MINNESOTA PUBLIC UTILITIES COMMISSION

Staff Briefing Papers

Meeting Date	**June 5, 2025**	**Agenda Item *3**
Company	Otter Tail Power Company (OTP or Company)	
Docket No.	E017/M-24-404	
	In the Matter of Otter Tail Power Company's Petition for Approval of the Solway and Abercrombie Solar Projects **In the Matter of the Petition of Otter Tail Power Company for Exemption from Certificate of Need for the 50 MW Solway Solar Project in Beltrami County, Minnesota**	
Issues	Should the Commission approve Otter Tail Power's investments in the Solway and Abercrombie solar projects? Should the Commission determine that the Projects qualify for application toward Otter Tail Power's Eligible Energy Technology Standard and Carbon-Free Standard obligations? Should the Commission authorize future cost recovery of the Projects through the Renewable Resources Cost Recovery Rider, subject to Commission review and approval of specific costs to be presented in a future petition? Should the Commission limit cost recovery to a capital cost cap? If so, how should the Commission set the cap? Should the Commission authorize Otter Tail Power to charge its Minnesota ratepayers for North Dakota's share of the solar projects?	
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✓**Relevant Documents**	**Date**
Otter Tail Power Company, Initial Filing	December 9, 2024
Otter Tail Power Company, Initial Filing	December 13, 2024
Department of Commerce, Comments	February 4, 2025
Office of the Attorney General, Comments	February 4, 2025
Otter Tail Power Company, Reply Comments	February 18, 2025
IUOE Local 49 and NCSRC of Carpenters	February 18, 2025
LIUNA Minnesota/North Dakota Reply Comments	February 18, 2025
Otter Tail Power Company, Request to Defer	April 7, 2025
Otter Tail Power Company, Supplemental Information Letter	May 23, 2025

STATEMENT OF THE ISSUES

1. Should the Commission approve Otter Tail Power's investments in the Solway and Abercrombie solar projects (Projects)?

2. Should the Commission determine that the Projects qualify for application toward OTP's Eligible Energy Technology Standard (EETS) and Carbon-Free Standard (CFS) obligations?

3. Should the Commission authorize future cost recovery of the Projects through the Renewable Resources Cost Recovery Rider (RRCR Rider), subject to Commission review and approval of specific costs to be presented in a future petition?

4. Should the Commission limit cost recovery to a capital cost cap? If so, how should the Commission set the cap?

5. Should the Commission authorize Otter Tail Power to charge its Minnesota ratepayers for North Dakota's share of the solar projects?

BACKGROUND

Otter Tail Power Company (OTP or the Company) proposes to construct, own, and operate two solar generation facilities – one in Minnesota, and one in North Dakota – totaling 350 megawatts (MW) in nameplate capacity:

- ***Solway Solar*** is a 66 MW solar facility; however, due to limits of the site's existing interconnection rights, Solway Solar will have an <u>operational capacity of 50 MW</u>. Solway Solar will be constructed in Beltrami County, Minnesota, adjacent to OTP's 42 MW, natural gas-fired Solway Combustion Turbine Generating Station (Solway Peaking Plant). Solway Solar will use existing interconnection rights at the Solway Peaking Plant via the Midcontinent Independent System Operator (MISO) surplus interconnection process (SIS). The anticipated commercial operation date (COD) is December 2026.

- ***Abercrombie Solar*** is a 295.1 MW solar facility to be constructed in Richland County, North Dakota and will interconnect to Minnkota Power Cooperative's existing 230 kV line. To date, Abercrombie Solar has been developed as the Flickertail Solar Project by Flickertail Solar Project, LLC (Flickertail); however, on October 30, 2024, OTP entered into an Asset Purchase Agreement (APA) with Flickertail to purchase the development assets of the project. The anticipated COD is December 2028.

These solar investments will implement the solar resources authorized by the Commission's July 22, 2024, Integrated Resource Plan Order (IRP Order),[1] which approved a settlement agreement (Settlement) between OTP and several stakeholders, including the Department of

[1] Docket No. 21-339, *In the Matter of Otter Tail Power's 2023-2037 Integrated Resource Plan*.

Commerce (Department), the International Union of Operating Engineers Local 49 (IUOE Local 49), the North Central States Regional Council of Carpenters (Carpenters), and the Laborers' International Union of North America–Minnesota and North Dakota (LIUNA).

During OTP's last IRP proceeding, in response to jurisdictional complications, OTP submitted a revised IRP – its Minnesota Preferred Plan with AME – specifically for Minnesota. The most significant proposal in the revised plan involved using a tool in the MISO tariff to turn OTP's portion of the coal-fired Coyote Station attributable to Minnesota (approximately 70 MW) into an Available Maximum Emergency (AME) resource. OTP explained that, if Coyote Station were designated an AME resource, it would only be called upon under a maximum generation event, such as in the case of extreme heat, cold, or other extreme events. Effectively, the Minnesota portion of Coyote Station would serve as a peaking plant for OTP's Minnesota customers, while allowing the Company to retain Coyote's capacity, mitigate against changes to MISO capacity accreditation standards, increase reliability for its Minnesota customers, and reduce costs and carbon emissions from the facility.

The Commission approved a modified version of the Settlement. Notably, Order Point 2 required OTP to designate the Minnesota portion of Coyote Station as AME for MISO Planning Years 2026-27 through 2030-31 but not beyond. Also, Order Point 11 determined that OTP's optimal resource mix would consist of:

- No less than 200 MW and up to 300 MW of solar with a COD of November 1, 2027, or as soon as practicable thereafter;
- No less than 150 MW and up to 200 MW of wind with a COD of December 31, 2029 or as soon as practicable thereafter; and
- No less than 20 MW and up to 75 MW of battery storage with a minimum of four-hour duration with a COD of December 31, 2029 or as soon as practicable thereafter.

Importantly, the IRP Order also addressed the Settlement's proposed approach to allocate costs among state jurisdictions, which is a disputed issue in this case. In the IRP, OTP proposed that the costs and benefits of the renewable projects in the Minnesota Preferred Plan with AME would be wholly allocated to Minnesota customers. However, the Commission declined to incorporate the Settlement's jurisdictional cost allocation provision into the IRP Order and instead decided to consider cost allocation issues on a project-specific basis.

OTP PETITION

I. Procedural Summary

On December 9, 2024, OTP filed a petition with three requests:

1. Approval of investments in the Solway and Abercrombie solar projects (Projects);

2. Qualification for application toward OTP's Eligible Energy Technology Standard (EETS)

and Carbon-Free Standard (CFS) obligations; and

3. Authorization for future cost recovery of the Projects through the Renewable Resources Cost Recovery Rider (RRCR Rider) under Minn. Stat. § 216B.1645, subd. 2a, subject to Commission review and approval of specific costs to be presented in a future petition.

