

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Otter Tail Power Company  
Advance Prudence – Merricourt Wind  
Project

Case Nos. PU-17-141 & 143  
OAH File Nos. 20170221, 20170222

**AMENDED ORDER GRANTING TRADE SECRET PROTECTION**

1. On April 10, 2017, Otter Tail Power Company (Otter Tail or the Company), filed an application for trade secret protection in cases PU-17-141 & 143 pursuant to North Dakota Administrative Code Section 69-02-09-01 and 69-02-09-04, requesting a protective order limiting disclosure of "Trade Secret" information as defined by North Dakota Century Code Section 47-25.1-01(4) and 44-04-18.4.

2. The information for which Otter Tail seeks trade secret protection are breakdowns of projected costs of the Astoria project and supporting testimony regarding its Application for an Advanced Determination of Prudence and Certificate of Public Convenience. These items include: a) costs of the Project, including capital costs, interconnection costs and contingency amounts; b) itemized cost of energy for the Project; c) various items and conditions of the Asset Purchase Agreement and Turnkey Engineering, Procurement, and Construction Agreements. These documents, testimony, and exhibits contain confidential business information.

3. The above referenced information is confidential business information and prepared specifically for Otter Tail. The Company states that the information is not publicly available and the confidentiality of this information has been maintained. If publicly available, vendors could use the information to their advantage in competing for project procurement opportunities, while competitors could use the information to

leverage their rate positions in the marketplace to Otter Tail's detriment. Disclosure to vendors and competitors if allowed, could be harmful to the Company's customers in North Dakota.

4. The Company states that in accordance with N.D. Admin. Code § 69-02-09-02, one copy of the trade secret material has been provided in a sealed envelope labeled TRADE SECRET – PRIVATE.

5. North Dakota Century Code Section 44-04-18.4(1) authorizes protection for commercial, financial, proprietary, and trade secret information if privileged and if the information has not been previously publicly disclosed. Commercial and financial information can be protected from disclosure if the information has not been previously disclosed and disclosure would impair the Commission's ability to obtain similar information in the future or would cause competitive injury to the person providing the information. North Dakota Century Code Sections 44-04-18.4(2)(a)-(b). Proprietary and trade secret information can be protected when the information derives independent economic value from not being generally known to or readily ascertainable by other persons, and is the subject of reasonable efforts to maintain its secrecy. North Dakota Century Code Sections 44-04-18.4(2)(c)-(d).

6. Commission staff originally responded that the Company's application in Case Nos. PU-17-141 & 143 satisfies the requirements of the North Dakota Century Code for protection of the information in some respects and staff did not oppose the request in that regard BUT staff did object to confidentiality of the estimated total cost of the Project. Thereafter, the ALJ granted both parties an opportunity to further brief the issue of whether or not trade secret protection for capital costs information should be

granted. Otter Tail Power filed its Response to Staff's objection on June 12, 2017. Thereafter, staff filed its Reply to Response on June 16 in which staff withdrew its one final objection to my granting Trade Secret Protection for capital costs information.

7. The Commission's process provides a means for interested parties to review protected documents upon signing a nondisclosure agreement.

8. This hearing officer has fully reviewed and considered all briefs filed regarding the application of Otter Tail and the recommendations of Commission staff, and determines that the information is both relevant for the hearing of this case and that the information, including capital costs information is entitled to the trade secret protection sought in the application.

IT IS, THEREFORE,

ORDERED that Otter Tail is hereby granted the confidential trade secret protection that it seeks in Case Nos. PU-17-141 & 143.

Dated: June 21, 2017

NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

By: 

Patrick J. Ward  
Administrative Law Judge  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that true and correct copies of the AMENDED ORDER GRANTING TRADE SECRET PROTECTION was emailed to the following:

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