

June 12, 2020

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

RE: **Comments of Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. E017/PA-19-533

Dear Mr. Seuffert:

Attached are the comments of the Minnesota Department of Commerce, Division of Energy Resources (Department) in the following matter:

In the Matter of Otter Tail Power Company's Petition for Approval of a Transfer of Property.

The petition was filed on August 16, 2019 by:

Kristian M. Dahl  
Associate General Counsel  
Otter Tail Power Company  
215 South Cascade Street  
P.O. Box 496  
Fergus Falls, Minnesota 56538

The Department recommends **approval** and is available to answer any questions that the Minnesota Public Utilities Commission (Commission) may have.

Sincerely,

Mark Johnson  
Public Utilities Analyst Coordinator

MJ/ar  
Attachment



## Before the Minnesota Public Utilities Commission

### Comments of the Minnesota Department of Commerce Division of Energy Resources

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Docket No. E017/PA-19-533

#### I. SUMMARY OF PROPOSAL

On August 16, 2019, Otter Tail Power Company (OTP or the Company) filed a petition for approval to purchase certain transmission assets from Central Power Electric Cooperative (CPEC) pursuant to Minnesota Statute §216B.50 and Minnesota Rules 7825.1700 and 7825.1800 (Petition).

Specifically, OTP seeks to purchase the following North Dakota-sited transmission assets from CPEC:

- CPEC equipment within the OTP Bottineau Substation (Bottineau County, ND);
- CPEC equipment within the OTP Wahpeton Substation (Richland County, ND);
- CPEC equipment within the OTP Rugby Substation and related facilities (Pierce County, ND); and
- an approximately 4-mile-long CPEC-owned 69 kV line segment from what is otherwise Otter Tail's 69 kV Rolette Line (Rolette County, ND) (collectively the Purchased Assets).

OTP stated that the Requested Acquisition is consistent with the public interest, pursuant to Minnesota Statute §216B.50, for the reasons explained in the Petition. OTP requested that the Commission give its consent and approval by order in writing, upon investigation without public hearing.

On September 9, 2019, the Minnesota Department of Commerce (Commerce) requested an extension of the deadline for comments, given complexities relating to a proceeding before the Minnesota Supreme Court. The Minnesota Public Utilities Commission (Commission) granted two extensions to deadlines, which the Department appreciates. The Department provides its comments below.

#### II. BACKGROUND

Otter Tail Power Company is an electric utility headquartered in Fergus Falls, Minnesota. OTP currently serves more than 131,000 retail electric customers throughout its service territories in Minnesota, North Dakota, and South Dakota.

CPEC is a wholesale electric generation and transmission cooperative headquartered in Minot, North Dakota. CPEC serves six CPEC-member distribution cooperatives, which supply electricity to customers across the central and southeastern third of North Dakota.

OTP stated that it and CPEC both own equipment within the Wahpeton, Bottineau, and Rugby Substations.<sup>1</sup> In addition, OTP stated that CPEC owns an approximately four-mile 69kV transmission line, which is the only segment of line along the entire 69kV systems between Rolette and Rolla, North Dakota, that is not currently owned by OTP.<sup>2</sup>

OTP stated that CPEC has determined that its continued ownership of the substation and line segment that make up the Purchased Assets is no longer significantly beneficial to CPEC's load-serving needs. Furthermore, OTP stated that, as further detailed in the Purchase Agreement, CPEC allowed OTP the exclusive right and option to purchase the Purchased Assets so long as OTP provided notice to CPEC on or before December 31, 2019.<sup>3</sup> OTP stated that it provided a timely notice to CPEC to exercise its right to purchase all of the Purchased Assets.<sup>4</sup> A copy of the Purchase Agreement is provided in Attachment 6 of the Petition.

Beginning on page 3 of its Petition, OTP stated that the exclusive option for it to acquire the Purchased Assets from CPEC is subject to an "all or none" purchase arrangement at each location. OTP stated that the purchase price for the Purchased Assets will be fixed at CPEC's net book value of equipment at the time of closing. In addition, OTP stated that since the purchase is subject to regulatory approvals in advance of closing, the exact purchase price will not be known until such time. However, OTP explained that the net book value would be approximately \$2.0 million if the closing would occur on December 31, 2019, or slightly less if the closing were to occur after December 31, 2019.<sup>5</sup>

### **III. DEPARTMENT ANALYSIS**

#### **A. STATUTORY REQUIREMENTS**

Minnesota Statutes §216B.50, subd. 1, states,

No public utility shall sell, acquire, lease or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000, or merge or consolidate with another public utility operating in this state without first being authorized so to do by the commission. Upon the filing of an application for the approval and consent of the commission thereto the commission shall investigate, with or without public hearing, and in case of a public hearing, upon such notice as the commission may require, and if it shall find that the proposed action is consistent with the public interest it shall give its consent and approval by order in writing. In reaching its determination the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated.

