

November 13, 2023

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: **Response Comments of the Minnesota Department of Commerce, Division of Energy Resources**
Docket No. E017/M-23-152

Dear Mr. Seuffert:

Attached are the response comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), responding to the September 28, 2023 Reply Comments of Otter Tail Power Company in the following matter:

Petition of Otter Tail Power Company (Otter Tail) for Approval of the Annual Rates
Update to its Transmission Cost Recovery Rider Annual Adjustment, Rate Schedule
13.05.

The Department recommends the Commission **approve the Petition, with modifications described herein**. The Department is available to answer any questions the Minnesota Public Utilities Commission may have.

Sincerely,

/s/ Louise Miltich
Assistant Commissioner of
Regulatory Analysis

/s/ Craig Addonizio
Public Utilities
Analyst Coordinator

/s/ Andrew Golden
Public Utilities
Financial Analyst

LM/CA/AG/ar
Attachment



Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. E017/M-23-152

I. INTRODUCTION

On April 7, 2023, Otter Tail Power Company (Otter Tail or the Company), filed a [petition](#) (Petition) requesting the Minnesota Public Utilities Commission (Commission) approve modifications to its Transmission Cost Recovery Rider (TCRR) in Section 13.05 of the Company's Electric Rate Schedule. Otter Tail requested that the Commission:

- find that two new transmission projects (the Oslo/Lake Ardoch and Winger 230/115 kV Transformer Projects) are eligible for cost recovery via the TCRR;
- approve cost recovery for the two new projects as well as two projects that had been approved for TCRR recovery in prior dockets; and
- approve cost recovery for Otter Tail's net MISO expenses.

On May 26, 2023, the Company submitted a [Supplemental Filing](#) requesting changes to its Petition after identifying errors in its forecasts of 2023 MISO Schedules 26 and 26A revenue and Schedule 26A expense.

On August 14, 2023, the Minnesota Department of Commerce (Department) filed [Comments](#) on Otter Tail's Petition. The Department recommended that the Commission approve Otter Tail's Petition with certain modifications. Specifically, the Department recommended that the Commission:

- find that the two new transmission projects are not eligible for cost recovery via the TCRR;
- if the Commission were to find the two new projects eligible, establish cost caps for purposes of cost recovery in the TCRR based on the total capital expenditure estimates provided in the Petition; and
- approve cost recovery for the two existing projects, but limited cost recovery via the TCRR based on cost caps for the projects established in prior Commission proceedings.

On September 28, 2023, Otter Tail filed [Reply Comments](#) in which it:

- continued to request that the Commission find the two new project eligible for cost recovery via the TCRR; and
- provided updated total cost estimates for three of the four projects it proposed to include in its TCRR.

II. DEPARTMENT ANALYSIS

A. STATUTORY FILING REQUIREMENTS

In its Comments, the Department noted that Otter Tail's Petition did not include a description of its efforts to ensure the lowest costs to ratepayers for projects included in the TCRR, as required by [Minnesota Statutes §216B.16, subdivision 7b\(c\)\(4\)](#) (the TCRR statute).

Otter Tail addressed this filing requirement in its Reply Comments, stating that it controls costs through competitive bidding for large components of its transmission projects, and through the use of alliance agreements.

The Department concludes that Otter Tail has reasonably satisfied this filing requirement.

B. PROJECT ELIGIBILITY

1. 115 kV Oslo Breaker Station and Oslo - Lake Ardoch Line

In its Reply Comments, Otter Tail reiterated its prior position that the 115 kV Oslo Breaker Station and Oslo - Lake Ardoch Line (Oslo/Lake Ardoch Project) is eligible for TCRR recovery under paragraph (a)(2) of the TCRR statute. As noted in the Department's Comments, § 216B.16, subd. 7b(a)(2) provides two eligibility criteria, both of which must be satisfied:

1. the proposed project for new transmission facilities must have been approved by the regulatory commission in the state in which it is to be constructed, *and*
2. the proposed project must have been found by the Midcontinent Independent System Operator (MISO) to benefit the utility or integrated transmission system.

At the time the Department filed its Comments, the Oslo/Lake Ardoch Project satisfied neither of these requirements.¹ On September 6, 2023, the North Dakota Public Service Commission (ND PSC) issued a Certificate of Public Convenience and Necessity for the project, satisfying the first requirement.² However, based on the information Otter Tail provided in its Reply Comments, the project still does not satisfy the second requirement.