On December 13, 2024, OTP filed a second petition that included a fourth request, for the Commission confirm that Solway Solar is exempt from Certificated of Need (CN) requirements. Procedurally, OTP suggested in the December 13 petition that, given the overlap with the December 9 petition, the Commission may wish to combine the two filings in a single comment period notice. The Commission subsequently issued a *Notice of Comment Period* requesting comments on both filings, as OTP suggested.

This matter was originally scheduled for the April 17, 2025, Commission meeting. However, on April 7, 2025, OTP filed a letter requesting that the hearing be deferred until a date in June 2025. OTP explained that it expected decisions on cost recovery in South Dakota and site permitting in North Dakota to be addressed in the near future. Recognizing that the Commission's decision would benefit from additional clarity on these issues, Staff rescheduled this matter to be heard on June 5, 2025.

On May 23, 2025, OTP filed a Supplemental Information Letter informing the Commission that the South Dakota Public Utilities Commission (SDPUC) issued an order on May 14, 2025, authorizing the Company's to recover project costs through its South Dakota Phase-In Rider. Therefore, whereas in OTP's December 9 petition the Company expressed uncertainty as to whether South Dakota will participate in the Projects, OTP now has certainty that the Projects' costs and benefits will be shared between its Minnesota and South Dakota customers.

II. December 9 Petition

As discussed above, OTP's December 9 petition requested approval of the Projects, qualification toward the EETS and CFS, and cost recovery through the RRCR Rider. This section will summarize each of OTP's three requests.

A. Project Approval

As required by the IRP Order, the Projects were selected as part of a competitive acquisition process. OTP stated that "the Solway and Abercrombie Projects were selected primarily because their [levelized cost of energy, or LCOE] were by far the lowest among the proposals evaluated."[2] Some reasons why the Projects had the lowest LCOE include:

- **Interconnection costs**: Solway Solar utilizes a surplus interconnection at an existing site, thus limiting the interconnection costs to the substation expansion required alongside

[2] OTP's December 9 Petition, p. 17.

the existing site. Abercrombie Solar has relatively low interconnection costs because minimal transmission upgrades are necessary to bring the project online.

- **Engineering, procurement, and construction**: OTP will use company personnel for the engineering, procurement, and construction (EPC) of the Project, not an EPC firm.
- **Land acquisition**: OTP has acquired the land necessary to build Solway Solar, eliminating operational lease payments over the life of the project.

Based on OTP's economic analysis, when compared to the cost of the lowest-cost unselected bid, Solway and Abercrombie yield $178 million in savings on a net present value of revenue requirement (NPVRR) basis. The table below compares the estimated savings of Abercrombie and Solway individually, as well as together, to the lowest-cost unselected project.

Table 1. Estimated Otter Tail Power Selected Project Savings - MN Allocation ($000s)

Project	NPVRR	Savings vs. Minimum Unselected Project
Abercrombie	$243,820	$153,681
Solway	$46,213	$24,520
Total	***$290,032***	***$178,201***

Other than cost savings, benefits of the Projects include protection from fluctuations in energy market prices and reduced carbon dioxide (CO_2) emissions. Specifically, the Projects will be on-peak resources and therefore offset market purchases during the most expensive hours, and they will offset approximately 764,116 tons of CO_2 annually.

OTP anticipates that both projects will be eligible for production tax credits (PTC) as passed in the Inflation Reduction Act (IRA) of 2022. OTP stated that the PTCs "are a significant part of the overall economics for both the Solway and Abercrombie Projects."[3]

OTP noted the possibility that the Trump administration could seek changes to the IRA or the way PTCs are administered, although this is unknown at this time. However, OTP noted that one benefit of the Company being the project developer of Solway Solar is its ability to flexibly adapt:

> Should there be substantial statutory or regulatory changes affecting the economics of the Solway Project, Otter Tail Power as the developer and project manager would have leeway in assessing the most effective and timely mitigation efforts. With respect to the Abercrombie Project, the APA between Otter Tail Power and Flickertail LLC permits the Company to terminate the Abercrombie APA

[3] OTP December 9 Petition, p. 22.

for a sum certain before closing.[4]

1. Solway Solar

OTP proposes to construct, own, and operate Solway Solar, which will have 50 MW of operational capacity and utilize the site's existing interconnection rights. Solway Solar's estimated COD is December 2026. OTP's Site Permit application for the Solway Project is pending before the Commission in Docket No. 24-309. The table below shows the anticipated timeline for the various phases of development.

Table 2. Solway Solar Project Schedule

Activity	Description	Timeline
Land Acquisition	Secure land rights necessary for development	Complete
Interconnection Application	MISO approval to connect the Project to the grid and signed Interconnection Agreement	Submitted July 8, 2024
Site Permit	Site Permit issuance	October 2025
Other Permits	Obtain all federal, state, local, and tribal government permits and approvals necessary for construction and operation	Prior to Construction
Equipment Procurement and Contractor Selection	Procurement of Project equipment. Final contractor selections contingent on Site Permit approval	April through September, 2025
Construction	Construction of the Project	Oct. 1, 2025 through Sept. 30, 2026
Testing and Commissioning	Testing and commissioning of project-related equipment	October 1, 2026
Operation	COD following construction and testing/commissioning	December 31, 2026

2. Abercrombie Solar

OTP also proposes to construct, own, and operate Abercrombie Solar, which will be located in North Dakota. The project will be 295.1 MW and consist of approximately 550,000 solar panels located on approximately 3,464 acres of privately-owned land under agreement with the Company. OTP intends to construct a 230 kV generation tie (gen-tie) line of approximately 530

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[4] OTP's December 9 Petition, pp. 22-23.

feet to facilitate the Project's interconnection. The gen-tie line would extend from the Project's collector substation and interconnect to Minnkota Power Cooperative's existing Frontier-Wahpeton 230 kV transmission line. The gen-tie line has been permitted through Abercrombie Township.

OTP anticipates that Abercrombie Solar will be in-service by the end of 2028. The table below shows the Company's estimated development timeline.

