

Staff Briefing Papers

Meeting Date October 22, 2020 Agenda Item 2**

Company Otter Tail Power Company

Docket Nos. **E017/M-19-530**

In the Matter of Otter Tail Power Company's Request for Determination that Transmission Investments are Eligible for Recovery Through the Company's Transmission Cost Recovery Rider

E017/M-18-748

In the Matter of the Petition of Otter Tail Power Company for Approval of a Transmission Cost Recovery Rider Annual Adjustment

E017/GR-15-1033

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

- Issues
1. Are the Lake Norden Area Transmission Improvement Project, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station eligible for recovery through the Transmission Cost Recovery Rider under Minn. Stat. § 216B.16, subd. 7b?
 2. Should the Commission approve Otter Tail Power's revised 2021 transmission cost recovery rider rates as provided in its August 24, 2020 Reply Comments?

Staff	Sundra Bender	sundra.bender@state.mn.us	651-201-2247
	Robert Manning	robert.manning@state.mn.us	651-201-2197
	Raymond Hetherington	Raymond.hetherington@state.mn.us	<u>651-201-2203</u>

To request this document in another format such as large print or audio, call 651.296.0406 (voice). Persons with a hearing or speech impairment may call using their preferred Telecommunications Relay Service or email consumer.puc@state.mn.us for assistance.

The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

✓ **Relevant Documents**

Date

Docket No. E017/M-19-530

Otter Tail Power Company – Initial Filing	August 16, 2019
Department of Commerce - Comments	July 6, 2020
Otter Tail Power Company - Reply Comments	July 21, 2020

Docket No. E017/M-18-748

Otter Tail Power Company – Initial Filing	November 30, 2018
Department of Commerce – Comments	April 1, 2019
Otter Tail Power Company – Extension Request and Provision of Certain Information	April 10, 2019
Otter Tail Power Company – Reply Comments	May 7, 2020
Department of Commerce – Response to Reply Comments	August 14, 2020
Otter Tail Power Company – Reply Comments	August 24, 2020
Department of Commerce – Supplemental Comments	September 3, 2020
Otter Tail Power Company – Reply Comments	September 14, 2020

Docket No. E-017/GR-15-1033 - Case No. A17-1300

Minnesota PUC – Findings of Fact, Conclusions, and Order	May 1, 2017
Minnesota Court of Appeals - Ruling	June 11, 2018
Minnesota Supreme Court - Ruling	April 22, 2020

Table of Contents

I.	Statement of the Issues	1
II.	Introduction	1
III.	Background	2
IV.	Relevant Statutes	4
A.	Minn. Stat. § 216B.16, subd. 7b. Transmission cost adjustment.	4
B.	Minn. Stat. § 216B.48. Relations with Affiliated Interest.	4
V.	Parties’ Comments, OTP 2019 TCRR, Docket 19-530	4
A.	Otter Tail’s Petition	4
B.	Department Response	6
C.	Otter Tail Reply Comments.....	7
VI.	Parties Comments, OTP 2018 TCRR, Docket 18-748	9
A.	Otter Tail’s Initial Filing (November 30, 2018).....	9
B.	Department Comments (April 1, 2019)	10
C.	OTP Request for Extension and Attachment A (April 10, 2019).....	11
D.	Supreme Court Ruling.....	12
E.	OTP Reply Comments (May 7, 2020)	12
1.	New Projects	13
2.	December 2020 Tracker Balance	14
3.	Carrying Charge.....	15
4.	Proposed Rates and Rate Impact.....	15
F.	Department Response Comments (August 14, 2020)	16
1.	Statutory Requirements.....	18
2.	Project Eligibility	18
3.	Reasonableness of Project Revenue Requirements and Cost Recovery Caps	19
4.	Regional Expansion and Cost Benefit Charges (MISO Schedules 26/26A, MISO Auction Revenue Rights, and MISO Schedules 37 & 38).....	19
5.	Other Wholesale Transmission Revenues (Non-RECB)	22
6.	Prorated Accumulated Deferred Income Taxes (ADIT)	22
7.	Tax Cuts and Job Act of 2017 and Excess ADIT	22
8.	True-up and Tracker Balances	23
9.	Cost Allocations and Rate Design	23
10.	Rate of Return.....	24
11.	Internalized Capital Costs	24

12.	Property Taxes	24
13.	Compliance with Minn. Stat. §216B.48	25
14.	Department Recommendations	25
G.	Otter Tail Reply Comments (August 24, 2020)	26
1.	Updated Revenue Requirements.....	27
2.	Cost Caps.....	28
3.	Excess ADIT	29
4.	Carrying Charge.....	29
5.	TCRR Project Eligibility (19-530)	30
a.	Timing.....	30
b.	Eligibility	31
6.	Requests to Revive All-In Allocation or Seek the Same Financial Effects.....	31
a.	Minn. Stat. § 216B.48 and Affiliated Interests.....	31
b.	MISO Schedule 26A Expense Associated with Xcel Energy’s Investment in BSAT-Brookings	32
c.	Cancel TCRR	33
d.	Courtenay Wind Project.....	34
7.	Conclusion.....	34
H.	Department Supplemental Comments (September 3, 2020).....	34
1.	Adjustment for Property Taxes.....	35
2.	Cost Caps.....	35
3.	Excess Accumulated Deferred Income Taxes	36
4.	Carrying Charge.....	36
5.	Response to Issues in Docket No. E-017/M-19-530	36
6.	OTP’s need to comply with MN Stat. §216B.48.....	38
7.	OTP’s TCRR	40
8.	Department’s Final Analysis.....	41
I.	Otter Tail Reply Comments (September 14, 2020).....	42
1.	TCRR Project Eligibility 19-530.....	42
2.	Costs of the New Projects.....	43
3.	Carrying Charges	44
4.	Discussion of BSAT Projects in Subsequent Rate Case	45
5.	Department Recommendation to Cancel Otter Tail’s TCRR.....	46
VII.	Staff Analysis.....	47
A.	New Projects	47



- B. Carrying Charges 47
- C. Customer Notice 49
- VIII. Decision Alternatives 51

I. Statement of the Issues

Are the Lake Norden Area Transmission Improvement Project, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station eligible for recovery through the Transmission Cost Recovery Rider under Minn. Stat. § 216B.16, subd. 7b?

Should the Commission approve Otter Tail Power's revised 2021 transmission cost recovery rider rates as provided in its August 24, 2020 Reply Comments?

II. Introduction

On May 1, 2017, the Commission issued its FINDINGS OF FACT, CONCLUSIONS, AND ORDER in OTP's most recent rate case and required OTP to incorporate its Big Stone Area Transmission (BSAT) Projects into OTP's TCRR using the all-in methodology. On June 11, 2018, the Minnesota Court of Appeals issued an unpublished decision reversing the Commission's May 1, 2017 decision regarding the BSAT Projects. On April 22, 2020, the Minnesota Supreme Court rendered its opinion in Case No. A17-1300 which affirmed the decision of the Court of Appeals. The Minnesota Supreme Court determined that the TCRR statute gives the utility discretion to seek early recovery of the costs of a particular transmission line, and that the Commission therefore lacked authority to order Otter Tail to include the costs and revenues of the BSAT projects in the existing TCRR. The Minnesota Supreme Court "express[ed] no opinion on whether the MPUC is preempted by federal statute and FERC tariffs from considering the costs and revenues of the Big Stone Lines when setting Otter Tail's Minnesota retail rates."

On August 16, 2019, in Docket No. E-017/M-19-530 (19-530), Otter Tail Power filed its request for determination that three transmission investments are eligible for cost recovery through its transmission cost recovery rider (TCRR) as of January 2020. On May 7, 2020, OTP filed reply comments in E-017/M-18-748 (18-748), with updated calculations and to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station and the Granville Junction Breaker Station (the New Projects) for cost recovery in the rates established in 18-748.

In response, the Department objected to OTP including the three new projects in its TCRR. The Department also objected to OTP's request to add carrying charges to the TCRR, and recommended the Commission require OTP to treat OTP's assignment of the cost and revenues of certain transmission projects, such as the BSAT projects, as an affiliated interest transaction in OTP's next rate case and to consider terminating authorization for OTP's TCRR.

At this meeting, the Commission needs to authorize implementation of the Supreme Court's ruling which determined the Commission does not have the authority to require OTP to include cost recovery for the BSAT transmission projects in OTP's TCRR. The Commission also needs to decide whether to allow OTP to include the new 2019 transmission projects in its TCRR.

OTP is proposing to put the new TCRR rate factors that will increase rates for OTP's customers by a total of \$10,259,744 into effect January 1, 2021. The average residential customer using

1,000 kWh will experience a monthly bill impact (increase) of \$7.32 under Otter Tail's proposal. OTP proposes to mitigate the effect of this increase by spreading recovery of the tracker balance over two years.

OTP is also planning to file a new rate case on November 2, 2020, in Docket No. E-017/GR-20-719, with interim rates to go into effect on January 1, 2021.

OTP is also proposing to refund over-collected 2020 fuel costs for the second and third quarters of 2020 in Docket No. E-017/AA-19-297 effective January 1, 2021. The Department is recommending OTP make these refunds as soon as possible. This docket, AA-19-297, is also on the Agenda for the Commission's October 22, 2020 meeting.

III. Background

On April 29, 2016, Otter Tail Power (OTP or Otter Tail) filed a petition requesting approval of its fifth annual update to its Transmission Cost Recovery Rider (TCRR) in Docket No. E-017/M-16-374 (2016 TCRR). OTP proposed a reduction to its TCRR rates.

On July 5, 2016, the Commission issued its Order granting provisional approval of OTP's fifth annual update to its TCRR.

On July 14, 2016, OTP filed its compliance filing as required by the Commission's July 5, 2016 Order.¹ The compliance filing indicated that the effective date of the rider was September 1, 2016.

On May 1, 2017, the Commission issued its *FINDINGS OF FACT, CONCLUSIONS, AND ORDER* in OTP's 2016 Rate Case, in Docket No. E-017/GR-15-1033 (2016 Rate Case Order).² The Commission's 2016 Rate Case Order required OTP to incorporate its Big Stone Area Transmission Project – Ellendale (BSAT-Ellendale) and the Big Stone Area Transmission Project – Brookings (BSAT-Brookings) (collectively the BSAT Projects) into OTP's TCRR using the all-in methodology.

On May 22, 2017, OTP requested that the Commission reconsider its decision on the BSAT Projects in OTP's 2016 Rate Case. The Commission denied OTP's request for reconsideration on July 21, 2017.

On August 18, 2017, OTP petitioned the Minnesota Court of Appeals seeking a reversal of the Commission's decision regarding the BSAT Projects.

¹ In the Matter of Otter Tail Power Company's Petition for Approval of the Annual Rate Update to its Environmental Upgrades Cost Recovery Rider Rate, Rate Schedule 13.08, Docket No. E-017/M-16-373, and In the Matter of the Petition of Otter Tail Power Company for Approval of a Transmission Cost Recovery Rider Annual Adjustment, Docket No. E-017/M-16-374

² This rate case has a 2015 docket number, however, OTP requested a forecasted test-year and this rate case is referred to in these briefing papers as the 2016 rate case.

On August 21, 2017, OTP made a compliance filing and provided updated TCRR rates including the BSAT Projects in accordance with the Commission's 2016 Rate Case Order. On October 30, 2017, the Commission issued its *ORDER APPROVING COMPLIANCE FILING AND PROVISIONALLY APPROVING TRANSMISSION COST RECOVERY RIDER RATE* in OTP's 2016 Rate Case. OTP's updated, provisionally-approved TCRR rates went into effect on November 1, 2017 and are credits – that is, a reduction in the bill.

On June 11, 2018, the Minnesota Court of Appeals issued its decision which agreed with OTP and reversed the Commission's May 1, 2017 decision (2016 Rate Case Order) regarding the BSAT Projects.

On July 11, 2018, the Commission appealed the Minnesota Court of Appeals decision to the Minnesota Supreme Court.

On November 30, 2018, OTP filed the instant petition requesting approval of its sixth annual update to its TCRR in Docket No. E017/M-18-748 (18-748).

On April 1, 2019, the Department of Commerce, Division of Energy Resources (Department) submitted comments in 18-748 with some preliminary recommendations.

On April 10, 2019 Otter Tail requested an extension of time, until 30 days after the Minnesota Supreme Court issues its opinion, for filing a response to the portions of the Department's Comments regarding the pending Minnesota Supreme Court opinion and the associated Department recommendations. Attached to its request for an extension of time, Otter Tail include an Attachment A providing certain information requested in the Department's April 1, 2019 Comments unrelated to the resolution of Case No. A17-1300. The Commission established the new deadline for replies to the Department's April 1, 2019 comments as 15 days after the Minnesota Supreme Court opinion.

On August 16, 2019, in Docket No. E017/M-19-530, Otter Tail Power Company filed its Request for Determination that three Transmission Investments are Eligible for Cost Recovery through its Transmission Cost Recovery Rider (TCRR) as of January 2020. Ordinarily, Otter Tail would have filed for actual cost recovery at that time, however, due to its ongoing court case, Otter Tail requested only a determination on eligibility for three transmission projects for recovery through TCRR, with actual recovery requested in a later filing, which is part of Docket E017/M-18-748.

On September 16, 2019, the Commission granted the Department of Commerce Division of Energy Resources (Department) request for an extension on the comment period until 30 days after the Minnesota Supreme Court rendered its opinion in Case No. A17-1300.

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

On May 7, 2020, 15 days after the Minnesota Supreme Court issued its ruling, OTP filed Reply Comments in 18-748. OTP provided updated calculations to reflect changes since its November

30, 2018 Annual Update and Supplemental Filing, including the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station and the Granville Junction Breaker Station (the New Projects) for cost recovery in the rates established in 18-748.

On July 6, 2020, the Department filed its comments on Docket E-017/M-19-530, with Otter Tail filing reply comments on July 21, 2020.

On August 14, 2020, the Department filed Response Comments in 18-748, and on August 24, 2020, Otter Tail provided Reply/Response Comments.

On September 3, 2020 the Department filed Supplemental Comments in 18-748 and on September 14, 2020 OTP provided Reply Comments.

IV. Relevant Statutes

A. Minn. Stat. § 216B.16, subd. 7b. Transmission cost adjustment.

The transmission cost adjustment statute, Minn. Stat. § 216B.16 subd. 7b, is the relevant statute for OTP's transmission cost recovery rider (TCRR).

The Transmission Cost Adjustment (TCA) statute, Minn. Stat. § 216B.16, subd. 7b, states that "the Commission may approve a tariff mechanism for the automatic annual adjustment of charges for the Minnesota jurisdictional costs net of associated revenues" for transmission facilities as further defined in the TCA statute.

Recovery of costs through rate riders is an exception to the traditional ratemaking process. Riders allow a utility to recover cost changes that arise outside of the test year in a rate case used to establish the utility's authorized rates. The process for recovery through a rider involves two components: the utility must obtain approval to recover costs through a rider, and it must establish that the costs incurred were reasonable and prudent.

A complete copy of Minn. Stat. § 216B.16, subd. 7b can be found in Attachment A.

B. Minn. Stat. § 216B.48. Relations with Affiliated Interest.

The affiliated interest statute includes definitions for affiliated relationships and is relevant to the Department's argument concerning possible accounting for and rate treatment of OTP's out-of-state transmission projects in OTP's next rate case.

