of customers, the customer charge and total customer charge revenue by customer class; and
    - 3. For each customer class, the total number of energy and demand related billing units, the per unit energy and demand cost of energy, and the total energy and demand related sales revenues.
  - iii. Revised tariff sheets incorporating authorized rate design decisions;
  - iv. Proposed customer notices explaining the final rates, the monthly basic service charges, and any and all changes to rate design and customer billing.
- B. A revised base cost of energy, supporting schedules, and revised fuel adjustment tariffs to be in effect on the date final rates are implemented.
- C. A summary listing of all other rate riders and charges in effect, and continuing, after the date final rates are implemented.
- D. A computation of the Conservation Cost Recovery Charge (CCRC) based upon the decisions in the Order.
- E. A schedule detailing the Conservation Improvement Plan (CIP) tracker balance at the beginning of interim rates, the revenues (CCRC and CIP Adjustment Factor) and costs recorded during the period of interim rates, and the CIP tracker balance at the time final rates become effective.
- F. If final authorized rates are lower than interim rates then, consistent with the Commission's Order, Otter Tail shall file a proposal to make refunds of interim rates, including interest.

- G. If by August 1, 2017, the IRS issues a private letter ruling (PLR) in response to Otter Tail's request regarding the Company's proration of its Accumulated Deferred Income Tax (ADIT), then Otter Tail shall make a filing within 15 days of the ruling that sets forth the details of the ruling and estimates how implementing the ruling would affect rates.

The Order also instructed the Company to adjust its test-year rider roll-in amounts at the end of the rate case and to set its renewable rider rate to account for differences in the amount of production tax credits included in base rates and actual production tax credits.

In its compliance filing, Otter Tail included rates developed based on the 2016 test year revenue requirement of \$206,616,720, which included moving recovery of investments currently in the transmission cost recovery (TCR) rider and the environmental cost recovery (ECR) rider into base rates.<sup>1</sup> The Company requested that the Commission authorize Otter Tail to implement final rates no later than bills rendered on and after November 1, 2017, with interim rate refunds, including interest at the prime rate, commencing on November 17, 2017.

## **II. Positions of the Parties**

### **A. The Department**

The Department reviewed the Company's compliance filing, and recommended that the Commission approve it with certain modifications. The Department noted that the Company's base cost of energy calculation was based on Company system sales and not Minnesota-jurisdictional-sales as required in the Commission's Order Setting New Base Cost of Gas.<sup>2</sup> The Department stated that if the Commission finds total system sales to be appropriate, the Company's filing complies as to this aspect of the May 1<sup>st</sup> rate case order.

The Department filed separate comments addressing the proration of accumulated deferred income tax and the July 7<sup>th</sup> IRS PLR. While the Department found that Otter Tail appropriately incorporated the effects of the private letter ruling on interim rates, final rates, and the interim rate refund, the agency disagreed that the PLR advice is consistent with Minnesota rate case practice. However, the Department recommended that if the Commission finds it must abide by the IRS's ruling, the Company should be required to demonstrate the reasonableness of using a forecasted test year (Otter Tail has previously used a historical test year in prior rate cases). Further, the Department recommended that unless the Company can convince the IRS to reverse its position, the utility should be precluded from using a forecasted test year in future rate cases.

Finally, the Department recommended that Otter Tail's revised customer notice be approved.

### **B. The OAG**

The OAG focused on the length of the interim rate period—from April 16, 2016 through October 2017. The OAG asserted that this 18-month period is significantly longer than the normal interim rate collection period. To remedy this disparity, the OAG requested that the

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<sup>1</sup> As discussed *infra*, rates for the TCR rider will be considered in its own docket.

<sup>2</sup> Docket No. E-017/MR-15-1034 (April 14, 2017).

Commission grant a rule variance to Minn. R. 7825.3300 to require that refunds be calculated with interest applied at the Company's overall rate of return (7.5056%) instead of the usual monthly prime interest rate. The OAG argued that use of the rate of return rate is justified as a reflection of the equity concerns for ratepayers.

### **C. Otter Tail's Reply**

At the Commission meeting, Otter Tail stated that after receiving the IRS PLR, it computed the tax amounts for the 2016 test year and the interim rate period outside the test year as directed. The Company argued that the PLR had no regulatory effect on final rates for ratepayers. Nor did the PLR affect the interim rate period outside of the 2016 test year.

Otter Tail asserted that the Commission should not adopt the Department's recommendation to impose a condition requiring the Company to attempt to convince the IRS to reverse its private letter ruling on the use of a projected test year. Otter Tail argued that Minn. R. 7825.3100, subp. 17, specifically allows the use of a projected *or* historical test year, as does Commission practice.<sup>3</sup>

Further, Otter Tail argued that the Department's recommendation is far out of proportion to any ratepayer interest, as the IRS PLR required only that the ADIT proration be applied for the part of the single 12-month period during which the information is deemed future, and interim rates are in effect. Importantly, Otter Tail argued that it should not be required to demonstrate the reasonableness of its use of a projected test year in this rate case, as it clearly provides a significant benefit to Otter Tail's ratepayers—consisting of an approximately \$68,000 reduction in interim rates due to the effect of the ADIT proration allowed under the IRS PLR.

The Company also argued that there is no need to clarify the base cost of energy calculation used in the rate case. Ordering paragraph 4 of the Commission's base cost of gas order required the Company to include Minnesota-jurisdiction total sales and costs in all future base cost of energy initial filings. Otter Tail stated that it supplied the necessary information in its compliance filing by providing a system-wide calculation, and that regardless of which factor is the most appropriate, the fuel clause rider (or adjustment) mechanism will true-up any actual deviations from the base cost of energy such that ratepayers will ultimately pay the same cost for energy.