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<sup>1</sup> Petition at 5

<sup>2</sup> *Id.*

<sup>3</sup> Petition at 3.

<sup>4</sup> *Id.*

<sup>5</sup> Petition at 4, footnote no. 3.

The Department considers the purchase of transmission assets pursuant to the Purchase Agreement to fall under the purview of the Commission, under Minnesota Statute §216B.50 and corresponding Minnesota Rules Part 7825.1700 and 1800. The Department considers the primary issue in this Petition to be whether the OTP's purchase of certain transmission assets from CPEC is consistent with the public interest.

The Department discusses this issue further below.

*B. PROCEDURES AND FILING REQUIREMENTS*

**7825.1700 Procedure for Approval to Acquire Property.**

Minnesota Rule 7825.1700 states:

A public utility, prior to entering into a transaction, shall petition for and receive from the commission by formal written order approval for such transaction. A petition for approval of capital structure (parts 7825.1000 to 7825.1500) shall be filed concurrently with the petition for approval of transfer, merger, or consolidation if consideration for such a transaction is a security or securities as defined in part 7825.1000. The commission may require an independent valuation of the property involved in the transaction.

Based on the above, the Department concludes that OTP needs a formal written order by the Commission in order to proceed with its proposed purchase of certain transmission assets from CPEC. Since capital structure approval is not relevant to the instant Petition, the Department concludes that Minnesota Rules 7825.1000 to 7825.1500 do not apply. In addition, since OTP proposes to purchase the transmission assets from CPEC at net book value, the Department concludes that an independent valuation of the transmission assets are not necessary.

**7825.1800 Filing Requirements for Petitions to Acquire Property.**

Minnesota Rule 7825.1800 requires that petitions for approval to acquire property must contain one original and three copies of the following information, either in the petition or as exhibits attached thereto:

- A. Petitions for approval of a merger or of a consolidation shall be accompanied by the following: the petition signed by all parties; all information, for each public utility, as required in parts 7825.1400 and 7825.1500; the detailed reasons of the petitions and each party for entering into the proposed transaction, and all facts warranting the same; the full terms and conditions of the proposed merger or consolidation.

- B. Petitions for approval of a transfer of property shall be accompanied by the following: all information as required in part 7825.1400, items A to J; the agreed upon purchase price and the terms for payment and other considerations.
- C. A description of the property involved in the transaction including any franchises, permits, or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.
- D. Other pertinent facts or additional information that the commission may require.

Minnesota Rule 7825.1800, subparts, B, C and D above specifically address the issue of transfer of property. The Department notes that OTP provided the relevant information required under Minnesota Rule 7825.1800 subparts B, C, and D in its Petition. Since the Petition does not pertain to a merger or a consolidation, the Department concludes that subpart A is not applicable.

As indicated above, Minnesota Rule 7825.1800, subpart B, requires various other detailed information (items A through J) as set forth in Minnesota Rule 7825.1400, which primarily relate to capital structure approvals:

- A. A descriptive title.
- B. A table of contents.
- C. The exact name of the petitioner and address of its principal business office.
- D. Name, address, and telephone number of the person authorized to receive notices and communications with respect to the petition.
- E. A verified statement by a responsible officer of the petitioner attesting to the accuracy and completeness of the enclosed information.
- F. The purpose for which the securities are to be issued.
- G. Copies of resolutions by the directors authorizing the petition for the issue or assumption of liability in respect to which the petition is made; and if approval of stockholders has been obtained, copies of the resolution of the stockholders shall be furnished.
- H. A statement as to whether, at the time of filing of the petition, the petitioner knows of any person who is an "affiliated interest" within the meaning of Minnesota Statutes, section 216B.48, subdivision 1, who has received or is entitled to receive a fee for services in connection with the negotiations or consummation of the issuance of the securities, or for services in securing underwriters, sellers, or purchasers of the securities.
- I. A signed copy of the opinion of counsel in respect to the legality of the issue or assumption of liability.

- J. A balance sheet dated no earlier than six months prior to the date of the petition together with an income statement and statement of changes in financial position covering the 12 months then ended. When the petitions include long-term securities, such statements shall show the effects of the issuance on such balance sheet and income statement.

