



Public Service Commission

State of North Dakota

COMMISSIONERS

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Executive Secretary
Darrell Nitschke

April 23, 2010

Darrell Nitschke
Executive Secretary
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Re: Otter Tail Power Company
Deferred Accounting – Big Stone II
Application
Case No. PU-09-739

and

Otter Tail Power Company
Discontinue Prudence Big Stone II
Application
Case No. PU-10-30

Dear Mr. Nitschke:

Enclosed is a Settlement Agreement reached between Otter Tail Power Company, the North Dakota Large Industrial Energy Group, and the North Dakota Public Service Commission Advocacy Staff in the above proceedings.

The Parties ask the Commission to approve the Settlement Agreement and are available to provide any additional information the Commission may require.

Please contact us with any questions.

Sincerely,

Annette Bendish
Counsel for Advocacy Staff

Enclosure

STATE OF NORTH DAKOTA
BEFORE THE
PUBLIC SERVICE COMMISSION

In the Matter of the Application of
Otter Tail Power Company for
Authority to use Deferred Accounting

Case No. PU-09-739

And

In the Matter of the Application of
Otter Tail Power Company
for a Determination of
Prudence to Discontinue Participation
in the Big Stone II Generating Plant

Case No. PU-10-30

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between the North Dakota Public Service Commission Advocacy Staff (“Staff”), Otter Tail Power Company (“OTP”) and the North Dakota Large Industrial Energy Group, Interveners, the members of which are listed below (“ND LIG”), (collectively, “the Parties”). The ND LIG includes Goodrich Corporation, Cargill Corporation, Cavendish Farms, Inc., Archer Daniels Midland Company, ComDel Innovation, Tharaldson Ethanol LLC, Bobcat Company and PrimeWood Inc., all of which are electric service customers of OTP. The Parties agree that this Settlement Agreement resolves all outstanding issues in the above-captioned proceedings.

BACKGROUND

These proceedings involve two separate but related matters -- OTP’s request for authority to use deferred accounting for OTP’s Big Stone II (“BSP II”) development costs, filed with the North Dakota Public Service Commission (“Commission”) on December 14, 2009, and a request by OTP for a determination that OTP’s continued participation in the BSP II project was no longer prudent, filed with the Commission on January 19, 2010.

The Big Stone II project was a proposed multi-owner coal-fired generating plant to be located at the site of the existing Big Stone Generating Plant near Big Stone, South Dakota. At the time of its withdrawal, OTP had a 26.54% share of the project and a corresponding responsibility for shared project costs.¹

OTP worked on developing the project for several years. In June of 2005, OTP entered in to project agreements with six other utilities for purposes of pursuing the project.² At that time, the participants applied for the necessary permits, began preliminary engineering work, and began other development work for the project. The Commission issued an Advance Determination of Prudence for OTP's participation in the project in July 2008, in Case No. PU-06-481. Also, other permits were received from the South Dakota Public Utilities Commission ("SDPUC"), who approved the project Site Permit in July 2006, and the Minnesota Public Utilities Commission ("MPUC"), who issued a Certificate of Need ("CON") for the Big Stone II transmission lines in March 2009. OTP's 2005 Integrated Resource Plan, which specifically included the Big Stone II project, was also approved by the MPUC in March 2009. The project also obtained a Water Allocation Permit, Air Permit, and other necessary permits, and completed a Federal Environmental Impact Statement for the project. According to OTP's Deferred Accounting Application, during the time these permit proceedings were pending OTP incurred \$13,173,953.55 for the permitting, engineering and other development activities for the project. The total costs were later reduced to \$12,692,127, as reflected on the Revised Attachment A (attached to this Settlement Agreement), which updates the Attachment A included with OTP's original Petition.³ The reduction was a result of liabilities that were mitigated after the Petition was filed at a lower cost than was

¹ Or more precisely 26.544622425% based on OTP's proportion of committed off-take: 116MW of a total of 437 MW committed. OTP's share of the project increased after Great River Energy ("GRE") and Southern Minnesota Municipal Power Agency ("SMMPA") withdrew from the project in September 2007. The project was permitted and engineered with an expected capacity between 500 and 550 MW, therefore, without new participants to make up for GRE and SMMPA, OTP's share of off-take was larger than its requirements and its share of obligation exceeded its expected investment.

