

January 15, 2016

Daniel P. Wolf  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 300  
St. Paul, Minnesota 55101

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources to Otter Tail Power Company's Reply Comments and Supplemental Filing**  
Docket No. E017/M-15-719

Dear Mr. Wolf:

Attached are the Response Comments of the Minnesota Department of Commerce, Division of Energy Resources (DOC or the Department) to the Reply Comments and Supplemental Filing by Otter Tail Power Company (OTP or the Company).

Based on our review, the Department recommends that the Minnesota Public Utilities Commission (Commission) **approve OTP's petition, as qualified** and discussed in greater detail herein. The DOC is available to answer any questions the Commission may have.

Sincerely,

/s/ MARK A. JOHNSON  
Financial Analyst

MAJ/lt  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE  
DIVISION OF ENERGY RESOURCES

DOCKET No. E017/M-15-719

**I. BACKGROUND**

On January 23, 2012, the Minnesota Public Utilities Commission (Commission) issued its Order approving Otter Tail Power Company's (OTP or the Company) request for an Advanced Determination of Prudence (ADP) regarding the installation of an Air Quality Control System (AQCS) at its Big Stone Generation Station (Big Stone Plant) located near Milbank, South Dakota in Docket No. E017/M-10-1082. The Big Stone Plant is a multiple-owner plant that OTP owns with Montana Dakota Utilities and NorthWestern Energy. OTP owns 53.9 percent of the plant.

On December 18, 2013, the Commission issued its Order approving OTP's request to begin recovery of costs associated with the Big Stone Plant's AQCS under OTP's proposed Environmental Cost Recovery Rider (ECR Rider) in Docket No. E017/M-13-648.

On November 26, 2014, the Commission issued its Order approving OTP's first annual update to its ECR Rider in Docket No. E017/M-14-647.

On May 27, 2015, the Commission issued its Order denying OTP's request to recover reagent costs associated with the Mercury and Air Toxics Standards (MATS) rule through OTP's fuel clause adjustment rider in Docket No. E017/M-14-649. In addition, the Commission denied OTP's request for variances to allow the recovery of costs and revenues associated with emission allowances through OTP's fuel clause adjustment rider.

On July 31, 2015, OTP filed the instant petition requesting approval of its 2015 ECR Rider.

On October 16, 2015, the Minnesota Department of Commerce, Division of Energy Resources (DOC or Department) filed its comments. The DOC recommended that:

- OTP explained in reply comments whether it receives any revenues (such as emission allowance revenues, tax credits, etc.) attributable to the AQCS project and whether these revenues have been included in the ECR Rider tracker; and

- OTP provide in reply comments information about any provisions OTP might have in contracts, insurance or other resources to address the higher replacement power costs that will be charged due to the longer-than-expected plant outage.

On November 9, 2015, OTP filed its reply comments.

On December 21, 2015, OTP made a supplemental filing to address the impact of pro-rating its Accumulated Deferred Income Taxes (ADIT) in compliance with recent Private Letter Rulings issued by the Internal Revenue Service (IRS).

## II. DEPARTMENT ANALYSIS

### A. OTP'S REPLY COMMENTS

On page 2 of its Reply Comments, OTP stated that it does not expect to receive any revenues, including emission allowances and tax credits, attributable to the AQCS Project. In addition, OTP stated that if it receives any revenues, emission allowances, or tax credits related to the AQCS Project, they will be credited through the ECR tracker. As a result, the DOC concludes that OTP does not have any offsetting revenues that need to be included in the ECR tracker at this time. The Department recommends that the Commission require OTP to address in its next ECR Rider filing all estimated sources of revenues and credits (e.g., any revenues associated with emission allowances or tax credits) and any actual revenues and credits received since the date that the rider went into effect, by year.

In its Comments, the Department expressed concern about the potential for increased replacement power costs due to a delay in the AQCS Project in-service date from October to December. Beginning on page 2 of its Reply Comments, OTP stated that the DOC misunderstood the duration of the outage at the Big Stone Plant. OTP stated that the plant outage end date was extended from June 11 to August 4, which delayed OTP's ability to complete testing of the AQCS project from October 1 to December 2015. OTP stated that:

The modification of the in-service schedule of the AQCS was not due to any issues with the AQCS project. The testing and in-service date for AQCS project was delayed to address cracks found in the blades of Big Stone's High Pressure section of the steam turbine (testing could not start until the plant was operational). The cracks were discovered during normal maintenance inspections performed at the same time the final AQCS project cutover was occurring. Again, the issues identified were with existing plant equipment, not the AQCS project equipment. After the cracks were discovered, the HP section of the turbine was sent to a vendor's facility for replacement of the blades. By discovering and addressing the cracks in the blades at this time, the risk of an unscheduled turbine failure in the future was mitigated.

With testing starting later than originally scheduled (in August rather than June), the AQCS project's in-service date was delayed to December, but this does not mean the Plant was not operating during this time. The original commercial operation date for the AQCS project was October 1, 2015. It is now expected in December 2015. While Otter Tail believes the above clarification should resolve the Department's questions about the outage at Big Stone, Otter Tail is providing the following information requested by the Department relating to the costs of replacement energy that were incurred during the time the turbine blades were being repaired (in the period from June-August). The impact on Minnesota customers of the cost of the replacement power purchased in June, July and the four days in August was an increase of \$258,000. Otter Tail's June average purchase cost was below Big Stone's cost of fuel and July's average cost of purchase for Otter Tail was above Big Stone's cost of fuel. The impact on a ratepayer using 750 kWh was approximately 35 cents per month.