As discussed in both the Department's Comments and Otter Tail's Reply Comments, the Oslo/Lake Ardoch project has a somewhat complicated history with respect to the MISO approval process, and Otter Tail has not definitively shown that MISO has found the project to be beneficial.³ In its Reply Comments, Otter Tail stated that, in order to clarify and confirm MISO's approval of the project, it has requested that MISO include the project in the pending 2023 MISO Transmission Expansion Plan

¹ Comments at 5-8.

² Reply Comments at 6.

³ Comments at 5-8 and Reply Comments at 2-5.

(MTEP23) cycle. MISO's Board of Directors is expected act on the MTEP23 in December 2023. The Department appreciates Otter Tail's efforts, but continues to conclude that the project has not yet been found by MISO to be beneficial. As a result, the Department concludes that the Oslo/Lake Ardoch Project does not satisfy the second criterion of the TCRR Statute, paragraph (a)(2), and therefore is not eligible for inclusion in the TCRR. Therefore, the Department continues to recommend that the Commission deny Otter Tail's request to include the Oslo/Lake Ardoch Project in the TCRR.

2. Winger 230/115 kV Transformer Project

In its Reply Comments, Otter Tail continued to request that the Commission find the Winger 230/115 kV Transformer Project (Winger Project) eligible for inclusion under § 216B.16, subd. 7b(a)(1), which requires that a project either have been granted a Certificate of Need (CN) by the Commission (under Minn. Stat. § 216B.243) or been certified or deemed to be a priority transmission project (under Minn. Stat. § 216B.2425).

The Company acknowledged that the Winger Project, considered in isolation, is not eligible for a CN or to be certified as a priority transmission project, and therefore cannot meet the criteria of § 216B.16, subd. 7b(a)(1). However, the Company noted that the project is part of a larger portfolio of projects required to maintain reliability for customers in the Northwest Minnesota area.⁴ Otter Tail went on to state:

This portfolio approach offered flexibility in timing at a lower cost than the higher priced, but stand-alone single large project. Because of this approach to manage rate impact through an approach that incrementally met the projected area's needs, Otter Tail believes that paragraph (a) (1) was designed specifically for a scenario such as this portfolio approach.⁵

The Company seems to be implying that had the portfolio of projects been proposed as a single, large project, rather than broken into smaller pieces, it would have qualified as a large energy facility as defined by Minn. Stat. § 216B.2421, and therefore would have required a CN or certification as a priority, thus making it eligible for inclusion in TCRR. Otter Tail, however, offered no explanation of or support for this assertion, and based on its limited review of the projects and the statutory definition of "large energy facility," the Department does not believe Otter Tail's implied assertion is true.

The TCRR Statute plainly requires a project located in Minnesota to either have been granted a CN or been certified as a priority transmission project. Based on the plain language of the TCRR Statute, the Winger Project is not eligible for inclusion in the TCRR because it has not been granted a CN or been certified. Therefore, the Department continues to recommend that the Commission deny Otter Tail's request to include the Winger Project in its TCRR.

⁴ Reply Comments at 5.

⁵ Reply Comments at 6.

C. *COST CAPS*

1. *Oslo/Lake Ardoch Project*

In its Comments, the Department recommended that, if the Commission were to find the Oslo/Lake Ardoch Project eligible for inclusion in the TCRR, that it also establish a cost cap of \$6.6 million (OTP Total) / \$3.3 million (OTP MN) for the project, based on the cost estimate Otter Tail provided in the main body of its Petition.

In Reply Comments, Otter Tail revised its cost estimate for the Oslo/Lake Ardoch project to \$11.9 million (OTP Total) / \$5.9 million (OTP MN), nearly double the estimate provided in its Petition. Otter Tail attributed the increase to:

- materials and contractor pricing increasing by at least 20 percent each year since the cost estimate provided in the Petition was produced, in June 2021;
- actual ground/soil conditions at the site being significantly different than assumed during the planning of the project;
- increased cost of the land due to commercial use; and
- increased easement costs for pole/line placement.⁶

The Department has multiple concerns related to the updated cost estimates Otter Tail provided in its Reply Comments.