² Preliminary investigation of the feasibility of a second unit at the Big Stone site and other project activities had been undertaken before the project group agreements were finalized and executed.

³ Also, the Revised Attachment A reflects some minor re-classification of costs among the identified categories. Minor changes to the category descriptions were also made to reflect the reclassifications and to correct a few typographical errors.

expected and an adjustment to remove an error in the loading rate for some internal costs. The North Dakota jurisdictional share of the total costs is 40.32% or \$5,117,466.⁴

By fall of 2009, a combination of factors caused OTP to withdraw from participation. The combination of factors included: a) significant changes to recent energy price forecasts that are expected to result in changes to OTP's next resource plan and resource adequacy requirements; b) unprecedented financial market conditions and cost-recovery risks that made raising the large amount of necessary capital unreasonably costly; and c) the risk that OTP could be required to either increase its share of the plant or participate in a smaller and less economic project if additional participants did not join in the project.⁵ OTP was one of five remaining participants when it withdrew from the project.⁶ The remaining participants later discontinued the project. The costs are more fully described in the Revised Attachment A to OTP's Deferred Accounting Petition, but fall generally into the following cost categories: Engineering, project development, permitting, legal, other expenditures, and Allowance for Funds Used During Construction ("AFUDC"). OTP has excluded from these costs and investments any costs that it has incurred for land in which it continues to have a title interest, and it has excluded any labor-related costs that were included in the revenue requirement in OTP's recent rate case (Case PU-08-742). For example, OTP incurred costs for certain easements relating to the project and OTP has a continuing real property right in those easements. Therefore, the costs of those easements is reflected in OTP's property accounts and not included in the deferral request. Additionally, OTP reviewed the internal labor costs included in this request and verified that they were excluded from the 2007 test year used in OTP's rate case (as they were being accounted for as Construction Work in Progress ("CWIP") along with the other project costs).

See Attachment B for a summary of the procedural history of these cases.

⁴ The jurisdictional allocation percentage is a composite of the E1 and D1 allocators set in OTP's last general rate case.

⁵ OTP's share of Big Stone II costs was estimated at about \$400 million. However, without the addition of other project participants, OTP's expected share of costs in a similarly sized project would have increased to approximately \$500 million or more. For purposes of illustrating the magnitude of the investment, OTP's total rate base as of the end of 2008 was approximately \$575 million.

⁶ Two Big Stone II Participants, GRE and SMMPA, withdrew from the project previously.

TERMS

OTP, Commission Advocacy Staff, and the ND LIG (collectively “the Parties”) agree to the provisions as defined below and supported by this Settlement Agreement.

I. Recovery of Costs related to the Generation Portion of the BSP II Project

The Parties agree that:

- A. OTP’s discontinuation of participation in the project was prudent and therefore OTP should be authorized to recover the portion of costs related to the BSP II generation project (“BSP II Generation Costs”) as detailed in this Section I.
- B. \$10,080,092 represents the total amount of BSP II Generation Costs incurred by OTP; of which \$4,064,293 represents North Dakota’s jurisdictional share of such costs.⁷
- C. The recovery of BSP II Generation Costs will occur over 36 months, beginning with the first day of the first calendar month by which implementation can practically be achieved by OTP following the Commission’s approval of this Settlement Agreement.
- D. OTP’s recovery will be in the form of an annual rate that shall be established based on one-third of the total recovery, divided by the estimate of energy and demand (kWh and kW) billing units, described in subsection G below, for the classes over the twelve-month period for which the rate will be in effect, to arrive at a rate for both kWh and kW billing units. The kWh and kW rates will be applied to all customer bills and appear as part of the energy adjustment based on actual kWhs consumed for the non-LGS class and actual kWhs and kW consumed for the LGS class.
- E. At least 60 days prior to the end of each annual period, OTP shall make a report to the Commission to show the amount recovered and the amount of actual billing determinants (kWh for the non-LGS class and a combination of kWh and kW for the LGS class) for the period (up to the time of the report). OTP will also calculate any

