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June 3, 2008

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PUBLIC SERVICE COMMISSION

VIA ELECTRONIC FILING

Hon. Kimberly Bose, Secretary
Hon. Nathaniel J. Davis, Sr., Deputy Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Otter Tail Corporation, Application For Authorization Under Section 203 Of The
Federal Power Act And Request For Expedited Action
Docket No. EC08-____-000

Dear Ms. Bose and Mr. Davis:

Enclosed for electronic filing please find the "Application For Authorization Under Section 203 Of The Federal Power Act And Request For Expedited Action" ("Application"). By this Application, Otter Tail Corporation ("Otter Tail") requests authorization pursuant to Section 203 of the Federal Power Act ("FPA")¹ and Part 33 of the regulations of the Federal Energy Regulatory Commission ("Commission")² to implement a corporate restructuring through which Otter Tail Power Company, currently an operating division of Otter Tail that provides electric utility services, will become a wholly-owned subsidiary of a newly-formed holding company (the "Restructuring"). As a result of the Restructuring, Otter Tail's utility services will be provided exclusively through a stand-alone utility subsidiary.

As the Application demonstrates, the Restructuring, which will separate and insulate Otter Tail's public utility business from its non-utility activities, fully satisfies the standards set forth in the Commission's Merger Policy Statement.³ The Restructuring will have no adverse effect on competition, rates or regulation and will not cause cross-subsidization or the pledge or encumbrance of any utility assets for non-utility purposes at the time of its completion or in the future.

¹ 16 U.S.C. § 824b (2000 & Supp. V 2005).

² 18 C.F.R. Part 33 (2007).

³ *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *on reconsideration*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. (Reg. Preambles) ¶ 31,111 (2000), *reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (collectively, "Merger Policy Statement").

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PU-08-292 Filed: 6/4/2008 Pages: 41
Copy of Application for Utility Restructuring under
Section 203 of the Federal Power Act

Otter Tail Corporation

JONES DAY

Hon. Kimberly Bose, Secretary
Hon. Nathaniel J. Davis, Sr., Deputy Secretary
June 3, 2008
Page 2

Pursuant to Section 33.11(c)(3) of the Commission's regulations,⁴ Otter Tail respectfully requests that the Commission give this Application expedited consideration and establish a public notice period of not more than 21 days and approve this Application 75 days from the date hereof.

Should you have any questions, please do not hesitate to contact the undersigned.

Very truly yours,

/s/ William J. Harmon
William J. Harmon
Kenneth B. Driver
Amy W. Beizer
Attorneys for Otter Tail Corporation

Enclosure

cc: James Akers (via hand delivery)
David Hunger (via hand delivery)
Janice MacPherson (via hand delivery)
Andrew Mosier (via hand delivery)
Jamie Simler (via hand delivery)
Service List at Attachment 3 to the Application

⁴ 18 C.F.R. § 33.11(c)(3) (2007).

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Otter Tail Corporation

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Docket No. EC08-____-000

**APPLICATION FOR AUTHORIZATION UNDER SECTION 203
OF THE FEDERAL POWER ACT
AND REQUEST FOR EXPEDITED ACTION**

Otter Tail Corporation (“Otter Tail” or “Applicant”) hereby respectfully requests Federal Energy Regulatory Commission (“FERC” or “Commission”) authorization pursuant to Section 203 of the Federal Power Act (“FPA” or “Act”)¹ and Part 33 of the Commission’s regulations² to implement a corporate restructuring through which Otter Tail Power Company (“OTP”), currently an operating division of Otter Tail, will become a wholly-owned subsidiary of a newly-formed holding company (the “Restructuring”).

As this Application demonstrates, the Restructuring, which will separate and insulate Otter Tail’s public utility business from its non-utility activities, fully satisfies the standards set forth in the Commission’s Merger Policy Statement³ and should be approved expeditiously and without modification, condition or a trial-type hearing. The Restructuring will have no adverse effect on competition, rates or regulation and will not cause cross-subsidization or the pledge or encumbrance of any utility assets for non-utility purposes at the time of its completion or in the future.

¹ 16 U.S.C. § 824b (2000 & Supp. V 2005).

² 18 C.F.R. Part 33 (2007).

³ *Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *on reconsideration*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *Revised Filing Requirements Under Part 33 of the Commission’s Regulations*, Order No. 642, FERC Stats. & Regs. (Reg. Preambles) ¶ 31,111 (2000), *reh’g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001) (“Order No. 642”) (collectively, “Merger Policy Statement”).

Otter Tail respectfully requests the Commission to give this Application expedited consideration pursuant to Section 33.11(c)(3) of the Commission's regulations.⁴ As explained in greater detail below, expedited consideration is appropriate because the Restructuring is consistent with Commission precedent and the public interest, involves an internal corporate reorganization that does not raise any cross-subsidization concerns and does not require a market power analysis as set forth in Appendix A of the Commission's Merger Policy Statement. Accordingly, Otter Tail respectfully requests that the Commission establish a public notice period of not more than 21 days and approve this Application 75 days from the date hereof.

After the Restructuring, Otter Tail's utility services will be provided exclusively through a stand-alone utility subsidiary, which will be named "Otter Tail Power Company" and is referred to herein as "New Otter Tail Utility." The new holding company, which will assume the name "Otter Tail Corporation" upon the completion of the proposed Restructuring, will engage in non-utility activities through separate subsidiaries.

The Restructuring will produce benefits for Otter Tail's utility customers and will have little impact, if any, on shareholders, employees, vendors and other stakeholders. The Restructuring will enhance the transparency of Otter Tail's utility business without changing the manner in which electric service is provided to its customers. Post-Restructuring, Otter Tail's utility business will reside entirely with New Otter Tail Utility, which will be a wholly-owned subsidiary of Otter Tail, rather than with OTP, a division of Otter Tail, as is currently the case. Thus, the Restructuring will not cause a change in the ultimate control of Commission-jurisdictional facilities or operations, and will not affect competition in any market. The Restructuring will have no negative effect on wholesale rates or the ability of state regulators or the Commission to regulate Otter Tail's public utility activities. The Restructuring will not cause

⁴ 18 C.F.R. § 33.11(c)(3) (2007).

cross-subsidization of a non-utility associate company or any pledge or encumbrance of utility assets for the benefit of an associate company. Rather, the Restructuring will reduce any potential risk of cross-subsidization by separating Otter Tail's utility and non-utility businesses. Because the Restructuring is consistent with the public interest and raises no cross-subsidy concerns, the Commission should expeditiously authorize the Restructuring under FPA Section 203.

I. DESCRIPTION OF THE APPLICANT

Otter Tail is a Minnesota corporation that operates an electric utility business under the name Otter Tail Power Company in the states of Minnesota, North Dakota and South Dakota. Otter Tail is publicly held and its shares of common stock are listed on The NASDAQ Stock Market. Otter Tail also engages in non-utility businesses including plastics, manufacturing, health services, food ingredient processing and other businesses.

Through OTP, Otter Tail provides electric utility service to over 129,000 retail customers in Minnesota, North Dakota and South Dakota. Otter Tail is a transmission-owning member of the Midwest ISO. As of December 2007, Otter Tail's transmission facilities total approximately 5,300 miles and consist of 48 miles of 345 kV lines, 405 miles of 230 kV lines, 799 miles of 115 kV lines and 4,039 miles of lower voltage, principally 41.6 kV lines.

Otter Tail owns approximately 716 MW of generating capability with generation facilities located in each of the three states it serves. Otter Tail owns a 35% share of the Coyote Station, a coal-fired plant located near Beulah, North Dakota, and also serves as operating agent of the plant. Otter Tail owns a 53.9 % share of the Big Stone Plant, a coal-fired plant located in northeastern South Dakota, and also serves as operating agent of the plant. Otter Tail also owns and operates the three coal-fired generating units that comprise the Hoot Lake Plant located near

Fergus Falls, Minnesota. Otter Tail also owns three peaking plants, one in each of the three states in which it operates.

Presently, Otter Tail's utility operations are not conducted through a separate corporate subsidiary. Rather, Otter Tail directly owns the utility assets, and serves its customers, through its OTP operating division. Otter Tail also owns assets and conducts business necessary to manage both its utility and non-utility businesses. Otter Tail's non-utility businesses are conducted through subsidiaries. These businesses are held primarily by a first-tier subsidiary, Varistar Corporation ("Varistar"). A diagram of Otter Tail's current structure is included as part of Exhibit C to this filing.