A complete copy of Minn. Stat. § 216B.48 can be found in Attachment B.

V. Parties' Comments, OTP 2019 TCRR, Docket 19-530

A. Otter Tail's Petition

Otter Tail requested recovery for three projects – Lake Norden Area Transmission Improvement Project, Rugby 41.6 kV Breaker Station, and Granville Junction Breaker Station.

The Lake Norden Area Transmission Improvement Project included 47 miles of 115 kV transmission lines, along with upgrades to three substations, to serve growing load in the Lake Norden, South Dakota area. It improves reliability and system flexibility in that part of South Dakota, and was included in the 2018 MISO Transmission Expansion Plan, which found that it “did not result in any negative impacts on system reliability.”³

The Lake Norden Project was approved by the South Dakota Public Utility Commission’s February 20, 2019 Order in Otter Tail’s 2018 Annual Update to its South Dakota TCRR in Docket No. EL18-048, and is expected to go into service in December 2020, at a Minnesota Jurisdictional cost of approximately \$18.8 million.

The second project is expansion of an existing 230/115 kV substation at Rugby, North Dakota to enhance reliability in the local area. Otter Tail installed a new 41.6 kV switchyard at the existing facility. Part of this project was motivated by an extended outage at a neighboring facility owned by Central Power Electric Cooperative, and transferred some connections from that facility to the Otter Tail-owned facility. This project included both Transmission and Distribution facilities, Otter Tail is only requesting recovery for the Transmission-related parts of the upgrade. MISO found that the shifting of load from the Central Power Electric Cooperative facility to the Otter Tail facility did not result in degradation in reliability on the Bulk Electric System.

Otter Tail obtained a Certificate of Public Convenience and Necessity from the North Dakota Public Service Commission for this project on November 2, 2016.⁴ With an in-service date of July, 2017, this project cost approximately \$1.8 million, with \$900 thousand as Minnesota jurisdictional.

The third project for which Otter Tail is requesting recovery is a new 41.6 kV breaker station at Granville Junction. Granville Junction is a junction point of three existing 41.6 kV lines from Dunning, Rugby, and Voltaire Substations, all in North Dakota. This installation resulted in a decrease in exposure to interruptions for customers in several towns in central North Dakota.

This project was approved for recovery by the North Dakota Public Service Commission in its December 14, 2016 Order in Otter Tail’s 2016 Annual Update to its North Dakota TCRR, Case No. PU-16-624. Total cost of the project is approximately \$1 million, with a Minnesota jurisdictional cost of \$510 thousand and an in-service date of July 2017.

³ MISO Presentation at 8/29/2018 West SPM Meeting can be found at: <https://cdn.misoenergy.org/20180829%20WSPM%20Item%2005b%20OTP%20Expedited%20Project%20Review%20Results269779.pdf>

⁴ Otter Tail’s Application for Certificate of Public Convenience and Necessity in Case No. PU-16-625, North Dakota Public Service Commission.

Otter Tail is only requesting approval of these projects for inclusion (determination of eligibility) in its TCRR in Docket No. E-017/M-19-530. Cost recovery is requested in Docket No. E-017/M-18-748.

B. Department Response

On September 9, 2019, the Department requested that this case be continued until the Supreme Court of Minnesota issued its ruling in Case No. A17-1300. The Supreme Court issued its ruling on April 22, 2020. The Department filed its Comments on the Otter Tail Request on July 6, 2020.

The Department argued that each of the three projects Otter Tail requested recovery for failed to meet the statutory requirements for recovery. The statute paragraph (a)(2), which establishes conditions for recovery, states:

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]

The Department notes that Lake Norden has received approval from the state Commission in South Dakota, which meets one criterion. The Department argues, however, that the approval cited by Otter Tail from MISO states that the Lake Norden project “can reliably serve load” in South Dakota. This is not a determination that the project either benefits the utility or the integrated transmission system. Instead, it is consistent with the purpose of the project, to serve a single large industrial customer in South Dakota. As such, the Department argues that the project does not meet the requirements of Minn. Stat. §216B.16, subd. 7b to be eligible for TCR recovery.

The Department agrees that the Rugby Project received North Dakota Public Service Commission (NDPSC) approval. The Department argues, however, that the evidence submitted by Otter Tail indicates that the project is designed to enhance reliability in the local area rather than in Minnesota or in the integrated transmission system. Since there are no Minnesota jurisdictional costs or benefits from the Rugby Project and MISO has not determined that the project benefits Otter Tail’s Minnesota utility or the integrated transmission system, it is ineligible for recovery under the TCR statute.

Like the other two projects, the Department agrees that the ND PSC has approved cost recovery for the Granville Junction project. The Department argues that the facts and conditions for Granville Junction are generally similar to those for Rugby, and so the Department draws the same conclusion. 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, and therefore is ineligible for recovery.

The Department thus recommends that the Commission reject OTP's petition requesting a determination of eligibility for cost recovery in the TCR for these three projects. This recommendation does not prohibit OTP from seeking recovery of any such costs in a future general rate case.

C. Otter Tail Reply Comments

On July 21, 2020, Otter Tail filed comments in reply to the Department recommendation.

Otter Tail argues that the Commission should find the three projects, Granville Junction, Rugby, and Lake Norden to be eligible for cost recovery through the TCRR mechanism. Otter Tail provides three reasons to disregard the Department recommendation:

- 1) The Department's recommendation is not consistent with the express language of the TCRR statute.
- 2) MISO has determined the Projects benefit Otter Tail, thereby satisfying the statutory requirement for eligibility.
- 3) The Department's position is contrary to how the transmission system functions, the Commission's recognition of that function and Minnesota Policy.

Otter Tail argues that the Department recommendation is based on a standard of review other than that provided by statute. Otter Tail argues that the Department has substituted a standard that the projects must demonstrate "benefit to Minnesota customers" or "Minnesota benefits."⁵ Otter Tail states that the statutory criteria clearly states benefit to "the utility OR integrated transmission system." Otter Tail argues that the statute does not require that benefits be in the State of Minnesota for costs to be recoverable through the TCR statute.

Otter Tail quotes the Department as follows regarding the Lake Norden project:

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*⁶

⁵ This language is from Department Comments, pages 3, 4, and 5.

⁶ Otter Tail Reply Page 3, quoting Department page 3-4. Emphasis from Otter Tail.

Otter Tail notes that the Department used similar language to recommend rejection of the Rugby and Granville Junction projects. Under the statute, projects that benefit “the utility” are eligible without a finding that the benefits accrue to either Minnesota customers or to Otter Tail’s “Minnesota utility”, an entity that does not exist – Otter Tail is a single utility with customers in multiple jurisdictions, there is no “Minnesota” Otter Tail utility.

Otter Tail cites several precedents that hold that adding words or language to unambiguous statute for interpretation is contrary to accepted judicial practice.

Otter Tail also argues that the cited determinations by MISO do fulfill the requirement to benefit the utility or integrated transmission system. Each project was included in a MISO Transmission Expansion Plan (MTEP). By including the projects in an MTEP, MISO is determining that each project is part of an overall plan that meets the needs of all stakeholders, which includes Minnesota customers.

Otter Tail also cites the specific findings in the MTEP for the various projects. MISO concluded that the Lake Norden project “offers better reliability at a lower cost” and “can reliably serve the new load” in its MTEP. MISO also found that Lake Norden benefits the integrated transmission system and was part of a group of “projects of urgent need”.

Rugby and Granville Junction were part of MTEP16, and MISO found that both projects provided benefits to Otter Tail. MISO found that each was part of a group of projects “being built to enhance reliability on the 41.6 kV system in North Dakota by adding sectionalizing capability, reducing exposure and adding operational flexibility”.

Otter Tail also argues that the Department position is contrary to how the transmission system functions, the Commission’s recognition of that function, and Minnesota policy. The Transmission system benefits all customers of a utility, across all states, by providing reliability and providing capacity to allow flexibility in use of generation assets to serve load. As an example, if Lake Norden were not built, the new load it most directly serves would impose burdens on other Otter Tail customers across all three states, including Minnesota. Similar arguments are made for Rugby and Granville Junction.

Otter Tail notes that Minnesota, FERC, MISO, North Dakota, and South Dakota have all adopted rate treatment for transmission that is predicated on the fact that all customers benefit from the transmission system being an integrated network. This principal is the basis for North and South Dakota customers paying for approximately 50% of transmission, including that built in Minnesota, and Minnesota customers paying for approximately 50% of transmission for Otter Tail, including that built in North and South Dakota.

Otter Tail believes the TCRR statute was enacted to promote investment in transmission, and in 2013 was expressly amended to allow for recovery of out-of-state costs which met certain criteria. Otter Tail argues that adopting the Department recommendations would undermine this policy.

Due to these reasons Otter Tail argues that the Commission should deem the three projects, Granville Junction, Rugby, and Lake Norden, as eligible for TCRR cost recovery effective January 1, 2020.

VI. Parties Comments, OTP 2018 TCRR, Docket 18-748

A. Otter Tail's Initial Filing (November 30, 2018)

Otter Tail submitted its initial petition on November 30, 2018, which was filed in Docket No. E017/M-18-748, as an annual update and supplemental filing to Docket No. E-017/M-16-374. Otter Tail submitted its petition while the Minnesota Supreme Court was reviewing the Commission's 2015 general rate case decision to include the Big Stone Area Transmission (BSAT) Multi-Value Projects (MVPs) in its TCRR. At the time, OTP anticipated that it would be possible that the Supreme Court decision would be rendered in the first half of 2019 or shortly thereafter, and OTP requested that the updated TCRR rates be implemented shortly after the Supreme Court issues its decision. Thus, Otter Tail provided TCRR revenue requirements and rates reflecting two possible scenarios: (A) assuming the Minnesota Supreme Court affirms the Court of Appeals' decision and the BSAT projects are not included in the TCRR; and (B) assuming the Supreme Court reverses the Court of Appeals' decision and the BSAT projects are included in the TCRR.

Otter Tail included actual billings, revenues, and expenses through October 2018 and forecasts through May 2020 in this update.

Under both OTP's Scenarios A and B, the forecasted revenue requirement of the components in the TCRR tracker is higher than the revenue requirements on which the current rates are based.

Under Scenario A (Court of Appeals decision affirmed and BSAT Projects not included in the calculation of TCRR revenue requirements) OTP calculated a net revenue requirement of \$6.5 million for the proposed recovery period which includes \$0.9 million of revenue requirements for the June 2019 through May 2020 period and \$5.6 million of revenue requirements for periods prior to June 2019. "This \$5.6 million true-up balance is due to actual billings, revenues, and expenses updated since the last provisionally approved revenue requirement calculation as well as the removal of the BSAT projects that were included in the TCRR in response to the Commission's October 30, 2017 Order in Docket No. E-017/GR-15-1033 at Order Point 4 approving provisional TCRR rates."

Otter Tail Power projected that if updated rates are implemented later than June 1, 2019, the under-collected balance will grow, on average, approximately \$350,000 each month that the current rate, a credit is in effect.

Under Scenario B (Court of Appeals decision reversed and BSAT Projects remain in OTP's TCRR and associated revenues and expenses included in the calculation of TCRR revenue requirements) OTP calculated a net revenue requirement of \$2.7 million for the proposed recovery period which includes \$(0.4) million of revenue requirements for the June 2019

through May 2020 period (a credit to customers) and \$3.1 million of revenue requirements for periods prior to June 2019.

For Scenario B, OTP projected that if updated rates are implemented later than June 1, 2019, the under-collected balance will grow, on average, approximately \$250,000 each month that the current rate, a credit, is in effect.

B. Department Comments (April 1, 2019)

In summary, the Department requested that Otter Tail address certain information in reply comments and proposed preliminary recommendations as follows:

The Department requested that OTP address the following in reply comments:

- whether any of the transmission projects included in its 2018 TCRR were over their respective cost caps;
- identify the specific amount of MISO Schedule 26 revenues and expenses associated with the Courtenay Wind Farm transmission project that was excluded from its 2018 TCRR.
- provide the excess ADIT balance as of December 31, 2017 for its TCRR along with OTP's proposed amortization period using the ARAM; and
- explain whether OTP excluded its internal capital costs from recovery in its 2018 TCRR.

The Department preliminarily recommended that:

[I]n the event that the Minnesota Supreme Court agrees with OTP and concludes that it is appropriate for OTP to keep for shareholders all wholesale revenues and expenses from the BSAT Projects by removing \$11,814,503 [Footnote omitted] in net revenues from OTP's retail rates and the TCRR, the Commission should require OTP to remove all other MVP projects and their related MISO Schedule 26A revenues and expenses from base retail rates and the 2018 TCRR.

Additionally, the Department recommended that the Commission:

- approve OTP's proposed ADIT proration for the forecasted test year in the 2018 TCRR, subject to a true-up calculation in the following year using actual non-prorated ADIT amounts;
- require OTP to begin amortizing and refunding its excess ADIT balances in its revenue requirement calculations in its 2018 TCRR; and
- require OTP to continue to include its wholesale transmission revenues or net credit for any non-RECB transmission projects included in future TCRR filings.

The Department stated that it would provide its final recommendations after reviewing OTP's reply comments.

Also, the Department noted that OTP's true-up and tracker balance calculations do not include any carrying charges. Further, the Department stated that it reviewed OTP's proposed true-up and tracker balances for its 2018 TCRR and concludes that the calculations are accurate.

The Department also stated:⁷

OTP's cost allocations and rate design are provided in Attachments 3A and 1A of its Petition. As shown therein, OTP used its Minnesota jurisdictional transmission allocator and its current rate design from its most recent rate case to allocate costs to Minnesota and its various customer classes. In addition, and consistent with previous TCRR filings, OTP proposed to use a demand-only billing rate for the Large General Service Class (LGS) and an energy-only billing rate (cents/kWh) for all other customers. The Department reviewed and agrees with OTP's proposed allocations and rate design method.

In the Commission's Order issued March 26, 2012 in 10-1061, the Commission requested an analysis of the impact of a "percentage of revenue" rate design among and within its customer classes. OTP's analysis is provided in Attachment 3A of its Petition.

The Department concludes that OTP complied with the Commission's March 26, 2012 Order in 10-1061 by providing an analysis in Attachment 3A of its Petition showing the impact of using a percentage of revenue rate design method to allocate costs among and within customer classes.

C. OTP Request for Extension and Attachment A (April 10, 2019)

On April 10, 2019, OTP submitted a request for an extension of time, until 30 days after the Minnesota Supreme Court Opinion is issued in Case No. A17-1300, to file its reply comments. Otter Tail stated:⁸

As background for this request, Otter Tail filed its annual update in this docket providing Transmission Cost Recovery Rider (TCRR) rates, attempting to reflect the results of the positions of the Commission and Otter Tail as to rate treatment of the Big Stone Area Transmission (BSAT) projects. Otter Tail made its filing based on the premise that the positions of Otter Tail and the Commission were clear and the prevailing position could be implemented quickly after the Supreme Court issues its opinion. The Department's April 1, 2019 Comments appear to support another position to be implemented "if the Minnesota Supreme Court agrees with OTP."

⁷ Department Comments, p. 19. (April 1, 2019).

⁸ Otter Tail Request for Extension, p. 1. (April 10, 2019).