Table 3. Abercrombie Solar Project Schedule

Activity	Description	Timeline
Land Acquisition	Secured voluntary lease agreements, easement agreements, or purchase options for the Project with landowners	Complete
Abercrombie Township CUP	Application for Conditional Use Permit	Received Nov. 20, 2023
Obtaining the Certificate of Site Compatibility	Site Permit issuance	Expected to be issued in Q2 2025
Other Permits	Obtain all permits and approvals necessary for construction and operation	Prior to Construction
Construction	Construction of the Project	Q1 2026 – Q4 2028
Testing and Commissioning	Will be completed prior to the COD and typically takes 3-6 months	Between Q1 and Q4 2028
Operation	Commercial operation following construction and testing/commissioning	December 31, 2028

The next section will discuss application to the EETS and CFS. Again, as discussed in OTP's May 23 Supplemental Information Letter, while North Dakota will not be participating in the Projects, the SDPUC recently approved OTP's request to recover costs from its South Dakota customers. OTP further explained that the "Minnesota jurisdictional allocation with South Dakota's participation in the Projects is currently projected to be 82.84 percent in 2026, which represents Minnesota's share of Otter Tail's Minnesota and South Dakota load with North Dakota removed from the calculation."[5]

[5] OTP Supplemental Information Letter, p. 2.

B. Application toward OTP's EETS and CFS

The table below reflects the impact of the Projects on OTP's compliance with the EETS and CFS in 2027, 2030, and 2035. Values are provided under scenarios comparing no new solar or wind versus Abercrombie and Solway Solar with South Dakota participation, in addition to the 200 MW of wind by 2030 that was approved in the IRP Order. Notably, values with SD participation are from the May 23 Supplemental Information Letter; however, since the baseline values (i.e., the no new renewables scenario) were not updated in the May 23 Supplement, Staff used the no-renewables values from OTP's December 9 petition. Also, for calculation purposes only, no new wind is allocated to South Dakota. This means that OTP assumes 100% of the energy generated by the wind will be assigned to Minnesota, but it remains to be seen whether future wind will be jurisdictionally-shared resources.

Table 4. OTP's compliance with the EETS and CFS by Milestone Year

		2027	**2030**	**2035**
Milestone dates	SES*	1.5%	1.5%	1.5%
	EETS	25%		55%
	CFS		80%	90%
MN without new solar or 2029 wind (Dec. 9 Petition)	SES	1.5%	1.5%	1.5%
	RES – MN Ren. Gen. only	31%	27%	26%
	CFS – MN Ren. Gen. only	32%	29%	27%
	CFS – Ren. Gen and MISO North Region Market	60%	61%	60%
MN with Abercrombie and Solway with SD participation, incl. 200 MW wind** (May 23 update)	SES	1.5%	1.5%	1.5%
	RES – MN Ren. Gen. only	34%	85%	85%
	CFS – MN Ren. Gen. only	32%	84%	83%
	CFS – Ren. Gen and MISO North Region Market	50%	93%	98%

**OTP's 1.5% SES requirement has already been met by the addition of Hoot Lake Solar.*
***For calculation purposes, 100% of new wind is allocated to Minnesota.*

The main takeaway from the table is that OTP cannot meet its CFS or EETS obligations in the 2030s with existing resources alone; thus, OTP will have a need for new renewable resources.

C. Cost Recovery

1. RRCR Rider

OTP argued that its request to recover costs through the Company's RRCR Rider is authorized by Minn. Stat. § 216B.1645 [Power Purchase Contract or Investment]. Subdivision 1 of the Statute states, in part, that the Commission:

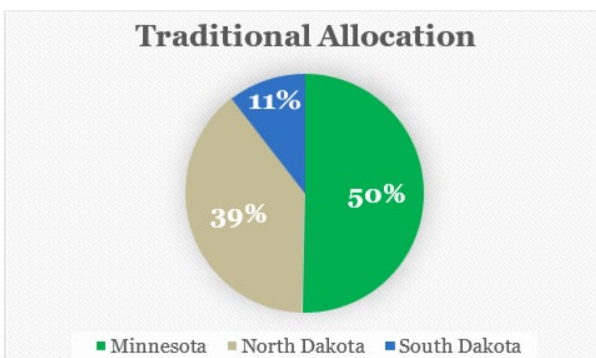
> shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy the wind and biomass mandates contained in sections 216B.169, 216B.2423, and 216B.2424, and to satisfy the renewable energy objectives and standards set forth in section 216B.1691 . . .

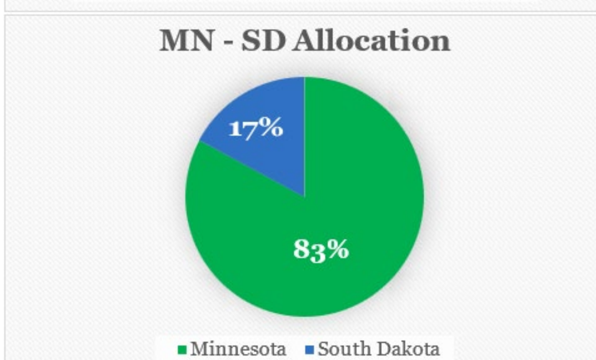
Additionally, Subdivision 2a of the Statute states, in part, that a utility may request approval for rider recovery if facilities are being acquired:

> to satisfy the requirements of section 216B.1691 [Renewable Energy Objectives], provided those facilities were previously approved by the commission under section 216B.2422 [Resource Planning] or 216B.243 [Certificate of Need], or were determined by the commission to be reasonable and prudent under section 216B.243, subdivision 9 [RES and CFS facilities] . . .

2. Jurisdictional Cost Allocation

If the Commission finds the Projects are eligible for recovery through the RRCR Rider, future RRCR Rider filing(s) will seek recovery of specific project costs, which will account for the allocation of costs between Minnesota and South Dakota. According to OTP's May 23 letter, this would result in approximately 83% of the Projects' costs and output being allocated to Minnesota and 17% to South Dakota.





However, a remaining cost recovery issue concerns Solway Solar's impact on the existing Solway Peaker, where the cost and benefits are currently allocated among all of OTP's jurisdictions. OTP explained:

> The Solway Solar Project makes use of a surplus interconnection with the Solway Peaker being the incumbent generator. As is the case in any surplus interconnection, the non-incumbent generator must account for the impact its generation has on the incumbent generator. During some hours of operation, Solway Solar, which has no fuel costs, is anticipated to displace generation that would have otherwise been provided by the Solway Peaker. This anticipated displacement has revenue impacts that flow through fuel clauses in all jurisdictions served by the Solway Peaker. Because North Dakota will not be participating in the Solway Solar Project, but is allocated cost and benefits of the Solway Peaker, the impact of reduced peaking plant revenues caused by displacement from solar generation will be accounted for through reconciliation of MISO settlements.[6]

For the hours in which reduced peaking plant revenues occur, the potential profit margin of the peaking plant will be analyzed, and a dollar figure will be calculated and divided based on jurisdiction allocations. OTP stated this calculation must ensure that (1) North Dakota customers suffer no harm and (2) Minnesota and South Dakota customers receive the full benefit and cost of Solway Solar.