II. DESCRIPTION OF THE RESTRUCTURING

Otter Tail has determined that it is in the best interests of its utility customers, shareholders, employees, and other stakeholders to reorganize into a holding company structure. In addition, recently enacted legislation in South Dakota effectively requires Otter Tail to separate its utility activities into a separate subsidiary.⁵ This new law further reinforces Otter Tail's decision to proceed with the Restructuring.

In the Restructuring, the newly-formed holding company will become the ultimate parent entity, with two principal first-tier subsidiaries: New Otter Tail Utility, which will own and operate all of Otter Tail's utility assets; and Varistar, which will continue to hold the non-utility business subsidiaries.⁶ Like Otter Tail today, the new holding company will be publicly held and its shares of common stock will be listed on The NASDAQ Stock Market. A chart showing the structure following the proposed Restructuring is included as part of Exhibit C to this filing.

⁵ See S.B. 40, 2008 Leg. Sess. (SD 2008).

⁶ Holding Company will have two additional first-tier subsidiaries: Otter Tail Assurance Limited, a captive insurance company, and Otter Tail Energy Services Company, described below in Section III.B.3.b.

The Restructuring will be accomplished through a merger that will consist of four steps. First, Otter Tail will create a new subsidiary, OT Holding Company (“Holding Company”). Second, Holding Company will create a subsidiary, OT Merger Co. Third, Otter Tail’s shareholdings in its non-utility subsidiaries will be transferred to Holding Company as will the property, contracts, leases, rights, privileges, franchises, patents, trademarks, licenses, registrations and other assets and liabilities of Otter Tail that pertain to the operation of the new holding company and that are not specific to the operation of the utility business. Otter Tail’s existing indebtedness will be categorized as either “utility” or “non-utility.” Fourth, Otter Tail, which at this point will consist only of the utility business, will merge with OT Merger Co., with Otter Tail being the surviving corporation. As a matter of law, all the assets and liabilities and rights and obligations of the utility business will reside in the surviving corporation, which will thereafter be named “Otter Tail Power Company.”

As a result of the merger, the shareholders of Otter Tail will receive for each share of common or cumulative preferred stock held at the time of the merger, one share of common or cumulative preferred stock, respectively, of Holding Company, which will thereafter be named Otter Tail Corporation. In addition, each outstanding option or right to purchase shares of Otter Tail’s common stock pursuant to Otter Tail’s stock incentive plan or employee stock purchase plan will be converted into an option or right to purchase, on the same terms and conditions, an identical number of shares of common stock of Holding Company. New Otter Tail Utility will be authorized under its Articles of Incorporation to issue cumulative preferred stock, but will have no cumulative preferred stock outstanding after the transaction. The existing indebtedness categorized as “utility” will remain indebtedness of New Otter Tail Utility by operation of law, unless redeemed or refinanced. Holders of debt securities of Otter Tail classified as “non-utility” will exchange their securities or agree to amendments that will result in these securities

becoming the obligations of Holding Company. Alternatively, Holding Company may issue new securities to refinance non-utility indebtedness.

New Otter Tail Utility will be a “public utility” subject to the jurisdiction of the Commission to the same extent that Otter Tail is now subject to Commission jurisdiction. Holding Company will be a “holding company” for purposes of the Public Utility Holding Company Act of 2005 and will be required to make an informational filing with FERC within 30 days following the Restructuring.⁷ Holding Company will be required to comply with the Commission’s regulations regarding maintaining and providing access to certain books and records.

III. REQUEST FOR AUTHORIZATION UNDER FPA SECTION 203

Otter Tail requests authorization under FPA Section 203 for the proposed Restructuring. The Restructuring will produce benefits for Otter Tail’s utility customers and will have little, if any, impact on Otter Tail’s shareholders, employees, vendors and stakeholders. The Restructuring will have no effect on competition in any market, and no negative effect on rates or regulation, and will not cause cross-subsidization of a non-utility associate company or any pledge or encumbrance of utility assets for the benefit of an associate company. Among other benefits, the Restructuring will enhance the ability of the Commission and state commissions to regulate Otter Tail’s utility business. The Restructuring is consistent with the public interest, will not result in cross-subsidization and, thus, expeditious Commission authorization is appropriate.

⁷ 18 C.F.R. § 366.4(a) (2007).

A. The Restructuring Is Consistent With The Public Interest And Will Not Result In Cross-Subsidization.

FPA Section 203(a)(4) provides that the Commission shall authorize a proposed transaction if it determines that the transaction “will be consistent with the public interest.”⁸ The Commission considers three factors when evaluating proposed transactions under the Section 203 public interest standard: (1) the effect on competition, (2) the effect on rates, and (3) the effect on regulation.⁹ In addition, FPA Section 203(a)(4) now requires the Commission to consider whether a proposed transaction would “result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company.”¹⁰ As explained more fully below, the Restructuring will have no adverse effect on competition, rates, or regulation and will not cause cross-subsidization or the pledge or encumbrance of any utility assets at the time of the completion of the Restructuring or in the future.

1. The Restructuring Will Have No Adverse Effect On Competition.

In Order No. 642, the Commission explained that its “objective in analyzing a proposed merger’s effect on competition is to determine whether the merger will result in higher prices or reduced output in electricity markets.”¹¹ The Restructuring will have no adverse effect on competition. The Restructuring entails an internal reorganization of the structure of Otter Tail’s utility and non-utility operations. While the Restructuring will cause a technical change of ownership over Otter Tail’s jurisdictional facilities by transferring them from OTP, a division within Otter Tail, to New Otter Tail Utility, the Restructuring will not cause any real change in

⁸ 16 U.S.C. § 824b(4) (2000 & Supp. V 2005).

⁹ 18 C.F.R. § 2.26(f) (2007).

¹⁰ 18 C.F.R. § 33.2(j) (2007).

¹¹ Order No. 642 at 31,879.

control because, following the Restructuring, New Otter Tail Utility will be a wholly-owned first-tier subsidiary of Otter Tail. Currently, OTP, as a division of Otter Tail, is wholly-owned by Otter Tail as well. The Restructuring will not cause any change in control over the ultimate ownership, nor any change in the operation, of Otter Tail's FERC-jurisdictional facilities or any other property.¹² There will be no change to the current utility facilities owned, operated or controlled by Otter Tail and no change to the method of operation of those facilities. Accordingly, there will be no change in New Otter Tail Utility's participation in power markets and no impact on competition in its markets. New Otter Tail Utility will continue to be a member of the Midwest ISO and existing reliability and other utility organizations such as the Mid-Continent Area Power Pool, Mid-Continent Energy Marketers Association and Midwest Reliability Organization.

The Restructuring will not cause a combination of jurisdictional facilities with the facilities of any other non-affiliated utility, nor will it cause the elimination of resources currently available to serve Otter Tail's customers. Accordingly, the Restructuring will not have any competitive impact. Because the Restructuring does not involve the merger of two or more non-affiliated utilities, nor cause the removal of any competitor from the market, the Commission's regulations do not require Otter Tail to provide a horizontal competitive market screen analysis under 18 C.F.R. Sections 33.3 and 33.4.¹³

Commission regulations require a vertical competitive market screen to be filed if, "as a result of the proposed transaction, a single corporate entity has ownership or control over one or

¹² See *Entergy Gulf States, Inc.*, 120 FERC ¶ 61,079 at P 66 (2007) ("EGS") (finding no effect on competition where no change in ownership or control of generation or Commission-jurisdictional facilities would result from the proposed internal reorganization of one of Entergy Corporation's subsidiary public utility companies).

