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MAY 18 2010

May 18, 2010

PUBLIC SERVICE COMMISSION

Mr. Darrell Nitschke
Director of Administration / Executive Secretary
North Dakota Public Service Commission
600 East Boulevard Avenue, Department 408
Bismarck, ND 58505-0480

VIA ELECTRONIC
dnitschk@nd.gov; ndpsc@nd.gov;
aljwahl@gmail.com; oah@nd.gov

The Honorable Al Wahl
Administrative Law Judge
138 East Edmonton Drive
Bismarck, ND 58503

AND UPS OVERNIGHT MAIL

RE: Proposed Order on Settlement
Case No. PU-09-739 and PU-10-30
OAH File No. 20100030 and 20100031

Gentlemen:

Please find enclosed the Proposed Order on Settlement in the above referenced matters.

A copy of this letter and proposed order has been served upon counsel for the parties and an Affidavit of Service by Electronic and Regular Mail is enclosed.

Mr. Nitschke will find an original and 7 copies of these documents enclosed for filing with the Commission.

If you have any questions, please contact me.

Sincerely,

Mark B. Bring
Associate General Counsel
MBB:nlo

Enclosures

37 PU-10-30 Filed 05/18/2010 Pages: 8
Proposed Order Adopting Settlement
Otter Tail Power Company
Mark Bring, Assoc. General Counsel

42 PU-09-739 Filed 05/18/2010 Pages: 8
Proposed Order Adopting Settlement
Otter Tail Power Company
Mark Bring, Assoc. General Counsel

STATE OF NORTH DAKOTA

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

AFFIDAVIT OF SERVICE BY ELECTRONIC AND REGULAR MAIL

STATE OF MINNESOTA
COUNTY OF OTTER TAIL

Nancy Olson deposes and says that:

She is over the age of 18 years and not a party to this action and on the 18th day of May, 2010, she served the following:

1. Letter dated May 18, 2010, addressed to Mr. Darrell Nitschke, North Dakota Public Service Commission and the Honorable Al Wahl, Administrative Law Judge; and,
2. Proposed Order on Settlement.

By electronic mail and by depositing a true and correct copy in the United States Mail, at Fergus Falls, Minnesota, properly enveloped with postage prepaid to the following:

Richard Savelkoul
Attorney at Law
Felhaber, Larson, Fenlon & Vogt, P.A.
444 Cedar Street, Suite 2100
St. Paul, Minnesota 55101-2136
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Ilona A. Jeffcoat-Sacco
General Counsel
North Dakota Public Service Commission
600 East Boulevard Avenue, Department 408
Bismarck, North Dakota 58505-0480
Email: ijs@nd.gov

Nancy L. Olson
Nancy L. Olson

Subscribed and sworn to before me this 18th day of May, 2010.

(NOTARIAL SEAL)

Penny Michelle Mosher
Penny Mosher, Notary Public



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**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

ORDER ADOPTING SETTLEMENT

_____, 2010

Appearances

Commissioners Kevin Cramer, Tony Clark, and Brian P. Kalk.

Mark B. Bring, Associate General Counsel, Otter Tail Corporation, 215 S. Cascade St., Fergus Falls, Minnesota 56537, attorney for Otter Tail Power Company.

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

Richard Savelkoul, Felhaber, Larson, Fenlon & Vogt, P.A., 444 Cedar Street, Suite 2100, St. Paul, Minnesota 55101-2136, attorney for the North Dakota Large Industrial Group.

Derrick Braaten, Sarah Vogel Law Partners, 222 North 4th Street, Bismarck, North Dakota 58501-4004, attorney for the Dakota Resource Council and Mark Trechock,.

Illona A. Jeffcoat-Sacco, General Counsel, Public Service Commission, 600 East 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 August 27, 2008, the Commission adopted an order approving the request of Otter Tail Power Company (OTP) for an advance determination of prudence for its proposed ownership in the Big Stone II generating facility and associated transmission facilities, Case No. PU-06-481.

On December 14, 2009, Otter Tail Power Company (OTP) filed its Application for Deferred Accounting regarding costs incurred during its participation in the Big Stone II Project, Case No. PU-09-739.

On January 19, 2010, OTP filed its Application for Determination That Continuation of the Big Stone II Project is No Longer Prudent, Case No. PU-10-30.

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 its Notice of Hearings consolidating Case Nos. PU-09-739 and PU-10-30 for a public hearing on May 5, 2010, and specifying the issues to be considered:

1. The issue to be considered in Case No. PU-10-30 is whether Otter Tail's continued participation in the Big Stone II Generating Station is no longer prudent.
2. The issue to be considered in Case No. PU-09-739 is whether authorization for deferred accounting of costs incurred during participation in the Big Stone II project is in the public interest.