Otter Tail believes that the Department's position would be unlawful and in conflict with a Minnesota Supreme Court decision that agrees with Otter Tail with respect to preemption and the interpretation of Minn. Stat. § 216B.16, subd. 7b. Rather than engage in a discussion based on what the Minnesota Supreme Court *might determine*, however, Otter Tail believes that it would be more appropriate for the discussion to await for what the Minnesota Supreme Court *actually determines*. Avoiding a speculative discussion of a possible Minnesota Supreme Court decision provides good cause for an extension and modification of comment process as proposed by Otter Tail.

In addition to making the extension request, Otter Tail included an Attachment A providing certain information requested in the Department's April 1, 2019 Comments unrelated to the resolution of Case No. A17-1300.

D. Supreme Court Ruling

On April 22, 2020, in Case No. A17-1300, the Minnesota Supreme Court issued its ruling determining that the Commission did not have the authority in OTP's 2015 Rate Case (Docket No. E107/GR-15-1033) to require OTP to file an amended TCRR that includes the costs and revenues associated with the BSAT Projects. The Minnesota Supreme Court "express[ed] no opinion on whether the MPUC is preempted by federal statute and FERC tariffs from considering the costs and revenues of the Big Stone Lines when setting Otter Tail's Minnesota retail rates."

E. OTP Reply Comments (May 7, 2020)

OTP expanded the scope of its initial petition in its May 7, 2020 reply comments by proposing inclusion of three new projects (the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station and the Granville Junction Breaker Station) and related annual revenue requirements that were not included in the Company's initial filing on November 30, 2018.

In addition, OTP's reply comments included (1) updates to billings, revenues, and expenses with actual data through March 2020 and forecasts through December 2021, and (2) requested a carrying charge, equal to OTP's cost of capital, on the unrecovered balance as of May 1, 2020.

OTP stated:⁹

The Commission provisionally approved current TCRR rates on October 30, 2017, with rates going into effect November 1, 2017. [Citation omitted.] Those rates are a credit to customers due in part to the MISO revenues for Otter Tail's investment in the Big Stone Area Projects (BSAT Projects) being included in retail rates effective January 1, 2016. At the same time, TCRR revenue requirements have

⁹ OTP Reply Comments, p. 2. (May 7, 2020)

increased, resulting in the accumulation of a large TCRR tracker balance. In order to mitigate the impact of the tracker balance on customers, Otter Tail requests that rates set in this Docket for this annual recovery period include one-half of the projected December 2020 TCRR tracker balance. Otter Tail proposes that the then-remaining TCRR tracker balance be collected in the next annual recovery period along with all other tracker updates.

Otter Tail indicated that its Attachments 1 through 13 result in a net revenue requirement of \$10.3 million for the proposed recovery period, and stated:

This revenue requirement consists of: (1) \$2.8 million in revenue requirements for the 2021 recovery period; and (2) one-half of the December 2020 TCRR tracker balance, which is projected to be \$13.4 million. Of the \$13.4 million projected December 2020 tracker balance, only \$3.2 million is related to the removal of the BSAT Project revenue requirement and MISO revenues and expenses associated with Otter Tail's investments in the projects from January 1, 2016 forward. [Footnotes omitted.]

Otter Tail proposed the following revenue requirements to be recovered beginning January 1, 2021:

**Table 1: Summary of Revenue Requirements
Includes One-Half of December 2020 Tracker Balance**

Line No.	Revenue Requirements	January 2021 - December 2021
1	Lake Norden Area Transmission Project	901,313
2	Rugby 41.6 kV Breaker Station	43,000
3	Granville Junction Breaker Station	23,779
4	Schedule 26 Expenses	6,279,366
5	Schedule 26A Expense	4,210,809
6	Schedule 26 Revenue	(6,998,550)
7	Schedule 37 & 38 Revenue	(174,114)
8	Schedule 26A Revenue	(1,527,305)
9	MVP ARR Revenue	(15,693)
10	Carrying Cost	821,891
11	True-Up (½ of December 2020 Tracker Balance)	6,689,095
13	Net Revenue Requirement	<u>\$10,263,592</u>

1. New Projects

As discussed earlier in these briefing papers, on August 16, 2019, in Docket 19-530, Otter Tail requested that the Lake Norden Area Transmission Improvement project, the Rugby 41.6kV Breaker Station project, and the Granville Junction Breaker Station project (the New Projects) be deemed eligible for cost recovery in Docket 19-530. Otter Tail now requests the Commission authorize cost recovery in this proceeding, Docket 18-748. Including these three New Projects increases the net revenue requirement for the proposed recovery period by \$1.7 million.

Otter Tail provided the costs of the Lake Norden Area Transmission Improvement project in Attachment 5 of its filing. Otter Tail stated:¹⁰

In the TCRR Eligibility Petition [19-530], Otter Tail provided a cost estimate of \$37.4 million (OTP Total) / \$18.8 million (OTP MN) based on Minnesota's D2 jurisdictional cost allocation factor of 50.297 percent. Otter Tail now estimates the project cost to be \$30.0 million (OTP Total) / \$15.0 million (OTP MN). Otter Tail removed all internal capital costs from this project in the amount of \$8.3 million (OTP Total) / \$4.2 million (OTP MN). This results in the total project costs included in Attachment 5 being \$20.8 million (OTP Total) / \$10.4 million (OTP MN).

Otter Tail provided the cost of the Rugby 41.6 kV Breaker Station in Attachment 6 of its May 7, 2020 reply comments. Otter Tail stated:

The total cost of the project, excluding internal costs of \$0.7 million (OTP Total) / \$0.4 million (OTP MN), is \$1.1 million (OTP Total) / \$0.6 million (OTP MN). This project was in-service July 2017.

Otter Tail provided the cost of the Granville Junction Breaker Station in Attachment 7 of its May 7, 2020 reply comments. Otter Tail stated:

The total cost of the project, excluding internal costs of \$0.4 million (OTP Total) / \$0.2 million (OTP MN), is \$0.6 million (OTP Total) / \$0.3 million (OTP MN). This project was in service July 2017.

2. December 2020 Tracker Balance

In recognition of the circumstances of this case, and the size of the projected December 31, 2020 tracker balance of approximately \$13.4 million, Otter Tail proposed that one-half of the projected December 31, 2020 tracker balance be included in the proposed January 2021 through December 2021 revenue requirements and resulting TCRR rates. OTP proposed the remaining tracker balance be included in OTP's next annual update filing, "which will measure actual billings to date and provide an updated tracker balance so that customers pay no more and no less than the authorized revenue requirements." OTP stated "[t]his approach reduces the monthly impact on a residential customer using 1,000 kWh a month by \$3.52, or

¹⁰ OTP Reply Comments, p. 4. (May 7, 2020).

approximately 33 percent, as compared to recovering the entire tracker balance in the January 2021 through December 2021 period.”

3. Carrying Charge

Otter Tail requested that the unrecovered balance as of May 1, 2020 be subject to a carrying charge equal to Otter Tail’s cost of capital, as determined in the 2016 Rate Case, Docket No. E-017/GR-15-1033. “Otter Tail requests a carrying charge given the entire tracker balance is not being recovered in the annual recovery period and that \$5.976 million continued to be credited to customers following the Court of Appeals ruling.” [Citation omitted.]

4. Proposed Rates and Rate Impact

Otter Tail provided the following table 2 comparing current provisionally approved TCRR rates (Column B) to Otter Tail’s proposed TCRR rates (reflecting rate mitigation (Column C)) and rates without rate mitigation (Column D).

Table 2
Rate Comparison

	A	B	C	D
Line No.	Class	Current Provisionally Approved Rates Effective November 1, 2017*	Jan 2021 - Dec 2021 Rates includes one-half of Dec 2020 tracker balance	Jan 2021 - Dec 2021 Rates includes entire Dec 2020 tracker balance
1	Large General Service	\$ (0.650) per kW	\$ 1.943 per kW	\$ 3.170 per kW
2	Controlled Service	\$ (0.00032) per kWh	\$0.00099 per kWh	\$ 0.00161 per kWh
3	Lighting	\$ (0.00113) per kWh	\$0.00418 per kWh	\$ 0.00682 per kWh
4	All Other Service	\$ (0.00173) per kWh	\$0.00558 per kWh	\$ 0.00911 per kWh

*The Commission’s October 30, 2017 ORDER APPROVING COMPLIANCE FILING AND PROVISIONALLY APPROVING TRANSMISSION COST RECOVERY RIDER RATE

Otter Tail stated:¹¹

The average residential customer using 1,000 kWh will experience a monthly bill impact of \$7.32 under Otter Tail’s proposal. Otter Tail requests new TCRR rates take effect January 1, 2021. This timeline is appropriate given the interaction with other dockets as well as current realities of the ongoing response to the coronavirus pandemic. Otter Tail provides Attachment 14, Tariff Schedule 13.05, with the proposed rates included in this filing. Otter Tail provides its proposed customer notice as Attachment 15 to this filing.

¹¹ OTP Reply Comments, p. 6. (May 7, 2020).

F. Department Response Comments (August 14, 2020)

On August 14, 2020, the Department filed response comments recommending Commission approval of the Company's proposal with modifications and requesting additional information from Otter Tail.

The Department observed that OTP's reply comments included an estimate for its 2021 Minnesota jurisdictional annual revenue requirements reflecting removal of the BSAT Projects. In addition, OTP proposed to include only half of its projected December 2020 tracker balance in the current TCR in order to mitigate the impact on ratepayers. However, OTP has also proposed to charge customers a carrying charge (based on the Company's cost of capital) on the remaining half tracker balance beginning May 1, 2020 and proposed to collect the remaining half tracker balance in its next TCRR recovery filing.

The Department noted that it asked OTP (in IR No. 4) to provide a summary of its 2021 revenue requirements without the exclusion of the BSAT Projects in order for DOC to analyze the change and its impact.

Table 3, below, shows the comparison of 2021 revenue requirements, including BSAT Projects (column A) and without the BSAT Projects (OTP's current proposal; column B) and the change reflected in column C.

Table 3: Summary of Proposed Projects and Revenue Requirements Including One-Half of the December 31, 2020 Tracker Balance¹²

Line	Project	(A) 2021 Annual Revenue Requirements – With BSAT Projects/1	(B) 2021 Annual Revenue Requirements – Without BSAT Projects/2	(C) Increase/ Decrease in Annual Revenue Requirements Due to Removal of BSAT Projects/3
1	Lake Norden Area Transmission Project	901,313	902,313	0
2	Rugby 41.6 kV Breaker Station	43,000	43,000	0
3	Granville Junction Breaker Station	23,779	23,779	0
4	BSAT-Brookings (MVP)	3,353,753	0	3,353,753
5	BSAT – Ellendale (MVP)	5,997,956	0	5,997,956
6	MISO Schedule 26 Revenues	(6,988,550)	(6,988,550)	0
7	MISO Schedule 26 Expenses	6,279,366	6,279,366	0
8	MISO Schedule 26A Revenues (MVPs)	(11,705,987)	(1,527,305)	10,178,682

¹² Department Response Comments, August 14, 2020, "Department Table 1", p. 5.

Line	Project	(A) 2021 Annual Revenue Requirements – With BSAT Projects/ 1	(B) 2021 Annual Revenue Requirements – Without BSAT Projects/ 2	(C) Increase/ Decrease in Annual Revenue Requirements Due to Removal of BSAT Projects/ 3
9	MISO Schedule 26A Expenses (MVPs)/ 4	4,327,935	4,210,809	117,126
10	MISO Schedules 37 & 38 Revenues	(174,114)	(174,114)	0
11	MVP ARR Revenue/ 5	(15,693)	(15,693)	0
12	Carrying Cost	627,217	821,991	194,674
13	Tracker True-up (one-half)	5,062,238	6,689,095	1,626,857
14	Total	7,732,214	10,263,592	2,531,378

Note: Bolded projects were newly introduced in OTPs reply comments
/1 Per OTPs response to Department Information Request No. 4.
/2 Per OTPs reply comments, attachment 2
/3 Difference: Column (B) – Column (A)
/4 Includes costs associated with Xcel’s share of BSAT lines
/5 “ARR” stands for Auction Revenue Rights

The Department noted that although OTP claimed to show revenue requirements without the BSAT that is inaccurate, since OTP numbers do not exclude Xcel Energy’s share of costs of the BSAT lines, “resulting in a mis-match of costs and revenues for the BSAT projects and a violation of the fundamental matching principle in accounting and rates.” Further, the Department said that “[t]his violation is particularly concerning, given OTP’s proposal to ‘assign’ the BSAT Projects to OTP’s shareholders, without Commission approval required under Minn. Stat. §216B.48.”

Regarding customer rates, the Department stated:

The TCRR is applicable to electric service under all of OTP’s retail rate schedules. OTP proposed to use the same allocations and rate design methods that are currently in place. Specifically, OTP proposed to use the transmission demand allocator (D2) to allocate total revenue requirements to the Minnesota jurisdiction and rate classes. In addition, OTP proposed to use a demand-only rate for the Large General Service class and an energy-only rate for all other customers.¹³

The Department emphasized that OTPs proposed rate increases due to its decision not to credit ratepayers with the net revenues from the BSAT Projects are material.

¹³ Department Response Comments, August 14, 2020, p. 6.

The Department stated that the Company has acknowledged that:

the monthly bill impact for a residential customer using, on average, about 1,000 kWh per month would be \$7.32 per month, [Citation omitted] or about \$88 per year compared to the current TCRR, with inclusion of only half of the December 2020 tracker balance at this time. Including the entire true-up would increase Residential customers' bills by \$10.84 per month or over \$130 per year.¹⁴

DOC noted that the Company has requested an effective date of January 1, 2021 for its proposed rates.

1. Statutory Requirements

The Department presented the Transmission Cost Recovery Statute, Minn. State. §216B.16, subd 7b, but emphasized the following:

(2) allows the utility to recover charges incurred under a federally approved tariff that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system. These charges must be reduced or offset by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset.

2. Project Eligibility

The Department stated that the three new projects consist of the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station. The total 2021 revenue requirements for these three projects add up to \$968,092.

The Department noted that, on August 16, 2019, OTP made a separate filing (Docket No. E017/M-19-530) requesting cost recovery in the Company's Transmission Cost Recovery Rider (TCRR). On July, 6, 2020, the Department filed comments in 19-530 concluding that the three new projects are not eligible for recovery under OTPs TCRR. This 19-530 docket is still pending before the Commission and, if the Commission agrees with the Department's conclusion, then the three new projects and their revenue requirements and tracker balances should be removed from OTP's TCRR in this proceeding.

The Department also noted that, in addition to the BSAT Projects, OTP also chose not to include the Courtenay Wind Project. In response to Department IR No. 4, OTP stated that "the Courtenay Wind Project would have an immaterial impact (approximately \$2,000) on the TCRR

¹⁴ Ibid

revenue requirement”. However, the Department pointed out that withholding the Courtenay Wind Project also means that its associated MISO Schedule 26 revenues and expenses have also been excluded from OTPs TCRR and will be discussed further below.

3. Reasonableness of Project Revenue Requirements and Cost Recovery Caps

The Department stated that in Xcel’s TCRR filing in Docket No. E-002/M-09-1048, the Commission stated the following in its April 7, 2010 Order:

...the Commission finds that TCR project cost recovery through the rider should be limited to the amount of the initial cost estimates at the time the projects are approved as eligible projects, with the opportunity for the Company to seek recovery of excluded costs on a prospective basis in a subsequent rate case. A request to allow cost recovery for project costs above the amount of the initial estimate may be brought for Commission review only if unforeseen or extraordinary circumstances arise on a project.