¹³ See Order No. 642 at 31,902 (finding that the Commission "will not require section 203 applicants to provide a competitive analysis under §§ 33.3 or 33.4 of the regulations if . . . the transaction is simply an internal corporate reorganization.").

more merging entities that provides electric generation products.”¹⁴ A vertical competitive market screen is not required where the applicant demonstrates that the merging entities “do not provide inputs to electricity products (*i.e.* upstream relevant products) and electricity products (*i.e.* downstream relevant products) in the same geographic markets or that the extent of the business transactions in the same geographic market is *de minimis*.”¹⁵ The Restructuring will not cause any vertical market power concerns because it will not cause any of the entities involved to gain the ability or incentive to affect prices or outputs in the downstream electricity markets or to discourage new generators. Accordingly, the Restructuring does not require a competitive screen analysis with respect to vertical competition issues.¹⁶

2. The Restructuring Will Have No Adverse Effect On Wholesale Rates.

In assessing the effect that a proposed transaction could have on rates, the Commission’s primary concern is “the protection of wholesale ratepayers and transmission customers.”¹⁷ The rights of Otter Tail’s pre-Restructuring customers will not be affected by the Restructuring. Following the Restructuring, Otter Tail’s customers will continue to be served by New Otter Tail Utility under the same rates, terms and conditions of service as were in effect pre-Restructuring.¹⁸ Thus, the Restructuring will have no impact on the current rates charged to retail or wholesale utility customers.¹⁹

¹⁴ 18 C.F.R. § 33.4(a)(1) (2007).

¹⁵ 18 C.F.R. § 33.4(a)(2) (2007).

¹⁶ *See EGS*, 120 FERC ¶ 61,079 at P 66 (finding no vertical market power concerns and thus no need for a vertical market screen where the corporate restructuring of an existing public utility would not increase the utility’s ability or incentive to affect prices or outputs in downstream electricity markets or to discourage entry by new generators).

¹⁷ *See New England Power Co.*, 82 FERC ¶ 61,179 at 61,659, *reh’g*, 83 FERC ¶ 61,275 (1998).

¹⁸ *See EGS*, 120 FERC ¶ 61,079 at P 77 (finding no adverse impact on rates where a public utility company’s customers post-restructuring would continue to be served under the same rates, terms, and conditions as pre-restructuring).

¹⁹ Otter Tail will incur transaction costs relating to the Restructuring including application or filing fees, legal fees, accounting fees and other expenses. New Otter Tail Utility may seek to include some portion of the

Otter Tail's utility customers will continue to receive the same quality service as provided today, by the same employees. The utility business will remain under the same management. There will be no change to the location of any of Otter Tail's current offices or service facilities. The technical, financial and managerial ability of New Otter Tail Utility to provide safe, adequate and reliable service at reasonable rates will not be diminished by the Restructuring.

Otter Tail employees that currently perform duties for OTP will become employees of New Otter Tail Utility. New Otter Tail Utility will continue administrative functions now provided by OTP such as human resources, information technology and procurement and operating functions such as accounting, bill and invoice processing, engineering, rates and regulation, payroll, marketing and sales, fuel and energy procurement and customer service. Those Otter Tail employees who currently perform "corporate" functions, such as general management functions, will become employees of Holding Company. These Holding Company employees may provide services to New Otter Tail Utility, but only, as is now the case for shared services, pursuant to agreements ensuring that only appropriate costs are allocated to New Otter Tail Utility and ensuring no cross-subsidization of non-utility activities. Otter Tail does not now, and following the Restructuring does not plan to, use a "service company" to provide services to entities under the Holding Company.²⁰ As noted, New Otter Tail Utility will perform most business functions related to the utility business through its own employees.

(continued...)

transition costs in rates, subject to regulatory approval in an appropriate proceeding. New Otter Tail Utility proposes amortizing these costs over a five-year period, effective with the consummation of the Restructuring.

²⁰ Holding Company will not be subject to the Commission's rules regarding filing an annual Form 60 because it will not be a "service company." A "service company," is defined as follows:

The term "service company" means any associate company within a holding company system organized specifically for the purpose of providing non-power

3. The Restructuring Will Have No Adverse Effect On Regulation.

The Restructuring will not affect the Commission's ability to regulate Otter Tail's jurisdictional facilities or activities, which, following the Restructuring, will be facilities and activities of New Otter Tail Utility. By isolating Otter Tail's utility activities, and thus Commission-jurisdictional activities, into a wholly-owned utility-only subsidiary, the Restructuring will provide greater transparency and enhance the Commission's and the relevant

(continued...)

goods or services or the sale of goods or construction work to any public utility in the same holding company system. 18 C.F.R. § 366.1 (2007).

The uniform system of accounts for service companies ("USofA") provides that it applies to any service company: "operating, or organized specifically to operate, within a holding company system for the purpose of providing non-power services to any public utility in the same holding company system." 18 C.F.R. § 367.2(a) (2007). The USofA specifies that it is not applicable to "holding companies." 18 C.F.R. § 367(b)(5) (2007).

In Order 684, which adopted the service company reporting obligation, FERC rejected a proposal of NARUC that FERC should close what NARUC viewed as loopholes in the new rules and "clarify that the new USofA applies to the entity that performs service company functions, even if it is a holding company or a company providing electric or gas utility services." *Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005*, 117 FERC ¶ 61,064 at P 51 (Oct. 19, 2006) ("Order 684"). In so rejecting this suggestion, FERC commented:

While the Commission shares NARUC's concerns that holding company systems could potentially circumvent the Commission's accounting and reporting requirements for centralized service companies, the Commission does not believe NARUC's recommendations are the best way to address the potential issue. At this time it is preferable to monitor developments in the industry and assess whether the instructions we are adopting lead to circumvention of our rules. If centralized service companies begin to decentralize their service functions in an effort to circumvent the Commission's accounting and reporting regulations, the Commission will take the necessary actions to ensure the Commission has the information necessary to carry out its obligations under PUCHA 2005, the FPA, and the NGA. The Commission also will not impose restrictions on holding company systems which prevent centralized service company functions from being transferred to other companies in the same holding company system. Such restrictions are outside the Commission's statutory authority under the PUCHA 2005, the FPA, and the NGA.

We also clarify that holding companies are not subject to the rules of this USofA, and we will amend the instructions to § 367.2 to provide for this exemption. Further, we will adopt in § 367.1(a) of the regulations a definition for the term "centralized service company" based on our discussions in Order No. 667.

Order No. 684 at PP 54-55.

The uniform system of accounts for service companies, by its express terms, therefore, is not applicable to Holding Company following the Restructuring and Holding Company will not be required to file a Form 60.

state commissions' ability to regulate Otter Tail's utility activities. New Otter Tail Utility will remain subject to Commission jurisdiction in the same manner that Otter Tail currently is subject to Commission jurisdiction. New Otter Tail Utility will continue to conduct Commission-jurisdictional activities pursuant to rate schedules, tariffs, and contracts on file with the Commission.

The Restructuring will not adversely affect the authority or ability of state regulators to regulate the sale of power to retail customers. Rather, the Restructuring will enhance the ability of state regulators to efficiently oversee the provision of services and compliance with state-specific regulatory requirements. The rates, terms and other conditions under which New Otter Tail Utility will offer retail service will continue to be regulated by the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Utilities Commission to the same extent that Otter Tail is regulated by them today. In addition, the Restructuring is subject to the approval of these three state commissions.

4. The Restructuring Will Not Result In Cross-Subsidization Or The Pledge Or Encumbrance Of Utility Assets.

Under the Energy Policy Act of 2005 amendments to FPA Section 203 and the Commission's implementing regulations adopted in Order No. 669, an applicant for FPA Section 203(a) authorization must provide assurance that the proposed transaction will not result in cross-subsidization of a non-utility associate company or a pledge or encumbrance of utility assets for the benefit of an associate company.²¹ Applicants must do so by providing an explanation, with appropriate evidentiary support, of how applicants can assure, based on facts and circumstances known to them or that are reasonably foreseeable, that the proposed

²¹ See *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 164 (2006) ("Order No. 669"), *reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214 (2006), *reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006); *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 at P 23 (2007) ("*Policy Statement*").

transaction will not result in, at the time of the transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.²² The Commission's regulations require that applicants explain that their proposed transaction will not result in: (1) any transfer of facilities between a traditional public utility and a non-utility associate company; (2) any new issuance of securities by any traditional public utility for the benefit of an associate company; (3) any new pledge or encumbrance of assets of any traditional public utility for the benefit of a non-utility associate company; or (4) any new affiliate contract between non-utility associate companies and any traditional public utility, or, in the alternative, explain that any such transactions resulting from the proposed transaction will be consistent with the public interest.²³

The Commission has determined that an applicant may satisfy these cross-subsidization requirements by showing that the proposed transaction fits into one of three categories of "safe harbors." The three safe harbors are: (1) where a franchised public utility with captive customers is not involved; (2) where only non-affiliates are involved in the transaction; and (3) where the proposed transaction is subject to review by a state commission.²⁴ With respect to the state commission safe harbor, "[t]he Commission, in the context of specific mergers or other corporate transactions, intends to defer to state commissions where the state adopts or has in place ring-fencing measures to protect customers against inappropriate cross-subsidization or the encumbrance of utility assets for the benefit of the 'unregulated' affiliates."²⁵ The Commission determined that compliance with its cross-subsidy requirements "could be satisfied with a

²² Order 669 at P 169.