On March 12, 2010, the North Dakota Large Industrial Group filed a Petition to Intervene in Case No. PU-09-739.

On March 18, 2010, the North Dakota Large Industrial Group filed a Petition to Intervene in Case No. PU-10-30.

On March 19, 2010, the Dakota Resource Council and Mark Trechock filed Petitions to Intervene in Case Nos. PU-09-739 and PU-10-30.

On March 24, 2010, the Commission issued its Orders Granting Intervention to the North Dakota Large Industrial Group, the Dakota Resource Council, and Mark Trechock in Case Nos. PU-09-739 and PU-10-30.

On April 23, 2010, Commission Advocacy Staff filed the Settlement Agreement between OTP, Advocacy Staff, and the North Dakota Large Industrial Group in Case Nos. PU-09-739 and PU-10-30. The Settlement Agreement provides, among other things, that:

- (a) OTP's discontinuation of participation in the Big Stone II project was prudent (for a combination of factors, including significant changes to recent energy price forecasts that are expected to result in changes to OTP's next resource plan and resource adequacy requirements; unprecedented financial market conditions and cost-recovery risks that made raising the large amount of necessary capital unreasonably costly; 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; and legislative and regulatory uncertainty surrounding federal energy and climate change policy) 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 the Settlement Agreement;
- (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;
- (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 the Settlement Agreement;
- (d) OTP will forego carrying charges on the BSP II Generation Costs during the 36 month recovery period.
- (e) An estimate of the rate impact based on an assumed implementation date of June 1, 2010 is \$0.62 per month for a typical residential customer with 750 kWh usage.
- (f) 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 Section II of the Settlement Agreement;
- (g) \$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;
- (h) 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);
- (i) If construction of all or a portion of the transmission facilities commences within three years of the Commission Order approving the Settlement Agreement, the 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.

On April 29, 2010, Advocacy Staff filed direct testimony of Mike Diller in Case Nos. PU-09-739 and PU-10-30 in support of the Settlement Agreement.

On May 4, 2010, Advocacy Staff filed a revision to page 5 of the Settlement Agreement between OTP, Advocacy Staff, and the North Dakota Large Industrial Group in Case Nos. PU-09-739 and PU-10-30.

On May 5, 2010, the public hearing was held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota. At the hearing, OTP provided testimony of Thomas Brause, Vice President-Administration, Mark Rolfes, Manager Generation Development, and Brian Draxten, Manager Resource Planning on the reasons behind OTP's withdrawal from Big Stone II, on the costs prudently incurred in developing Big Stone II, and in support of the Settlement Agreement. Mike Diller, the Commission's Director of Economic Regulation, provided testimony on behalf of Advocacy Staff in support of the Settlement Agreement. No testimony was offered in opposition to the Settlement Agreement.

On May 10, 2010, Advocacy Staff filed a revision to page 3 of the Settlement Agreement between OTP, Advocacy Staff, and the North Dakota Large Industrial Group in Case Nos. PU-09-739 and PU-10-30.

On May 13, 2010, OTP filed Late-filed Exhibit OTP-4, Documentation for Costs Shown in Attachment "A" to Settlement Agreement (Exhibit OTP-1).

Having considered this matter, the Commission finds the Settlement Agreement filed April 23, 2010, as amended on May 4, 2010 and May 10, 2010, is reasonable and should be approved subject to the conditions stated below. Therefore, the Commission issues the following:

Order

1. The Settlement Agreement filed April 23, 2010, as amended on May 4, 2010 and May 10, 2010, a copy of which is attached to this Order and made a part of this Order, is APPROVED, subject to the provisions in Ordering Paragraph 3 below.
2. OTP's discontinuation of participation in the Big Stone II Project is prudent pursuant to the Settlement Agreement and N.D. Cent. Code § 49-05-16(5), and OTP is authorized recovery of the costs incurred in the Big Stone II project, pursuant to the Settlement Agreement.
3. OTP shall, within 15 days, file a rate schedule and documentation supporting calculation of the rate schedule, consistent with this Order and Settlement Agreement, in order to implement final rates as agreed upon in the Settlement Agreement to become effective for bills rendered on and after July 1, 2010. The Commission will not suspend the rate

schedule, but will promptly issue a Notice of Opportunity for Hearing on the rate schedule submitted by OTP. Any amount of over- or under-collection of cost recovery resulting from final implementation of the rate schedule shall be addressed as called for by the Settlement Agreement.

4. OTP's Application for Deferred Accounting regarding costs incurred during its participation in the Big Stone II Project, Case No. PU-09-739, is rendered moot by this Order.

PUBLIC SERVICE COMMISSION

**Tony Clark
Commissioner**

**Kevin Cramer
Chairman**

**Brian P. Kalk
Commissioner**