First, the cost estimate provided in the text of the Company's Petition (\$6.6 million (OTP Total)) is out of date and inaccurate. More significantly, the project's revenue requirements for which the Company is seeking recovery reflect total capital expenditures of only \$4.2 million (OTP Total) through the end of 2024, by which time the project is expected to have been placed in-service.⁷ It seems unlikely that the project could be placed in service with only roughly one-third of the current estimated budget (\$11.9 million (OTP Total)) having been spent. Thus, the Department is concerned that the revenue requirements for the project included in Otter Tail's request are likely also inaccurate.

Per the Company's explanation of the increase, the materials and contractor pricing had been increasing significantly for nearly two years at the time it filed its Petition. Based on that factor alone, Otter Tail should have known that its initial cost estimate from 2021 was out of date, and at the very least should have provided a qualitative discussion of the cost increases in its Petition.

In addition, while Otter Tail cited contractor and materials pricing increases as a primary driver of the increased cost estimate, the Company declined in Reply Comments to adjust its initial cost estimate to reflect the effects of inflation using a Handy-Whitman construction cost index, which is a common

⁶ Reply Comments at 4-5.

⁷ The \$4.2 million of capital expenditures are from the Company's response to DOC Information Request (IR) 1, which is a live spreadsheet version of Attachments 5-8 to the Petition, with supporting data.

method for accounting for inflation in rider proceedings. The Company stated this inflation index normally used to make the adjustment, “is not the appropriate tool to use at this time due to the unusual inflationary period experienced over the past few years.”⁸ The Department’s understanding is that the main point of using the Handy-Whitman index is to account for inflation in construction costs, and therefore the Department does not understand or agree with Otter Tail’s claim. The Company chose not to provide any further explanation or support for its position.

While Otter Tail identified inflation as a primary driver of the total cost increase, it also identified a number of factors that are not related to inflation (*e.g.*, the increase related to ground/soil conditions). Generally, cost recovery in riders is limited to initial cost estimates plus an adjustment for inflation, and cost increases due to other factors (assumptions made during the planning phase turning out to be incorrect) are not recoverable. Because the Company did not update its initial cost estimates with a Handy-Whitman construction cost index, the Department does not have enough information to determine how much of the cost increase is attributable to inflation versus other factors.

Rather than trying to resolve all of these new issues that result from the introduction in Reply Comments of a new and significantly increased total cost estimate for the Oslo/Lake Ardoch Project, the Department recommends that they be addressed in a future TCRR docket, if necessary. If the Commission finds that the Oslo/Lake Ardoch is eligible for inclusion in the TCRR, the Department recommends that the Commission approve cost recovery at the proposed level of approximately \$76,000 per year, based on total capital expenditures of \$4.2 million, which is below the cost cap the Department recommended originally. If, in a future TCRR docket, the Company wishes to seek cost recovery based on a higher level of capital expenditures, it will have to justify the higher estimate at that time. Otherwise, the cost overruns will be considered in the Company’s next rate case.

2. Winger 230/115 kV Transformer Project

In its Comments, the Department recommended that if the Commission were to find the Winger 230/115 kV Transformer Project (Winger Project) eligible for inclusion in the TCRR, it also establish a cost cap of \$4.8 million (OTP Total) / \$2.4 million (OTP MN), as provided in the Company’s Petition. The Department noted that this cost estimate matched the estimate provided to the ND PSC when that Commission approved cost recovery for the project.

In its Reply Comments, Otter Tail stated that:

- the cost estimate in the text of its Petition was erroneous;
- the live tracker provided in response to Department IR 1 indicated total capital expenditures of \$5.7 million (OTP Total); and
- subsequent increases have driven the total budget to \$6.2 million (OTP Total).

⁸ Reply Comments at 8.

The Company attributed the cost increases to:

- materials and contractor pricing increasing by at least 20 percent each year since the original cost estimate (\$4.8 million (OTP Total)) was developed, in June 2020.
- Engineering consultants acquired to assist with electrical and civil design to meet project milestones.

The Department's concerns about the Winger Project's increased cost estimates are largely the same as the concerns described above about the Oslo/Lake Ardoch Project. The text of the Company's Petition and the revenue requirements calculations in Attachment 1 of the Petition are likely inaccurate, and the Company cited drivers that are not related to inflation, and therefore would generally not be permitted to be recovered in a rider.