²³ See 18 C.F.R. § 33.2(j) (2007).

²⁴ *Policy Statement* at PP 14-19.

²⁵ *Id.* at P 18.

showing that the proposed transaction complies with specific state regulatory protections against inappropriate cross-subsidization by captive customers.”²⁶

As explained in greater detail below, the Restructuring does not pose a risk of cross-subsidization of a non-utility associate company or any pledge or encumbrance of utility assets for the benefit of any non-utility associate company at the time of the Restructuring or in the future. The concerns expressed by the Commission in its promulgation of the cross-subsidization requirements are not present in the Restructuring. Furthermore, the Restructuring qualifies for the state commission safe harbor because it complies with the specific regulatory protections against inappropriate cross-subsidization of the states that regulate Otter Tail’s public utility business.

Otter Tail currently has in place policies and procedures and other protections to ensure that utility ratepayers do not subsidize its non-utility operations. For example, Otter Tail has cost allocation procedures to ensure that costs directly attributable to a business are charged to that business only. Further, where there are common costs, such as corporate governance, external financial reporting, consolidated tax return preparation, shareholder services, investor relations, and executive compensation, Otter Tail allocates these costs using a method that is fair and reasonable. The Restructuring will not change any of those policies, practices or procedures. Thus, there is no potential for affiliate abuse or reciprocal dealing.

a. The Restructuring Will Not Result In The Transfer Of Facilities Between A Traditional Public Utility And A Non-Utility Associate Company.

While the Restructuring will result in the transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities (*i.e.*, Otter Tail) and an associate company (*i.e.*,

²⁶ *Id.*

New Otter Tail Utility), such transfer does not raise cross-subsidization concerns because New Otter Tail Utility is not a non-utility associate company.²⁷ Rather, New Otter Tail Utility is being created for the purpose of separating Otter Tail’s utility operations from its non-utility operations. By restructuring so that the non-utility businesses are not subsidiaries of the entity that conducts the regulated utility business, the new corporate structure decreases the potential for cross-subsidization, consistent with Commission policy.

b. The Restructuring Will Not Result In The Issuance Of Securities By Any Traditional Public Utility For The Benefit Of An Associate Company.

The Restructuring involves no issuance of securities by a traditional public utility associate company for the benefit of an associate company. As a subsidiary engaged only in the utility business, New Otter Tail Utility will have a capital structure fully appropriate to its business. Following the Restructuring, New Otter Tail Utility will have its own capital – the common stock held by its new parent Holding Company and indebtedness or other securities held by the parent or third-party lenders.

All of the existing cumulative preferred stock of Otter Tail will remain at the parent company level. To the extent that the utility capital structure of OTP includes a cumulative preferred stock component, however, Holding Company will provide New Otter Tail Utility with replacement capital with a cost to New Otter Tail Utility that is not greater than the cost of the cumulative preferred stock currently enjoyed by OTP. Accordingly, this change regarding cumulative preferred stock will have no adverse impact on utility rates. The New Otter Tail Utility will have direct access to capital needed to fund improvements and expansions of its utility business. It will have direct access to the public capital markets for indebtedness or

²⁷ See *EGS*, 120 FERC ¶ 61,079 at P 86 (finding that no cross-subsidization concerns were raised where, under the proposed transaction, no utility facilities would be transferred “to non-utility associate companies.”).

preferred stock capital. Further, if additional common equity is required, Holding Company will be able to infuse such funds.

Currently, the indebtedness of Otter Tail related to the utility business is not issued by a separate “utility” entity but by Otter Tail. The existing indebtedness categorized as “utility” will remain indebtedness of New Otter Tail Utility by operation of law, unless redeemed or refinanced. Holders of debt securities of Otter Tail classified as “non-utility” will exchange their securities or agree to amendments that will result in these securities becoming the obligations of Holding Company. Alternatively, Holding Company may issue new securities to refinance non-utility indebtedness. The actual indebtedness of Holding Company and New Otter Tail Utility outstanding immediately following the Restructuring will depend on the extent to which necessary third party consents, or necessary refinancing, can be obtained on commercially reasonable terms.

c. The Restructuring Will Not Result In Any New Pledge Or Encumbrance Of Assets Of Any Traditional Public Utility For The Benefit Of A Non-Utility Associate Company.

The Restructuring involves no new pledges or encumbrances of assets of a traditional public utility associate company for the benefit of a non-utility associate company. As noted above, in preparation for the Restructuring, Otter Tail will allocate its existing indebtedness to ensure that New Otter Tail Utility will not be obligated on any of Otter Tail’s current indebtedness attributable to non-utility operations. No utility assets will be pledged or encumbered to support any existing or new indebtedness of Holding Company.

d. The Restructuring Will Not Result In Any New Affiliate Contract Between Non-Utility Associate Companies And Any Traditional Public Utility.

The Restructuring will not result in any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers

or that owns or provides transmission service over jurisdictional transmission facilities.²⁸ Any existing contracts between OTP and a non-utility associate company will continue as contracts of New Otter Tail Utility.

e. The Restructuring Qualifies For The State Commission Safe Harbor.

Minnesota, North Dakota and South Dakota, which currently regulate Otter Tail's public utility activities and will continue to regulate such activities of New Otter Tail Utility following the Restructuring, have requirements in place to prevent the cross-subsidization by public utilities of their non-public utility affiliates. In addition, the Restructuring is subject to the approval of all three state commissions that regulate Otter Tail's utility activities.

Pursuant to Minnesota statutes, the Minnesota Public Utilities Commission ("MN PUC") must approve all contracts and arrangements between the public utilities it regulates and their affiliates.²⁹ The MN PUC grants approval only if the contract or arrangement is found to be reasonable and consistent with the public interest.³⁰ Otter Tail, through its utility division OTP, is in compliance with Minnesota's affiliate contract requirement and, following the Restructuring, New Otter Tail Utility shall maintain such compliance.

Pursuant to North Dakota law, the North Dakota Public Service Commission has authority, through its rate setting process, to review transactions between affiliated companies and to make rate adjustments, as needed, to protect the public interest.³¹ In addition, North

²⁸ Because the corporate structure will change from using an operating division to separate corporate entities, existing arrangements for cost allocation will have to be memorialized in new contracts to recognize that after the Restructuring such arrangements will be between separate corporate entities. The substance of these arrangements will be unchanged.

²⁹ Minn. Stat. § 216B.48, Subd. 3.

³⁰ *Id.*

³¹ N.D. Cent. Code § 49-05-06.

Dakota requires public utilities to obtain approval before encumbering their franchises or systems.³²

Pursuant to South Dakota law, the South Dakota Public Utilities Commission has the authority to disallow for rate-making purposes any unreasonable profit made in the sale of materials to or service for any public utility by the utility's affiliate.³³ In addition, South Dakota recently passed legislation requiring public utilities to segregate public utility assets from non-utility subsidiaries and affiliates.³⁴ The legislation also requires that secured debt of a public utility may only be used for public utility purposes and that public utilities may not extend credit to non-utility affiliates.³⁵ The Restructuring ensures Otter Tail's compliance with this legislation and New Otter Tail Utility will maintain such compliance following the Restructuring.

In sum, the Restructuring will not cause Otter Tail or New Otter Tail Utility to engage in cross-subsidization or require the pledge or encumbrance of any utility assets for the benefit of a non-utility associate company, and will not result in the transfer of facilities between a traditional utility associate company with wholesale or retail customers served under cost-based rates and an associate company in a manner contrary to the public interest. Furthermore, Otter Tail is, and New Otter Tail Utility will remain, in compliance with the state affiliate requirements put in place to protect the utility ratepayers in those states.

B. Information Required By 18 C.F.R. § 33.2

1. The Exact Name And Principal Business Address Of Applicant

Otter Tail Corporation
4334 18th Ave. SW, Suite 200
P.O. Box 9156

³² N.D. Cent. Code § 49-04-05.

