

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Otter Tail Power Company
Advance Prudence – Astoria
Project Application**

Case No. PU-17-140

**Otter Tail Power Company
Advance Prudence - Merricourt
Project Application**

Case No. PU-17-141

**Otter Tail Power Company
Certificate of Public Convenience &
Necessity – Merricourt Project
Application**

Case No. PU-17-143

ORDER ON SETTLEMENT

November 3, 2017

Appearances

Commissioners Randy Christmann, Julie Fedorchak, and Brian Kroshus.

Mitchell D. Armstrong, Special Assistant Attorney General, 122 East Broadway Avenue, P.O. Box 460, Bismarck, North Dakota 58502, for the Public Service Commission Advocacy Staff.

Cary Stephenson, Associate General Counsel, Otter Tail Power Company, 215 S. Cascade Street, Fergus Falls, Minnesota 56537, for Otter Tail Power Company.

Illona A. Jeffcoat-Sacco, General Counsel, Public Service Commission, 600 E. Boulevard Avenue, Department 408, Bismarck, North Dakota 58505, for the Public Service Commission Advisory Staff.

Patrick J. Ward, Zuger Kirmis & Smith, P.O. Box 1695, Bismarck, North Dakota 58502 as procedural Hearing Officer.

64 **PU-17-141** Filed: 11/3/2017 Pages: 14
Order on Settlement

68 **PU-17-143** Filed: 11/3/2017 Pages: 14
Order on Settlement

59 **PU-17-140** Filed: 11/3/2017 Pages: 14
Order on Settlement

Preliminary Statement

On April 10, 2017, Otter Tail Power Company (OTP) applied to the Commission for an Advance Determination of Prudence (ADP) for the Astoria Natural Gas Project, Case No. Pu-17-140.

Also on April 10, 2017, OTP filed an application for an ADP for the Merricourt Wind Project, Case No. PU-17-141.

Finally, on April 10, 2017, OTP filed an application for a Certificate of Public Convenience and Necessity (PCN) for the Merricourt Wind Project, Case No. PU-17-142.

On June 30, 2017, the Commission issued its Notice of Consolidated Hearings consolidating the three applications for hearing, and scheduling a public hearing to begin October 6, 2017 at 8:30 a.m. CDT in the Commission Hearing Room, 12th Floor, State Capitol, 600 East Boulevard Avenue, Bismarck, North Dakota, 58505.

The issue to be determined in each of the two ADP cases (Case No. PU-17-140 and Case No. PU-17-141) is whether the proposed resource addition is prudent.

The issues to be determined in the PCN case (Case No. PU-17-143) are:

1. Whether public convenience and necessity require or will require the construction and operation of the public utility plant or system; and
2. Whether the applicant is fit, willing, and able to provide service.

On October 2, 2017, OTP filed a Settlement Agreement executed by OTP and Commission Advocacy Staff.

On October 6, 2017, the consolidated hearing was held as scheduled.

The parties to the Settlement agree that the Astoria Natural Gas Project is reasonable and prudent up to a total capital expenditure cost of \$181.5 million excluding AFUDC, and that the Merricourt Wind Project is reasonable and prudent up to a total capital expenditure cost identified in the testimony of Jim Heidell, at page 48, lines 18-19, excluding AFUDC. The parties make no determination of prudence regarding costs exceeding the agreed-to amounts.

The parties further agree that OTP's ownership and operation of the Merricourt Wind Project satisfies the standards for issuance of a Certificate of Public Convenience and Necessity.

OTP and Advocacy Staff witnesses testified in support of the Settlement Agreement.

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Public Convenience and Necessity

Certificate Number 5914

This is to certify that public convenience and necessity require, and permission is granted for Otter Tail Power Company to acquire and operate the Merricourt Wind project located in Dickey and McIntosh Counties of North Dakota.

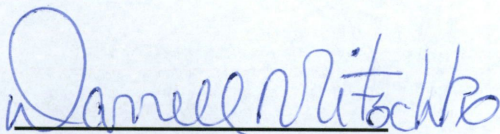
This certificate is issued in accordance with the Order of this Commission dated November 3, 2017 in Case No. PU-17-143, and is subject to the conditions and limitations noted in the Order.