With respect to item H, OTP stated that at the time of the filing of this Petition it was not aware of any person who has an “affiliated interest” within the meaning of Minnesota Statute §216B.48, subd. 1.<sup>6</sup> In addition, OTP stated that there is no fee for services in connection with underwriting, selling, purchasing or issuing of securities associated with its Petition, since there are no securities associated with the proposed transaction.<sup>7</sup> As a result, OTP stated that it believes it has provided all relevant information called for by Minnesota Rule 7825.1400, but requested a waiver for items F, H, I, and J.<sup>8</sup>

Minnesota Rule part 7829.3200 sets forth the criteria for evaluating a variance request:

1. Enforcement of the rule would impose an excessive burden upon the application or others affected by the rule.
2. Granting the variance would not adversely affect the public interest.
3. Granting the variance would not conflict with the standards imposed by law.

Beginning on page 10 of its Petition, OTP stated that its waiver request is appropriate and meets the standards for a waiver under Minnesota Rule 7829.3200. OTP stated that the relevance of this information to the instant Petition and the associated burden are such that it would not add value to the Commission’s consideration of the Petition. In addition, OTP stated that granting such a waiver in this instance would not adversely affect the public interest or conflict with the standards imposed by law for this type of petition.

The Department reviewed OTP’s Petition and concludes that OTP provided all relevant information required under Minnesota Rule 7825.1400. The Department agrees with OTP that information required under items F, I, and J primarily relate to capital structure filings and are not applicable to the current Petition. Furthermore, the Department agrees with OTP that enforcement of the rule would impose an excessive burden and that granting a variance would not adversely affect the public interest. Lastly, the Department is unaware of any legal standards that would be violated if the variance were granted.

As a result, the Department recommends that the Commission grant OTP a waiver regarding the filing requirements for items F, I, and J under Minnesota Rule 7825.1400. The Department considers OTP’s statement above regarding item H to be sufficient for purposes of this Petition and concludes that a waiver for item H is not necessary.

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<sup>6</sup> Petition at 8.

<sup>7</sup> *Id.*

<sup>8</sup> Petition at 8-9.

#### *D. ANALYSIS OF THE PURCHASE AGREEMENT*

##### **1. Standard for Review of the Purchase of Transmission Assets**

As explained by OTP on page 4 of its Petition, Minnesota Statute §216B.50 governs the Commission's review of OTP's purchase of transmission assets from CPEC, since the total consideration is in excess of \$100,000. In addition, OTP stated that Minnesota Statute §216B.50 further authorizes the Commission to investigate an application for approval and provides that "[i]f the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval by order in writing." Moreover, OTP stated on page 2 of its Petition that the related acquisition is consistent with the public interest and recommends that the Commission give its consent and approval by order in writing, upon investigation without public hearing. Finally, OTP stated that the Commission established in 1997 that the phrase "consistent with the public interest" under Minnesota Statute §216B.50 and concluded that it does not require an affirmative finding of public benefit but rather a finding that the proposed transaction is compatible with the public interest.

The Department agrees with OTP that the proposed transaction is governed by Minnesota Statute §216B.50 and considers the primary issue to be whether OTP's purchase of certain transmission assets from CPEC at net book value is consistent with the public interest. When the Department analyzes whether a proposed transaction is consistent with the public interest, the more benefits the Company is able to show, the easier it is for the Department to support approval of a given transaction. As a result, the Department expects utilities to show that their proposal is clearly in the public interest. The issue of public interest is analyzed and discussed below.

##### **2. Analysis of the Purchase Agreement**

On page 3 of its Petition, OTP stated that as further detailed in the Purchase Agreement, CPEC allowed OTP the exclusive right and option to purchase the Purchased Assets so long as OTP provided notice to CPEC on or before December 31, 2019.<sup>9</sup> OTP stated that it provided a timely notice to CPEC to exercise its right to purchase all of the Purchased Assets in December 2018.<sup>10</sup> A copy of the Purchase Agreement is provided in Attachment 6 of the Petition.

The Department reviewed the Purchase Agreement. The Purchase Agreement spells out the terms and conditions for the sale of the Purchased Assets, including the stipulation that the purchase price for the assets be based on the net book value at the time of closing. Moreover, the Department agrees that OTP had an exclusive right and option to purchase the Purchased Assets so long as the Company provided notice to CPEC on or before December 31, 2019, which OTP did. Based on our review, the Department concludes that the Purchase Agreement appears reasonable.

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<sup>9</sup> Petition at 3.

