



Public Service Commission
State of North Dakota

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February 15, 2008

Illona Jeffcoat-Sacco
Executive Director
North Dakota Public Service Commission
600 E. Boulevard Ave. Dept 408
Bismarck, ND 58505-0480

Re: Otter Tail Corporation Renewable Generator Rider Application,
Case No. PU-06-466

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing please find the original and seven copies of the following documents:

1. Advocacy Staff Response to Commission Questions.
2. Affidavit of Mailing.

Sincerely,

A handwritten signature in black ink, appearing to read "William W. Binek".

William W. Binek
Chief Counsel

Enclosures

cc: Bruce Gerhardson

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
Renewable Generation Rider
Application

Case No. PU-06-466

ADVOCACY STAFF RESPONSE TO COMMISSION QUESTIONS

On February 11, 2008, the Otter Tail Corporation d/b/a Otter Tail Power Company ("Otter Tail") and the Public Service Commission's advocacy staff ("staff") were provided with copies of an e-mail sent by Commissioner Wefald with a request for responses.

Question: Ottertail is requesting an order from the Commission determining its investment in the 40.5 MW Landon, ND renewable energy facility to be prudent pursuant to NDCC section 49-05-16. That section of law is titled, "**Advance determination of prudence**" and goes on, "A public utility proposing to construct, lease, or make improvements to an energy conversion facility . . . may file an application with the commission for an advance determination of the prudence regarding the proposal." In this case, Ottertail **has already built** the energy conversion facility. Is it appropriate for Ottertail to file under this section of law?

Response: N.D.C.C. §49-05-16 does not mandate that an application for advance determination of prudence be filed in advance of construction of a facility. Although one would ordinarily expect a public utility to file an application in advance of construction, the law is silent regarding the time for filing of an application. The only reference to time is the requirement in N.D.C.C. §49-05-16(2) that the commission order must be rendered no later than seven months after the application is filed.

The underlying purpose of the statute is to provide certainty to a public utility that the resource addition being proposed or is constructed will be determined to be prudent and be included in rate base. Therefore, filing of an application for advance determination of prudence at any time in advance of a ratemaking proceeding would be appropriate. N.D.C.C. §49-05-16(4) provides that "[t]he commission's order determining prudence of the resource adjustment is binding for ratemaking purposes."

Question: Ottertail is asking for the Rider to be put in place immediately. In that argument they mention NDCC section 49-05-06, which provides for interim rates to be collected by public utilities, subject to refund. Is this a rate case?

Response: The application that has been filed by Otter Tail is for the approval of a Renewable Resource Rider tariff. Because it is a tariff filing it has the appearance of a single issue rate case filing. Staff does not believe that Otter Tail is asking for interim rates under N.D.C.C. §49-05-16, but references that statute to emphasize that avoiding delay in implementation of rates for renewable energy facilities is consistent with statutes that promote renewable energy facilities in North Dakota.

Question: Ottertail wants this charge to be included in the Fuel Cost Adjustment on customer's bills. They say, "Due to lack of flexibility in Otter Tail's 20 year old billing system, Otter Tail proposes to include the billing for the Rider with the Fuel Cost Adjustment (FCA) on customer's bills." Recently the legislature allowed utilities to file tariffs to recover transmission costs, and environmental costs. In each of these situations, these costs were considered separate from the FCA. Should the costs for company owned generation also be listed on bills as a separate cost?

Response: N.D.C.C. §§ 49-05-04.2 and 49-05-04.3 are the statutory provisions for the recovery of federal environmental mandates and transmission facility costs. These are specific laws that provide for the recovery of those costs, and therefore would be separate from the FCA. There is no specific statutory provision for the recovery of the costs of renewable energy facilities. Therefore, if the Commission allows for recovery of these costs outside of a formal rate case proceeding, the costs could be combined with the FCA.

In recent years the Commission has used its discretion under chapters 49-02, 49-05 and 49-06 to implement rates that might be considered nontraditional, but are within the constraints of reasonableness. The Commission has exercised this discretion, and allowed costs to be included in rates including the allowance of acquisition premiums in rates, a sharing mechanism for off-system sales margins, performance based ratemaking and manufactured gas plant clean-up costs.

Chapter 49-02 sets out the general powers of the commission, including the power to "originate, establish, modify, adjust, promulgate and enforce tariffs, rates, joint rates and charges of all public utilities." Chapter 49-05 sets out the procedure for the commission to use on the regulation of utilities and provides that the commission, after a hearing on a utility's rate application, must establish rates that are "just and reasonable." Chapter 49-06 sets out the process for the commission to use to value utility property in order to determine reasonable rates. This chapter provides that "for the purpose of ascertaining just and reasonable rates and charges of public utilities, or for any other purpose authorized by law, shall investigate and determine the value of the property of every public utility, ...used and useful for the service and convenience of the public...." Later the chapter defines the "value of the property of a public utility, as determined by the commission for ratemaking purposes, is the money honestly and prudently invested therein by the utility...."

Question: Ottetail has told the Commission that they intend to file an electric rate increase case this fall. What are the advantages or disadvantages of looking at this one issue now, versus looking at it in the context of the 08 rate case?

Response: To delay recovery until the next rate case would send the wrong regulatory signal to Otter Tail. There is little risk in buying power at market prices and then automatically recovering the cost through the cost of energy adjustment. Otter Tail assumed additional risk by constructing and owning the wind generation to secure cheaper power for its customers hoping the commission would grant full recovery. Staff has supported this approach from the beginning and remains firm today.

Question: What are the basic issues that the Commission looks at in any prudence case?

Response: In the Otter Tail and MDU advance determination of prudence cases, Case Nos. PU-06-481 and PU-06-482, the issues were 1) whether the resource addition is reasonable and prudent; 2) whether the applicants have need for additional generating resources; and 3) what alternatives exist for meeting additional generation needs.

Basically prudence requires that a public utility must exercise the same judgment, discretion and care that a reasonable person would exercise under the circumstances prevailing at the time the decision is made.

There is a rebuttable presumption under N.D.C.C. §49-05-16(6) that a renewable energy facility which is located in the state of North Dakota is prudent. Therefore, the burden of proof is on the Commission to establish that such facility is not prudent. In order to establish that the investment is not prudent, advocacy staff believes it would have to establish 1) that the generation facility unnecessary; 2) that there are alternative generating resources available to Otter Tail at less cost; and 3) that purchasing the wind generation from a supplier is more cost effective than for Otter Tail to own the generation facility.

Dated February 15, 2008



William W. Binek
Chief Counsel

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
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AFFIDAVIT OF SERVICE BY MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Shelly Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **15th day of February, 2008**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with postage fully prepaid, securely sealed and containing a photocopy of:

1. **Advocacy Staff Response to Commission Questions**
2. **Letter to Executive Director**

The envelope was addressed as follows:

Bruce Gerhardson
Otter Tail Corporation
215 S Cascade St
Fergus Falls MN 56538-0496

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Shelly A. Bauske

Subscribed and sworn to before me
this **15th day of February, 2008**.

Esther Jangula

Notary Public

SEAL