This certificate is conditioned upon Otter Tail Power Company securing the franchise or other authority of the proper municipal or other public authority for the exercise of these rights and privileges.

Bismarck, North Dakota, November 3, 2017.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

Having considered this matter, the Commission finds the Settlement Agreement reasonable and acceptable. Therefore, the Commission issues the following

Order

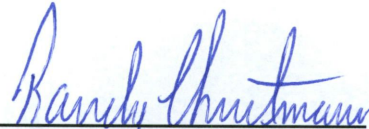
The Commission Orders:

1. The Settlement Agreement filed October 2, 2017, is APPROVED. A copy of the Settlement Agreement is attached to this Order and made a part of this Order.
2. Certificate of Public Convenience and Necessity Number 5914 is issued to Otter Tail Power Company for the Merricourt Project


PUBLIC SERVICE COMMISSION



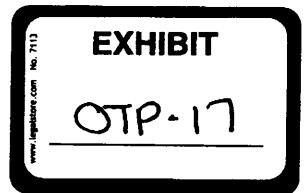
Brian Kroshus
Commissioner



Randy Christmann
Chairman



Julie Fedorchak
Commissioner



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

Otter Tail Power Company
Advance Prudence – Astoria
Project Application

Case No. PU-17-140

Otter Tail Power Company
Advance Prudence - Merricourt
Project Application

Case No. PU-17-141

Otter Tail Power Company
Certificate of Public Convenience &
Necessity – Merricourt Project Application

Case No. PU-17-143

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into on this 29th day of September, 2017, by and between the North Dakota Public Service Commission Advocacy Staff (Advocacy Staff) and Otter Tail Power Company (OTP or the Company) (collectively, the Settlement Parties). The Settlement Parties agree this Settlement Agreement, if approved by the Public Service Commission (Commission) resolves all issues in the above-captioned proceedings in a manner consistent with the public interest.

BACKGROUND

Procedural Background

On April 10, 2017, OTP applied to the Commission for an Advance Determination of Prudence (ADP) for the Astoria Natural Gas Project (Case No. PU-17-140). On the same day, OTP applied to the Commission for an ADP for the Merricourt Wind Project (Case No. PU-17-141) and a corresponding Certificate of Public Convenience and Necessity (Case No. PU-17-143) (OTP's applications in Case Nos. PU-17-140, PU-17-141, and PU-17-143 are collectively

59 PU-17-143 Filed 10/06/2017 Pages: 10
Exhibit OTP-17 - Settlement Agreement

55 PU-17-141 Filed 10/06/2017 Pages: 10
Exhibit OTP-17 - Settlement Agreement

50 PU-17-140 Filed 10/06/2017 Pages: 10
Exhibit OTP-17 - Settlement Agreement

referred to as the Applications and the projects included therein as the Merricourt and Astoria Projects).

With its Applications, OTP provided direct testimony of supporting witnesses and related project documentation supporting the need and prudence of each project, the selection process for each project, and the estimated costs for each project. Advocacy Staff conducted discovery and analyzed each project with the assistance of Mr. James Heidell of PA Consulting Group.

On June 30, 2017, the Commission issued its Notice of Consolidated Hearings which consolidated the Applications for hearing on October 6, 2017. The Commission's Notice provided that the issues to be determined in Case Nos. PU-17-140 (Astoria ADP) and PU-17-141 (Merricourt ADP) are whether the proposed resource additions are prudent. The Notice further provided that the issues to be determined in Case No. PU-17-143 (Merricourt CPCN) are: (1) whether public convenience and necessity require or will require the construction and operation of the public utility plant or system; and (2) whether the applicant is fit, willing, and able to provide service.

On August 18, 2017, Advocacy Staff filed Mr. Heidell's Direct Testimony with supporting schedules. Mr. Heidell recommended that the Commission grant ADPs for the Merricourt and Astoria projects subject to certain qualifications. Thereafter OTP and Advocacy Staff engaged in negotiations resulting in this Settlement Agreement.

