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February 26, 2016

Mr. Mike Diller
Director of Economic Regulation
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

Mr. Darrell Nitschke
Director of Administration/Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

**RE: COMMENTS ON RETIRING RENEWABLE ENERGY CREDITS TO MEET
NORTH DAKOTA'S RENEWABLE ENERGY OBJECTIVE**

Dear Mr. Diller and Mr. Nitschke:

Below are Otter Tail Power Company's (OTP) responses to questions posed by Mike Diller (North Dakota Public Utilities Commission Staff) regarding North Dakota's Renewable Energy Objective.

Also included at the bottom of this document and referenced as "Attachment A" is a copy of the letter that was sent to the North Dakota Public Service Commission on February 9, 2015 which discussed the Company's interpretation of North Dakota Century Code **49-02-28. *State renewable and recycled energy objective.*** Our interpretation has not changed since that time. Where possible, we will refer to that letter when responding to the questions below.

- 1. On a North Dakota (ND) basis, provide a table depicting your inventory of Renewable Energy Credits (RECs) generated, retired, sold and remaining balance since the program started. For years when RECs were sold, indicate the amount of revenue received. For the next 10 years, provide your average projected value for a REC.**

Below is a table showing the year RECs were generated as well as the transaction value in the year a REC sale occurred. Otter Tail has 492,879 of banked ND allocated RECs.

	2008	2009	2010	2011	2012	2013	2014	2015	Total
RECs Generated - ND Allocation	106,548	202,717	231,982	270,103	246,668	264,584	359,418	320,382	2,002,402
RECS Retired - ND Allocation	-	-	-	-	-	-	-	-	-
RECS Sold - ND Allocation	106,548	202,717	231,982	270,103	246,668	264,584	186,921	-	1,509,523
Remaining RECS - ND Allocation	-	-	-	-	-	-	172,497	320,382	492,879
REC Sales - ND Allocation (1)			\$ 227,951	\$ 196,611	\$ 312,638	\$ 162,801	\$ 378,989	\$ -	\$ 1,278,990
							Average REC Sale Price	\$	0.85
Notes:									
¹	The REC Sales amount indicates the year that the sale took place. It does not reflect the vintage of the RECs sold. For instance the 2010 sales amount contains 2008, 2009, and 2010 Vintage RECS								

Otter Tail does not make projections for the REC values into the future. However, the average sale price for RECs sold over the past 6 years is \$0.85 per REC.

2. What is the useful life (do RECs self-terminate after a period of time) of RECs in each of the state jurisdictions you serve? If there is no termination date, does the REC market discount old RECs and to what extent? What is your oldest REC remaining in your current balance of unused RECs?

It is OTP's understanding that a RECs useful life (or shelf-life) is generally a matter for determination by each state that defines and qualifies RECs. Otter Tail is unaware of a shelf-life for RECs in North Dakota and South Dakota. In Minnesota the shelf-life is four years plus the year generated. Otter Tail's experience has been that RECs that are over 2 years old have little or no value in the REC market. Of the RECs currently banked by OTP, the oldest North Dakota allocated REC has a 2014 vintage. Otter Tail has older vintage RECs allocated for other states, since we bank and retire them for compliance in those other states.

3. Can RECs prior to 2020 be used to satisfy the Clean Power Plan (CPP) rule and to what extent? Would it be wise to not retire any RECs and save them all for transitioning to less carbon-based generation under the CPP?

If the CPP is ultimately upheld,¹ OTP believes it is unlikely that RECs generated prior to 2020 will be able to be used for CPP compliance. Reasons for this include:

- If North Dakota implements a rate-based CPP plan, the compliance instrument that would be used to reduce the CO₂ emissions intensity of a power plant is an Emission Rate Credit ("ERC"). According to the preamble to the CPP, "An ERC is issued separately from any other instruments that may be issue for a MWh of energy generation...the EPA notes that the definitions of other instruments, such as RECs, differ (as established under state statute, regulations, and PUC orders) and that requirements under state regulatory programs that use such instruments, such as state RPS, also differ."²
- Under a rate-based CPP plan, ERCs cannot be generated until 2022 (or potentially 2020 if a state elects to participate in the Clean Energy Incentive Program). Therefore, even if RECs were a CPP compliance instrument, the RECs that were generated in 2015 would not be able to be used for the CPP.
- Unfortunately, the CPP rule does not appear to allow wind projects that began operation prior to 2013 to be eligible to generate ERCs. OTP was extremely disappointed with this provision

¹ On February 9, 2016 the Supreme Court granted emergency applications to stay the CPP. The stay will remain in effect until such time that the Supreme Court completes action on the rule, which is likely to occur in either 2017 or 2018.

² Federal Register Vol. 80 at 64908

of the rule, and appreciates that North Dakota has continued to advocate to EPA that there should be a way to credit these projects.

- It is uncertain whether North Dakota would decide to implement a rate-based plan or a mass-based plan. Use of ERCs would only factor into a rate-based plan.

Although OTP believes that it is unlikely RECs generated prior to 2020 will be able to be used for CPP compliance, we appreciate that the Commission posed this question, as we shared the same uncertainty prior to seeing the final CPP rule. For that reason, shortly after the CPP was proposed in 2014, OTP decided to stop selling RECs until there was further clarity in the final rule.

- 4. If you have other states you serve that have a Renewable Energy Objective (REO), are you retiring or planning to retire RECs in those states? Have other REO states provided you with guidance on the disposition of REC's in their state?**

In addition to North Dakota, OTP also serves customers in Minnesota and South Dakota. Minnesota has a Renewable Energy Standard which requires the RECs be retired to meet the RES. South Dakota has a 10% REO beginning in 2015. OTP has had discussions with South Dakota Public Utilities Commission (SDPUC) Staff about this topic although no formal action has been taken by the SD PUC. OTP has recently contacted the SD PUC informally to ask for direction on the question of retiring RECs related to South Dakota's REO.