D. Competitive Resource Acquisition Process

According to OTP, the Company "identified and selected the Solway and Abercrombie Solar Projects through the Company's competitive, flexible acquisition process."[7] Eight solar proposals were considered—six PPAs and two self-build options. As noted above, OTP selected Solway and Abercrombie primarily because they were the lowest-cost on an LCOE basis.

1. IRP Order

OTP's overall resource acquisition requirements were established by the IRP Order. Order Point 13 required that the resource acquisition competitive process:

a. uses a minimum of three bidders for both of the major components of Astoria Station on-site fuel storage project and evaluates at least five proposals for all other resource acquisition projects;
b. ensures that the request for proposals (RFP) or procurement process is consistent with the Commission's then-most recent IRP order and direction regarding size, type, and timing unless changed circumstances dictate otherwise;

[6] OTP, December 9 Petition, p. 13.

[7] OTP's December 9 Petition, p. 16.

c. ensures that the RFP or procurement process includes the option for both power purchase agreements (PPA) and build–transfer proposals unless Otter Tail Power can demonstrate why either a PPA or build–transfer proposal is not feasible;
d. provides the Department of Commerce (Department) and other stakeholders with notice of RFP or procurement process issuances;
e. notifies the Department and other stakeholders of material deviations from initial timelines;
f. updates the Commission, the Department, and other stakeholders regarding changes in the timing or need that occur between IRP proceedings;
g. where Otter Tail Power or an affiliate proposes a project,
    a. requires Otter Tail Power to create separate teams for the Otter Tail Power project and for evaluation of the bids received, and
    b. engages an independent auditor, if required to by the Department and the [Office of the Attorney General–Residential Utilities Division (OAG)], to oversee the bid process and provide a report for the Commission;
h. includes in the RFP or procurement process a plan to address the impact of material delays or changes of circumstances on the bid process; and
i. ensures that any RFP or procurement process documents for peaking resources issued are technology neutral.
j. The commission will evaluate whether a cap is appropriate in any future process to approve a project or cost recovery for a particular project.[8]

On August 16, 2024, OTP submitted a compliance filing (Procurement Process Filing) describing the process and criteria that would be used to evaluate proposals. The Procurement Process Filing outlined a three-step process that OTP intended to follow so the evaluation process would be consistent with the IRP Order:

1. OTP provided notice to the Department and other stakeholders that the Company was in the process of procuring certain solar resources and described how the Company would evaluate and select solar projects.

2. OTP applied the evaluation criteria described in the Procurement Process filing to the list of competitive projects to select one or more solar resource proposals. OTP made a second compliance filing on September 16, 2024, identifying selected projects and the basis for selection (Selection Filing).

3. A future petition will require OTP to request approval and recovery for the selected project or projects through the Company's RRCR Rider. The filing will require OTP to provide supporting information to explain why the projects are in the public interest and eligible for inclusion in the RRCR Rider.

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8 IRP Order at Ordering Para. 13.

2. Competitive Resource Acquisition Process

OTP explained that the Company has had discussions with solar developers and suppliers since OTP's last IRP filing in 2021; initially, the IRP proposed 150 MW of new solar resources in the five-year action plan.

OTP developed a final list of eight competitive projects, with Solway and Abercrombie being the lowest cost among the proposals evaluated. Viable projects were evaluated on the following criteria:

1. levelized cost of energy;
2. indication of site commitment;
3. status of generation interconnection;
4. location of interconnection and impact of delivery, including potential project curtailment;
5. project permitting status;
6. anticipated COD to ensure utilization of the tax incentives and be consistent with the resource plan;
7. evidence of resource (resource assessment of wind/solar);
8. developer's experience in developing energy facilities; and
9. other public interest benefits/considerations.[9]

III. December 13 Petition – Certificate of Need Exemption

OTP's December 13 Petition requested the Commission determine that Solway Solar is exempt from the CN Requirement of Minn. Stat. § 216B.243 under Minn. Stat. § 216B.2422, subd. 5 (Bidding Exemption), and/or Minn. Stat. § 216B.243, subd. 9 (RES/CFS Exemption). OTP's argument is as follows:

> Pursuant to Minn. Stat. § 216B.243, a CN is required prior to construction of a "large energy facility," as defined in Minn. Stat. § 216B.2421, subd. 2(1), unless the facility falls within a statutory exemption from the CN requirements. A "large energy facility" is defined, in relevant part, as "any electric power generating plant or combination of plants at a single site with a combined capacity of 50,000 kilowatts or more and transmission lines directly associated with the plant that are necessary to interconnect the plant to the transmission system."[10] The proposed Project qualifies as a "large electric power generating plant," as defined by Minn. Stat. § 216E.03, subd. 1, and falls within the definition of a "large energy facility." Accordingly, the Project requires a CN from the Commission unless an exemption applies.

[9] OTP's December 9 Petition, pp. 16-17.

[10] Minn. Stat. § 216B.2421, subd. 2(1).

The Project falls under two distinct statutory provisions: Minn. Stat. § 216B.2422, subd. 5 (Bidding Exemption), and Minn. Stat.§ 216B.243, subd. 9 (RES/CFS Exemption). Otter Tail Power respectfully requests that the Minnesota Public Utilities Commission (Commission) find that the Project satisfies the criteria for exemption under Minn. Stat. §§ 216B.2422, subd. 5, and alternatively Minn. Stat. 216B.243, subd. 9, and requests a determination from the Commission that the requirements for a CN do not apply to the Project.[11]

PARTY COMMENTS

I. Department of Commerce

A. Recommendations

The Department recommends that the Commission:

1. approve OTP's investment in the Projects;
2. limit cost recovery to an aggregate, symmetrical capital cost cap for the Projects, with the capital cost recovered being set at the costs bid by OTP for Solway Solar and Abercrombie Solar combined;
3. authorize OTP to request Commission approval to exceed the symmetrical cost cap if it can show that any cost it incurred above the cap are the result of a government action (e.g. tariff, trade investigation, etc.) that causes a meaningful disruption to solar panel supplies and market prices;
4. determine that the Projects qualify for application toward OTP's EETS and CFS obligations;
5. determine that the Solway Project qualifies for recovery via OTP's Renewable Resource Rider;
6. authorize future cost recovery of the Projects through the Renewable Resource Rider, subject to Commission review and approval of specific costs to be presented by the Company in a future petition; and
7. determine that the Solway Project is exempt from the CN requirements under the Competitive Bidding and RES/CFS Exemptions.

The following sections will summarize the Department's analysis.

[11] OTP's December 13 Petition, pp. 1-2.