⁷ Based on a 40.32 percent Jurisdictional allocator.

amount of over- or under-collection (based on actual amounts up to the time of the report and estimated sales for the remainder of the annual period), and that amount (the “True-up Amount”) shall be added to or subtracted from the amount to be recovered in the next annual period. Any True-up Amount remaining at the end of the 36 month recovery period shall be collected from customers (for any under-collection) or refunded to customers (for any over-collection) in a one-time adjustment to customer bills (and reflected as part of the energy and renewables adjustment line item).

- F. OTP shall include in its total recovery amount a monthly carrying charge on North Dakota share of BSP II Generation Costs for the period from September 1, 2009 (the date in which it ceased accumulating an allowance for funds used during construction (AFUDC) on the construction work in progress (CWIP) balance) up until the recovery of costs commences as described in paragraph C. above. The carrying charge shall be OTP’s rate of return as approved in its 2008 rate case (8.62 percent), which amounts to a carrying charge of \$29,195 per month.
- G. The cost allocation between classes shall be based on the 2009 E1 and D1 class allocators. These class allocators will remain constant for the entire recovery period. For the LGS class, a kW and kWh charge will be derived by dividing E1 related costs by estimated kWh and dividing the D1 related costs by estimated kW. For the non-LGS class, the E1 and D1 related costs will be divided by estimated kWh.
- H. An estimate of the rates described above based on an assumed implementation date of June 1, 2010, are as follows: non-LGS customers - \$0.00082 per kWh, or \$0.62 per month for an typical residential customer with 750 kWh usage. LGS customers - \$0.00064 per kWh and \$0.079 per kW, or \$254.76 per month for a customer with a monthly usage of 600 kW and 234,000 kWh. These estimated rates are calculated by taking the North Dakota Share of BSP II Generation Costs (\$4,064,293) and adding the carrying charge for nine months (\$29,195 times 9 months = \$262,757, for a total of \$4,327,050), then amortizing that amount over 3 years. Table 1 shows additional support for these calculations.

Table 1

Costs subject of settlement agreement (generation only)						\$10,080,092
North Dakota share*	40.32%					4,064,293
Estimated carrying costs (assumes cost recovery begins June 2010)**						262,757
North Dakota costs						\$4,327,050
Amount to be recovered in first 12 months						\$1,442,350
Class factors	Weighting	LGS		All others		Total
ND E1****	75.285%	33.304%	\$361,639	66.696%	\$724,234	\$1,085,873
ND D1****	24.72%	24.445%	\$87,141	75.555%	\$269,336	\$356,477
North Dakota			\$448,780		\$993,570	\$1,442,350
		LGS		All others		
	Rate	billing units***	Revenue	Rate	billing units***	Revenue
kWh billing	\$0.00064	564,334,811	\$361,639	\$0.00082	1,217,550,599	\$993,570
kW billing	\$0.079	1,104,373	\$87,141	n/a	n/a	n/a
North Dakota			\$448,780			\$993,570
Total North Dakota year 1 revenue						\$1,442,350
* Allocated to North Dakota based on a composite of D1 and E1 factors used for generation rate base in Otter Tail's most recent North Dakota rate case, Case No. PU-08-862.						
** Carrying cost is the rate of return approved in Otter Tail's last rate case of 8.62% for nine months.						
*** June 2010 - May 2011 projected year 1 recovery period.						
**** Class factors are most recent actual year (2009).						