Finally, Otter Tail recommended at the hearing that the TCR and ECR rider costs be moved to base rates effective November 1, 2017. The Company argued that the renewable energy rider costs were moved to base rates in the Company's last rate case. Otter Tail emphasized that while the rider dockets were not scheduled to be heard by the Commission with the rate case docket, the results of the riders being placed into base rates would be a reduction in costs and a benefit for ratepayers.<sup>4</sup>

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<sup>3</sup> Minn. R. 7825.3100, subp. 17 defines a test year as the 12-month period selected by the utility for the purpose of expressing its need for a change in rates.

<sup>4</sup> At the hearing, Otter Tail estimated that, consistent with the rate case order, the Company would be over-collecting the rider amounts until the rider dockets are resolved.

### III. Commission Action

The Commission recognizes that the parties have worked diligently to thoroughly address the issues related to the implementation of final rates and that the Company has fulfilled its obligation to submit a detailed compliance filing with the items listed above. The Commission will approve the Company's compliance filing as set forth below and authorize implementation of final rates effective November 1, 2017.

First, the Commission can see no basis on which it would question the Company's reliance on or compliance with the income tax ADIT proration requirements as determined in the IRS's PLR. The Company appears to have complied with all aspects of the PLR in this matter. Nor will the Commission impose the additional conditions on the Company requested by the Department. The use of either a projected or historical test year is allowed by Commission rules and practice. Finally, the Company asserted at the hearing that interim rates in this matter were approximately \$68,000 lower due to proration of the ADIT, meaning that in this case ratepayers benefited from the ADIT tax treatment for the projected tax year.

In future rate cases, the Commission will require Otter Tail to discuss in its initial filings the revenue requirement implications to ratepayers of applying the IRS requirement to calculate the differences between taxpayer's projected prorated ADIT balance and the non-prorated ADIT balance for the interim rates.

With respect to Otter Tail's request to reset its ECR and TCR rider rates, on October 16, 2017, the Company made a letter filing in this matter to incorporate reply comments it had previously made in its ECR and TCR rider dockets.<sup>5</sup> In those filings, Otter Tail proposed that the Commission allow Otter Tail to reset the TCR and ECR rates.

At the Commission meeting, Otter Tail stated that there was no dispute among the parties with respect to incorporation of its ECR rider amount into base rates to be effective November 1, 2017.<sup>6</sup> The Commission agrees, and will unconditionally approve implementation of the new ECR rider rate effective November 1, 2017.

After discussion at the meeting, it is clear that the parties are not in similar agreement concerning implementation of the TCR rider rate at this time. However, based on the Company's representations at the hearing as to its calculations of the anticipated effect of rolling the riders into base rates (with lower costs to be imposed on ratepayers), and without explicitly making a decision on the merits of the new TCR rider rates, the Commission will provisionally allow implementation of the TCR rider rates effective November 1, 2017. A final Commission determination on the merits of the TCR rider rates will be made at a later date, in Docket No. E-017/M-16-374.

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<sup>5</sup> Docket Nos. E-017/M-16-373 and E-017/M-16-374.

<sup>6</sup> At the end of the rate case, costs that were previously in the environmental cost recovery rider and the transmission cost recovery rider were to be rolled into rate base.

The Commission has considered the OAG's argument that, based on the length of the interim rate period in this matter, the Commission should order Otter Tail to issue interim rate refunds with interest applied at its overall rate of return of 7.5056%. While the Commission agrees that a different interest rate has been occasionally imposed in the past, this is a relatively rare occurrence, justified by specific factors not present here. Further, the interest rates used have typically been lower than the rate proposed by the OAG in this matter. For these reasons, the Commission does not find use of a different interest rate appropriate, and instead will approve Otter Tail's use of the prime rate of interest to calculate interest on interim rate refunds.

Further, the Commission will require the Company to submit, within 10 days of completion of its interim rate refund, a compliance filing that shows the actual refunds and interest paid by class, including the calculations used.

Finally, the Commission finds that Otter Tail has adequately verified that its calculation of the revised Base Cost of Energy—based on the Company's system-wide sales—adequately complies with the Commission's Order Setting Base Cost of Gas. While ordering paragraph 4 required the Company to include Minnesota-jurisdiction total sales and costs in all future base cost of energy initial filings, Otter Tail supplied the information necessary to establish that its system-wide calculation suffices to address this requirement. The fuel clause rider mechanism will ultimately true-up any actual deviations from the base cost of energy.

### **ORDER**

1. The Commission hereby approves Otter Tail Power Company's compliance filing, as set forth below.
2. The Commission approves implementation of final rates effective November 1, 2017.
3. The Commission unconditionally approves implementation of the new ECR rider rate effective November 1, 2017.
4. Without explicitly making a decision on the merits of the new transmission cost recovery rider rates, the Commission will provisionally allow implementation of those rates effective November 1, 2017. A final Commission determination on the TCR rider rate will be made at a later date in Docket No. E-017/M-16-374.
5. The Commission approves Otter Tail's use of the prime rate of interest to calculate interest on interim rate refunds.
6. The Commission approves Otter Tail's calculation of the revised Base Cost of Energy which is based on the Company's system-wide sales.
7. Within 10 days of the interim rate refund, Otter Tail shall file a compliance filing report that shows the actual refunds and interest paid by class, including the calculations used.

8. In all future rate cases, Otter Tail shall include in its initial filings a discussion of the revenue requirement implications to ratepayers of applying the IRS requirement to calculate the differences between taxpayer's projected prorated ADIT balance and the non-prorated ADIT balance for the interim rates.
9. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf  
Executive Secretary



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