B. Analysis of Need

The Department concluded that OTP has a need for solar generally and for new EETS- and CFS-qualifying resources, for two main reasons: (1) the IRP Order required OTP to acquire 200-300 MW of solar resources with a COD of November 1, 2027, or as soon as practicable thereafter, and (2) OTP demonstrated that it cannot meet the EETS nor the CFS with the Company's current resources. Also, the Department was able to verify OTP's calculations.

The Department addressed the size of the acquisition, specifically that Solway and Abercrombie combined exceeds the range in the IRP Order. The Department concluded:

> While the combined size of the Projects exceeds the Commission's 300 MW solar target, the EETS and CFS energy needs identified by OTP in Table 5 along with the pricing of the various bids received by OTP indicate that exceeding the 300 MW solar target is reasonable in this instance.[12]

The Department also noted that "[i]t is common for actual resource acquisition to vary from the amount listed in a resource plan order based on the facts discovered by the acquisition process."[13]

C. Renewable Resources Rider

The Department explained that Minn. Stat. § 216B.1645, subd. 2a(a) provides three paths for a project to address the EETS or CFS to qualify for rider recovery:

- approval via Minn. Stat. § 216B.2422, which allows a utility to select resources through a Commission-approved bidding process;
- approval via Minn. Stat. § 216B.243, which establishes the CN requirements; or
- approval via Minn. Stat. § 216B.243, subd. 9, which states that the CN requirements do not apply to a wind or solar generation facility that is intended to be used to meet the requirements of the EETS or the CFS.

The Department recommends the Commission authorize future cost recovery of the Projects through the RRCR Rider, subject to Commission review in a future petition, for the following reasons:

- OTP's resource acquisition process and analysis was reasonable;
- OTP has a need for additional energy to meet the EETS and CFS, and the Projects would help meet this need; and
- Solway Solar qualifies for a CN exemption because it is being acquired via a Commission-

[12] Department comments, p. 4.

[13] Department comments, p. 4, footnote 15.

approved bidding process.

The Department also recommends that the Commission limit cost recovery to an aggregate, symmetrical capital cost cap for the Projects with the capital cost recovered being set at the costs bid by OTP for Solway and Abercrombie combined. The Department explained the rationale for a symmetrical cost cap as follows:

> This treatment mirrors that of third-party bidders, so treating OTP in the same manner is reasonable and preserves the integrity of the bidding process. To not implement such a cap would give the Company a competitive advantage in that other bidders bear the risk of cost overruns—a risk which OTP would not face.[14]

Finally, the Department recommends the Commission authorize OTP to request approval to exceed the symmetrical cost cap if it can show that any cost it incurred above the cap are the result of a government action (e.g. tariff, trade investigation, etc.) that causes a meaningful disruption to solar panel supplies and market prices. As Staff will explain later, the Commission adopted the same Department recommendation in Docket No. 22-403, Xcel Energy's petition for approval of Sherco Solar 3 and the Apple River Solar PPA.

D. EETS and CFS Obligations

As noted above in the Analysis of Need section, the Department reviewed and verified OTP's calculations of the Company's EETS and CFS obligations. Based on this review, the Department concluded that OTP's calculations are reasonable, and the Commission should determine that the Projects qualify for application toward the EETS and CFS.

E. CN and RES/CFS Exemptions

1. CN Exemption

Since Solway Solar is greater than 50 MW in size and located in Minnesota, it qualifies as a large energy facility (LEF) under Minn. Stat. § 216B.2421, subd. 2(1). However, the Department argued that Solway Solar is exempt from the CN requirements under the Bidding Exemption because the project was selected in a bidding process approved or established by the Commission.

2. RES/CFS Exemption

For the RES/CFS Exemption to apply, the Commission must determine that Solway Solar is a reasonable and prudent approach to meeting OTP's obligations under Minn. Stat. § 216B.1691, subd. 2a (EETS) or 2g (CFS). Under Minn. Stat. § 216B.243, subd. 9, when making the reasonableness determination, the Commission must consider six factors:

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[14] Department comments, p. 5.

1. the size of the facility relative to a utility's total need for renewable resources;
2. alternative approaches for supplying the renewable energy;
3. the facility's ability to promote economic development;
4. the facility's ability to maintain electric system reliability;
5. impacts on ratepayers; and
6. other criteria as the Commission may determine are relevant.

The table below summarizes the Department's analysis of these criteria:

Table 5. Six Factors to Consider under Minn. Stat. § 216B.243, subd. 9

Size	It would require both of the Projects and an additional 200 MW of wind to meet the CFS standard in 2035, so the size of the Solway Project is reasonable.
Alternatives	Alternatives in terms of different types (such as wind) were evaluated in OTP's most recent resource plan. The IRP Order determined that 200 MW to 300 MW of solar resources were best for OTP. Alternatives in terms of different projects were evaluated by OTP during the bidding process. The Solway Project "was selected primarily because its LCOE was significantly lower than six of the other projects evaluated."
Economic Development	Minn. Stat. § 216B.1691, subd. 9(a) provides six reasonable actions the Commission must take and benefits that must be maximized When considering economic development.[15] The Department concluded that the Solway Project will maximize the benefits under the six criteria.[16]
Reliability	Solway Solar will maintain reliability because interconnection of the Solway Project will follow the MISO process, which is designed to ensure that new generation does not impact the reliability of the grid. Second, MISO will operate the system such that the energy produced by the Solway Project will be reliably integrated.
Ratepayer Impact	Solway Solar was selected, in part, due to having the lowest LCOE, which means having the lowest direct impact on ratepayers.
Other	None identified.

As noted in the table above, Minn. Stat. § 216B.1691, subd. 9 requires that one of the factors the Commission must consider when making a reasonableness determination is a project's ability to promote economic development. The Department highlighted that construction of

[15] (1) the creation of high-quality jobs in Minnesota paying wages that support families; (2) recognition of the rights of workers to organize and unionize; (3) ensuring that workers have the necessary tools, opportunities, and economic assistance to adapt successfully during the energy transition, particularly in environmental justice areas; (4) ensuring that all Minnesotans share (i) the benefits of clean and renewable energy, and (ii) the opportunity to participate fully in the clean energy economy; (5) ensuring that statewide air emissions are reduced, particularly in environmental justice areas; and (6) the provision of affordable electric service to Minnesotans, particularly to low-income consumers.

[16] Additional data was provided by OTP in response to Department Information Request No. 2.

Solway Solar will:

- last approximately 12 to 14 months and employ 70 to 80 construction workers at peak;
- pay prevailing wages;
- support multiple employment sectors;
- result in temporary, positive impacts on local economies;
- create long-term benefits including reliable electric service and economic benefits through increases in utility property taxes;
- support increases in renewable energy production; and
- enhance the capacity for the energy industry (including OTP) to accommodate growing communities, which will benefit local economies.

