

ADV-1

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Otter Tail Power Company  
Transmission Facility Cost Recovery  
Rates**

**Case No. PU-11-153**

**Otter Tail Power Company  
Transmission Facility Cost Recovery  
Tariff**

**Case No. PU-11-682**

**DIRECT TESTIMONY**

**of**

**JERRY LEIN**

**PUBLIC SERVICE COMMISSION ADVOCACY STAFF**

**January 24, 2012**

1 **Q. Please state your name and business address?**

2 A. My name is Jerry Lein. My business address is Public Service  
3 Commission, State Capitol, Department 408, 600 E Boulevard Ave., Bismarck,  
4 ND 58501-0480

5 **Q. By whom are you employed, what is your position and  
6 responsibilities?**

7 A. I am employed by the North Dakota Public Service Commission as a  
8 Public Utility Analyst. My responsibilities consist primarily of advising the  
9 Commission on utility related matters including electric transmission issues.

10 **Q. Please describe your educational background and work experience.**

11 A. I received my Bachelor of Science in Electrical Engineering in 1985 from  
12 North Dakota State University, where I also completed graduate coursework and  
13 served as an instructor and teaching assistant. In 1988, I began employment as  
14 an analyst with the Public Service Commission focusing primarily on the  
15 regulation of electric and natural gas utilities.

16 In early 1994, I accepted employment with the Public Service Commission  
17 of Nevada. I served as a commission advisor with primary responsibility for  
18 electric transmission issues.

19 In late 1997, I returned to the North Dakota Public Service Commission  
20 where I now serve as the Commission's primary advisor for electric transmission  
21 issues.

22 **Q. What is the purpose of your testimony?**

1 A. On behalf of Public Service Commission Advocacy Staff, I will present  
2 staff recommendations regarding the Transmission Facility Cost Recovery tariff  
3 filed by Otter Tail Power Company under N.D.C.C. section 49-05-04.3.

4 **Q. Will you please summarize staff recommendations?**

5 A. Advocacy Staff supports the rate design changes agreed to by the parties,  
6 including the demand charge billing for the large industrial customer class. In  
7 addition, staff supports the "all in" revenue recovery approach being advanced by  
8 the Large Industrial Group. Advocacy Staff recommends the Commission  
9 approve the tariff rider with those changes.

10 **Q. Are you the same Jerry Lein that presented testimony before the**  
11 **Commission regarding Otter Tail's request for an advanced determination**  
12 **of prudence to participate in the construction of four CAP-X 2020 electric**  
13 **transmission lines in Case No. PU-09-676?**

14 A. Yes.

15 **Q. Will you please explain the concern you raised during that proceeding**  
16 **whether the ND Public Service Commission is the proper forum for**  
17 **advance prudence determinations regarding interstate transmission**  
18 **projects given that cost recovery for these interstate transmission projects**  
19 **will be through federally-approved transmission service rates under a**  
20 **Federal Energy Regulatory Commission (FERC) tariff?**

21 A. As I explained in that previous testimony, the major purpose for seeking  
22 an advanced determination of prudence is to assure utilities and investors that  
23 cost recovery in retail rates will not be disallowed because the projects are later

1 deemed to be imprudent. However, my retail ratemaking experience has been  
2 that state regulatory agencies are federally pre-empted from disallowing retail  
3 cost recovery of federally approved wholesale rates. States may disallow  
4 expenditures related to a finding that too much of a product or service was taken,  
5 but cannot make disallowances based on a finding that the federally approved  
6 unit rate for those products or services is unreasonable. The revenue  
7 requirements and transmission rates for the interstate transmission lines at issue  
8 in these cases would be determined under the Midwest ISO's Federal Energy  
9 Regulatory Commission Open Access Transmission Tariff (OATT) such that it  
10 appears state regulators wishing to challenge prudence would need to do so  
11 before the Federal Energy Regulatory Commission and not in a state retail rate  
12 proceeding.

13 **Q. Why did staff abandon its jurisdictional concern in the ADP**  
14 **proceedings?**

15 A. Otter Tail was planning to invest directly in the projects at amounts  
16 significantly greater than what the MISO billing expenses for serving Otter Tail's  
17 native load at the FERC tariff rate would have totaled. There was concern that  
18 retail rate recovery could be accomplished by capitalizing these investments into  
19 state rate base. Otter Tail stated it was not comfortable proceeding with the  
20 investments without first obtaining an advanced determination of prudence from  
21 the Commission.

22 **Q. How much did Otter Tail report it was planning to invest?**

1 A. For the two CAP-X lines that Otter Tail is requesting cost recoveries for in  
2 this initial transmission rider filing, the Commission granted an ADP based on  
3 Otter Tail's reported 13.2% share of the Fargo Project investment and 20.0%  
4 share of the Bemidji Project investment.

5 **Q. How does that previous ADP issuance relate to staff's**  
6 **recommendation in this case that the Commission adopt the "all in"**  
7 **accounting method?**

8 A. As the tariff rider was initially filed, Otter Tail would have simply passed  
9 through the MISO billing expenses at the FERC approved tariff rate as an  
10 operating expense without any state rate basing of the investments so there  
11 would have been no need for the ADP that was issued. Instead, under the "all in"  
12 method the investments that Otter Tail reported when seeking its ADP are rate  
13 based and all payments from MISO cost sharing are used to offset the resulting  
14 state revenue requirements. Such treatment is consistent with the granting of the  
15 ADP and, because of differences in federal and state authorized rates of return  
16 and other rate making practices, the end result is a significant savings to Otter  
17 Tail's native load customers.

18 **Q. Does this conclude your testimony?**

19 A. Yes. Thank you.