The Department said that the Commission applied this same approach in OTPs 2013 TCRR,¹⁵ ordering that OTP should limit its TCRR recovery of the Bemidji project to \$74 million.

Since OTP did not address this issue in its filings, the Department requested¹⁶ that the Company explain in reply comments whether any of the project costs included in this TCRR are over their respective cost caps. However, OTP did not respond in its May 7, 2020 reply comments, so the Department again recommends that OTP provide this information in additional reply comments and the Department will provide additional comments after review of OTP’s information

4. Regional Expansion and Cost Benefit Charges (MISO Schedules 26/26A, MISO Auction Revenue Rights, and MISO Schedules 37 & 38)

MISO Schedules 26/26A

Regarding MISO Schedules 26/26A, the Department noted that Minn. Stat. §216B.16. subd 7(b)(2) was amended in 2008 to allow utilities providing transmission to recover “the charges incurred by a utility that accrue from other transmission owners’ regionally planned transmission projects that have been determined by MISO to benefit the utility, as provided for under a federally approved tariff,” upon Commission approval. The Statute further requires that any such cost recovery “must be reduced or offset by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset.” Thus, as stated and highlighted above under the Statutory Authority section, this entire portion of the law states the following requirement for the transmission cost recovery tariff, that it:

¹⁵ Docket No. E-017/M-13-103, Otter Tail Power Petition, February 7, 2013

¹⁶ Department Comments, April 1, 2019.

(2) allows the utility to recover charges incurred under a federally approved tariff that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system. These charges must be reduced or offset by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset;

The Department said that:

Based on the language in the statute, the Department concludes that this statute does not allow OTP to charge its ratepayers for Xcel's costs of the BSAT facilities without the "revenues received by the utility" for the same transmission project that MISO has determined will "benefit the utility or the integrated transmission system."

Further, the Department pointed out:

The Department notes that Minnesota regulated electric utilities normally include in their TCRR's MISO Schedule 26/26A revenues and expenses for all of their qualifying projects, regardless of whether the transmission asset itself is included for recovery in base rates or in the TCRR. For example, even after accounting for OTP's proposed exclusion of the net revenues for the two BSAT Projects, OTP's TCRR still contains MISO Schedule 26A revenues of (\$1,527,305) that are associated with OTP's CAPX 2020 Brookings Project, which was moved into base rates in OTP's 2016 Rate Case. The Department notes that Xcel Energy and Minnesota Power include all of their MISO Schedule 26/26A revenues and expenses in their TCRRs regardless of whether the transmission assets themselves are included in base rates or the TCRRs.

[Footnote omitted.]

The Department observed that OTPs proposal to exclude the BSAT Projects reduces the Company's Minnesota ratepayers' portion of MISO Schedule 26A revenues by \$10,178,682 and MISO Schedule 26A expenses by \$117,126. This reduction along with related true-up charges more than offsets the removal of the Minnesota jurisdictional annual revenue requirements for the BSAT Projects.¹⁷ Under OTPs proposal Minnesota ratepayers would be required to pay an additional \$2,531,378 because OTP is proposing exclusion of the BSAT Projects.

The Department went on to point out "concerning results" from OTPs current proposal in that retail ratepayers would still be charged for costs of all other MVP projects in the MISO footprint including Xcel's costs for the same MVP facilities. Moreover, the \$4,210,809 in MISO Schedule 26A expenses that OTP is proposing to charge Minnesota ratepayers includes OTPs share of

¹⁷ See Staff Briefing Papers, Table 3 on p. 16.

MISO 26A expenses associated with Xcel's half ownership of the BSAT-Brookings MVP Project – *the same transmission line that OTP claims is only for wholesale purposes.*¹⁸

The Department further said that, by choosing not to include the BSAT Projects in its TCRR, OTP proposes to increase the total amount of TCRR annual revenue requirements charged to ratepayers by \$2,531,378 in this proceeding, with significant rate impacts. Moreover, the Department noted that OTP's decision to exclude the BSAT Projects from the TCRR allows OTP to keep these net revenues for shareholders.

Also, the Department noted that OTP excluded a small transmission project – the Courtenay Wind Farm – and its related Minnesota jurisdictional revenue requirements and MISO Schedule 26 revenues and expenses from its TCRR. The Department indicated that it is concerned about the exclusion of revenues and expenses.

The Department argued that:

Given OTP's decision not to include the BSAT Projects in its TCRR and the resulting harm to ratepayers and the extensive amount of time and resources spent analyzing and addressing complex facts associated with OTP's TCRR proposals, the Department recommends, as it did in OTP's last rate case, that the Commission consider cancelling OTP's TCRR and requiring OTP to include all of its transmission assets and their related MISO Schedule revenues and expenses in base rates in a general rate case proceeding.¹⁹

Regarding MISO Schedule 26/26A revenues and costs, the Department recommended that the Commission require OTP to remove MISO costs for Xcel's share of the BSAT transmission facilities.

MISO's Auction Revenue Rights (ARRs)

As shown above in Table 3, OTP proposed to include \$15,693 of ARR revenues in its TCRR. The Department reviewed OTP's ARR calculations and concluded that they appear reasonable and in compliance with the Commission's February 18, 2015 Order in 14-375.

MISO Schedules 37 & 38

In its March 10, 2014 Order in 13-103, the Commission required OTP to separately identify its MISO Schedule 37/38 revenues included in its TCRR. As shown above in Table 3, OTP proposed to include \$182,739 of MISO Schedule 37/38 revenues in its 2018 TCRR.

The Department stated that, based on its review, it concluded that OTP's MISO Schedule 37/38 revenue calculations appear reasonable and in compliance with the Commission's March 10, 2014 Order in 13-103.

¹⁸ Department emphasis.

¹⁹ Surrebuttal Testimony of Mr. Johnson in Docket No. E017/GR-15-1033, page 26.

5. Other Wholesale Transmission Revenues (Non-RECB)

The Department noted that the bulk of Minnesota regulated electric utilities' transmission assets over 100 kilovolts are considered to be non-RECB projects for MISO purposes and are included in the utilities' base rates rather than a transmission rider. However, "the Department understands that some utilities receive other wholesale transmission revenues from third-party transmission customers who are charged the utility's Federal Energy Regulatory Commission (FERC) jurisdictional MISO tariff²⁰ rate for the use of the utility's non-RECB transmission system."

The Department said that in instances when non-RECB projects qualify for TCRR recovery, and consistent with Minn. Stat. §216B.16, subd 7(b)(2) noted above, the utility provides a net credit in its TCRR to account for the amount of revenues it expects to receive from MISO for other utilities' use of the transmission asset. This net credit reflects the difference between what the utility pays MISO for using its own non-RECB transmission asset and what the utility receives from MISO for other utilities' use of the asset.

The Department stated that, if the Commission allows OTP to include the three new transmission projects – despite Department objections in 19-530 – then the Department recommended that the Commission require OTP to include any related wholesale transmission revenues or net credits associated with these projects in its TCRR.

6. Prorated Accumulated Deferred Income Taxes (ADIT)

The Department noted that OTP replaces its forecasted prorated ADIT balances with actual non-prorated ADIT balances the following year in its TCRR. As a result, the Department concluded that OTP's forecasted prorated ADIT balances are subject to a true-up calculation in the following year using actual non-prorated ADIT amounts. The Department agreed with this approach.

The Department recommended that the Commission approve OTP's proposed ADIT proration for the forecasted test year in this proceeding, subject to a true-up calculation in the following year using actual non-prorated ADIT amounts.

7. Tax Cuts and Job Act of 2017 and Excess ADIT

The Department noted that OTP did not specifically address the effects of the TCJA on its TCRR, but it did use the updated tax rates to calculate its current period tax expense and the tax gross-up in its revenue requirement calculations. However, the Department also noted that OTP did not provide its excess ADIT balance as of December 31, 2017 or its related amortization period associated with its excess ADIT balance using the Average Rate Assumption Method (ARAM). As a result, the Department requested that OTP provide its excess ADIT balance as of December 31, 2017 for its TCRR along with its proposed amortization period using the ARAM. In

²⁰ Department FN 18: "Utility-specific rates are contained in Attachment O of MISO's Open Access Transmission Tariff (OATT)."

addition, consistent with the Commission's decision in the Tax Docket, the Department recommended that the Commission require OTP to begin amortizing and refunding its excess ADIT balances in its revenue requirement calculations in its TCRR.

The Department noted that OTP did not respond to the Department's request in its reply comments. Thus, the Department recommended that OTP provide this information in additional reply comments.

8. True-up and Tracker Balances

The Department stated that:

. . . OTP's projected December 31, 2020 tracker balance totaled \$13,378,191 (including carrying charges of \$472,015). As explained on page 2 of its reply comments, OTP proposed to include only half of its projected December 2020 tracker balance or \$6,689,095 in its proposed January 2021 through December 2021 annual revenue requirement calculations in an attempt to mitigate somewhat the impact of the large tracker balance on ratepayers. However, OTP proposed to charge ratepayers for the carrying costs based on OTP's cost of capital associated with the remaining half tracker balance beginning May 1, 2020. Thus, in addition to the \$472,015 in carrying charges included in OTP's December 31, 2020 tracker balance, OTP included estimated 2021 carrying charges totaling \$821,891 in its TCRR. . .

The Department notes that OTP's proposal to include carrying charges on its tracker balance ignores the Commission's March 10, 2014 Order in Docket No. E017/M-13-103, which stated in part that:

Otter Tail shall not add a carrying charge to the tracker balance for the TCR rider and the Renewable Resource Cost Recovery Rider effective with the date of this Order.

The Department concludes that OTP's proposal to include carrying charges in its TCRR does not comply with the Commission's March 10, 2014 TCRR Order. As a result, the Department recommends that the Commission deny OTP's proposal to apply carrying charges to its TCRR tracker balance.

9. Cost Allocations and Rate Design

The Department stated:

OTP used its Minnesota jurisdictional transmission allocator and its current rate design from its most recent rate case to allocate costs to Minnesota and its various customer classes. In addition, and consistent with previous TCRR filings, OTP proposed to use a demand-only billing rate for the Large General Service Class (LGS) and an energy-only billing rate (cents/kWh) for all other customers. The

Department reviewed and agrees with OTP's proposed allocations and rate design method.

In the Commission's Order issued March 26, 2012 in 10-1061, the Commission requested an analysis of the impact of a "percentage of revenue" rate design among and within its customer classes. OTP's analysis is provided in Attachment 3 of its reply comments.

The Department concluded that OTP complied with the Commission's March 26, 2012 Order in 10-1061 by providing an analysis in Attachment 3 of its reply comments showing the impact of using a percentage of revenue rate design method to allocate costs among and within customer classes.

10. Rate of Return

The Department found that OTP used an overall rate of return of 7.51 percent as allowed by the Commission in the Company's last rate case in Docket No. E017/GR-15-1033.

11. Internalized Capital Costs

The Department said that, "[i]n Docket No. E017/M-13-103, the Commission determined that OTP's internal capitalized costs should be excluded from recovery under the Company's TCRR beginning March 2014. ..., OTP complied with the Commission's directive and excluded internal capitalized costs from its TCRR." The Department agreed with OTP and concluded that the Company has complied with the Commission's directive.

12. Property Taxes

The Department noted that OTP included property taxes in its forecasted 2021 annual revenue requirements calculations for the three new transmission projects included in its TCRR. The Department stated that, since property taxes are not paid until the following year (i.e. 2021 property taxes are paid in 2022), there should be a reduction to rate base to reflect this timing difference.

If the Commission allows OTP to include the 3 new projects in its TCRR despite the Department's objections in 19-530, the Department recommended a rate base reduction for the property taxes included in the 2021 revenue requirement, to recognize the time value of money for these ratepayer-supplied funds that the Company will collect and hold for a significant amount of time in advance of the actual tax payment.

The Department reviewed OTP's most recent general rate case (Docket No. E017/GR-15-1033) and determined that the relative amount of the rate base reduction for property taxes was equivalent to approximately 72 percent of the property tax expense. Therefore, if the Commission allows OTP to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects in its

TCRR, the Department recommends that the Commission require OTP to include a downward adjustment to rate base of \$95,354 to be reflected in OTP's proposed 2021 annual revenue requirements, which represents approximately 72 percent of the incremental amount of property tax expense of \$132,436 included in OTP's proposed 2021 annual revenue requirement calculations shown in Attachment 5 through 7 of OTP's reply comments.

[Footnotes omitted]

13. Compliance with Minn. Stat. §216B.48

The Department said:²¹

While the Minnesota Supreme Court allowed OTP to pick and choose between rate cases which project to include in its TCRR filing to the detriment of ratepayers, it did not decide that a utility could "assign" net proceeds from an asset away from ratepayers to an unregulated affiliate, without written approval from the Commission. Specifically, Minn. Stat. §216B.48 subd 1(9) defines an affiliate as "every part of a corporation in which an operating division is a public utility."

Thus, the Department recommends that the Commission require OTP to provide in its initial filing in its next rate case a fully and complete justification for assigning any transmission projects to such an affiliate.

14. Department Recommendations

The Department recommends that the Commission:

- require OTP to remove from its TCRR in this proceeding the costs of the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects and their related revenue requirements and tracker balances, if the Commission agrees with the Department's conclusions and recommendations in 19-530;
 - if, despite the Department's objections in 19-530, the Commission allows OTP to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects in its TCRR:
 - require OTP to include any related wholesale transmission revenues or net credits associated with these projects in its TCRR; and
 - include a downward adjustment to rate base of \$95,354 to be reflected in OTP's proposed 2021 annual revenue requirements.
- deny OTP's proposal to apply carrying charges to its TCRR tracker balance;

²¹ Department Response Comments, p. 19. (August 14, 2020).

- require OTP to begin amortizing and refunding its excess ADIT balances in its revenue requirement calculations in its TCRR; and
- require OTP to provide in its initial filing in its next rate case a full and complete justification for assigning any transmission projects to an affiliate as defined under Minn. Stat. §216B.48.

In addition, given the harm to OTP's ratepayers caused by the Company's choices regarding its TCRR, the Department recommends that the Commission consider cancelling OTP's TCRR and requiring OTP to include all of its transmission assets and their related MISO Schedule revenues and expenses in base rates in a general rate case proceeding.

Finally, the Department recommends that OTP provide the following information in its additional reply comments:

- explain whether any of the project costs included in its TCRR are over their respective cost caps;
- provide its excess ADIT balance as of December 31, 2017 for its TCRR along with its proposed amortization period using the ARAM.

The Department intends to provide final comments after reviewing this information from OTP.

G. Otter Tail Reply Comments (August 24, 2020)

Otter Tail responded to the Department providing certain information requested by the Department and incorporating the Department's recommended property tax adjustment. According to Otter Tail, the property tax adjustment does not change its proposed TCRR rates.

Otter Tail also addressed what it called "the Department's apparent intent to continue pursuing rate treatment for Otter Tail's investment in the Big Stone Area Projects (BSAT Projects) found to be unconstitutional by the Minnesota Court of Appeals." According to Otter Tail, "[t]he Commission can implement updated TCRR rates in this Docket without addressing the Department's position on Otter Tail's investment in the BSAT Projects."