II. OAG

The Office of the Attorney General—Residential Utilities Division (OAG) raised three main issues: (1) the size and timing of OTP's solar investments; (2) jurisdictional cost allocation; and (3) cost caps. The OAG recommends the Commission:

1. Reject OTP's proposal to charge its Minnesota ratepayers for North Dakota's share of the solar projects.

2. Order a hard cap on recovery of the costs of each project based on OTP's current estimates, with a 90%/10% sharing of any savings below the cap.[17]

3. If the Commission allows OTP to recover costs that exceed the cap, the Commission should define with particularity the government actions that would justify exceeding the cap and require OTP to show direct causation between a specified government action and every dollar of overrun for which it asks to exceed the cap.

A. Size and Timing of Solar Acquisition

OAG believes OTP proposes "both too much solar generation and too late."[18] As noted above, the IRP Order determined that the optimal range for solar acquisition is 200-300 MW by 2027. However, OTP proposes 345 MW, with 300 MW coming online at the end of 2028. OAG argued that this deviation from the IRP is significant enough to warrant a notice of changed circumstances under Minn. R. 7843.0500. While the Company cited the Projects' favorable costs and its CFS requirements, OAG responded that the CFS was already factored into the

[17] OAG provided an example whereby, if a project's cost cap were $100 million, and capital costs for its construction came in at $110 million, OTP would forego recovery of the extra $10 million. If the project's cost came in at $90 million, OTP would get to add $91 million to rate base for the project— representing its $90 million actual cost plus ten percent of the $10 million savings below the cap.

[18] OAG initial comments, p. 8.

Commission's IRP decision, and OTP did not address the difference in timing between the IRP Order (November 1, 2027) and the in-service date of Abercrombie Solar (December 2028).

B. Cost Recovery

1. Cost Caps

OAG and the Department both recommend capping the recovery of costs based on OTP's current project cost estimates. However, OAG recommends that the Commission apply a separate cost cap for each project, rather than the Department's aggregate cost cap; moreover, OAG's proposal would require OTP to share any under-budget savings with ratepayers.

OAG drew three key distinctions between its cost cap proposal and the Department's, which are summarized in the table below:

Table 6. Comparison of OAG and Department Cost Cap Proposals

OAG	Department
Caps are applied separately to each project	Costs are capped in the aggregate
Hard cap	OTP may recover costs exceeding the cap that are the result of a government action
90% of savings below the cap go to ratepayers	OTP can recover the full costs of its initial estimates even if actual costs are lower

OAG's rationale for these three distinctions are briefly summarized below:

- **Individual project caps**: OTP should not use savings from one project to offset cost overruns on the other project. This will encourage OTP to maximize the savings for both projects.

- **Hard cap**: OAG's proposal would be an absolute cap on the costs OTP would be able to recover. This will provide ratepayers with full protection from cost overruns. The Department's cap would leave ratepayers exposed to overruns due to government actions.

- **Shared savings**: OTP has budgeted for substantial contingencies, so it is fair that ratepayers share in the savings if that budget does not need to be used. Moreover, a cost cap could be set too high, and the risk of an excessively high cap is mitigated if the utility does not get to keep the full benefit of overestimating the Projects' costs.

2. North Dakota's Share of Solar Project Costs

OAG recommends the Commission reject OTP's proposal to charge Minnesota ratepayers for the North Dakota share of the solar projects for three main reasons:

1. It would not be just or reasonable to ask Minnesota ratepayers to bear other states' share of the Projects' costs when the projects benefit those states.

2. The Commission has rejected similar proposals from Xcel Energy for this very reason.

3. The Commission should not assume that North Dakota will not participate in the projects when OTP has not made an official request before that state's commission.

OAG argued that because OTP's system is integrated, excluding the customers of one or more states from "participating in" a generation resource would mean that customers in nonparticipating states would benefit from its presence on the system while bearing none of the costs. The excerpt below is one example of OAG's response to OTP's proposal to allocate costs and benefits across jurisdictions:

> Otter Tail states that it would assign "the costs and output" of the solar projects to the participating states (potentially just Minnesota). "Output" in this context presumably refers to a project's wholesale energy and capacity revenues, as well as its renewable-energy credits. But Otter Tail has not established that wholesale revenues and renewable-energy credits account for all the benefits that the projects will have for Otter Tail's system.[19]

OAG argued that OTP's cost allocation proposal is especially unreasonable given that the larger of the two solar projects is located in North Dakota; since Abercrombie would be sited in North Dakota, many of the economic development benefits, and most of the tax benefits, would accrue to North Dakota, so it would be unfair for Minnesotans to bear the entire burden of paying for the project.

According to OAG, the Commission has rejected similar proposals in the past. For example, when Xcel petitioned to recover a portion of the North Dakota-related costs of the Aurora Distributed Solar PPA from its Minnesota ratepayers,[20] the Commission concluded that Xcel's proposal would not result in just and reasonable rates. The Commission reasoned that Xcel:

> "operates a single, integrated system covering portions of five states" and that "[t]he Aurora project was found to be a cost-effective resource addition in the context of Xcel's system as a whole," without regard to state-specific policies.[21,22]

[19] OAG initial comments, p. 10.

[20] Docket No. E-002/M-15-330, *In the Matter of the Petition of Xcel Energy for Approval of Cost Recovery of the Aurora Power Purchase Agreement.*

[21] Docket No. E-002/M-15-330, Order Denying Recovery of North Dakota-Related Purchased-Power Costs, p. 6.

[22] OAG initial comments, p. 13.

In addition, in Xcel's 2021 rate case, the Commission applied a similar rationale in rejecting Xcel's request to recover Aurora's South Dakota-related costs from Minnesota ratepayers. The Commission determined that "Xcel's request stands at odds with fundamental cost-causation and allocation principles."[23]

OAG also argued that OTP has not made sufficient regulatory effort to support its conclusion that North Dakota will not participate in the Projects. For instance, OTP based its assertion largely on (1) an investigation report produced by an engineering firm who concluded that no new renewable resources are necessary to serve North Dakota customers, and (2) a December 4, 2024 order from the North Dakota commission finding that OTP does not need new wind, solar, or battery storage through 2030. In OAG's view:

> These documents do not support the categorical claim that North Dakota will not participate in the solar projects, and the Commission should not credit that claim on this record.[24]

C. Resource Acquisition

OAG characterized the Company's process for soliciting projects very differently than the Company. For instance, OAG stated that OTP "conducted an informal procurement process, identifying potential solar projects by talking to developers in the region."[25] However, despite such criticisms, it does not appear that OAG recommends rejecting the Projects on the basis of an inadequate competitive acquisition process.