³³ S.D. Codified Laws § 49-34A-19.2 (2004).

³⁴ See S.B. 40, 2008 Leg. Sess. (SD 2008).

³⁵ *Id.*

Fargo, ND 58106-9156

Otter Tail Power Company, a division of Otter Tail Corporation
P.O. Box 496
215 S Cascade Street
Fergus Falls, MN 56538-0496

2. Name And Address Of Persons Authorized To Receive Notices And Communications

George Koeck
General Counsel & Corporate Secretary
Otter Tail Corporation
4334 18th Ave. SW, Suite 200
P.O. Box 9156
Fargo, ND 58106-9156
Phone: 701.451.3567
Fax: 701.451.5567
gkoeck@ottertail.com

William J. Harmon
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Chicago, IL 60601
Phone: 312.782.3939
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wjharmon@jonesday.com

Bruce Gerhardson
Associate General Counsel
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Fergus Falls, MN 56538-0496
Phone: 218.998.7108
Fax: 218.998.7109
bgerhardson@ottertail.com

Kenneth B. Driver
Amy W. Beizer
Jones Day
51 Louisiana Avenue, NW
Washington, DC 20001
Phone: 202.879.3939
Fax: 202.626.1700
kbdriver@jonesday.com
awbeizer@jonesday.com

Otter Tail respectfully requests that the foregoing persons be placed on the official service list for this proceeding and that the Commission grant waiver of Rule 203(b)(3) of its regulations³⁶ in order to permit designation of more than two persons for service in this proceeding.

³⁶ 18 C.F.R. § 385.203(b)(3) (2007).

3. Required Exhibits

a. Exhibit A — Business Activities

A description of Otter Tail's business activities has been provided above in Section I of this Application. Otter Tail respectfully requests waiver of the need to provide any additional information under Section 33.2(c)(1).³⁷

b. Exhibit B — List Of Energy Subsidiaries And Affiliates

Currently, Otter Tail does not have any energy subsidiaries or affiliates. Otter Tail Energy Services Company, which currently maintains a heating and air conditioning business and provides other miscellaneous electrician-type services, may, in the future, become involved in energy activities such as the development of wind energy projects.³⁸

c. Exhibit C — Organizational Charts

Organizational charts showing the corporate structure both before and after the Restructuring are included as Exhibit C.

d. Exhibit D — Business Arrangements

As demonstrated in the description of the Restructuring provided above in Sections II and III.A, the Restructuring will not affect Otter Tail's business interests. All contracts, joint ventures or strategic alliances entered into by Otter Tail will be honored after consummation of the Restructuring, in accordance with their terms. Accordingly, Otter Tail respectfully requests waiver of the requirement in Section 33.2(c)(4) to file an Exhibit D.³⁹

³⁷ 18 C.F.R. § 33.2(c)(1) (2007).

³⁸ Any such activities will be consistent with Otter Tail's Request for No-Action Letter and the resulting No-Action Letter issued by the Commission's Office of General Counsel on April 7, 2008 in FERC Docket No. NL08-3-000. In its No-Action Letter, FERC Staff granted Otter Tail's request for non-public treatment of this matter for 120 days following the letter's issuance.

³⁹ 18 C.F.R. § 33.2(c)(4) (2007).

e. Exhibit E — Common Officers Or Directors

The Restructuring will not cause a change in the officers or directors of Otter Tail. New Otter Tail Utility is expected to have a board of directors drawn from the current officers or directors of Otter Tail and OTP.

f. Exhibit F — Description Of Wholesale Power Customers And Unbundled Transmission Customers

A list of Otter Tail's customers is included as Exhibit F.

g. Exhibit G — Description Of Applicant's Jurisdictional Facilities

A description of Otter Tail's facilities is contained above in Section I. Otter Tail's FERC-jurisdictional facilities include transmission facilities and tariffs,⁴⁰ generator-related jurisdictional interconnection facilities, wholesale power sales tariffs,⁴¹ rate schedules and service agreements, and various books and records. None of these jurisdictional facilities will be substantively affected by the proposed Restructuring. Accordingly, to the extent additional information is required to comply with Section 33.2(d) beyond that which is provided herein, Otter Tail respectfully requests waiver of such requirement.⁴²

⁴⁰ Otter Tail transferred functional control of its 100 kV and above transmission facilities to the Midwest ISO on November 21, 2001. *See Otter Tail Power Co.*, 97 FERC ¶ 61,226 (2001); *see also Otter Tail Power Co.*, 98 FERC ¶ 62,218 (2002). Effective April 1, 2002, Otter Tail terminated its Open Access Transmission Tariff and implemented its Control Area Services and Operations Tariff, which remains in effect. *See Otter Tail Power Co.*, 99 FERC ¶ 61,019 (2002); *see also Otter Tail Power Co.*, 102 FERC ¶ 61,036 (2003).

⁴¹ The Commission granted Otter Tail market-based rate authority on August 11, 2000 in Docket No. ER00-3080-000. *See Otter Tail Power Co.*, Letter Order, Docket No. ER00-3080-000 (Aug. 11, 2000). Otter Tail filed its most recent market power analysis on April 11, 2005 in Docket No. ER00-3080-000. *See Otter Tail Power Co.*, Letter Order, Docket No. ER00-3080-000 (Mar. 9, 2006). Currently, Otter Tail does not have any subsidiaries or affiliates with market-based rate authority.

⁴² 18 C.F.R. § 33.2(d) (2007).

h. Exhibit H — Facilities And Securities Associated With Or Affected By The Restructuring

A description of the Restructuring's impact on facilities and securities is provided above in Sections II and III.A.4. Otter Tail respectfully requests waiver of the need to provide any additional information under Section 33.2(e)(2).⁴³

i. Exhibit I — Consideration For And Contracts Related To The Proposed Restructuring

The consideration for the Restructuring is the exchange of shares described in Section II of this Application. The Restructuring will be effected through the Articles and Plan of Merger filed as Exhibit I hereto.

j. Exhibit J — Public Interest Discussion

The Restructuring is in the public interest for the reasons set forth above in Section III.A. of this Application. Otter Tail respectfully requests waiver of the need to provide any additional information pursuant to Section 33.2(g).⁴⁴

k. Exhibit K — Maps

There will be no change to the geographic location of the jurisdictional facilities that will be owned by New Otter Tail Utility following the Restructuring. Otter Tail respectfully requests waiver of the need to provide maps under Section 33.2(h).⁴⁵

l. Exhibit L - Orders From Other Regulatory Bodies

Contemporaneously with the filing of this Application, Otter Tail is submitting the necessary applications to the Minnesota Public Utilities Commission, the North Dakota Public Service Commission and the South Dakota Public Utilities Commission. Otter Tail shall promptly file with the Commission any orders issued by these state commissions prior to the

⁴³ 18 C.F.R. § 33.2(e)(2) (2007).

⁴⁴ 18 C.F.R. § 33.2(g) (2007).

⁴⁵ 18 C.F.R. § 33.2(h) (2007).

issuance of a Commission order on this Application or following the issuance of a Commission order on this Application should the Commission so require.⁴⁶

m. Exhibit M — Explanation Providing Assurance That The Proposed Restructuring Will Not Result In Cross-Subsidization Or Pledges Or Encumbrances Of Utility Assets

The explanation in Section III.A.4. above demonstrates that the Restructuring will not result in cross-subsidization or pledges or encumbrances of utility assets. Otter Tail respectfully requests waiver of the need to provide any additional information under Section 33.2(j).⁴⁷

C. Proposed Accounting Entries, Verification and Service

Pursuant to 18 C.F.R. Section 33.5, Otter Tail provides the *pro forma* accounting entries for the proposed accounting treatment of the Restructuring in Attachment 1. The entries reflect Otter Tail's best present assessment of the manner in which the Restructuring will be recorded for accounting purposes. To the extent necessary, Otter Tail respectfully requests waiver of the need to provide any additional information under Section 33.5.⁴⁸ Otter Tail will submit proposed final accounting entries within six months of the consummation of the Restructuring.

The verification required by Section 33.7⁴⁹ is included as Attachment 2. Otter Tail has served a copy of this Application on the parties listed on Attachment 3.