Otter Tail stated:²²

As this Docket draws to a close, it is important to focus on the benefits that Minnesota customers receive from transmission investments. The Commission has previously noted that regional transmission provides "system-wide benefits...." The TCRR was created by the Legislature to encourage development of transmission. Congress also has acted, requiring FERC to establish mechanisms that encourage the development of regional transmission projects like the BSAT Projects and other Multi-Value Projects (MVPs). These mechanisms include

²² OTP Reply/Response Comments, pp. 1-2. (August 24, 2020).

investment incentives and regional cost sharing, whereby all utilities in the MISO footprint (and by extension, their retail customers) share in the costs of the MVPs.

The BSAT Projects have been a success story of these policies. The BSAT Projects were designed and approved by MISO to meet MISO-region wide needs, bringing wind power from North and South Dakota to the rest of the MISO grid and region. Federal investment incentives and regional cost sharing were key factors, as the BSAT Projects could not have been cost-justified based only on the needs of Otter Tail's retail customers. The BSAT Projects were also placed into service on-time and *approximately 45 percent under budget*, increasing the benefits of the Projects to all customers in the MISO region, including Minnesota customers.

Otter Tail's TCRR rates were last adjusted November 1, 2017. Otter Tail respectfully requests the Commission approve Otter Tail's revised TCRR rates as provided in this filing, reflective of the modification Otter Tail made in response to one recommendation in the Department Comments.

[Citations omitted.]

1. Updated Revenue Requirements

Otter Tail agrees with the Department's recommended \$95,354 reduction to rate base for the property taxes included in the 2021 revenue requirement to recognize the time value of money for ratepayer-supplied funds that Otter Tail will collect and hold for an amount of time in advance of the actual tax payment. Otter Tail included *Revised* Attachments 1-7 and 12 in its Response Comments, incorporating this recommendation. As shown in Otter Tail's *Revised* Attachment 2, the revised proposed revenue requirements are as follows:

**Table 4: Summary of Revenue Requirements
Includes One-Half of December 2020 Tracker Balance²³**

Line No.	Revenue Requirements	January 2021 - December 2021
1	Lake Norden Area Transmission Project	897,906
2	Rugby 41.6 kV Breaker Station	42,722
3	Granville Junction Breaker Station	23,625
4	Schedule 26 Expenses	6,279,366
5	Schedule 26A Expense	4,210,809
6	Schedule 26 Revenue	(6,998,550)
7	Schedule 37 & 38 Revenue	(174,114)
8	Schedule 26A Revenue	(1,527,305)
9	MVP ARR Revenue	(15,693)
10	Carrying Cost	821,882
11	True-Up	6,689,095
13	Net Revenue Requirement	<u>\$10,259,744</u>

The revision does not change Otter Tail’s previously proposed TCRR rates.

2. Cost Caps

“The only transmission projects included in Otter Tail’s updated TCRR rates are the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station and the Granville Junction Breaker Station (the New Projects).”

“The New Projects are not located in Minnesota and were not subject to Minnesota certificate of need proceedings.” Otter Tail provided its Table 2, reproduced below as Table 5, which summarizes the initial budgeted amounts, excluding internal costs, for each of the New Projects used in regulatory filings in North Dakota and South Dakota approving the projects, which are comparable to cost caps. “Lake Norden Phase I, Rugby and Granville Junction were all completed below their respective budgeted amounts, while Lake Norden Phase II is on track to be completed under budget.”

²³ OTP Reply Comments, Revised Attachment 2. (August 24, 2020).

Table 5²⁴
Comparison of Budgeted Project Costs Excluding Internal Costs (OTP Total)
(in millions)

	A	B	C	D	E
		Lake Norden Phase I	Lake Norden Phase II	Rugby	Granville Junction
1	Proceeding	SD Docket No. EL-18- 048	SD Docket No. EL-18- 048	ND Case No. PU-16-624	ND Case No. PU-16-624
2	Initial Regulatory Estimate	\$9.5	\$19.6	\$1.3	\$0.7
3	Completed / Current Cost	\$7.2	\$15.5	\$0.4	\$0.2
4	Amount Under Budget	\$2.3	\$3.1	\$0.9	\$0.5

3. Excess ADIT

In response to the Department's request for information regarding OTP's excess ADIT balance as of December 31, 2017 for its TCRR along with its proposed amortization period using the ARAM, Otter Tail stated:

Part 3 of Attachment A to Otter Tail's April 10, 2019 Extension Request in this Docket included the requested information.²⁵ No adjustment is needed within the TCRR to account for the ARAM.

4. Carrying Charge

Otter Tail acknowledged that the Commission historically has not allowed carrying charges on tracker balances but argued that the extraordinary circumstances of this case make appropriate Otter Tail's proposal for recovery of the carrying charge. Otter Tail stated:²⁶

Otter Tail has requested only one-half the projected December 31, 2020 tracker balance be included in the proposed TCRR rates to be implemented January 1, 2021, delaying recovery of over \$6.7 million. Comparatively, the total carrying charge under Otter Tail's proposal is approximately \$1.3 million. Otter Tail's offered two-year period for collection of the accumulated tracker balance reduces the impact on a residential customer using 1,000 kWh a month by \$3.52 per month, as compared to recovering the entire tracker balance in the conventional one-year period. Conversely, the carrying charge costs a residential customer using 1,000 kWh a month about 58¢ per month. Further, a significant portion of the projected December 2020 tracker balance (\$5.976 million, or approximately

²⁴ Reproduced from OTP Reply Comments, p. 4, Table 2. (August 24, 2020).

²⁵ Otter Tail Reply Comments, p. 4, FN 15: "See Attachment 16." (August 24, 2020).

²⁶ OTP Reply Comments, pp. 4-5. (August 24, 2020).

45 percent) is attributable to credits that were issued after the Minnesota Court of Appeals rejected the Department's proposed rate treatment for the BSAT Projects on June 11, 2018.

The current situation is fundamentally different from prior decisions evaluating carrying charges on rider tracker balances. A key premise in the Order cited in the Department Comments was that the TCRR was an "extraordinary recovery mechanism" that allowed for recovery of projects outside of a rate case. In that context, the Commission was reluctant to authorize a carrying charge. This case is different: TCRR rates were established as part of a rate case and the tracker balance grew due to the passage of time during the pendency of the legal proceedings, not because of projects being added to the TCRR. Finally, a carrying charge is intended to recognize the actual effect of the time value of money associated with an uncollected balance, which is fundamentally the same treatment the Department has requested for Property taxes, described in Section II, above. Given the circumstances of this case, a carrying charge on the uncollected tracker balance is appropriate and should be authorized.

[Citations omitted.]

5. TCRR Project Eligibility (19-530)

a. Timing

OTP argued:²⁷

Several factors support inclusion of the New Projects in the TCRR now, without further delay. Otter Tail made its eligibility filing for the New Projects more than a year ago (August 16, 2019). The Department requested the Commission pause consideration of Otter Tail's request until after the Supreme Court made its decision and asked that the eligibility determination be placed on the same procedural schedule as the TCRR update.²⁸ Once the procedural schedules were aligned, Otter Tail requested that the Commission find the New Projects eligible for cost recovery and include them for recovery in the TCRR rates established in this Docket. There are several examples of the Commission concurrently determining eligibility and including projects in rates.²⁹ The alternative would be

²⁷ *Id.*, pp. 5-6.

²⁸ Otter Tail Reply Comments, p. 5, FN 22. (August 24, 2020): "In the Matter of Otter Tail Power Company's Request for Determination that Transmission Investments are Eligible for Recovery through the Company's Transmission Cost Recovery Rider, Docket No. E017/M-19-530, Comments of the Minnesota Department of Commerce, Division of Energy Resources (Sept. 9, 2019)."

²⁹ Otter Tail Reply Comments, p. 6, FN 23. (August 24, 2020): "See, e.g., Docket Nos. E017/M-10-1061; E002/M-17-797, E002/M-09-1048, E002/M-12-50."

to wait for an eligibility determination and then file another update, resulting in unnecessary duplication and considerable delay...

b. Eligibility

OTP stated:

Otter Tail's August 16, 2019 Petition and July 21, 2020 Reply Comments in Docket No. 19-530 fully explain and justify the eligibility of the New Projects for TCRR recovery. The New Projects have been determined by MISO to benefit Otter Tail and the integrated transmission system, making them eligible for TCRR recovery.³⁰

6. Requests to Revive All-In Allocation or Seek the Same Financial Effects

OTP stated "[s]everal aspects of the Department Comments suggest the Department intends to continue pursuing all-in allocation or achieving the effects of all-in allocation through other means despite the ruling of the Minnesota Court of Appeals that all-in allocation and its effects are unconstitutional."

a. Minn. Stat. § 216B.48 and Affiliated Interests

OTP responded as follows to the Department's request that Otter Tail be required to evaluate the ratemaking treatment of its investment in the BSAT Projects under Minn. Stat. § 216B.48 in its next rate case:³¹

The request appears to be an effort to use Minn. Stat. § 216B.48 (rather than Minn. Stat. § 216B.16) to achieve a result (appropriation of some or all of Otter Tail's earnings from the BSAT Projects) the Minnesota Court of Appeals deemed unconstitutional. As discussed below, the Department's request has no basis in fact or law. But even if it did, the Department cannot utilize Minn. Stat. § 216B.48 to accomplish what the Minnesota Court of Appeals held to be unconstitutional.³²

Otter Tail's proposed treatment of its investment in the BSAT Projects gives effect to FERC-approved wholesale revenues and cost allocations, as required by the Constitution.³³ Appropriating some or all of Otter Tail's earnings from its investment in the BSAT Projects is unconstitutional,³⁴ irrespective of what Minnesota Statute is relied upon. Thus, any discussion in a future rate case would

³⁰ Id., FN 24: "Minn. Stat. § 216B.16, subd. 7b(a)(2)."

³¹ Otter Tail Reply Comments, pp. 7-8. (August 24, 2020).

³² Otter Tail Reply Comments, p. 7, FN 31: "Minn. Stat. § 645.17(3) ("the legislature does not intend to violate the Constitution of the United States or of this state.").

³³ Id., FN 32: "*In re Otter Tail Power Co.*, A17-1300, p. 9-13 (Minn. Ct. App. June 11, 2018)."

³⁴ Id., FN 33: "*Id.*"

show that Otter Tail’s proposal is “reasonable and consistent with the public interest”³⁵ and that the Department’s approach is not. Additional discussion of Minn. Stat. § 216B.48 will not change this result.

Even in the absence of the ruling of the Minnesota Court of Appeals, there is no basis to evaluate the ratemaking treatment of the BSAT Projects under Minn. Stat. § 216B.48. Minn. Stat. § 216B.48 applies to “contracts or arrangements” between a public utility and an “affiliated interest”, as defined in Minn. Stat. § 216B.48, subd. 1. Otter Tail has a “contract or arrangement” with MISO for its investment in the BSAT Projects (i.e. the MISO Tariff, which provides for the revenues paid to Otter Tail for its investments), but MISO is not an affiliated interest with Otter Tail. The inapplicability of Minn. Stat. § 216B.48 is confirmed by consistent Commission practice, which has never required Minn. Stat. § 216B.48 review of jurisdictional allocations within a utility. If the Commission were to extend its application of Minn. Stat. § 216B.48 in this way, it would implicate the same kind of problematic interference with the authority of other jurisdictions that was just litigated.

b. MISO Schedule 26A Expense Associated with Xcel Energy’s Investment in BSAT-Brookings

Otter Tail responded as follows to the Department’s recommendation that Otter Tail be denied recovery of Schedule 26A expense associated with Xcel Energy’s investment in the BSAT-Brookings Project:³⁶

This suggestion also appears to reflect an effort to reduce Otter Tail’s cost recovery based on the Department’s belief that Otter Tail is wrongly receiving FERC-authorized earnings from its investment in the BSAT Projects. The Minnesota Courts have resolved that issue: it is appropriate and constitutional for Otter Tail to receive “the FERC-approved and section 219-mandated return on equity for its investment in the BSAT Lines.”³⁷

The January 2021 – December 2021 recovery period Schedule 26A expense associated with Xcel Energy’s investment in the BSAT-Brookings Project is approximately \$35,474, as shown in Otter Tail’s Response to IR MN-DOC-006.³⁸ These costs are eligible for TCRR recovery under the TCRR Statute,³⁹ and the United States Court of Appeals expressly rejected arguments that utilities should not be required to pay for other utilities’ MVP investments:

³⁵ Id., FN 34: “Minn. Stat. § 216B.48, subd. 3.”

³⁶ Otter Tail Reply Comments, pp. 8-9. (August 24, 2020).

³⁷ Otter Tail Reply Comments, p. 8, FN 36: “*In re Otter Tail Power Co.*, A17-1300, p. 13 (Minn. Ct. App. June 11, 2018).”

³⁸ Id., FN 37: “Otter Tail’s response to IR MN-DOC-006 is included as Attachment 17.”

³⁹ Id., FN 38: “Minn. Stat. § 216B.16, subd. 7b(a)(3) and (b)(2).”

[T]o obtain the benefits of the MVP program each state’s MISO members may have to shoulder costs of some specific projects that they’d prefer not to support. ... The requirement of proportionality between costs and benefits requires that all beneficiaries—which [FERC] has determined include all users of the MISO grid...—shoulder a reasonable portion of MVP costs.⁴⁰

The Department Comments also claim that Otter Tail’s May 7 Comments were “inaccurate” regarding the treatment of Schedule 26A expense associated with Xcel Energy’s investment in the BSAT-Brookings Project.⁴¹ This claim is unsupported. Otter Tail’s May 7 Comments clearly stated that the proposed TCRR rates excluded the costs and revenues associated with Otter Tail’s investments in the BSAT Projects, not expenses associated with other utilities’ investments in the Projects.⁴² Otter Tail’s response to IR MNDOC- 006 also clearly explains what costs are and are not included in the updated TCRR rates. Exclusion of the costs and revenues associated with Otter Tail’s investments in the BSAT Projects is consistent with the Minnesota Supreme Court ruling.⁴³ There was no inaccuracy.

c. Cancel TCRR

In response to the Department’s recommendation that the Commission consider cancelling OTP’s TCRR, Otter Tail argued:⁴⁴

As with the items discussed above, this recommendation appears to reflect ongoing opposition to the decisions by the Minnesota Supreme Court, the Minnesota Court of Appeals and the Administrative Law Judge in Otter Tail’s last rate case that the Legislature intended utilities to be able to choose which projects to include in a TCRR.⁴⁵ The Department is incorrect in claiming that use of the

⁴⁰ *Id.*, FN 39: “*Ill. Commerce Comm’n v. FERC*, 721 F.3d 764, 773, 780 (7th Cir. 2013).”

⁴¹ *Id.*, FN 40: “Department Comments, p. 4 (“The Department notes that OTP’s representation that its proposal claimed to show revenue requirements ‘without BSAT Projects’ is inaccurate.”).”

⁴² *Id.*, p. 9, FN 41: “Otter Tail May 7 Comments, p. 2, n. 5 (“Consistent with the Supreme Court’s ruling, Attachments 1 through 15 do not include Otter Tail’s investment in the BSAT Projects or the Courtenay Project or the related costs and expenses assessed by MISO.”), p. 3 (“Of the \$13.4 million projected December 2020 tracker balance, only \$3.2 million is related to the removal of the BSAT Project revenue requirement and MISO revenues and expenses associated with Otter Tail’s investments in the projects from January 1, 2016 forward.”).”