III. IUOE Local 49 and NCSRC of Carpenters

IUOE Local 49/Carpenters support OTP's proposed solar investments. IUOE Local 49/Carpenters agreed that the Projects support OTP's transition of the Minnesota portion of Coyote Station to AME and will deliver cost-effective solar energy for Minnesota. IUOE Local 49/Carpenters emphasized opportunities for local workers:

> The most recent OTP IRP also included provisions intended to ensure that projects maximize opportunities for high-quality opportunities for local workers. We have already begun conversations with OTP on how to maximize these opportunities and we look forward to continuing to partner with OTP through the development and construction phases to ensure we meet these requirements.

[23] Docket No. E-002/GR-21-630, Findings of Fact, Conclusions, and Order at 38 (July 17, 2003).

[24] OAG initial comments, p. 15.

[25] OAG initial comments, pp. 1-2.

IV. LIUNA

LIUNA supports OTP's investments in Solway and Abercrombie, stating that the Projects will deliver reliable energy, as well as meet the Company's IRP requirements.

Additionally, Abercrombie and Solway Solar will deliver "significant socioeconomic benefits to regions that has seen relatively little clean energy development." In particular, Abercrombie's location on the Minnesota-North Dakota border can provide work opportunities for members and new apprentices from both states. LIUNA noted that that socioeconomic benefits can be maximized by ensuring that the Projects are built by union contractors and apprenticeship opportunities, and LIUNA's understanding is that OTP intends to meet these objectives on both projects.

OTP REPLY COMMENTS

I. Response to the Department

OTP disagreed with the Department's recommendation that the Commission limit cost recovery to an aggregate, symmetrical cost cap. OTP raised concerns that the only relief from the cap (as proposed by the Department) would be governmental actions, such as tariffs and changes in federal laws, that materially impact the costs of solar panel supplies. OTP suggested that the Department's proposal would be more reasonable if it covered a wider range of issues, in particular force majeure events, such as a global pandemic, wars, and natural disasters, which are typically included in many contracts.

In lieu of the Department's proposal, OTP prefers the traditional soft cap approach used in previous resource acquisitions:

> [I]t is reasonable for the Commission to adopt a traditional soft cap approach where the Company recovers the actual capital budget outlays required to put each project in commercial service if those outlays are at or below budget. If costs exceed budget, the Company will then simply have an opportunity to demonstrate to the Commission those costs were necessary and prudently incurred.[26]

II. Response to OAG

In response to OAG's concern that the size of the solar projects exceeds the range identified in the IRP Order, OTP argued that the projects' size and timing are appropriate and beneficial for two main reasons: (1) they are needed for future compliance with Minnesota's CFS, and (2) they are beneficial for the Company's Minnesota customers.

OTP argued that OAG "errs in asserting Otter Tail Power's proposal would unfairly burden Minnesotans and criticizing the Company's advocacy before the North Dakota Public Service

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[26] OTP reply comments, p. 4.

Commission."[27] OTP explained that its Minnesota and South Dakota customers will receive all the energy, capacity, and renewable energy credit benefits produced by the Projects. In its May 23 Supplemental Information Letter, OTP provided a rate impact estimate of the Projects:

> [W]e currently assess that adding these Projects will save customers approximately 6.4 percent on their bills over the life of the project when comparing the revenue requirements of the projects with the projected energy market value. Given the uncertainty right now in future resource accreditation, capacity value was not considered in that calculation. Any capacity credit received and sold in the PRA would only increase the benefits for Minnesota ratepayers.[28]

Lastly, OTP argued that OAG's asymmetrical hard cap is unreasonable and unnecessary. OTP stated that OAG's hard cap "would preclude additional recovery for events that are indisputably outside the Company's control or ability to foresee, including federal law changes and tariffs."[29]

STAFF DISCUSSION

In this section, Staff will address two issues: (1) the size and timing of OTP's solar investments, and (2) the three proposals for cost caps—OTP's, the Department's, and OAG's.[30]

I. Size and Timing

Staff believes the size and timing of OTP's proposed solar acquisition is reasonable and does not contradict the IRP Order, for three reasons:

First, while the IRP Order established a range of 200-300 MW of solar by 2027, Staff agrees with the Department that resource acquisition processes commonly reveal that actual, available projects in the market do not always match the range of generic units selected in an IRP. This can be the result of quickly changing market dynamics, such as price fluctuations, supply chain issues, interconnection, and policy changes, which can lead to differences from the assumptions and results in an IRP.

Second, it is common for utilities to propose cost-effective renewable energy projects to the Commission if it would be in their customers' interests, even if that leads to an amount above a previously-approved range. In this case, the bidding process identified two projects that were, by far, the least-cost projects on a LCOE basis. To the extent OTP has an opportunity to reduce

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[27] OTP reply comments, p. 6.

[28] OTP May 23 Supplemental Information Letter, p. 4.

[29] OTP reply comments, p. 11.

[30] OTP does not explicitly propose a cost cap, but a soft cap is implied in OTP's argument that cost overruns would require Commission approval and a demonstration from the Company that any costs higher than the initial estimate were reasonably incurred.

system costs while advancing multiple state energy policy objectives, Staff believes OTP should be encouraged to do so.

Third, with regard to the timing of the projects, the IRP Order identified a COD for solar resources of "November 1, 2027, or as soon as practicable thereafter."[31] It appears that one of the two best projects available to meet the need identified in the IRP (Abercrombie) cannot practicably be in-service until 2028—only one year after the date identified in the IRP Order. Staff does not perceive this to be a significant problem, and Staff does not believe a reasonable alternative would be selecting a substantially higher-cost project just to align it with the November 1, 2027, COD. After all, without Abercrombie, OTP would both be well-below the IRP range and unable to meet future EETS and CFS obligations.

II. Cost Caps

Staff has no recommendation or preference among the three cost cap options, mostly because Staff believes there are reasonable arguments for adopting any of the cost cap proposals.

First, OTP's recommendation – which is an implied soft cap – uses the same cost recovery language as proposed in the Hoot Lake Solar docket,[32] which the Commission approved. In the Hoot Lake Solar proceeding, the Commission's order did not explicitly impose a cap; rather, the Commission: (1) authorized future cost recovery of Hoot Lake Solar through the RRCR Rider; (2) allocated 100% of the Hoot Lake Solar Project's output and costs to OTP's Minnesota jurisdiction; and (3) required OTP to make a compliance filing detailing its jurisdictional allocation and cost recovery proposal.[33]

One benefit of OTP's implied soft cap is that it continues a consistent approach for the Company recovering its costs; it is reasonable to assume that OTP, when considering substantial capital investments, prefers consistency and predictability for recovering its costs. If OTP has or perceives a financial risk that it may not be able to recover the costs of its investments, this may disincentivize the Company from pursuing such large investments in renewable energy.