II. Recovery of Costs related to the Transmission Portion of the BSP II Project

The Parties agree that:

- A. OTP should be allowed to account for the portion of costs related to the BSP II transmission project (“BSP II Transmission Costs”) as detailed in this Section II.

- B. \$2,612,036 represents the total amount of BSP II Transmission Costs incurred by OTP; of which \$1,053,173 represents North Dakota's jurisdictional share of such costs.
- C. OTP shall return the North Dakota Share of Transmission costs to CWIP and such costs shall be eligible for AFUDC continuing as of September 2009 (the month when OTP ceased accruing AFUDC on the project).
- D. If construction of all or a portion of the transmission facilities commences within three years of the Commission Order approving this settlement Agreement, the above BSP II Transmission Costs and accumulated AFUDC shall be included in the rate base investment for these future transmission facilities. If construction is not commenced on any of the transmission facilities within three years of the Commission Order approving this Settlement Agreement, then OTP may petition the Commission to either continue accounting for these costs as CWIP or to commence recovery of such costs. It shall be OTP's burden of proof in any such proceeding to show that there is good cause to continue reflecting the costs as CWIP or that cost recovery is appropriate.

III. Miscellaneous

A. Basis of Settlement Agreement

It is agreed this Settlement Agreement is a negotiated settlement agreement subject to approval by the Commission.

B. Effect of the Settlement Negotiations

It is understood and agreed that all offers of settlement and discussions related to this Settlement Agreement are privileged and may not be used in any manner in connection with proceedings in this case or otherwise, except as provided by law. In the event the Commission does not approve this Settlement Agreement, the Settlement Agreement will not be admissible as evidence in this or any other proceeding and no part thereof may be used by any party for any purpose in this case or in any other.

C. Applicability and Scope

This Settlement Agreement shall be binding on the Parties, and their successors, assigns, agents, and representatives. Consistent with the Commission's settlement guidelines, this Settlement Agreement does not set policy or overturn precedent. This Settlement Agreement shall not in any respect constitute an agreement, admission or determination by any of the Parties as to the merits of any specific allegation or contention made by the Parties in this proceeding.

D. Effective Date

This Settlement Agreement shall be effective on the date of the Commission Order approving the Settlement Agreement.

E. Modification

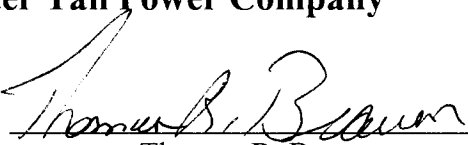
If the Commission Order modifies or conditions approval of this Settlement Agreement, it shall be deemed terminated if either Party files a letter with the Commission within three (3) business days of the date of such Order stating that a condition or modification to the Settlement Agreement is unacceptable to such Party.

CONCLUSION

The Parties have agreed to the forgoing terms to resolve the contested issues in the above-captioned proceedings. These terms are a result of negotiations between the Parties, are in the public interest and will result in reasonable electric rates. For these reasons, the Parties urge the Commission to approve the Settlement Agreement.

[Signature Pages Follow]

Otter Tail Power Company

By: 
Thomas R. Brause
Vice President Administration

Dated this 21st day of April, 2010.

North Dakota Public Service Commission Staff

By: Annette Bendish
Annette Bendish
Counsel to Advocacy Staff

Dated this 21 day of April, 2010.

North Dakota Large Industrial Energy Group

By: 

Richard J. Savelkoul,
Attorney for the North Dakota
Large Industrial Energy Group

Dated this 21 day of April, 2010.

**Otter Tail Power Company
Big Stone II Development Costs
For Period February 1, 2005 through January 26, 2010**

1	Engineering, procurement and construction management	\$1,467,297
2	Project development team (including labor)	\$3,474,522
3	Permitting and environmental impact statement	\$2,602,562
4	Legal	\$2,899,554
5	Other expenditures	\$1,012,417
6	Credit from participants that previously withdrew	-\$725,479
7	AFUDC	\$1,961,253
	BIG STONE II PROJECT DEFERRAL REQUEST	\$12,692,127

Ownership percentages:

OTP paid 19.33% of joint project costs through September 2007, the date when GRE and SMMPA withdrew. OTP funded 26.54% from September 2007 through its withdrawal on September 11, 2009. OTP's share of joint project costs were assigned on a composite percentage basis because of changes in ownership percentages over the life of the project.