- 5. How should the commission weigh achieving the REO against selling REC's for the benefit of ratepayers? What would your company do if the commission decided in favor of selling all RECs and returning the proceeds to ratepayers? What should the commission do to minimize the optics of not meeting the REO and instead selling RECs for the benefit of customers?**

Please see OTP's February 9, 2015 letter for OTP's response to this question. As a utility serving electric customers in North Dakota, it has been and will continue to be OTP's intention to follow state statutes.

As stated in OTP's February 9, 2015 letter, OTP is concerned that not retiring REC's to meet the ND REO could actually reduce the value of other REC's that the Company would plan to sell.

- 6. Given the interplay between the CPP, REO and your customers' interest, summarize your plan for managing REC's absent any guidance from the commission and the rationale for doing so.**

It is the Company understanding that RECs generated from any of its current renewable generation will not be eligible to be counted toward EPA's Clean Power Plan compliance. As stated in the February 9, 2015 letter, our plan would be to continue to retire REC's to meet renewable legislation in all three states we serve and to sell the excess RECs and return the proceeds of those sales back to customers.

- 7. According to state law (49-02-34), the last annual report showing progress toward meeting the REO is due on June 30, 2016. If there is no requirement to report on achieving the REO beyond this year, what concern is there in not retiring REC's for the purpose of selling them or saving them for meeting CPP requirements? If you are intent on retiring RECs to meet the REO each year, do you desire to continue reporting RECs retired to meet the REO so there is a public record of it?**

Whether a report on progress toward meeting the REO is filed or required would not have an impact on our interpretation of the statute. Whether this activity warrants reporting requires a balancing of the costs and benefits of reporting. OTP is generally in favor of fewer reporting requirements, as there are administrative costs to preparing and filing such reports, but OTP also realizes that reasonably transparency requires reporting. Given that there is a heightened interest in this subject at the present time; OTP believes continuing reporting at this time would be beneficial. OTP will, of course, provide such reporting as the Commission may require.

- 8. Do you have any rule or statute changes you would like the commission to consider concerning RECs and the REO?**

OTP has no current suggestions for changes to regulatory rules or legislation.

Please feel free to contact me with any questions you may have.

Sincerely,

/s/ BRIAN DRAXTEN

Brian Draxten
Manager, Resource Planning

BHD:nlo
By electronic filing

February 9, 2015

Mr. Darrell Nitschke
Director of Administration/Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408



**RE: COMMENTS ON RETIRING RENEWABLE ENERGY CREDITS TO MEET
NORTH DAKOTA'S RENEWABLE ENERGY OBJECTIVE**

Dear Mr. Nitschke:

Otter Tail Power Company (Otter Tail) has received a request from the North Dakota Public Service Commission (Commission) Staff to address how Otter Tail would recommend dealing with the Renewable Energy Credits (RECs) generated from complying with North Dakota's Renewable and Recycled Energy Objective (REO).

Otter Tail currently has about 19 percent of its retail energy coming from renewable generation. While the Company has a renewable energy standard / objective in all three states it serves, Otter Tail has been able to add all of its renewable resources cost effectively to reduce the overall costs to its customers. Since 2010, Otter Tail has sold over 1.5 million North Dakota allocated RECs – returning nearly \$1.3 million to ND customers.

North Dakota's REO of 10 percent takes effect in 2015. That statute appears below:

49-02-28. State renewable and recycled energy objective.

The legislative assembly establishes a state renewable and recycled energy objective that ten percent of all electricity sold at retail within the state by the year 2015 be obtained from renewable energy and recycled energy sources. The objective must be measured by qualifying megawatt-hours delivered at retail or by certificates representing credits purchased and retired to offset nonqualifying retail sales. This objective is voluntary and there is no penalty or sanction for a retail provider of electricity that fails to meet this objective. The objective applies to all retail providers of electricity in the state, regardless of the ownership status of the electricity retailer. Municipal and cooperative utilities that receive wholesale electricity through a municipal power agency or generation and transmission cooperative may aggregate their renewable and recycled energy objective resources to meet this objective.

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Based on the language of that statute, it appears clear that the legislative intent was to have utilities retire RECs to meet the objective. Otter Tail recommends that the Commission adopt that position as well. Unless the Commission disagrees, it would appear unnecessary for the Commission to take any formal action on this issue.

Additionally, there may be some possible downstream consequences if we don't retire the RECs. First, Otter Tail would not be able to claim we have met North Dakota's REO, as the statute makes clear that RECs need to be retired to meet the REO. Second, if we don't retire the RECs as required by the statute the RECs that would have otherwise been used to meet the REO may be viewed as "tainted" in the eyes of potential purchasers and thus of less value. This concern arises because there may be a view that the RECs have already been implicitly used to meet the legislated objective, and therefore they cannot have value to a purchaser. Furthermore, because it may be difficult for Otter Tail to certify that the RECs its transacting are not part of the ten percent that would have been otherwise used to meet the North Dakota REO, this potential for "tainting" in the eyes of potential purchasers could possibly spread to all of OTP's RECs, thus reducing their value as well.

Otter Tail anticipates retiring in the Midwest Renewable Tracking System (M-RETS) enough North Dakota allocated RECs to comply with the 2015 North Dakota objective of 10 percent. The Company would expect to sell the excess North Dakota allocated RECs and return the proceeds to our North Dakota customers – just as we are currently doing.

Please feel free to contact me with any questions you may have.

Sincerely,

/s/ BRIAN DRAXTEN

Brian Draxten

Manager, Resource Planning

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By electronic filing