The Department's cost cap proposal is reasonable, in Staff's view, because it also reflects past Commission decisions in competitive resource acquisition processes in which the utility is a bidder. For example, the Department recommended the same symmetrical cost cap in Xcel

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[31] Order Point 11, Docket No. 21-339, *In the Matter of Otter Tail Power's 2023– 2037 Integrated Resource Plan*.

[32] Docket No. 20-844, In the Matter of Otter Tail Power Company's Petition for Approval of the Hoot Lake Solar Project.

[33] Of note, neither the Department nor the OAG addressed cost caps in their Hoot Lake Solar comments, presumably because both parties recommended rejecting the petition.

Energy's acquisition of Sherco Solar 3 and the Apple River Solar PPA,[34] which the Commission adopted. In that case, the Commission:

- limited cost recovery to an aggregate, symmetrical capital cost cap for Xcel's proposed Sherco Solar 3 project with the capital cost recovered being set at the cost bid by Xcel for the 250 MW version of the Sherco Solar 3 project;

- authorized Xcel to request Commission approval to exceed the symmetrical cost cap if it can show that any cost it incurred above the cap are the result of a government action (e.g. tariff, trade investigation, etc.) that causes a meaningful disruption to solar panel supplies and market prices; and

- authorized Xcel, Department, or OAG to request modification of the symmetrical cost cap if it is demonstrated that cost changes are the result of a government action that causes a meaningful change to solar panel supplies and market prices.

Staff believes the Department's reference to Xcel's solar RFP docket was appropriate because, in both OTP's case and Xcel's case, the utility sought bids for self-build and PPA projects. The underlying rationale for a symmetrical cost cap, in both cases, is to: (1) hold the utility to its original bid (with identified exceptions); (2) treat the utility the same as third-party bidders; and (3) be consistent with past orders in self-build/PPA resource acquisition proceedings, all of which Staff supports.

If one bidder (the utility in this case) is allowed to pass extra costs onto ratepayers while other bidders are not, then the bidding process would arguably be unfair to all other bidders. In addition, without a cost cap, it could be argued that the final cost of project bids to ratepayers is unknown when the Commission is evaluating them, which means ratepayers are at risk to incur some amount of unknown costs.

Finally, Staff notes that OTP explained in reply comments that the Department's recommendation was too narrow in scope. OTP stated:

> The Company believes an aggregate, symmetrical cost cap would be more reasonable if a wider range of issues were considered by the Commission if capital costs exceed the Projects' aggregate budget. The scope of this relief would resemble force majeure events included in many contracts. This would include such things as a global pandemic directly impacting the availability and cost of materials or contractors. Wars and natural disasters are also commonly included. This does not shift risks to customers as it only permits the Company to petition

[34] Docket No. 22-403, In the Matter of the Petition of Northern States Power Company, d/b/a Xcel Energy, for Approval of Sherco Solar 3 and the Apple River Solar Power Purchase Agreement (Commission Order issued on October 25, 2023).

> the Commission, with the Commission as the final arbiter of whether the Company demonstrated prudency.[35]

Staff supports expanding the scope of the symmetrical cost cap to the extent the Commission finds it to be reasonable.

Regarding OAG's proposal, Staff believes OAG's support for sharing savings of under-budget costs with ratepayers is reasonable. To put it another way, Staff believes it is reasonable to oppose allowing OTP to <u>retain all savings and earn a return on the full upfront estimate</u> even if the project comes in below budget. Staff also believes OAG made reasonable arguments for why the cost cap should be set <u>for each project individually</u> rather than in the aggregate.

Overall, when considering various cost cap proposals, Staff suggests the Commission consider how various guardrails on rate recovery may impact project development risk. For example, while Staff agrees with some aspects of OAG's proposal, Staff prefers OTP's and the Department's soft approach over OAG's absolute, hard cap because the hard cap may create project development risk. OAG's hard cap essentially dismisses uncertainties outside of OTP's control that could impact the ultimate costs; if OTP is unwilling to absorb the financial implications of these risks, it could abandon one or both of the projects, which, in Staff's view, based on the record at hand, would be a bad outcome for ratepayers.

[35] OTP reply comments, p.

DECISION OPTIONS

Approval

1. Approve Otter Tail Power's investments in the Solway and Abercrombie solar projects. *(OTP, Department)*

2. Determine that the Projects qualify toward OTP's Eligible Energy Technology Standard and Carbon-Free Standard obligations. *(OTP, Department)*

3. Determine that Solway Solar is exempt from the certificate of need requirement of Minn. Stat. § 216B.243. *(OTP, Department)*

Cost Recovery

4. Authorize future cost recovery of the Projects, including OTP's proposal to charge its Minnesota ratepayers for North Dakota's share of the solar projects, through the Renewable Resources Cost Recovery Rider under Minn. Stat. § 216B.1645, subd. 2a, subject to Commission review and approval of specific costs to be presented in a future petition. *(OTP, Department) [Staff's redline above was added to clarify what OTP proposed; OTP's December 9 petition did not explicitly request Commission approval to charge its Minnesota customers for North Dakota's share of the Projects.]*

5. Limit cost recovery to an aggregate, symmetrical capital cost cap for the Projects, with the capital cost recovered being set at the costs bid by OTP for Solway Solar and Abercrombie Solar combined. *(Department)*

AND

6. Authorize OTP to request Commission approval to exceed the symmetrical cost cap if it can show that any costs it incurred above the cap are the result of a government action (e.g. tariff, trade investigation, etc.) that causes a meaningful disruption to solar panel supplies and market prices. *(Department)*

    a. In any request to exceed the cost cap, require OTP to show a direct causation between a specified government action and every dollar for which it asks to exceed the cap. *(OAG alternative)*

    b. Define the government actions that could justify exceeding the cost cap as follows: *(Staff alternative to OAG alternative) [Staff note: The OAG's original recommendation is provided on page 16 of the briefing papers. Staff modified the OAG's language because, if the Commission selects the OAG alternative, it would need to specify a definition or list of qualifying government actions.]*

OR

7. Limit recovery of the costs of each project to Otter Tail's current estimates and preclude the Company from requesting to recover any costs above the cap in the future. If actual costs are less than the current estimates, require Otter Tail to allocate 90% of the savings to ratepayers. *(OAG)*

Jurisdictional Cost Allocation

8. Reject Otter Tail's proposal to charge its Minnesota ratepayers for North Dakota's share of the solar projects. *(OAG)*