

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
Renewable Resource Cost Recovery Rider 2009
Tariff

Case No. PU-08-742

**STAFF RESPONSE TO OTTER TAIL CORPORATION'S APPLICATION FOR
TRADE SECRET PROTECTION**

On September 2, 2008, Otter Tail Corporation, d/b/a Otter Tail Power Company (Otter Tail) filed an application for a trade secret protective order under N.D. Admin. Code §69-02-09-01 for protecting against public disclosure trade secret information as defined by N.D.C.C. §47-25.1-01(4). Otter Tail provided the following to support its application:

1. General Description of the Nature of the Information Sought to be Protected.

The information Otter Tail seeks to protect is cost information contained in the calculation of Revenue Requirements on Otter Tail's shares of the Langdon Wind Energy Center facility and Ashtabula Wind Energy Center facility, contained in Attachment 3 of Otter Tail's Application.

2. Explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons.

Otter Tail states that the information could have economic value to potential vendors, contractors, and suppliers who may desire to supply components of similar

projects in which Otter Tail may be involved in the future. They could use such information against Otter Tail's interests in the course of submitting proposals.

3. An Explanation of why the information is not readily ascertainable by proper means by other persons.

Otter Tail states that the confidentiality of the information has been maintained by the company. The information is not disclosed to the public or to persons other than employees or authorized agents of Otter Tail who need to know the information to fulfill their responsibilities in connection with the project or to third persons pursuant to agreement to maintain the confidentiality of the information.

4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information.

Otter Tail states that potential equipment and material vendors, contractors, and other suppliers for similar projects would obtain economic value from disclosure of the costs.

5. A specific description of known competitors and competitors' goods and services that is pertinent to the tariff or rate filing.

Otter Tail refers to its response to No. 4.

6. A description of the efforts used to maintain the secrecy of the information.

Otter Tail refers to its response to No. 3.

Staff Review

Staff has reviewed Otter Tail's request for trade secret protection. N.D.C.C. § 47-25.1-01(4) defines the term "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.”

The definition of "trade secret" under North Dakota Century Code section 44-04-18.4(2)(d), which is almost identical to North Dakota Century Code section 47-25.1-01(4), reads:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, *technical know how*, or process, that:

1. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and
2. Is the subject of efforts that are reasonable under the circumstances to maintain *the secrecy of the information*. (Differences italicized).

N.D. Admin. Code § 69-02-09-04 requires that the “commission staff examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01.”

The information is relevant to the application because the information is used to calculate the revenue requirements for Otter Tail. The information for which trade secret protection is requested could be used against Otter Tail by vendors, contractors and suppliers in the course of submitting proposals for similar projects.

Staff believes that Otter Tail’s application satisfies the requirements of N.D.C.C. §47-25.1-01 which allows the Commission to grant trade secret protection in this proceeding. The Commission’s process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

For reasons set forth above, staff recommends that the Commission grant Otter Tail's Application Requesting Trade Secret Protection in this case.

Dated this 8 day of December, 2008.


Annette Bendish
Staff Counsel