However, the increase for the Winger Project is much less significant than that of the Oslo/Lake Ardoch Project, and the Department recognizes that inflation has likely driven up costs, despite the Company's lack of supporting information for its claim of 20 percent annual inflation. Therefore, the Department recommends the same approach it recommended for the Oslo/Lake Ardoch Project. Rather than attempting to fully resolve all of the issues raised by the increased cost estimate provided in Reply Comments, the Department recommends that if the Commission finds the Winger Project eligible for inclusion in the TCRR, the Commission approve cost recovery at the proposed level of approximately \$212,000 in the 2024 test period based on total capital expenditures of \$5.7 million. If the Company wishes to seek cost recovery based on a higher level of capital expenditures in the future, either in a rider proceeding or a rate case, it will have to justify the increase at that time.

3. Erie Substation Project

The Commission initially approved TCRR cost recovery for the Erie Substation in the TCRR in Docket No. E017/M-21-811 (the "2021 TCRR Docket"), with a cost cap of \$6.6 million (OTP Total), which is greater than the initial cost estimate for the project (\$5.5 million (OTP Total)) provided in the project's route permit application.⁹ In its Comments, the Department noted that Otter Tail's Petition reflected total capital expenditures of \$8.2 million through the end of 2024 for the project, or \$1.8 million in excess of the cost cap.

In its Reply Comments, Otter Tail stated that the capital expenditures reflected in its Petition, upon which the project's revenue requirements were calculated, are erroneous.¹⁰ The Company stated that the total estimated cost of the project is \$7.5 million (OTP Total) and requested that the project's costs be capped at that level for purposes of TCRR cost recovery. Otter Tail stated that it would provide updated revenue requirements calculations in a compliance filing.

⁹ Comments at 11.

¹⁰ Reply Comments at 7.

Otter Tail attributed the increase from \$6.6 million to \$7.5 million to:

- materials and contractor pricing increasing by at least 20 percent each year since the cost estimate provided in the Petition was produced, in June 2020; and
- responsibility for and ownership of certain parts of the project changed from Xcel Energy to Otter Tail, resulting in increased costs; and
- unforeseen transmission line relocations required by Great River Energy (GRE) at the GRE Frazee substation.

The Department notes that the increase from \$6.6 million to \$7.5 million over a period of three years represents inflation of approximately four percent annually, which the Department considers to be generally reasonable given the recent inflationary environment. Based on this rough inflation adjustment, which is consistent with normal practice in riders, the Department recommends that the Commission approve cost recovery based on a cost cap of \$7.5 million.

4. Hoot Lake 115/43/13.8 kV Transformer Project

In its Comments, the Department noted that total costs for the Hoot Lake 115/43/13.8 kV Transformer Project (\$1.3 million (OTP Total)) had slightly exceeded the project's cost cap (\$1.2 million (OTP Total)). The Department recommended that the Commission maintain the established cost cap. In its Reply Comments, Otter Tail agreed with the Department's recommendation.¹¹

III. CONCLUSION AND RECOMMENDATIONS

The Department recommends the Commission:

1. Approve Otter Tail's request as presented in its May 26, 2023 Supplemental Filing, with the following four modifications:
 - a. Deny Otter Tail's request to include its proposed 115 kV Oslo Breaker Station and Oslo - Lake Ardoch Line project in the TCRR;
 - b. Deny Otter Tail's request to include its proposed Winger 230/115 kV Transformer project in the TCRR;
 - c. Cap cost recovery of the Erie Substation project based on total costs of \$7.5 million; and
 - d. Cap cost recovery of the Hoot Lake 115/43/13.8 kV Transformer Project based on total costs of \$1.2 million;
2. Require Otter Tail to file a compliance filing within 30 days of the Commission's Order in this Docket demonstrating the Company's recalculation of the TCRR to reflect the changes required by the Commission.

¹¹ Reply Comments at 8.

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-23-152

Dated this **13th** day of **November 2023**

/s/Sharon Ferguson

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Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_23-152_M-23-152
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Generic Notice	Residential Utilities Division	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_23-152_M-23-152
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