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PUBLIC SERVICE COMMISSION



VIA E-FILING

Darrell Nitschke
Executive Secretary and Director of Administration
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480

**Re: In the Matter of the Application of Otter Tail Power Company for Authority to Increase Rates for Electric Utility Service in North Dakota
Case No. PU-08-862**

AND

**In the Matter of the Application of Otter Tail Power Company's Annual Filing for Renewable Resource Cost Recovery Factor
Case No. PU-08-742**

Dear Mr. Nitschke:

Enclosed for filing in the above-referenced matters is a proposed Order. This proposed Order has been reviewed and approved by counsel for the Advocacy Staff and the Large Industrial Group. The original and seven copies will be sent by First Class Mail.

If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bruce Gerhardson', with a long, sweeping horizontal line extending to the right.

Bruce Gerhardson
Associate General Counsel
BG/dm

c: Richard Savelkoul
Annette Bendish

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Proposed Order

Otter Tail Power Company
Bruce Gerhardson, Associate Gnl. Counsel

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Proposed Order

Otter Tail Power Company
Bruce Gerhardson, Associate Gnl. Counsel

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Corporation
Electric Rate Increase
Application**

Case No. PU-08-862

**Otter Tail Corporation
Renewable Resource Cost Recovery Rider 2009
Application**

Case No. PU-08-742

ORDER ADOPTING SETTLEMENT

_____, 2009

Appearances

Commissioners Kevin Cramer, Tony Clark, and Brian Kalk.

Bruce Gerhardson, Associate General Counsel, Otter Tail Power Company, 215 South Cascade Street, Fergus Falls, Minnesota 56537, attorney for Otter Tail Power Company.

Richard J. Savelkoul, Felhaber, Larson, Fenlon & Vogt, USB Plaza, 444 Cedar Street, Suite 2100, St. Paul, Minnesota 55101-2136, attorney for the Large Industrial Group.

Annette Bendish, Legal Counsel, Public Service Commission, 600 E. Boulevard Ave, Department 408, Bismarck, North Dakota, 58505-0480, attorney for the Advocacy Staff.

Ilona A. Jeffcoat-Sacco, General Counsel, Public Service Commission, 600 E. Boulevard Avenue, Department 408, Bismarck, North Dakota 58505-0480, attorney for the Public Service Commission.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882, appearing as hearing officer.

Preliminary Statement

On November 3, 2008, Otter Tail Corporation, d/b/a/ Otter Tail Power Company ("OTP"), filed a Notice of Change in Rates for Electric Service ("Notice") with the Commission, based on a historical 2007 test year, with rates to become effective December 3, 2008, unless they were suspended. The Notice proposed an increase in electric retail and miscellaneous base rates of \$6,084,003, or approximately a 5.14 percent overall increase in revenues. Filed with the Notice were revised tariffs, direct testimony by nine witnesses, exhibits, and supporting statements.

Concurrent with the Notice, the Company submitted an Alternative Petition for Interim Rates. The proposed interim increase, which impacted only base rates, was for \$4,810,562, or 4.07 percent, to be effective January 2, 2009 (60 days from filing) in the event the Commission suspended the proposed general increase. The proposed interim increase and rate design were submitted pursuant to the criteria set forth in N.D.C.C. § 49-05-06.

On November 20, 2008, the Commission issued an Order suspending the Company's general rate increase application and set the matter for investigation and hearing.

On December 3, 2008, the Commission issued an Order allowing an interim base rate increase of \$4,810,562, or 4.07 percent, to be placed into effect January 2, 2009, subject to refund.

On December 17, 2008, the Commission issued a Notice of Public Input Sessions and Intervention Deadline announcing Public Input Sessions to be held via interactive television on February 10, 2009 and March 23, 2009 at 12:00 noon central time at locations in Devils Lake, Jamestown, Washburn, Wahpeton, and Bismarck. Members of the public were invited to appear and participate in the informal discussion. The notice also set forth a deadline of February 27, 2009 for parties to intervene in the case.

On December 30, 2008, the Large Industrial Group, consisting of the Goodrich Corporation, Cargill Corporation, Cavendish Farms, Inc., Archer Daniels Midland Company, ComDel Innovation and Tharaldson Ethanol LLC, filed a Petition to Intervene with the Commission. The Large Industrial Group was the only party to intervene.

On January 14, 2009, the Commission ordered the hearing in Case No. PU-08-742, for the 2009 Renewable Resource Cost Recovery Rider and an advance determination of prudence for the Company's 48 MW ownership share in the Ashtabula Wind Energy Center, be combined with the hearing in the rate case, Case No. PU-08-862.

On February 20, 2009, the Company entered into a partial settlement agreement with the North Dakota Public Service Commission Advocacy Staff ("Staff"). The parties agreed to an overall rate of return ("ROR") of 8.62 percent, and a return on equity ("ROE") of 10.75 percent, for the Company. The Large Industrial Group did not oppose the partial settlement.