IV. REQUEST FOR EXPEDITED CONSIDERATION

Expeditious consideration is appropriate under Section 33.11(c) of the Commission's regulations, which provides for expedited consideration of transactions that do not require a market power analysis as set forth in Appendix A of the Commission's Merger Policy Statement

⁴⁶ See *Policy Statement* at P 26 (explaining that where the Commission grants authorization under FPA Section 203 before the relevant state commission issues an order specifying state-required cross-subsidy or ring-fencing protections, the Commission may, in the context of individual section 203 authorizations, require applicants to file such state orders issued subsequent to the Commission order).

⁴⁷ 18 C.F.R. § 33.2(j) (2007).

⁴⁸ 18 C.F.R. § 33.5 (2007).

⁴⁹ 18 C.F.R. § 33.7 (2007).

and of internal corporate reorganizations that do not present cross-subsidization issues.⁵⁰ While the corporate organization of the utility business will change, the utility business will continue unchanged. OTP is, and New Otter Tail Utility will be, a traditional public utility with captive customers that owns or provides transmission service over jurisdictional transmission facilities. No third party is involved in the transactions and no jurisdictional assets will be disposed to or acquired from any unrelated third party. Thus, as noted previously, an Appendix A analysis is not required. As demonstrated in full herein, the Reorganization is consistent with the public interest and does not present any cross-subsidization issues. Accordingly, Otter Tail respectfully requests a 21-day public comment period and Commission action on the Application no later than 75 days from the date of the filing of this Application.⁵¹

⁵⁰ 18 C.F.R. § 33.11(c)(2)-(3) (2007). The Reorganization is being effected technically through a merger – which is the typical corporate mechanism for establishing a holding company structure. This fact should not disqualify the Reorganization from expeditious consideration under Rule 33.11(c) because there is no need for the Commission to consider the combination of jurisdictional assets previously held by unrelated parties. *See* Order No. 669 at PP 189, 192 (explaining that the list of transactions eligible for expedited review in the rule is not exhaustive and noting that internal corporate reorganizations that do not present cross-subsidization issues are unlikely to cause anticompetitive effects).

⁵¹ *See* Order No. 669 at P 194; Order No. 669-A at P 155.

V. CONCLUSION

WHEREFORE, Otter Tail respectfully requests that the Commission grant: (1) all authorizations necessary to permit Otter Tail to implement the corporate Restructuring as described herein; (2) the waivers requested herein; and (3) the request for expedited consideration, including a 21-day comment period and a Commission order within 75 days of the filing of this Application.

Respectfully submitted,

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Fax: 218.998.7109
bgerhardson@ottertail.com

Dated: June 3, 2008

EXHIBIT C
ORGANIZATIONAL CHARTS
CURRENT STRUCTURE

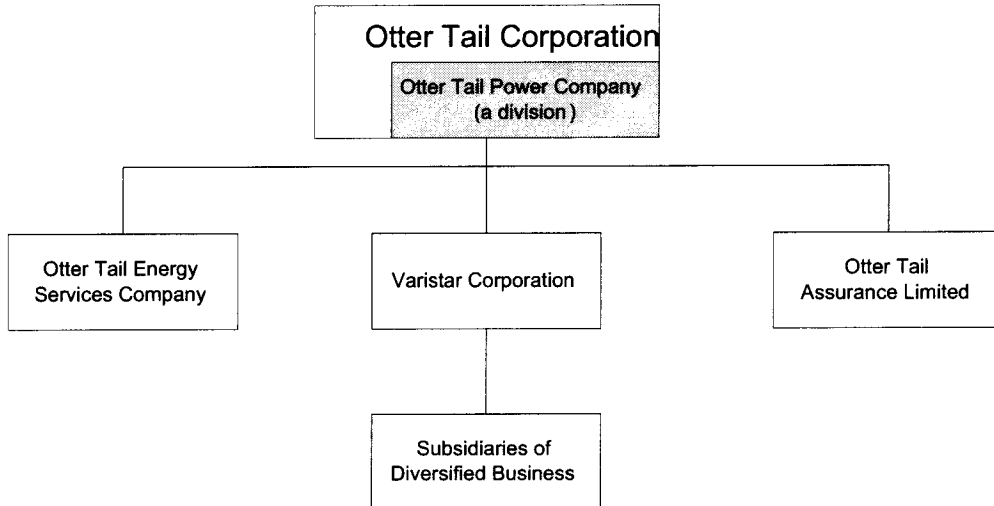
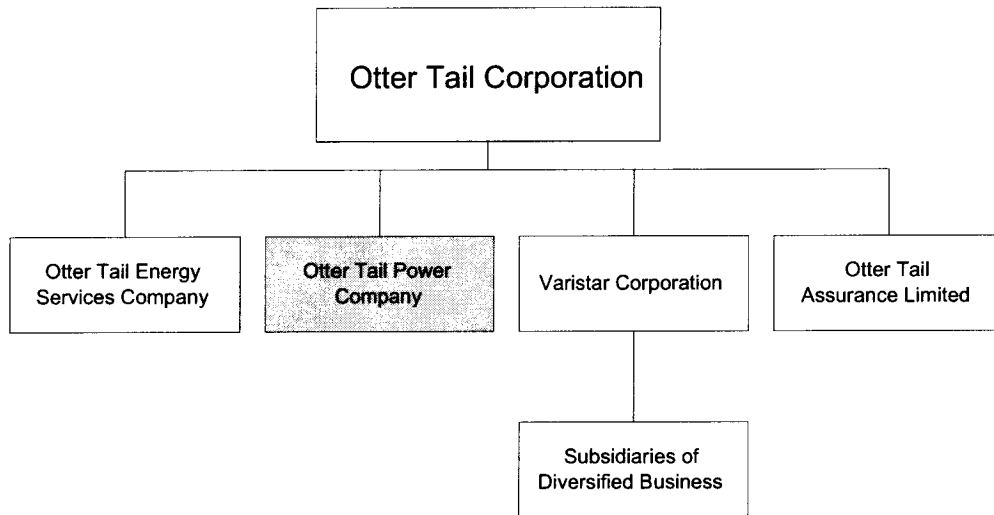


EXHIBIT C
ORGANIZATIONAL CHARTS

NEW HOLDING COMPANY STRUCTURE



**EXHIBIT F
DESCRIPTION OF WHOLESALE POWER CUSTOMERS AND UNBUNDLED
TRANSMISSION CUSTOMERS**

	A.	B.	C.	D.	E.
GFA No.	Service	Parties	FERC Rate Schedule/Docket	Date Agreement Entered	Termination Date
300	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and City of Newfolden, MN	FERC Electric Tariff, Original Volume No. 4, Third Revised Sheet Nos. 1-14 (FERC Docket ER88-110-000)	June 1, 1977	Evergreen
302	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and City of Nielsville, MN	FERC Electric Tariff, Original Volume No. 4, Third Revised Sheet Nos. 1-14 (FERC Docket ER88-110-000)	June 1, 1977	Evergreen
304	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and City of Shelly, MN	FERC Electric Tariff, Original Volume No. 4, Third Revised Sheet Nos. 1-14 (FERC Docket ER88-110-000)	June 1, 1977	Evergreen
433	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and State of North Dakota on behalf of Grafton State School	FERC Docket ER84-38-000	July 1, 1981	Evergreen
434	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and State of North Dakota on behalf of School of Forestry	FERC Docket ER84-38-000	July 1, 1981	Evergreen
435	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and State of North Dakota on behalf of School of Science	FERC Docket ER84-38-000	July 1, 1981	Evergreen
436	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and State of North Dakota on behalf of School for the Deaf	FERC Docket ER84-38-000	July 1, 1981	Evergreen

	A.	B.	C.	D.	E.
GFA No.	Service	Parties	FERC Rate Schedule/Docket	Date Agreement Entered	Termination Date
437	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and Fort Totten Indian Agency	FERC Docket ER84-38-000	October 1, 1968	Evergreen
438	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and Turtle Mountain Indian Agency	FERC Docket ER84-38-000	October 16, 1968	Evergreen
439	Low Voltage Transmission Service	Agreement between Otter Tail Power Company and Oakes O&M Center	FERC Docket ER84-38-000	December 20, 1968	Evergreen
440	Firm Wheeling - Transmission and Partial Requirements	Agreement between Otter Tail Power Company and Town of Badger, SD	FERC Electric Tariff, Original Volume No. 4, Third Revised Sheet Nos. 1-14 (FERC Docket ER88-110-000)	June 1, 1977	Evergreen

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FORM OF
ARTICLES OF MERGER
OF
OTTER TAIL CORPORATION
INTO
[OT MERGER CO.]