⁴³ *Id.*, FN 42: “*In re Otter Tail Power Co.*, 942 N.W.2d at 180-81.”

⁴⁴ Otter Tail Reply Comments, p. 9. (August 24, 2020).

⁴⁵ *Id.*, p.9, FN 44: “*In re Otter Tail Power Co.*, 942 N.W.2d at 180-81; *In re Otter Tail Power Co.*, A17-1300, p. 14 (Minn Ct. App. June 11, 2018);) *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Service in Minnesota*, Docket No. E017/GR-15-1033, Findings of Fact, Summary of Public Testimony, Conclusions of Law and Recommendation, ¶ 291 (Jan. 5, 2017).”

TCRR be an “all or nothing” proposition.⁴⁶ The Commission should give no consideration to cancelling a cost recovery mechanism that was created by the Legislature to encourage development of transmission,⁴⁷ and that the Commission has stated “expedite[s] the construction of critically needed infrastructure.”⁴⁸

d. Courtenay Wind Project

In response to the Department’s expressed “concern” over the exclusion of the transmission portion of the Courtenay Wind Project and associated MISO Schedule 26 revenues and expenses from the TCRR, Otter Tail explained:⁴⁹

As Otter Tail had explained twice before, including the Courtenay Wind Farm transmission project in the TCRR would have an immaterial impact (approximately \$2,000) on the TCRR revenue requirement. Further, the Minnesota Supreme Court and the Minnesota Court of Appeals ruled that utilities cannot be required to include projects in a TCRR Otter Tail excluded this project from the TCRR because the administrative burden outweighed the immaterial impact on rates. Otter Tail continues to recommend the Courtney Wind Farm Transmission Project not be included in the TCRR.

[Citations and footnotes omitted.]

7. Conclusion

Otter Tail requested that the Commission consider and approve the TCRR annual rate adjustment mechanism as set forth in Attachments 1 through 15 (of its August 24, 2020 Response Comments) for usage on and after January 1, 2021.

H. Department Supplemental Comments (September 3, 2020)

The Department is responding to several issues below:

- Adjustment for property taxes,
- Cost caps,
- Excess Accumulated Deferred Income Taxes,
- Carrying charge,

⁴⁶ *Id.*, FN 45: “Department Comments, p. 13 (“Given OTP’s decision not to include the BSAT Projects in its TCRR ..., the Department recommends, as it did in OTP’s last rate case, that the Commission consider cancelling OTP’s TCRR and requiring OTP to include all of its transmission assets and their related MISO Schedule revenues and expenses in base rates in a general rate case proceeding.”).”

⁴⁷ *Id.*, FN 46: “*In re Otter Tail Power Co.*, 942 N.W.2d at 180.”

⁴⁸ *Id.*, FN 47: “Otter Tail 2014 TCRR Order, p. 9.”

⁴⁹ Otter Tail Reply Comments, pp. 9-10. (August 24, 2020).

- Response to issues in Docket No. E-017/M-19-530,
- OTP's need to comply with MN Stat. §216B.48, and
- OTP's TCRR.

1. Adjustment for Property Taxes

In its August 14, 2020 Response to Reply Comments, the Department noted that, since OTP does not pay property taxes until the year after the test year, an adjustment should be made to base rates to account for this timing difference. This would only apply to the three new projects that the Department concluded should not be included in the TCRR. So, if the Commission agrees with the Department that these three new projects should not be included in the TCRR, then no adjustment would be necessary. Conversely, if the projects are included in the TCRR, then the Department estimated (based on data from OTP's most recent rate case, Docket No. E-017/GR-15-1033) that the rate base adjustment would be \$95,354.

OTP argued, in its August 24, 2020 Reply Comments, that the costs of the new projects in Docket 19-530 should be charged to its Minnesota ratepayers and accepted the minor reduction in rate base, noting that the adjustment has no effect on Minnesota rates.

The Department responded to OTP's arguments regarding issues in Docket 19-530 in a separate section below.

2. Cost Caps

In its August 14, 2020 Response to Reply Comments, the Department discussed the Commission's determination that "TCR project cost recovery through the rider should be limited to the amount of the initial cost estimates at the time the projects are approved as eligible projects." The Commission allows utilities to seek recovery of costs above cost caps "on a prospective basis in a subsequent rate case" and noting that requests to charge ratepayers for more than the initial estimate "may be brought for Commission review only if unforeseen or extraordinary circumstances arise on a project."

The Department noted that OTP did not address this issue for the three new projects in its comments, the Department requested that OTP provide this information. In its August 24, 2020 Reply Comments, the Company said that "The New Projects are not located in Minnesota and were not subject to Minnesota certificate of need proceedings." Instead, OTP referred to proceedings before the North Dakota Public Service Commission (ND PSC) and the South Dakota Public Utilities Commission (SD PUC).

If, contrary to Department recommendations, the Commission decides that the three new projects meet requirements for cost recovery in a special rider, the Department pointed out that the costs for the new projects to be charged through the rider appear to be overstated.

For example:

- The plant balance for Rugby is also overstated, by approximately \$0.7 million:

- OTP indicated on page 4 of its August 24, 2020 Reply Comments that total Company cost of Rugby is \$0.4 million;
 - OTP's August 24, 2020 Reply Comments used a plant balance of \$1,115,701;
 - the difference between these two rate base amounts is over \$700,000.
- The plant balance for Granville is overstated by over \$0.4 million:
 - OTP indicated on page 4 of its August 24, 2020 Reply Comments that total Company cost of Granville is \$0.2 million;
 - OTP's August 24, 2020 Reply Comments used a plant balance of \$618,956;
 - the difference between these two rate base amounts is over \$400,000.

The Department concluded that even if the Commission determined that the new projects meet the statutory requirements for extraordinary cost recovery in a rider, the Company's proposed revenue requirements are excessive.

3. Excess Accumulated Deferred Income Taxes

The Department stated that it asked for further information on OTP's accumulated deferred income taxes (ADIT) and excess ADIT, but OTP's reply did not address the three new projects. However, the Department was able to confirm that OTP used the correct tax conversion factor for the new projects and therefore, this portion of the calculation is correct, in the event that the Commission finds that the new projects qualify under Minnesota statute for extraordinary rider rate treatment.

4. Carrying Charge

The Department observed that OTP has proposed to charge its ratepayers nearly one-half million dollars (\$472,015) in 2020 for carrying charges and further charges would be added since the Company also proposed to charge carrying charges on the second half of the true-up.

In its August 14, 2020 Response to Reply Comments, the Department recommended that the Commission not allow OTP to charge a carry charge. This recommendation was based on the Commission's March 10, 2014 Order in Docket No. E017/M-13-103, which stated in part that "Otter Tail shall not add a carrying charge to the tracker balance for the TCR rider and the Renewable Resource Cost Recovery Rider effective with the date of this Order."

In its reply, OTP has argued that the circumstances in this proceeding are different and warrant allowing OTP to surcharge for interest. The Department recommended that, if the Commission allows a carrying charge, that charge should be applied only on a going-forward basis and should be restricted to the Company's cost of short-term debt, which the Commission has allowed on trackers to recover costs of conservation improvement programs.

5. Response to Issues in Docket No. E-017/M-19-530

The Department pointed out that OTP has argued that the costs of the three new projects should be charged to its ratepayers through the TCRR rather than a rate case. Besides the issue of overstated plant balances discussed above, the Department contended that “none of these projects meet the requirements in Minnesota Statutes for extraordinary ratemaking through the rider rather than base rates.” The Department summarized its findings as “[t]he 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 Department said that ordinarily, utilities recover costs of projects in the first rate case after the project’s facilities become “used and useful”. However, there is an exception to this ratemaking treatment in Minn. Stat. §216B.16, subd. 7b, which states:

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]

The Department identified the following requirements for eligibility to be recovered in a rider, prior to a rate case – 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 concluded the following:

. . . [T]he 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 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.

Further, in its July 6, 2020 Comments in 19-530, the Department indicated that MISO found that both the Granville and Rugby Projects were installed “to enhance reliability in the local area” and, more specifically, they 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.”

Since the purpose of these three new projects is to enhance reliability in the local area rather than in Minnesota or Otter Tail’s integration system, the Department concluded that there are no Minnesota jurisdictional costs or benefits that would justify extraordinary ratemaking through the TCR rider.

However, in its July 21, 2020 reply comments, OTP stated that the only requirement for extraordinary cost recovery through a rider is merely for MISO to find any benefits to a utility of a transmission project.

The Department pointed out that MISO does not determine jurisdictional cost allocations of transmission projects; those determinations are made in a general rate case. Therefore, the Department concluded that, until OTP’s next rate case, the costs of the three new projects should not be charged to Minnesota ratepayers in the TCRR.

6. OTP’s need to comply with MN Stat. §216B.48

In its August 14, 2020 Response to Reply Comments, the Department said that the Minnesota Supreme Court allowed OTP to exclude revenues from certain transmission projects in its TCRR between rate cases, but “did not decide that a utility could ‘assign’ net proceeds from an asset away from ratepayers to an unregulated affiliate, without written approval from the Commission.” Also, the Department pointed to the definition of an affiliate from Minn Stat. §216B.48, subd. 1(9) as “every part of a corporation in which an operating division is a public utility.”

Further, the Department recommended that the Commission require OTP, in its initial filing in its next rate case, to provide “full and complete justification” for assigning any transmission projects to such an affiliate.

The Department said that, in its August 24, 2020 Reply Comments. OTP appears to be arguing that the Minnesota Court of Appeals and the Minnesota Supreme Court decided that OTP need not comply with Minnesota’s Affiliated-Interest statute. However, the Department said that “the Minnesota Supreme Court merely decided that OTP could keep for its shareholders through the TCRR between rate cases the revenues from the BSAT facilities and expressly decided not to determine how rates should be set in the Company’s next rate case.” Further, “the Court of Appeals did not decide that OTP need not comply with Minnesota’s Affiliated-Interest Statute.” Therefore, the Department concluded that OTP must still comply with Minn. Stat. §216B.48 in its next rate case.

The Department asserted that OTP's compliance with this statute is "key to the question of jurisdiction over OTP's rates" and pointed out that Minn. Stat. §216B.48, subd. 3 requires Commission approval of any contract or arrangement⁵⁰ between a public utility and "any affiliated interest as defined in subdivision 1, clauses (1) to (8), or any arrangement between a public utility and an affiliated interest as defined in subdivision 1, clause (9), made or entered into after August 1, 1993."

The Department concluded that, under Minnesota Statutes, OTP's proposal to "assign" a transmission asset to another part of its corporation is a transaction with an affiliated interest.

The Department contended that OTP never sought approval for such a transaction even though §216B.48, subd. 1 broadly defines affiliated interests of a public utility in clause (9) as: "every part of a corporation in which an operating division is a public utility." Thus, OTP's proposal to assign a transmission facility asset to any part of OTP's corporation (an affiliated interest) requires Commission approval.

Further, the Department stated that the Commission may grant approval "only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest" and the burden of proof to show that its proposal is in the public interest rests with OTP. Thus far, the Department concluded that OTP has not yet made such proof and should be required to do so to comply with Minnesota statutes.

The Department said:

Only if OTP can make such a showing prior to or within its next rate case would the Commission lose jurisdiction over OTP's retail rates in base rates related to the BSAT lines. Until such time, the Commission retains full jurisdiction over OTP's retail rates, where the Commission must continue to fully recognize – as the all-in method does⁵¹ – both the costs and revenues authorized by FERC.

The Department went on to cite various United States Supreme Court rulings (including *Hughes v. Talen Energy Marketing, LLC*, 136 S.Ct. 1288 (2016)) to demonstrate that the Federal Energy Regulatory Commission (FERC) has jurisdiction over wholesale rates, but that the states retain authority over retail rates. Further, DOC pointed out that states such as Minnesota that have never deregulated generation of the vertically integrated utilities retain jurisdiction over rates to recover the costs of the vertically integrated generation, transmission and distribution facilities.

⁵⁰ Minn. Stat. §216B.48, subd. 3, in part "contract or arrangement, including any general or continuing arrangement, providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing".

⁵¹ Department footnote: The Department provided schematics in Attachment 2 to its April 1, 2019 Comments in this proceeding demonstrating how Minnesota ratemaking includes all FERC-authorized costs and revenues. It is only OTP that omits some FERC authorized revenues from its proposed rates.

Moreover, the Department noted that “the U.S. Supreme Court recognized in the Hughes-Talen case that states such as Maryland that unbundled and lost jurisdiction over retail rates regarding generation and transmission may remedy concerns over retail rates for transmission facilities by re-regulating electric generation.”

Therefore, the Department stated that “due to the significant effect on jurisdiction over retail rates, OTP must first comply with Minnesota Statute §216B.48 subd. 3 by meeting its burden of proof to show that its affiliated-interest transaction is reasonable and consistent with the public interest.”

Finally, the Department concluded:

[G]iven the decision by the Minnesota Supreme Court regarding the TCRR and the rates set in OTP’s prior rate case, the Department agrees with OTP that the Commission need not decide in this proceeding the future ratemaking in OTP’s next rate case. However, given OTP’s reluctance to comply with Minnesota Statute §216B.48, it is evidently necessary for the Commission to order the Company to make the showing required in subd. 3.

7. OTP’s TCRR

The Department stated that, as noted above, it recognizes that the Minnesota Supreme Court allowed OTP to choose between rate cases whether or not to credit ratepayers with net revenues from BSAT projects and that the Company has chosen to keep the revenues for its shareholders for now, with significant bill impacts for its customers resulting from the Company’s choice.

The Department cited examples from its August 14, 2020 Response to Reply Comments:

- the monthly bill impact for a residential customer using, on average, about 1,000 kWh per month would be \$7.32 per month,⁵² or about \$88 per year compared to the current TCRR, with inclusion of only half of the December 2020 tracker balance at this time. Including the entire true-up would increase Residential customers’ bills by \$10.84 per month or over \$130 per year.
- Bill impacts for Farm customers using over 2,140 kWh per month⁵³ would be more than twice as high, at \$15.64 per month and over \$187 per year with only half of the true-up, and over \$23 per month and over \$278 per year if the entire true-up is included.

The Department also said that it finds the circumstances leading to OTP’s current proposal to be sufficiently troubling to warrant Commission consideration as to whether the Company

⁵² OTP Reply Comments, p. 6.

⁵³ Source: OTP’s 8/21/2017 Compliance filing, Docket No. E017/GR-15-1033, Attachment 3A, Schedule E-2, page 1.

should be allowed to continue to have a TCRR. Noting that Minn. Stat. §216B.16, subd. 7b is permissive regarding such a rider mechanism (“the commission may approve a tariff mechanism...”), DOC said that consideration as to whether to suspend the TCRR, on a going-forward basis, is justified.