On March 11, 2009, the Commission issued a Notice of Hearing, Notice of Continued Hearing and Notice of Public Input Session which continued the hearing to May 11, 2009, and set forth the following issues to be considered in this case:

1. What is the value of Otter Tail's property, used and useful, for the service and convenience of the public in North Dakota?
2. What is Otter Tail's rate of return on its property, used and useful, for the service and convenience of the public in North Dakota?
3. What is a just and reasonable rate of return on Otter Tail's property, used and useful, for the service and convenience of the public in North Dakota?
4. What rates and charges are necessary to provide a just and reasonable rate of return on Otter Tail's property, used and useful, for the service and convenience of the public in North Dakota?
5. Are Otter Tail's proposed rate schedules designed in such a manner that they result in a basis of charges to its customers that is just and reasonable without discrimination?
6. Is Otter Tail's investment in the Ashtabula Wind Energy Center prudent?
7. Should the Commission approve the 2009 Renewable Resource Cost Recovery Rider as filed?
8. Should Otter Tail be permitted to recover any generation costs through a Rider?
9. Other relevant information or proposals concerning the proceedings.

The February 10, 2009 public input session was cancelled due to inclement weather. On March 23, 2009, the Commission conducted public input sessions. The sessions utilized interactive video-conferencing capabilities to include participants in Devils Lake, Jamestown, Washburn and Bismarck. The Wahpeton location was rescheduled for April 13, 2009 due to flooding conditions within the City of Wahpeton.

On April 1, 2009, the Large Industrial Group filed Direct Testimony prepared by two consultants from KM Energy Consulting, LLC and LLS Resources, LLC.

On April 6, 2009, Staff filed Direct Testimony prepared by two consultants from Snavelly, King, Majoros, O'Connor, and Bedell, Inc.

On April 23, 2009, Otter Tail filed a request to suspend the procedural schedule in order for the parties to finalize resolution of all disputed issues in this matter.

On April 29, 2009, the Commission issued its Order suspending the procedural schedule and continuing the hearing in this matter.

On July 1, 2009, Counsel for Advisory Staff filed a fully executed Settlement Agreement providing among other things for:

- (a) A rate increase to provide additional annual revenue of approximately \$3,597,887, or 3.04%;
- (b) A moratorium prohibiting further electric base rate increases from becoming effective prior to January 1, 2011;
- (c) An earnings sharing mechanism if net income exceeds 10.75% return on equity;
- (d) A fuel clause adjustment sharing mechanism for asset based wholesale margins;
- (e) Allocations and rate designs for base rates;
- (f) Adjustments to the Renewable Resource Cost Recovery Rider; and
- (g) A Finding that OTP's investment in the Ashtabula Wind Energy Center project was prudent, and that costs related to that project are appropriate for recovery under the Renewable Resource Cost Recovery Rider.

On July 23, 2009, Counsel for Advisory Staff filed a Memorandum in Support of the Settlement Agreement.

On September 28, 2009, the Commission held a formal hearing to consider the Settlement Agreement. At the hearing counsel for OTP explained changes that should be made to the July 1, 2009 Settlement Agreement to accommodate a later final implementation of final rates and to correct minor errors.

On October 5, 2009, Counsel for Advisory Staff filed a fully executed Amended Settlement Agreement that changed the anticipated timeframe for implementation of final rates and made other corrections to the Settlement Agreement filed on July 1, 2009. Having considered this matter, the Commission finds the Amended Settlement Agreement filed on October 5, 2009, is reasonable and should be approved. Therefore, the Commission issues the following:

Order

1. The Amended Settlement Agreement filed October 5, 2009, a copy of which is attached to this Order and made a part of this Order, is APPROVED.
2. OTP shall file, compliance tariffs consistent with this Order and the Amended Settlement Agreement to implement final rates for bills rendered on or after _____ 1, 2009, to yield an annual revenue increase of not more than \$6,824,405, which is expected to yield a net annual revenue increase of approximately \$3,597,887 when combined with fuel cost adjustment decreases resulting from off-system sales margin sharing (estimated based on historical performance).
3. Interim rates approved by the Commission will remain in effect for all customer classes until final rates are implemented. Refunds, in the form of one-time bill credits, must be issued to customers within 90 days of the implementation of final rates for the difference between the interim revenue level and the approved revenue requirement. OTP shall file a final refund report with the Commission upon completion of the refunding.
4. This Order supersedes the interim accounting treatment ordered in Case No. PU-05-131 for Midwest ISO Day 2 Energy Market costs and Case No. PU-05-131 shall be closed.
5. OTP's investment in the Ashtabula Wind Energy Center is prudent.
6. The North Dakota share of OTP's Ashtabula Wind Energy Center costs is appropriate for recovery under OTP's Renewable Resource Cost Recovery Rider, as described in the Amended Settlement Agreement, and the adjustments to OTP's Renewable Cost Recovery Rider described in the Amended Settlement Agreement are approved.
7. OTP shall include with the compliance filing referenced in Ordering Paragraph 2, above, a recalculated 2009 Renewable Cost Recovery Rate consistent with this Order and the Amended Settlement Agreement.

8. OTP's future annual Renewable Cost Recovery Rate filings under the Renewable Cost Recovery Rider shall be made by January 1 of each year with the expectation of final implementation of the annual Renewable Cost Recovery Rate by April 1 of each year.
9. Effective with final rates, OTP's Renewable Cost Recovery Rate will be combined with the fuel clause adjustment on customer bills to show a single energy adjustment.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Kevin Cramer
Chairman

Brian P. Kalk
Commissioner