Project Backgrounds

The Astoria Station will be an approximately 250 MW natural gas-fired simple cycle combustion turbine near the town of Astoria in Deuel County, South Dakota (the Astoria Project). The Astoria Project includes all associated facilities, including a short segment of natural gas pipeline necessary to interconnect to the Northern Border Pipeline and electric transmission facilities necessary to interconnect to the Big Stone South-Brookings County 345 kV electric transmission line. The Astoria Project will be capable of quickly starting to serve a load-following function and peak capacity needs. The Astoria Project is expected to be in service no later than May of

2021. The Astoria Project is being developed with the flexibility to add combined cycle generation if circumstances later warrant it.

OTP has acquired land rights near Astoria where the Northern Border Pipeline and the Big Stone South-Brookings County transmission line intersect. The Project will require construction of a gas pipeline estimated to be less than 1,000 feet. The Project will likely interconnect to a new switching station to be constructed by the co-owners of the Big Stone South-Brookings County 345 kV transmission line (i.e., Northern States Power Company-Minnesota and OTP). Final interconnection costs for the Project have not yet been determined. The Project is in the Midcontinent Independent System Operator (MISO) interconnection queue, in the February 2016 study group. The MISO interconnection studies for this study group began in February 2017 and final identification of facilities necessary to interconnect the Project are expected in Q1 of 2018. This study process will ultimately culminate in a generator interconnection agreement (GIA) that the Company expects to execute in 2018. To estimate potential interconnection costs, the Company has completed its own transmission studies that are intended to replicate the MISO generator interconnection process. OTP will develop and manage the Astoria Project, engaging third parties for detailed engineering contracts, with OTP acting as the construction manager.

The Merricourt Wind project will be a 150 MW wind energy generation facility located near Merricourt, North Dakota, approximately fifteen miles south of Edgeley in McIntosh and Dickey Counties (the Merricourt Project). The Merricourt Project will consist of 75 two-MW Vestas V110 wind turbine generators and associated infrastructure, on a footprint comprising approximately 13,000 acres of land. The Project's energy output is expected to be approximately 666,000 megawatt hours (MWh) annually, at a projected net capacity factor of 50.7%. The Merricourt Project will be developed and constructed by subsidiaries of EDF Renewable Energy, Inc. (EDF). OTP and EDF have executed (1) an Asset Purchase Agreement (APA) under which OTP will purchase the development assets of the Merricourt Project; and (2) a corresponding Turnkey Engineering, Procurement, and Construction (TEPC) Agreement, under which EDF will construct the Project on a turnkey basis.

The Merricourt Project will interconnect to Montana-Dakota Utilities Company's Merricourt 230 kV substation located approximately 13 miles southwest of Kulm, North Dakota. Final interconnection costs for the Merricourt Project have not yet been determined. The Project is in the Midcontinent Independent System Operator, Inc. (MISO) interconnection queue and the August 2016 study group. OTP estimates that studies for the August 2016 study group will begin this month, with final identification of facilities necessary to interconnect the Project expected in the second half of 2018. This study process will ultimately culminate in a GIA that the Company expects to execute in 2019. The Merricourt Project is intended to capture the highly-competitive pricing made available by the federal production tax credit (PTC) for wind facilities before the PTC expires.

As stated in OTP's initial filings, the Merricourt and Astoria Projects comprise a two-part plan to reliably meet OTP's customers' electric needs, replace expiring capacity purchase agreements, and prepare for the 2021 retirement of the 1950s-era 140 MW Powder River Basin (PRB) coal-fired Hoot Lake Plant near Fergus Falls, Minnesota. The Merricourt and Astoria Projects are intended to complement each other, with the Merricourt Project providing low cost wind energy to OTP's customers, and the Astoria Project providing low-cost capacity and dispatchable energy with the capability to quickly start and follow load to bolster system reliability.

TERMS OF SETTLEMENT

The Settlement Parties agree to the provisions as defined below and supported by the records in the above-entitled matters.

1. Astoria Project Advance Determination of Prudence (Case No. PU-17-140). OTP's application, pre-filed testimony and responses to Advocacy Staff's Information Requests along with Advocacy Staff's analysis and pre-filed testimony demonstrate that the Astoria Natural Gas Project is reasonable and prudent at a total capital expenditure cost of up to \$181.5 million (the Astoria Authorized Amount) excluding AFUDC (i.e., AFUDC shall not be counted toward the Astoria Authorized Amount). The Astoria Project is reasonable and prudent up to the Authorized Amount regardless of the composition of total project costs. No determination of prudence has been made with respect to costs exceeding \$181.5 million.