Finally, the Department stated that these facts warrant such consideration:

- To date, OTP has sought no approval from the Commission of the affiliated-interest transaction under Minnesota Statute §216B.48, subd. 3;
- In OTP’s prior rate case (Docket No. E017/GR-15-1033), OTP made numerous attempts to obscure the unauthorized affiliated-interest transaction, including:
 - Failing to disclose in its testimony any information about the affiliated-interest transaction,
 - Making a reference only in a workpaper to an undefined term of “Traditional” ratemaking, requiring significant regulatory resources even to uncover the fact that OTP was proposing to keep revenues for shareholders through an unauthorized affiliated interest transaction,
 - Referring (inaccurately) to a Commission decision as requiring the Company’s proposal, without identifying the Order or the basis for its argument,⁵⁴
- OTP failed to honor the commitment the Company made to the Commission:
 - In re Otter Tail Power Co.’s Petition for Approval of Transfer of Operational Control of Transmission Facilities to the Midwest Independent System Operator, Otter Tail proposed to transfer operational control of transmission assets to the Midwest Independent Transmission System Operator,
 - OTP assured – accurately, as explained above- that the Minnesota Commission, not FERC, had jurisdiction over Otter Tail’s bundled retail rates,
 - Otter Tail also assured the Commission that the Commission would retain its authority to evaluate any proposed retail rate changes due to wholesale transmission rate changes, based in part on the Company’s assurance, the Commission conditionally approved Otter Tail’s request. Docket No. E-017/PA-01-1391, Order Authorizing Transfer with Conditions at 10, 12 (MPUC May 9, 2002),
 - However, OTP failed to honor its commitments.

8. Department’s Final Analysis

Based on the analysis above, the Department recommends that the Commission:

⁵⁴ The August 16, 2016 Direct Testimony in Docket No. E017/GR-15-1033 of Department Witness Mr. Mark Johnson, beginning on page 30, discusses these issues in more detail.

- require OTP to remove from its TCRR in this proceeding the costs of the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects and their related revenue requirements and tracker balances, if the Commission agrees with the Department’s conclusions and recommendations in 19-530;
 - if, despite the Department’s objections in 19-530, the Commission allows OTP to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects in its TCRR:
 - require OTP to include any related wholesale transmission revenues or net credits associated with these projects in its TCRR;
 - require OTP to remove the overstated Rugby and Granville project costs;
 - include a downward adjustment to rate base of \$95,354 regarding the timing of property taxes to be reflected in OTP’s proposed 2021 annual revenue requirements.
- deny OTP’s proposal to apply carrying charges equal to its overall rate of return to its TCRR tracker balance, given the Commission’s prior determination that no carrying charge would be allowed;
- if the Commission allows OTP to apply a carrying charge, allow such a charge on a going forward basis only, and only at the rate of OTP’s short-term debt;
- require OTP to provide in its initial filing in its next rate case a full and complete justification for assigning any transmission projects to an affiliate as defined under Minn. Stat. §216B.48; and
- consider cancelling OTP’s TCRR on a going-forward basis, given the concerns listed in these comments.

I. Otter Tail Reply Comments (September 14, 2020)

Otter Tail reiterated that “[t]he Commission can implement updated TCRR rates in this Docket without addressing the Department’s positions on Otter Tail’s investment in the BSAT Projects, but its other recommendations should be rejected as part of the resolution of this Docket.” Further, Otter Tail stated:

There is a well-documented and broad public policy interest in facilitating beneficial investment in transmission. Otter Tail has responded well to that interest and, therefore, we respectfully request the Commission approve Otter Tail’s revised TCRR rates as provided in our August 24 Comments.^{55]}

1. TCRR Project Eligibility 19-530

OTP stated:

Minnesota (as well as FERC, MISO, North Dakota and South Dakota) has adopted

⁵⁵ Otter Tail Reply Comments, p. 2. (September 14, 2020)

ratemaking for transmission investments that is predicated on the fact that *all* customers benefit from the transmission system being an integrated network for the delivery of power.⁵⁶ This rate treatment, including the allocation of costs among Otter Tail's retail jurisdictions, is longstanding and does not need to be reaffirmed in a rate case in order to deem the New Projects [the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station and the Granville Junction Breaker Station] eligible for TCRR recovery.⁵⁷ The Commission regularly applies jurisdictional allocations when establishing TCRR rates and can do so in this case.⁵⁸ The New Projects should be deemed eligible for TCRR recovery effective January 1, 2020.

2. Costs of the New Projects

OTP replied to the Department's three recommendations regarding the costs of the New Projects as follows:

First, the Department recommends any related wholesale transmission revenues or net credits associated with the New Projects be included in the TCRR. Otter Tail agrees with this recommendation and included wholesale revenue credits in the calculation of proposed TCRR rates. Second, the Department recommends rate base be adjusted downward to reflect property tax timing differences. Otter Tail agrees with this recommendation and incorporated it into its calculations as part of the August 24 Comments, though this recommendation does not change proposed TCRR rates.

The Department's third recommendation relates to costs of the Rugby and Granville Junction projects. In its August 14 Comments, the Department requested information regarding cost caps of projects included in the TCRR. Otter Tail

⁵⁶ *Id.*, p.3, FN 11: "See *In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Utility Service in Minnesota*, Docket No. E017/GR-10-239, Findings of Fact, Conclusions and Recommendation, ¶147 (Feb. 14, 2011) [*hereinafter* Otter Tail 2010 Rate Case ALJ Report], *adopted by* Findings of Fact, Conclusions, and Order, p. 18-19 (April 25, 2011)."

⁵⁷ *Id.*, p. 3, FN 12: Department September 3 Comments, p. 7 ("However, MISO does not determine jurisdictional cost allocations of transmission projects; such determinations are made in a general rate case. ... Until OTP's next rate case, the costs of these new projects should not be charged to Minnesota ratepayers in the TCRR.").

⁵⁸ *Id.*, p. 4, FN 13: "See *In the Matter of Otter Tail Power Company's Request for Approval of a Transmission Cost Recovery Rider Including the Proposed 2010 Transmission Factor*, Docket No. E017/M-09-881, Comments of the Minnesota Department of Commerce, p.18-19 (Sept. 28, 2009) (" OTP's proposed rate design uses the transmission demand allocation factor, D2, which was used to allocate total revenue requirements from OTP's last Minnesota general rate case, to allocate total revenue requirements to jurisdictions (Minnesota 50.79%) and rate classes. ... OTP's proposed rate design methodology is consistent with OTP's most recent rate case and consistent with the methodology used in other recent Rider filings. Thus, based on our analysis and the information available at this time, the OES recommends approval of the rate design in the Company's proposed Rider.").

provided information in its August 24 Reply Comments regarding initial budgeted amounts, excluding internal costs, for each of the New Projects used in regulatory filings in North Dakota and South Dakota approving the projects, which are comparable to cost caps. After reviewing the Department's September 3 Comments, Otter Tail recognized that the information provided on August 24 in Table 2 contained an error, whereby internal costs were incorrectly excluded from the completed project costs [Line No. 3]. Otter Tail apologizes for the error.

The corrected information [Line No. 3 and resulting calculation in Line No. 4] is provided below. The amounts shown in Revised Table 2 are consistent with the amounts included in Attachments 5, 6, and 7 to Otter Tail's May 7, 2020 and August 24, 2020 Comments, as well as discussion of the costs of the New Projects in the body of Otter Tail's May 7 Comments. Importantly, this correction does not change the information included in the attachments to Otter Tail's August 24 filing or the proposed TCRR rates.

Revised Table [5]⁵⁹
Comparison of Budgeted Project Costs Excluding Internal Costs (OTP Total)
(in millions)

	A	B	C	D	E
		Lake Norden Phase I	Lake Norden Phase II	Rugby	Granville Junction
1	Proceeding	SD Docket No. EL-18- 048	SD Docket No. EL-18- 048	ND Case No. PU-16-624	ND Case No. PU-16-624
2	Initial Regulatory Estimate	\$9.5	\$19.6	\$1.3	\$0.7
3	Completed / Current Cost	\$7.2	\$13.6	\$1.1	\$0.6
4	Amount Under Budget	\$2.3	\$6.0	\$0.2	\$0.1

Accordingly, Otter Tail requests the Commission approve the TCRR rates as proposed in Otter Tail's August 24 filing and not adopt the Department's recommended reduction in the costs of Rugby and Granville Junction.

[Citations omitted.]

3. Carrying Charges

Otter Tail described what it said in its May 7 and August 24 Comments in this Docket (which will not be repeated again here) and went on to say:⁶⁰

⁵⁹ Reproduced from OTP Reply Comments, *Revised Table 2*, p. 5. (September 14, 2020).

⁶⁰ Otter Tail Reply Comments, p. 6. (September 14, 2020)

Otter Tail acknowledges that historically the Commission has not allowed carrying charges on unrecovered TCRR tracker balances. Yet, each carrying charge request is fact specific, as recognized by the Commission. Based on the facts of the particular request, the Commission has authorized a carrying charge equal to Otter Tail's cost of capital in Otter Tail's Environmental Cost Recovery Rider (ECRR). The unique circumstances of this case similarly justify a carrying charge.

The Department asserts that any carrying charge should be limited to Otter Tail's cost of short-term debt, based on the treatment of conservation improvement programs. This case is factually different from the Conservation Improvement Program (CIP) Rider, justifying different results. The Commission limited carrying charges for CIP Riders because CIP Rider tracker balances are driven by financial incentives, not out of pocket costs:

While the CIP financial incentives making up the bulk of the CIP tracker account serve an important public-policy purpose, they are not the kind of costs—out of pocket costs—for which rate-of-return treatment can be most readily justified.⁶¹

Here, Otter Tail has incurred out of pocket costs and has not received current recovery. Recovery will be further delayed – to the significant benefit to customers – under Otter Tail's proposal to forego full recovery of the tracker balance in a single rate period.

The circumstances of this case are unique and justify Otter Tail's request that the unrecovered TCRR balance be subject to a carrying charge equal to Otter Tail's cost of capital. It is Otter Tail's intent that this be a one-time request to accommodate the cost-mitigation being proposed.

[All but one, Citation and Footnotes omitted.]

4. Discussion of BSAT Projects in Subsequent Rate Case

Otter Tail stated:⁶²

The Commission need not make any finding regarding obligations in a subsequent rate case filing or the relevance of Minn. Stat. § 216B.48. Therefore, Otter Tail requests the Commission not adopt the Department recommendations on this issue.

Importantly, the obligation to give effect to FERC-approved wholesale rates is not dependent on or subservient to Minn. Stat. § 216B.48 or any other state statute:

⁶¹ Otter Tail's September 14, 2020 Reply Comments, p. 6, FN 26: "OTP 2014 CIP Rider Order, p. 7."

⁶² *Id.*, p. 7.

it comes from the Supremacy Clause, which makes “the laws of the United States ... ‘the supreme Law of the Land; . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’”⁶³ “Under United States Supreme Court and Minnesota Supreme Court case law, [retail rates established by the Commission] must give effect to FERC-approved wholesale rates.”⁶⁴ Otter Tail will discuss in its future rate case filings how Minnesota base retail rates can be established consistent with the obligation to give effect to FERC-approved rates for Otter Tail’s investments in the BSAT Projects.

Also, Otter Tail reiterated its August 24 Comments on this issue and stated “the Department cannot use Minn. Stat. § 216B.48 (rather than Minn. Stat. § 216B.16) to achieve a result (appropriation of some or all of Otter Tail’s earnings from the BSAT Projects and denial of FERC-authorized costs) the Minnesota Court of Appeals deemed unconstitutional.”

5. Department Recommendation to Cancel Otter Tail’s TCRR

Otter Tail responded to the Department’s recommendation that the Commission consider cancelling Otter Tail’s TCRR as follows:⁶⁵

The only change since prior cases is that Otter Tail sought judicial review to recover its FERC-approved costs, including its FERC-approved return on its investment for the BSAT Projects. The Minnesota Court of Appeals affirmed that Otter Tail has a constitutional right to recover those costs. While the Department disagrees with this decision, the Commission should not follow such a path.

FERC has established the cost of service and just and reasonable rates regarding Otter Tail’s investment in the BSAT Projects. All-in allocation does not permit Otter Tail to recover those costs. Given the size of Otter Tail’s investment and financial harm that results from all-in allocation, Otter Tail sought judicial review and its position was accepted. The Department dismissively characterizes Otter Tail’s attempt to recover its FERC-authorized costs as “the Company’s choice”,⁶⁶ but all Otter Tail seeks is to recover the amounts deemed just and reasonable by FERC, no more and no less. The Commission should give no consideration to cancelling a cost recovery mechanism that was created by the Legislature to encourage development of transmission,⁶⁷ and that the Commission has stated “expedite[s] the construction of critically needed infrastructure.”⁶⁸ The Commission should

⁶³ *Id.*, p. 7, FN 28: “In re Otter Tail Power Co., A17-1300, p. 4 (Minn. Ct. App. 2018) (citing U.S. Const., art. VI, cl. 2).”

⁶⁴ *Id.*, p. 7, FN 29: “In re Otter Tail Power Co., A17-1300, p. 10 (Minn. Ct. App. 2018).”

⁶⁵ Otter Tail’s Reply Comments, p. 8. (September 14, 2020)

⁶⁶ *Id.*, p. 8, FN 32: “Department September 3 Comments, p. 9.”

⁶⁷ *Id.*, p. 8, FN 33: “In re Otter Tail Power Co., 942 N.W.2d 175, 180 (Minn. 2020).”

⁶⁸ *Id.*, p. 8, FN 34: “In the Matter of Otter Tail Power Company’s Request for Approval of a Transmission

reject the Department's suggestion that Otter Tail be prevented from using this mechanism due to Otter Tail's protection of its constitutional rights.

VII. Staff Analysis

A. New Projects

In 19-530, the Commission will need to decide whether the New Projects are eligible for recovery in a TCRR. In 18-748, if deemed eligible, the Commission will need to decide if they should be included as proposed, or modified, keeping in mind that while Minn. Stat. 216B.16, Subd. 7b(a) says that "the commission may approve a tariff mechanism for the automatic annual adjustment of charges for the Minnesota jurisdictional costs net of associated revenues...", Subd. 7b(d) states "Upon receiving a filing for a rate adjustment pursuant to the tariff established in paragraph (b), the commission shall approve the annual rate adjustments provided that, after notice and comment, the costs included for recovery through the tariff were or are expected to be prudently incurred and achieve transmission system improvements at the lowest feasible and prudent cost to ratepayers."

If the New Projects are included in the TCRR, Otter Tail has agreed with two of the Department's recommended modifications: to include any related wholesale transmission revenue credits associated with these projects in its TCRR; and to include a downward adjustment to rate base of \$95,354 regarding the timing of property taxes to be reflected in OTP's proposed 2021 annual revenue requirements. With respect to the third modification recommended by the Department, "require OTP to remove the overstated Rugby and Granville project costs[.]" OTP provided a "Revised Table 2" in its reply comments, which it corrected costs to show that it did not include these projects above their respective cost caps.⁶⁹

The Department has not responded to Otter Tail's reply so it is unknown if the Department still supports its entire recommendation or is satisfied with OTP's reply.

B. Carrying Charges

The Commission will also need to decide whether to allow OTP to apply carrying charges to its tracker balance, and if so, when carrying charges should start and at what rate.

OTP proposed to collect carrying charges on the tracker balance at OTP's overall rate of return beginning May 1, 2020. The Department recommended that the Commission deny OTP's

Cost Recovery Rider Including the Proposed Transmission Factor for the Recovery Period from May 2, 2013 to April 30, 2014, Docket No. E017/M-13-103, Order Capping Costs, Denying Rider Recovery of Excess Costs, and Requiring Inclusion of All MISO Schedule 26 Costs and Revenues in TCR Rider, p. 9 (Mar. 10, 2014)."