The plan of merger attached as Exhibit A (the "Plan of Merger") provides for the merger of Otter Tail Corporation, a Minnesota corporation, with and into **[OT Merger Co.]**, a Minnesota corporation and wholly owned indirect subsidiary of Otter Tail Corporation, under Section 302A.626 of the Minnesota Business Corporation Act.

The Plan of Merger has been adopted by Otter Tail Corporation, pursuant to Section 302A.626 the Minnesota Business Corporation Act.

The merger shall be effective **[December 31, 2008]** at **[__ :00]** p.m. Central Standard Time.

These articles of merger have been signed on behalf of Otter Tail Corporation by a person authorized to do so.

Dated: December __, 2008

OTTER TAIL CORPORATION

By: _____
Name: _____
Title: _____

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EXHIBIT A

FORM OF
PLAN OF MERGER

This PLAN OF MERGER, dated as of [December __, 2008] (the “Plan”), is entered into by and among Otter Tail Corporation, a Minnesota corporation (“Otter Tail” and after the Effective Time, the “Surviving Corporation”), [OT Holding Co.], a Minnesota corporation and the direct subsidiary of Otter Tail (“OT Holding”), and [OT Merger Co.], a Minnesota corporation and indirect subsidiary of Otter Tail and direct subsidiary of OT Holding (“Merger Sub”).

WHEREAS, the authorized capital stock of Otter Tail consists of:

(a) 50,000,000 Common Shares of the par value of \$5 per share (“Otter Tail Common Shares”), of which _____ shares were issued and outstanding as of [December 1, 2008];

(b) 1,500,000 Cumulative Preferred Shares without par value (“Otter Tail Cumulative Preferred Shares”), of which (i) 60,000 have been designated as Otter Tail’s \$3.60 Cumulative Preferred Shares (“Otter Tail \$3.60 Cumulative Preferred Shares”), 60,000 of which were issued and outstanding as of [December 1, 2008], (ii) 25,000 have been designated as Otter Tail’s \$4.40 Cumulative Preferred Shares (“Otter Tail \$4.40 Cumulative Preferred Shares”), 25,000 of which were issued and outstanding as of [December 1, 2008], (iii) 30,000 have been designated as Otter Tail’s \$4.65 Cumulative Preferred Shares (“Otter Tail \$4.65 Cumulative Preferred Shares”), 30,000 of which were issued and outstanding as of [December 1, 2008], and (iv) 40,000 have been designated as Otter Tail’s \$6.75 Cumulative Preferred Shares (the “\$6.75 Otter Tail Cumulative Preferred Shares”), 40,000 of which were issued and outstanding as of [December 1, 2008]; and

(c) 1,000,000 Cumulative Preference Shares without par value (the “Otter Tail Cumulative Preference Shares”), none of which are currently outstanding.

WHEREAS, OT Holding is and, at all times since its organization, has been a direct, wholly owned subsidiary of Otter Tail with authorized capital stock consisting of:

(a) 50,000,000 Common Shares of the par value of \$5 per share (“OT Holding Common Shares”), of which [100] shares are currently issued and outstanding;

(b) 1,500,000 Cumulative Preferred Shares without par value (“OT Holding Cumulative Preferred Shares”), of which (i) 60,000 have been designated as OT Holding’s \$3.60 Cumulative Preferred Shares (“OT Holding \$3.60 Cumulative Preferred Shares”), (ii) 25,000 have been designated as OT Holding’s \$4.40 Cumulative Preferred Shares (“OT Holding \$4.40 Cumulative Preferred Shares”), (iii) 30,000 have been

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designated as OT Holding's \$4.65 Cumulative Preferred Shares ("OT Holding \$4.65 Cumulative Preferred Shares), and (iv) 40,000 have been designated as OT Holding's \$6.75 Cumulative Preferred Shares (the "OT Holding \$6.75 Cumulative Preferred Shares"); none of which were issued and outstanding as of **[December 1, 2008]**; and

(c) 1,000,000 Cumulative Preference Shares without par value (the "OT Holding Cumulative Preference Shares"), none of which are currently issued and outstanding.

WHEREAS, the designations, rights and preferences, and the qualifications, limitations and restrictions thereof, of the OT Holding Common Shares, the OT Holding Cumulative Preference Shares and each series of OT Holding Cumulative Preferred Shares, are the same as those of the Otter Tail Common Shares, the Otter Tail Cumulative Preference Shares, and the corresponding series of Otter Tail Cumulative Preferred Shares, respectively.

WHEREAS, the Articles of Incorporation and the Bylaws of OT Holding immediately after the Effective Time (as hereinafter defined) will contain provisions identical to the Articles of Incorporation and Bylaws of Otter Tail immediately before the Effective Time (other than, as allowed by Section 302A.626 (subd. 7) of the Minnesota Business Corporation Act, as amended (the "MBCA")).

WHEREAS, Merger Sub is a wholly owned subsidiary of OT Holding with authorized capital stock consisting of 1,000 shares of common stock, par value \$.01 per share ("Merger Sub Common Shares"), of which **[100]** shares are currently issued and outstanding.

WHEREAS, the Board of Directors of each of Otter Tail, OT Holding and Merger Sub has determined that it is desirable and in the best interests of Otter Tail, OT Holding and Merger Sub, respectively, that Otter Tail and Merger Sub should merge, Otter Tail shall be the surviving corporation, and OT Holding shall be a "holding company" of Otter Tail, as such term is defined in Section 302A.626 (subd. 1)(b) of the MBCA.

Terms

NOW, THEREFORE, the parties hereby prescribe the terms and conditions of the merger and the mode of carrying the same into effect as follows:

1. Merger of Merger Sub with and into Otter Tail. At the Effective Time, Merger Sub shall merge with and into Otter Tail (the "Merger") in accordance with Section 302A.626 (subd. 3) of the MBCA, and the separate existence of Merger Sub shall cease and Otter Tail shall be a direct, wholly owned subsidiary of OT Holding. Otter Tail shall be the surviving corporation and assume all of the rights, privileges, assets and liabilities of Merger Sub. Merger Sub and Otter Tail are the only constituent corporations to the Merger.

2. Name of Surviving Corporation. The name of the surviving corporation shall be "Otter Tail Power Company".

3. Effect of the Merger. The effect of the Merger shall be as provided in Section 302A.626 of the MBCA. As a result of the Merger, by operation of law and without further act or deed, at the Effective Time, all property, rights, interests and other assets of Merger

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Sub shall be transferred to and vested in the Surviving Corporation, and the Surviving Corporation shall assume all of the liabilities and obligations of Merger Sub.

4. Effect on Capital Stock. At the Effective Time:

(a) Each then issued and outstanding OT Holding Common Share held by Otter Tail will, by virtue of the Merger and without any action on the part of the holder thereof, be cancelled without conversion or issuance of any shares of stock of the Surviving Corporation with respect thereto.

(b) Each then issued and outstanding Otter Tail Common Share will, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one OT Holding Common Share, which shall have the same designations, rights, powers and preferences and the same qualifications, limitations and restrictions as one Otter Tail Common Share immediately prior to the Effective Time.

(c) Each then issued and outstanding Otter Tail \$3.60 Cumulative Preferred Share will, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one OT Holding \$3.60 Cumulative Preferred Share, which shall have the same designations, rights, powers and preferences and the same qualifications, limitations and restrictions as an Otter Tail \$3.60 Cumulative Preferred Share immediately prior to the Effective Time.

(d) Each then issued and outstanding Otter Tail \$4.40 Cumulative Preferred Share will, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one OT Holding \$4.40 Cumulative Preferred Share, which shall have the same designations, rights, powers and preferences and the same qualifications, limitations and restrictions as a Otter Tail \$4.40 Cumulative Preferred Share immediately prior to the Effective Time.

(e) Each then issued and outstanding Otter Tail \$4.65 Cumulative Preferred Share will, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one OT Holding \$4.65 Cumulative Preferred Share, which shall have the same designations, rights, powers and preferences and the same qualifications, limitations and restrictions as a Otter Tail \$4.65 Cumulative Preferred Share immediately prior to the Effective Time.