<sup>10</sup> *Id.*

### 3. Accounting and Ratemaking for Transmission Assets to be Purchased

As stipulated in the Purchase Agreement, the purchase price for the Purchased Assets will be fixed at CPEC's net book value at the time of closing. In addition, OTP stated that since the purchase is subject to regulatory approvals in advance of closing, the exact purchase price will not be known until such time. However, the Department notes that OTP explained on page 3 of its Petition that the net book value would be approximately \$2.0 million if the closing were to occur on December 31, 2019, or somewhat less if the closing were to occur after December 31, 2019.<sup>11</sup>

In similar, past proceedings, the Department asked utilities to make a subsequent compliance filing providing the final journal entries upon closing of the proposed transaction. Thus, if the Commission approves the proposed transaction in this proceeding, the Department recommends that the Commission require OTP to submit journal entries supporting the final purchase price in a compliance filing within 60 days after the closing of the transaction.

### 4. Public Interest Standard

Beginning on page 5 of its Petition, OTP stated that its requested acquisition is in public interest and would provide a variety of benefits centered around efficiencies gained by a more seamless ownership of the transmission facilities. Currently, OTP and CPEC both own equipment within the Wahpeton, Bottineau, and Rugby Substations as well as portions of the 69kV line running between Rolette and Rolla, North Dakota. Upon completion of the proposed transaction, OTP stated it would have continuous ownership of all the equipment within the substations and the entire 69kV system between Rolette and Rolla, North Dakota. As a result, OTP stated that there would be gains in operation and maintenance (O&M) efficiencies since the Company is already performing these activities on its own facilities. Moreover, OTP stated that while it anticipates a negligible increase in O&M expenses a result of the proposed transaction, it expects that these costs will be offset by other financial benefits as described below.

Beginning on page 7 of its Petition, OTP stated that it would also recognize financial benefits as a result of the proposed transaction, which are expected to be in the form of higher revenues from the Midcontinent Independent System Operator (MISO) and lower expenses from the Southwest Power Pool (SPP), which will be passed back to its ratepayers. OTP stated that:

Otter Tail will experience higher MISO revenues due to a decrease in the amount of facility credits that CPEC obtains through MISO. Due to the integration of the Purchased Assets with other transmission facilities under MISO's Tariff, CPEC is currently receiving facility credits for its Wahpeton Equipment, Bottineau Equipment and the Rolette Line Segment. These facility credits reduce CPEC's Schedule 9 (Network Integration Transmission Service) expenses in MISO. The Requested Acquisition will lower the amount of CPEC facility credits since CPEC will no

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<sup>11</sup> Petition at 4, footnote no. 3.



longer own the Purchased Assets, which in turn will result in higher Schedule 9 expenses to CPEC that flow back to Otter Tail in the form of more Schedule 9 revenues. These higher MISO Schedule 9 revenues from CPEC will be included in the SPP Tracker that was established during Otter Tail's 2016 general rate case.

Otter Tail will also have lower SPP expenses as a result of the Requested Acquisition because Otter Tail will be able to obtain higher facility credits in SPP, which in turn will reduce SPP Schedule 9 expenses. Similar to CPEC obtaining facility credits in MISO, Otter Tail will be able to obtain facility credits from SPP for the Rugby Equipment. As explained above, these facility credits reduce Otter Tail's Schedule 9 expenses in SPP. The Requested Acquisition will increase the amount of Otter Tail facility credits since Otter Tail will now own the Rugby Equipment, which in turn will result in lower SPP Schedule 9 expenses to Otter Tail. These lower Schedule 9 expenses will be included in the SPP Tracker that was established during Otter Tail's 2016 general rate case, as noted above. The combined impacts of higher Schedule 9 revenues in MISO and lower Schedule 9 expenses in SPP will result in a financial benefit to Otter Tail's customers, which will be reflected in the SPP Tracker and addressed in Otter Tail's next general rate case filing.

The Department agrees with the Company's assessment of the public interest benefits of the proposed transaction and recommends that the Commission approve OTP's proposed purchase of certain transmission assets from Central Power Electric Cooperative CPEC.

#### **IV. SUMMARY OF RECOMMENDATIONS**

The Department recommends that the Commission:

- grant OTP a variance or waiver regarding the filing requirements for items F, I, and J under Minnesota Rule 7825.1400;
- approve OTP's proposed purchase of certain transmission assets from Central Power Electric Cooperative; and
- require OTP to submit final journal entries supporting the final purchase in a compliance filing within 60 days after the closing of the transaction.

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