Descriptions for breakdown categories:

- 1 **ENGINEERING, PROCUREMENT AND CONSTRUCTION MANAGEMENT:** The plant project's engineering, procurement and construction manager designed and specified the electric generating plant, solicited/evaluated six equipment bid packages in 2006, produced three major cost estimate renditions, performed a coal drying assessment, geotechnical investigation and ultra-supercritical study, and provided testimony at regulatory proceedings. Includes the cost of transmission studies conducted to determine the impact the proposed generator has on the transmission system and the upgrades to allow the generator to interconnect and deliver energy to the transmission system, and preliminary engineering efforts to determine proposed structure types and potential substation layouts.

- 2 **PROJECT DEVELOPMENT TEAM (INCLUDING LABOR):** Includes Otter Tail generation project labor; staff expenses such as meals, lodging, travel; and payments to several independent contractors. The project development team provided assistance for project engineering, permitting, communications and financing efforts. Transmission project management time spent on permitting, engineering, environmental, land or other specifically detailed tasks were included in those specific categories. General transmission staff project management time not specifically assigned to other categories is included here. Internal labor costs and expenses included in this filing were excluded from the test year expenses used in OTP's rate case.

- 3 **PERMITTING AND ENVIRONMENTAL IMPACT STATEMENT:** External costs associated with efforts to obtain the Federal EIS and the following permits: MN CON and route, SD site, PSD air, solid waste, water, and groundwater permits. Permitting activities include development of permits, filing fees and hearing expenses. Excludes all outside attorney fees as they are included in #4 legal. Plant permitting related internal labor costs are included in #2 project development. Transmission permitting costs presented here include outside consultants and internal labor and expenses to support these efforts.

**Otter Tail Power Company
Big Stone II Development Costs
For Period February 1, 2005 through January 26, 2010**

- 4 **LEGAL:** Payments to outside legal firms for generation and transmission activities. Includes work on the project agreements including the Participation Agreement, O&M Services Agreement, Joint Facilities Agreement, Trust Agreement, Interconnection and Transmission Upgrade Allocation Agreement, and Blanket Easement Agreement. Includes outside counsel charges related to financing, new participants and equipment contracts. Also includes external attorney fees for obtaining permits including MN CON and route, SD site, solid waste, water, groundwater and PSD air permits.

- 5 **OTHER:** Includes groundwater tolerance testing costs, insurance premiums and broker fees, communications expenses, scrubber evaluation costs, SD use tax payments, and credits for SD tax rebates. Includes payments for property easements, options and purchases, mineral and water rights, as well as property tax payments, and other miscellaneous charges net of lease revenues. Includes property purchases committed and obligated prior to withdrawing from the project. EXCLUDES any costs for property rights for which OTP continues to have a title interest.

- 6 **CREDIT FROM PARTICIPANTS THAT PREVIOUSLY WITHDREW:** When GRE and SMMPA withdrew from the project in September 2007 they forfeited their trust fund balances and paid exit payments in accordance with the project agreements. The dollars shown here are OTP's 26.54% share of GRE and SMMPA exit payments and trust fund balances when they withdrew from the project.

- 7 **AFUCD:** Allowance for funds used during construction on OTP's CWIP investment for the period February 1, 2005 to August 31, 2009.

PROCEDURAL HISTORY OF CASE NO. PU-09-739 PRIOR TO FILING OF SETTLEMENT AGREEMENT

On December 14, 2009, Otter Tail Power Company filed its Application for Deferred Accounting regarding cost incurred during its participation in the Big Stone II Project. On December 17, 2009, the Commission filed a Letter Returning Otter Tail Power Company's \$50 filing fee.