Moreover, this Settlement Agreement and the Commission's Order(s) finding prudence shall not be construed as a determination that costs exceeding \$181.5 million are imprudent or non-recoverable. The Settlement Parties agree that additional project costs may be prudent as described in Section 4. The Settlement Parties therefore agree that the ADP requested by OTP in Case No. PU-17-140 should be granted by the Commission consistent with the provisions of this Settlement Agreement

2. Merricourt Project's Advance Determination of Prudence. OTP's application, pre-filed testimony and responses to Advocacy Staff's Information Requests, along with Advocacy Staff's analysis and pre-filed testimony demonstrate that the Merricourt Wind Project is reasonable and prudent at a total capital expenditure cost up to the amount identified in the testimony of Jim Heidell at page 48, lines 18-19 (the Merricourt Authorized Amount) excluding AFUDC (i.e., AFUDC shall not be counted toward the Merricourt Authorized Amount). The Merricourt Project is reasonable and prudent up to the Authorized Amount regardless of the composition of total project costs. While the Merricourt Project is presumptively prudent, consistent with North Dakota law, no determination of prudence has been made with respect to costs exceeding the Merricourt Authorized Amount. Moreover, this Settlement Agreement and the Commission's Order(s) finding prudence shall not be construed as a determination that costs exceeding the Merricourt Authorized Amount are imprudent or non-recoverable. The Settlement Parties agree that additional project costs may be prudent as described in Section 4. The Settlement Parties therefore agree that the ADP requested by OTP in in Case No. PU-17-141 should be granted by the Commission consistent with the provisions of this Settlement Agreement.

3. Rate Treatment of Project Costs. The Settlement Parties agree that consistent with the provisions of N.D.C.C. § 49-05-16, the ADPs for the Merricourt and Astoria projects shall be binding for ratemaking purposes. OTP may request the Commission include the actual capital costs of the Astoria and Merricourt Projects (up to the Astoria Authorized Amount and Merricourt Authorized Amount, as applicable) in rates consistent with general ratemaking principles (i.e., as a capital addition to rate base including AFUDC and other adders) through applicable riders, a general rate case, or any other authorized mechanisms,

consistent with the terms of this Settlement. In furtherance of the foregoing, the Settlement Parties intend that OTP's actual costs for the Astoria and Merricourt Projects up to the Authorized Amounts be reflected in rates, and, in the event that OTP's actual project costs are below the Astoria Authorized Amount or Merricourt Authorized Amount, as applicable, it shall be the actual costs below the Astoria Authorized Amount and Merricourt Authorized Amount that are reflected in rates. In the event that the total actual capital costs of the Astoria Project or the Merricourt Project, as applicable, exceed the Astoria Authorized Amount or the Merricourt Authorized Amount, as applicable, the provisions of Section 4 of this Settlement Agreement shall apply.

4. Project Costs Exceeding Authorized Amounts. In the event the total capital expenditure costs of the Astoria Project or Merricourt Project exceed the Astoria Authorized Amount or Merricourt Authorized Amount, as applicable, OTP may reflect in rates capital expenditure costs for the Astoria Project and/or Merricourt Project, as applicable, equivalent to the Astoria Authorized Amount or Merricourt Authorized Amount, as applicable. Costs exceeding the Astoria Authorized Amount and/or Merricourt Authorized Amount, as applicable, may be recoverable and may be included in rate base as capital additions, subject to Commission approval as follows:

- a. Additional Interconnection Project Costs. Interconnection costs are determined by MISO and affected regional transmission systems and the transmission owners in those systems, not OTP. OTP has provided a reasonable estimate of interconnection costs in its Astoria and Merricourt Project budgets. While OTP has provided a reasonable estimate of interconnection costs and timelines for both projects, such costs and timelines are inherently uncertain. The Settlement Parties acknowledge and agree that interconnection costs exceeding the estimates in the current project budgets are possible and that these costs may be recoverable, subject to Commission approval. The Settlement Parties agree that when (1) a project's total project costs exceed that project's Authorized Amount, and (2) interconnection costs exceed the project's interconnection estimate, OTP may seek to recover and include in rate base as a capital addition the lesser of (a) the costs that exceed the Authorized Amount,

and (b) the amount of interconnection costs that exceeds the project's interconnection cost estimate. This Section 4(a) is intended to address additional interconnection project costs, and shall not be construed to exclude or limit OTP's recovery of additional project expenses that are not interconnection expenses, as described in Section 4(b).