(f) Each then issued and outstanding Otter Tail \$6.75 Cumulative Preferred Share will, by virtue of the Merger and without any action on the part of the holder thereof, be converted into one OT Holding \$6.75 Cumulative Preferred Share, which shall have the same designations, rights, powers and preferences and the same qualifications, limitations and restrictions as a Otter Tail \$6.75 Cumulative Preferred Share immediately prior to the Effective Time.

(g) Each then issued and outstanding Merger Sub Common Share will, by virtue of the Merger and without any action on the part of the holder thereof, be converted into a common share of the Surviving Corporation.

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5. Certificates. At the Effective Time, each outstanding certificate that, immediately prior to the Effective Time, evidenced Otter Tail Common Shares or Otter Tail Cumulative Preferred Shares shall be deemed and treated for all corporate purposes to evidence the ownership of the number of OT Holding Common Shares or Otter Tail Cumulative Preferred Shares, as the case may be, into which such Otter Tail Common Shares or Otter Tail Cumulative Preferred Shares were converted pursuant to Sections 4(b), 4(c), 4(d), 4(e) and 4(f), respectively, of this Plan.

6. Articles of Incorporation, Bylaws, Officers and Directors. Subject to Section 7 below, the Articles of Incorporation and Bylaws of Otter Tail, as in effect immediately prior to the Effective Time, shall be the Articles of Incorporation and Bylaws of the Surviving Corporation. The officers and directors of Otter Tail immediately prior to the Effective Time shall be the officers and directors of OT Holding as of the Effective Time. The officers and directors of Merger Sub immediately prior to the Effective Time shall be the officers and directors of the Surviving Corporation as of the Effective Time.

7. Amendment to Articles of Incorporation.

(a) Automatically, upon filing the Articles of Merger and this Plan in accordance with the MBCA, the Articles of Incorporation of the Surviving Corporation shall be amended as follows:

- (i) Article I of the Articles of Incorporation is amended in its entirety to read as follows:

ARTICLE I.

The name of the corporation shall be Otter Tail Power Company.

- (ii) A new Article XI of the Articles of Incorporation is added to read in its entirety as follows:

ARTICLE XI.

Any action or transaction by or involving the corporation, other than the election or removal of directors of the corporation, that requires for its adoption under the Minnesota Business Corporation Act or these Articles of Incorporation, the approval of the shareholders of the corporation shall, pursuant to Section 302A.626 (subd. 3(8)(i)) of the Minnesota Business Corporation Act, require, in addition to the approval of the shareholders of the corporation, the approval of the shareholders of Otter Tail Corporation, a Minnesota corporation (or any successor by merger), so long as such corporation or its successor is the ultimate parent, directly or indirectly, of the corporation, by the same vote that is required

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by the Minnesota Business Corporation Act and/or by these Articles of Incorporation. For the purposes of this Article XI, the term “parent” shall mean a corporation that owns, directly or indirectly, any outstanding capital stock of the corporation entitled to vote in the election of directors of the corporation.

(b) In connection with the Merger, the Articles of Incorporation of **[OT Holding Co.]** shall be amended to provide that the name of **[OT Holding Co.]** shall be “Otter Tail Corporation”.

8. Assumption of Certain Agreements and Plans. OT Holding and Otter Tail hereby agree that they will, at the Effective Time, execute, acknowledge and deliver one or more assignment and assumption agreements pursuant to which Otter Tail will assign and OT Holding will assume, from and after the Effective Time, all rights, duties and obligations required under the following:

(a) **[List of benefit plans and award agreements to be assumed by OT Holding to be added];** and

(b) **[List of other agreements and instruments to be assumed by OT Holding to be added].**

9. Plan of Reorganization. This Plan shall constitute a plan of reorganization of Otter Tail and Merger Sub.

10. Tax Treatment. The Merger shall constitute a tax-free reorganization within the meaning of Section 368(a) of the Internal Revenue Code.

11. Filing and Effective Time. If this Plan has not been terminated pursuant to Section 12 hereof, after this Plan has been duly approved in the manner required by law, appropriate Articles of Merger and this Plan shall be filed by Otter Tail and Merger Sub pursuant to and in accordance with the MBCA. The Merger shall be effective (the “Effective Time”) at [__:00] p.m. Central Standard Time on **[December 31, 2008]**.

12. Termination. This Plan may be terminated and the Merger abandoned by the Board of Directors of Otter Tail at any time prior to the Effective Time.

13. Adoption and Approval. The Plan was adopted and approved by the Board of Directors of Otter Tail on _____, 2008. Pursuant to Section 302A.626 (subd. 2) of the MBCA, the Plan was not approved by the shareholders of Otter Tail or Merger Sub.

**ATTACHMENT 1
PROPOSED ACCOUNTING ENTRIES**

**Otter Tail Power Company
(operating division of Otter Tail Corporation)**

**Proposed Accounting Entries to Affect of Restructuring
October 1, 2007**

	DR	CR
Notes Receivable- Interco. - Otter Tail Corp.	60,000,000	
Long Term Notes Payable		256,890,000
Long Term Notes Payable - Interco. - Otter Tail Corp.	199,890,000	
Paid In Capital		3,000,000
	\$259,890,000	\$259,890,000

**FERC system of accounts currently maintained at Otter Tail utility - no further entries required.

Otter Tail Corporation keeps accounts for its operating division Otter Tail Power Company similarly to what would apply if Otter Tail Power were a legal entity. The adjustments reflect the additional changes that would be made in connection with Otter Tail Power becoming a separate legal entity (assuming the transaction occurred January 1, 2007).

The principal adjustment is an increase in long-term debt of \$57,000,000 to reconcile the allocation of Otter Tail Corporation external debt between Otter Tail Power and the holding company. In addition, an adjustment of \$3,000,000 of additional equity contribution from the holding company to Otter Tail Power is reflected.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Otter Tail Corporation) Docket No. EC08-____-000

VERIFICATION PURSUANT TO 18 C.F.R. § 33.7
OF APPLICATION FOR AUTHORIZATION
UNDER SECTION 203 OF THE FEDERAL POWER ACT
AND REQUEST FOR EXPEDITED ACTION

County of Cass)
)
State of North Dakota)

Kevin Moug, being duly sworn, deposes and says: That he is Chief Financial Officer and Treasurer of Otter Tail Corporation; that he has the authority to verify the foregoing Application on behalf of Otter Tail Corporation; that he has read said Application; and that to the best of his knowledge, information, and belief, all of the statements contained therein pertaining to Otter Tail Corporation are true and correct.

/s/ Kevin Moug
Kevin Moug

SUBSCRIBED AND SWORN to before me on this 3rd day of June, 2008.

Jacquelyn Rogness
Notary Public

My commission expires: January 10, 2012

**ATTACHMENT 3
SERVICE LIST**

A copy of Otter Tail Corporation's ("Otter Tail") Application For Authorization Under Section 203 Of The Federal Power Act And Request For Expedited Action is being served on the following:

City of Badger
Attn: Myron Andersen
700 East Main
Badger, SD 57214

City of Newfolden
Attn: Sharol Wawrzuniak
P.O. Box 188
Newfolden, MN 56738

City of Nielsville
Attn: Stephanie Abentroth
P.O. Box 68
Nielsville, MN 56568

City of Shelly
Attn: JoDean Neil
P.O. Box 126
Shelly, MN 56581

Fort Totten Agency
Bureau of Indian Affairs
P.O. Box 270
Fort Totten, ND 58335

Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

North Dakota Department of Human Services
North Dakota Developmental Center (formerly known as Grafton State School)
600 E. Boulevard Ave., Dept. 325
Bismarck, North Dakota 58505-0440

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

North Dakota State College of Science (formerly known as the State School of Science) and
Minot State University-Bottineau (formerly known as State School of Forestry)
North Dakota University System
State Board of Higher Education
John Q. Paulson, President
10th Floor, State Capitol
600 East Boulevard Ave, Dept. 215
Bismarck, ND 58505-0230

South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501-5070

The North Dakota School for the Deaf
Dennis Fogelson, President
1401 College Drive North
Devils Lake, ND 58301

Turtle Mountain Agency
Bureau of Indian Affairs
P.O. Box 60
Belcourt, ND 58316

Western Area Power Administration (Oakes O&M Center)
Upper Great Plains Customer Service Region
Attn: Mr. Ron Klinefelter
P.O. Box 35800
Billings, Montana 59107-5800