On December 31, 2009, the Commission Appointed Annette Bendish, Mike Diller, and Jerry Lien as Advocacy Staff.

On January 5, 2010, Mike Diller, Director Economic Regulation, filed a Memo regarding an Ex Parte Communication generally describing the kinds of costs included in Montana-Dakota Utilities Co.'s request for deferred accounting treatment. An Affidavit of Service indicating service on the parties listed on the official service list was filed on January 7, 2010 by the Commission.

On January 11, 2010, the Commission filed a letter addressed to Bruce Gerhardson, Otter Tail Power Company Associate General Counsel indicating the Motion Appointing Advocacy Staff had been approved by the Commission. Annette Bendish, Mike Diller, and Jerry Lien were appointed. On January 19, 2010, those parties on the official service list were noticed of the passing of the Motion Appointing Advocacy Staff.

On January 26, 2010, the Commission filed a Request for Administrative Law Judge, and on January 28, 2010 the Office of Administrative Hearings filed a letter Designating Al Wahl as Administrative Law Judge.

On March 10, 2010, the Commission Issued a Notice of Hearings scheduling a consolidated public hearing for case numbers PU-09-739 and PU-10-30 beginning at 8:30 a.m. CDT on May 5, 2010; an email Notice to the North Dakota Newspaper Association for publication as well as a reply email from the North Dakota Newspaper Association confirming publication process and dates. An Affidavit of Service indicating service on the parties listed on the official service list was filed by the Commission on March 11, 2010 and March 15, 2010.

On March 12, 2010, the Commission filed a Letter to Parties Regarding Court Reporter indicating that the May 5, 2010 hearing would be electronically recorded, and if the parties would like a court report to also record the hearing, they should notify the Commission at least two weeks prior to the hearing of their wishes.

On March 12, 2010, the North Dakota Large Industrial Group filed a Petition to Intervene on behalf of the North Dakota Large Industrial Energy Group.

On March 19, 2010, the Dakota Resource Council and Mark Trechock filed a Petition to Intervene of Dakota Resource Council and Mark Trechock.

On March 24, 2010, the Commission filed a Motion Adopting Order Granting Intervention to Dakota Resource Council and Mark Trechock. The Commission on March 24, 2010 filed an Order Granting Intervention to Dakota Resource Council and Mark Trechock.

On March 24, 2010, the Commission filed a Motion Adopting Order Granting Intervention to those parties belonging to the North Dakota Large Industrial Group. The Commission on March 24, 2010 filed an Order Granting Intervention to those parties belonging to the North Dakota Large Industrial Group.

On March 26, 2010, the Commission filed an Affidavit of Service indicating service to those parties listed on the official service list of the Orders Granting Intervention.

On April 7, 2010, the North Dakota Newspaper Association filed their Affidavit of Publication and Invoice for the publication of the Notice of Hearing.

On April 20, 2010, the Commission filed an Affidavit of Service indicating service of the Montana-Dakota Utilities Co. cases' Settlement Agreement upon those parties listed on the official service list.

PROCEDURAL HISTORY OF CASE NO. PU-10-30 PRIOR TO FILING OF SETTLEMENT AGREEMENT

On January 19, 2010, Otter Tail Power Company filed its Application for Determination That Continuation of the Big Stone II Project is No Longer Prudent.

On January 26, 2010, the Commission filed a Request for Administrative Law Judge, and on January 28, 2010, the Office of Administrative Hearings filed a Letter Designating Al Wahl as Administrative Law Judge.

On February 19, 2010, the Commission filed a Letter Regarding Certified Mail of Notices and Orders addressed to Bruce Gerhardson, Otter Tail Power Company Associate General Counsel and Bernadeen Brutlag, Otter Tail Power Company Manager of Regulatory Services stating that certified mailings would be sent to Mr. Gerhardson and Ms. Brutlag would receive regular mailings of those documents unless otherwise notified by Otter Tail Power Company.

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