⁶⁹ Otter Tail Reply Comments, pp. 4-5. (September 14, 2020)

proposal to apply carrying charges to the tracker balance and quoted⁷⁰ in part the Commission's March 10, 2014 Order, in Docket No. E-017/M-13-103, as follows:

Otter Tail shall not add a carrying charge to the tracker balance for the TCR rider and the Renewable Resource Cost Recovery Rider effective with the date of this Order.⁷¹

Staff notes that the March 10, 2014 Order also stated;

... the TCR rider and the renewable resource cost recovery rider are extraordinary cost-recovery mechanisms adopted to expedite the construction of critically needed infrastructure.

They offer unique advantages over traditional ratemaking treatment. For example, they permit cost recovery—including recovery of the authorized rate of return—to begin with construction, instead of when the facilities are placed into service. And both riders permit cost recovery to begin before the facilities' costs have been fully scrutinized in a rate case. The additional advantages of a carrying charge are therefore unnecessary either to ensure fairness or to act as an incentive.

For all these reasons, the Commission will not permit carrying charges on either rider.⁷²

OTP argued that the extraordinary circumstances of this case make appropriate Otter Tail's proposal for recovery of the carrying charge.⁷³

This case is different: TCRR rates were established as part of a rate case and the tracker balance grew due to the passage of time during the pendency of the legal proceedings, not because of projects being added to the TCRR. Finally, a carrying charge is intended to recognize the actual effect of the time value of money associated with an uncollected balance, which is fundamentally the same treatment the Department has requested for Property taxes, described in Section II, above. Given the circumstances of this case, a carrying charge on the uncollected tracker balance is appropriate and should be authorized.⁷⁴

⁷⁰ Department's Response Comments, p.17. (August 14, 2020)

⁷¹ *In the Matter of Otter Tail Power Company's Request for Approval of a Transmission Cost Recovery Rider Including the Proposed Transmission Factor for the Recovery Period from May 2, 2013 to April 30, 2014*, Docket No. E-017/M.13-103, Order Capping Costs, Denying Rider Recovery of Excess Costs, and Requiring Inclusion of all MISO Schedule 26 Costs and Revenues in TCR Rider, p. 10. (Mar. 10, 2014).

⁷² *Id.*, p. 9.

⁷³ Otter Tail Reply Comments, p. 4. (August 24, 2020).

⁷⁴ *Id.*, p. 5.

Otter Tail also acknowledged that historically the Commission has not allowed carrying charges on unrecovered TCRR tracker balances, but Otter Tail stated each carrying charge request is fact specific. Otter Tail further argued:⁷⁵

Based on the facts of the particular request, the Commission has authorized a carrying charge equal to Otter Tail's cost of capital in Otter Tail's Environmental Cost Recovery Rider (ECRR).⁷⁶ The unique circumstances of this case similarly justify a carrying charge.

In the alternative, the Department stated, "if the Commission allows OTP to charge its ratepayers a carrying charge, that charge should be allowed only on a going-forward basis and at an amount no higher than OTP's cost of short-term debt, which the Commission has allowed on trackers to recover costs of conservation improvement programs."⁷⁷

OTP responded to this alternative stating that:

This case is factually different from the Conservation Improvement Program (CIP) Rider, justifying different results. The Commission limited carrying charges for CIP Riders because CIP Rider tracker balances are driven by financial incentives, not out of pocket costs[.]⁷⁸

C. Customer Notice

Staff notes that OTP included its proposed Customer Notice in its August 24, 2020 Reply Comments as Attachment 15.

If the Commission adopts any changes to OTP's proposal (including regarding carrying charges) it may wish to delegate to the Executive Secretary authority to approve any customer notice related to OTP's TCRR. This is reflected in Decision Alternative 13.

The Commission's Consumer Affairs staff has reviewed the proposed Customer Notice language and suggested changes as indicated below:

The Minnesota Public Utilities Commission has approved an adjustment to the Transmission Cost Recovery Rider that is part of the Resource Adjustment on your

⁷⁵ Otter Tail Reply Comments, p. 6. (September 14, 2020).

⁷⁶ Id., p. 6, FN 24 "*In the Matter of Otter Tail Power Company's (OTP) Request for Approval of its Environmental Upgrades Cost Recovery Rider for the Big Stone Plant*, Docket No. E017/M-13-648, Order (Dec. 18, 2013)."

⁷⁷ Department Supplemental Comments, p. 5. (September 3, 2020).

⁷⁸ Otter Tail Reply Comments, p. 6. (September 14, 2020).



monthly electric service ~~statement~~ bill. This rider recovers costs related to
~~associated with~~ transmission projects that help to ensure we can continue to
provide you with safe and reliable service. The table below shows the prior and
new rates, beginning January 1, 2021, for all classes of customers. A residential
customer who uses 1,000 kWh per month will see a bill increase of \$7.32.

VIII. Decision Alternatives

19-530

1. Deem the Lake Norden Area Transmission Improvement Project, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station eligible for recovery through the Transmission Cost Recovery Rider, under Minn. Stat. § 216B.16 subd. 7b, effective January 1, 2020. [OTP]
2. Deem the Lake Norden Area Transmission Improvement Project, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station NOT eligible for recovery through the Transmission Cost Recovery Rider under Minn. Stat. § 216B.16 subd. 7b.
3. Reject the petition requesting recovery in the TCR. [Department]

18-748

OTP Petition and OTP August 24, 2020 Attachments 1 through 14

4. Approve the TCRR annual rate adjustment mechanism as set forth in the Attachments 1 through 14 of Otter Tail's August 24 Comments for usage on and after January 1, 2021. [OTP]

Or

5. Approve OTP's proposal with one or more of the following modifications: [Department]
 - a. Require OTP to remove from its TCRR the costs of the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects and their related revenue requirements and tracker balances; [Department]

Or

- b. If the Commission allows OTP to include the Lake Norden Area Transmission Improvements, the Rugby 41.6 kV Breaker Station, and the Granville Junction Breaker Station transmission projects in its TCRR:
 - i. Require OTP to include any related wholesale transmission revenues or net credits associated with these projects in its TCRR; [Department, OTP agrees]
 - ii. Require OTP to remove the overstated Rugby and Granville project costs; [Department]
 - iii. Include a downward adjustment to rate base of \$95,354 regarding the timing of property taxes to be reflected in OTP's proposed 2021 annual revenue requirements. [Department, OTP agrees and has reflected this in its August 24 comment revenue requirements]

Carrying Charges

6. Deny OTP's proposal to apply carrying charges equal to its overall rate of return to its TCRR tracker balance, given the Commission's prior determination that no carrying charge would be allowed; [Department]

Or

7. Allow carrying charges on a going-forward basis only, and only at the rate of OTP's short-term debt; [Department Alternative]

Or

8. Allow carrying charges equal to OTP's overall rate of return to be applied to its TCRR tracker balances beginning May 1, 2020. [OTP – this is what is included in Alternative 1 above]

Does the Affiliate Relations Statute Apply to Any or Certain Transmission Projects?

9. Require OTP to provide in its initial filing in its next rate case a full and complete justification for assigning any transmission projects to an affiliate as defined under Minn. Stat. §216B.48; [Department]

OTP's TCRR in the future

10. Consider cancelling OTP's TCRR on a going-forward basis. [Department]

Compliance Filing

11. Require OTP to submit a compliance filing within ten days of the date of this order showing the final revenue requirement calculations, rate adjustment factors, and all related tariff changes. (Staff)

Customer Notice (OTP Attachment 15)

12. Approve OTP's customer notice with the language proposed in its August 24, 2020 Reply Comments, Attachment 15. [OTP]
13. Require OTP to separately submit its proposed customer notice (incorporating the changes suggested by staff and updated rates if necessary) within ten days of the date of this order. Delegate to the Executive Secretary authority to approve any customer notice related to OTP's TCRR. [Staff]

Transmission Cost Recovery Statute

Minn. Stat. § 216B.16, Subdivision 7b. Transmission cost adjustment.

(a) 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:

(1) new transmission facilities that have been separately filed and reviewed and approved by the commission under section [216B.243](#) or new transmission or distribution facilities that are certified as a priority project or deemed to be a priority transmission project under section [216B.2425](#);

(2) 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; and

(3) charges incurred by a utility under a federally approved tariff that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system.

(b) Upon filing by a public utility or utilities providing transmission service, the commission may approve, reject, or modify, after notice and comment, a tariff that:

(1) allows the utility to recover on a timely basis the costs net of revenues of facilities approved under section [216B.243](#) or certified or deemed to be certified under section [216B.2425](#) or exempt from the requirements of section [216B.243](#);

(2) allows the utility to recover charges incurred under a federally approved tariff that accrue from other transmission owners' regionally planned transmission projects that have been determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system. These charges must be reduced or offset by revenues received by the utility and by amounts the utility charges to other regional transmission owners, to the extent those revenues and charges have not been otherwise offset;

(3) allows the utility to recover on a timely basis the costs net of revenues of facilities approved by the regulatory commission of the state in which the new transmission facilities are to be constructed and determined by the Midcontinent Independent System Operator to benefit the utility or integrated transmission system;

(4) allows the utility to recover costs associated with distribution planning required under section [216B.2425](#);

(5) allows the utility to recover costs associated with investments in distribution facilities to modernize the utility's grid that have been certified by the commission under section [216B.2425](#);

(6) allows a return on investment at the level approved in the utility's last general rate case, unless a different return is found to be consistent with the public interest;

(7) provides a current return on construction work in progress, provided that recovery from Minnesota retail customers for the allowance for funds used during construction is not sought through any other mechanism;

(8) allows for recovery of other expenses if shown to promote a least-cost project option or is otherwise in the public interest;

(9) allocates project costs appropriately between wholesale and retail customers;

(10) provides a mechanism for recovery above cost, if necessary to improve the overall economics of the project or projects or is otherwise in the public interest; and

(11) terminates recovery once costs have been fully recovered or have otherwise been reflected in the utility's general rates.

(c) A public utility may file annual rate adjustments to be applied to customer bills paid under the tariff approved in paragraph (b). In its filing, the public utility shall provide:

(1) a description of and context for the facilities included for recovery;

(2) a schedule for implementation of applicable projects;

(3) the utility's costs for these projects;

(4) a description of the utility's efforts to ensure the lowest costs to ratepayers for the project; and

(5) calculations to establish that the rate adjustment is consistent with the terms of the tariff established in paragraph (b).

(d) Upon receiving a filing for a rate adjustment pursuant to the tariff established in paragraph (b), the commission shall approve the annual rate adjustments provided that, after notice and comment, the costs included for recovery through the tariff were or are expected to be prudently incurred and achieve transmission system improvements at the lowest feasible and prudent cost to ratepayers.

Affiliated Interests Statute

Relations With Affiliated Interest. Minn. Stat. § 216B.48.

Subdivision 1. Definition of affiliated interests.

"Affiliated interests" with a public utility means the following:

- (1) every corporation and person owning or holding directly or indirectly five percent or more of the voting securities of such public utility;
- (2) every corporation and person in any chain of successive ownership of five percent or more of voting securities;
- (3) every corporation five percent or more of whose voting securities is owned by any person or corporation owning five percent or more of the voting securities of such public utility or by any person or corporation in any such chain of successive ownership of five percent or more of voting securities;
- (4) every person who is an officer or director of such public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities;
- (5) every corporation operating a public utility or a servicing organization for furnishing supervisory, construction, engineering, accounting, legal, and similar services to utilities, which has one or more officers or one or more directors in common with the public utility, and every other corporation which has directors in common with the public utility where the number of the directors is more than one-third of the total number of the utility's directors;
- (6) every corporation or person which the commission may determine as a matter of fact after investigation and hearing is actually exercising any substantial influence over the policies and actions of the public utility even though the influence is not based upon stockholding, stockholders, directors or officers to the extent specified in this section;
- (7) every person or corporation who or which the commission may determine as a matter of fact after investigation and hearing is actually exercising substantial influence over the policies and actions of the public utility in conjunction with one or more other corporations or persons with which or whom they are related by ownership or blood relationship or by action in concert that together they are affiliated with such public utility within the meaning of this section even though no one of them alone is so affiliated;
- (8) every subsidiary of a public utility;
- (9) every part of a corporation in which an operating division is a public utility.

 Staff Briefing Papers for Docket No. [Click here to enter text.](#)

Subd. 2. Construing the term "person."

The term "person" as used in subdivision 1 shall not be construed to exclude trustees, lessees, holders of beneficial equitable interest, voluntary associations, receivers, and partnerships.

Subd. 3. Contract between utility and affiliated interest.

No contract or arrangement, including any general or continuing arrangement, providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing, or for the furnishing of any service, property, right, or thing, other than those above enumerated, made or entered into after January 1, 1975 between a public utility and any affiliated interest as defined in subdivision 1, clauses (1) to (8), or any arrangement between a public utility and an affiliated interest as defined in subdivision 1, clause (9), made or entered into after August 1, 1993, is valid or effective unless and until the contract or arrangement has received the written approval of the commission. Regular recurring transactions under a general or continuing arrangement that has been approved by the commission are valid if they are conducted in accordance with the approved terms and conditions. Every public utility shall file with the commission a verified copy of the contract or arrangement, or a verified summary of the unwritten contract or arrangement, and also of all the contracts and arrangements, whether written or unwritten, entered into prior to January 1, 1975, or, for the purposes of subdivision 1, clause (9), prior to August 1, 1993, and in force and effect at that time. The commission shall approve the contract or arrangement made or entered into after that date only if it clearly appears and is established upon investigation that it is reasonable and consistent with the public interest. No contract or arrangement may receive the commission's approval unless satisfactory proof is submitted to the commission of the cost to the affiliated interest of rendering the services or of furnishing the property or service to each public utility. Proof is satisfactory only if it includes the original or verified copies of the relevant cost records and other relevant accounts of the affiliated interest, or an abstract or summary as the commission may deem adequate, properly identified and duly authenticated, provided, however, that the commission may, where reasonable, approve or disapprove the contracts or arrangements without the submission of cost records or accounts. The burden of proof to establish the reasonableness of the contract or arrangement is on the public utility.

Subd. 4. Contract not exceeding \$50,000.

The provisions of this section requiring the written approval of the commission shall not apply to transactions with affiliated interests where the amount of consideration involved is not in excess of \$50,000 or five percent of the capital equity of the utility whichever is smaller; provided, however, that regularly recurring payments under a general or continuing arrangement which aggregate a greater annual amount shall not be broken down into a series of transactions to come within the aforesaid exemption. Such transactions shall be valid or effective without commission approval under this section. However, in any proceeding

 Staff Briefing Papers for Docket No. [Click here to enter text.](#)

involving the rates or practices of the public utility, the commission may exclude from the accounts of such public utility any payment or compensation made pursuant to the transaction unless the public utility shall establish the reasonableness of the payment or compensation.

Subd. 5. Applicability to determining rates and costs.

In any proceeding, whether upon the commission's own motion or upon application or complaint, involving the rates or practices of any public utility, the commission may exclude from the accounts of the public utility any payment or compensation to an affiliated interest for any services rendered or property or service furnished, as above described, under existing contracts or arrangements with the affiliated interest unless the public utility shall establish the reasonableness of the payment or compensation.

Subd. 6. Commission retains continuing authority over contract.

The commission shall have continuing supervisory control over the terms and conditions of the contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.