Because the extended outage was not related to the AQCS Project and did not have a significant impact on customer costs, the appropriate venue to address any further questions surrounding the extended outage costs is within the Annual Automatic Adjustment AAA filing rather than this ECR filing.

The extended outage delayed testing of the AQCS equipment. The delay in testing has delayed the in-service date of the AQCS until December 2015.

The Department agrees that, at this time, it appears that the AQCS Project itself has not caused an unanticipated extended outage period. The Department appreciates that OTP acknowledges that the costs associated with the extension to the outage period last summer are appropriate to be addressed in an AAA proceeding. However, the Department requests that OTP provide a status report within 30 days of the in-service date of the AQCS Project, explaining any delays and identifying associated costs, if any.

**B. *OTP'S SUPPLEMENTAL FILING***

On December 21, 2015, Otter Tail Power Company made a supplemental filing in the instant petition. According to OTP, the purpose of the supplemental filing was to address the impact of pro-rating its Accumulated Deferred Income Taxes (ADIT) in compliance with recent Private Letter Rulings issued by the Internal Revenue Service (IRS).

OTP stated that subsequent to its initial filing in this docket it became aware of an IRS rule related to the normalization of ADIT balances in forward-looking test years used for ratemaking purposes. OTP stated that many utilities, including OTP, were made aware of

the rule through a series of Private Letter Rulings issued by the IRS to a number of other utilities.

According to OTP, the Private Letter Rulings state that under IRS Section 1.167(l)(h)(6) ratemaking procedures and adjustments must be consistent with normalization accounting. OTP stated that IRS Section 1.167(l)(h)(6) defines the procedures a company must use to normalize the impact on rate making in a forward-looking test year if a company elects to use accelerated depreciation methods. According to OTP, this section stipulates that the monthly changes to the deferred taxes balance, as calculated by the company, must be prorated prior to computing the average of beginning and ending balances for ADIT. OTP stated that it would risk losing its ability to take accelerated depreciation if it fails to comply with this rule. OTP stated that accelerated depreciation is a significant benefit to ratepayers as ADIT amounts are credited against rate base amounts when establishing rates making adherence to this rule important to Minnesota customers

OTP stated that it recently completed its analysis and application of the proration methodology to its ADIT balances and has included revised attachments in its supplemental filing that reflect the new ADIT calculation. OTP stated that in its next update to its ECR Rider actual ADIT balances will replace the prorated forecast ADIT balances included in this filing, with the difference between the actuals and prorated forecast amounts incorporated into the true-up applicable to the next collection period. According to OTP, the Company's adherence to this rule results in an increase of \$55,707 to the forecasted revenue requirement in this docket due to the lower ADIT balance as a result of the proration. However, OTP proposes to keep the current ECR Rider rate in effect.

The Department provides the following brief responses. First, the Department notes that Xcel Energy addressed this same issue in its Transmission Cost Recovery Rider in Docket No. E002/M-15-891 and its recently filed rate case in Docket No. E002/GR-15-826; the DOC plans to discuss this issue extensively in those dockets. Second, since this petition is a rider, the effect over time should net out since OTP will replace the forecasted pro-rated ADIT balances with actual ADIT balances in its true-up calculation in its next ECR Rider.<sup>1</sup> As a result, OTP's actual revenue requirements will decrease by \$55,707 in its true-up calculation in its next ECR Rider. Finally, despite the \$55,707 impact on OTP's ECR Rider, the Company proposed to keep the current ECR Rider rate in effect. Thus, because the IRS Private Letter Ruling has no effect on rates, it is not necessary to address the issue in this proceeding.

Based on the above, the Department recommends that the Commission approve OTP's 2015 ECR Rider and OTP's proposal to keep the current ECR Rider rate in effect, with the understanding that the Commission's decision in this case does not preclude the Commission from making a different decision on IRS Private Letter Rulings in proceedings

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<sup>1</sup> The Department notes there is a significant difference between pro-rating ADIT balances in riders as opposed to rate cases. Riders have subsequent true-up calculations which replace pro-rated ADIT balances with actual ADIT balances. Rate cases do not have a subsequent true-up calculation. As a result, the DOC is more concerned with pro-rated ADIT balances in the context of a rate case.

that have different facts. This important tax matter will be addressed as appropriate in other proceedings.

### **III. SUMMARY AND RECOMMENDATIONS**

The Department recommends that the Commission approve OTP's 2015 ECR Rider and OTP's proposal to keep the current ECR Rider rate in effect, with the understanding that the Commission's decision in this case does not preclude the Commission from making a different decision on IRS Private Letter Rulings in proceedings that have different facts.

The Department recommends that the Commission require OTP to address in its next ECR Rider filing all estimated sources of revenues and credits (e.g., any revenues associated with emission allowances or tax credits) and any actual revenues and credits received since the date that the rider went into effect, by year.

In addition, the Department recommends that the Commission require OTP to provide a status report within 30 days of the in-service date of the AQCS Project, explaining any delays and identifying associated costs, if any.

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## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Response Comments**

**Docket No. E017/M-15-719**

Dated this **15<sup>th</sup>** day of **January 2016**

**/s/Sharon Ferguson**

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