- b. Additional Project Expenses. Additional Merricourt and Astoria Project costs beyond interconnection expenses may also be recoverable and may be included in rate base as capital additions, subject to Commission approval, where OTP can demonstrate it was prudent to incur such expenses. This Section 4(b) shall not be construed to exclude or limit OTP's recovery of additional interconnection project expenses under Section 4(a).
 - c. Recovery Mechanisms. OTP may at any time request the Commission to modify its ADP order(s) to include additional Merricourt or Astoria Project costs, whether interconnection or other costs, consistent with this Settlement Agreement. Additionally, OTP may seek Commission approval and recovery of additional project costs consistent with the Settlement Agreement through applicable riders, a general rate case, and any other authorized mechanisms.
5. Certificate of Public Convenience and Necessity for Merricourt Project. The Settlement Parties agree that the Merricourt Project satisfies the standards for issuance of a CPCN as requested by OTP in Case No. PU-17-143 and that the Commission should grant the CPCN as requested.
 6. Merricourt Project Production Tax Credit Risk. OTP's customers will not pay any additional costs that are caused by the Company's failure to obtain the full amount of Production Tax Credits (PTCs) detailed in the Company's ADP application unless OTP's failure to obtain the full amount of PTC's is attributable to changes in law, delays in MISO's final interconnection authorization, or other items outside of the Company's reasonable control, in which case, OTP may seek recovery of the additional costs. OTP shall bear the

burden of proving the reason for OTP not obtaining full PTCs is beyond its reasonable control, and that the additional costs are prudent.

7. **Merricourt and Astoria Project Reporting Requirements.**

- a. In conjunction with its monthly fuel cost reports filed with the Commission, OTP will provide monthly reports of curtailment and negative pricing observations for the Merricourt Project, including any known reasons for observed curtailment and negative pricing.
- b. OTP will provide the Commission quarterly construction progress reports on the Merricourt Project until the project is in service.
- c. OTP will provide the Commission quarterly construction progress reports on the Astoria Project until the project is in service.
- d. On at least an annual basis, and as more frequently as may be advisable, OTP shall file a letter with the Commission in these cases advising whether the trade secret information must remain trade secret or if it may be made public.

MISCELLANEOUS PROVISIONS

1. **Joint Recommendation as Package.** OTP and Advocacy Staff will jointly recommend that settlement terms for the Merricourt and Astoria projects be accepted as a package.
2. **No Precedential Effect.** The Settlement will have no precedential effect on any existing or future ADP determinations.
3. **Reservation of Rights.** OTP reserves any rights under state and federal law or equity not specifically waived in the Settlement.
4. **Basis of Settlement Agreement.** It is agreed this Settlement Agreement is a negotiated Settlement Agreement subject to approval by the Commission.
5. **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 the 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 for any purpose in this case or in any other.

6. **Applicability and Scope.** This Settlement Agreement is binding on OTP and Advocacy Staff, and their successors, assigns, agents, and representatives. This Settlement Agreement does not set policy or overturn precedent. Except as specifically provided herein, this Settlement Agreement does not constitute an agreement, admission or determination by OTP or Advocacy Staff as to the merits of any specific allegation or contention made by OTP and Advocacy Staff in this proceeding. This Settlement Agreement supersedes all prior settlement negotiations and agreements between OTP and Advocacy Staff in these proceedings.
7. **Effective Date.** This Settlement Agreement is effective on the date of the Commission Order approving the Settlement Agreement.
8. **Modification.** If the Commission Order modifies or conditions approval of this Settlement Agreement, it shall be deemed terminated if either OTP or the Advocacy Staff files a letter with the Commission within five (5) business days of the date of such Order by stating that a condition or modification to the Settlement Agreement is unacceptable to such party.

Counterparts. This Settlement Agreement may be executed in counterparts by OTP and Advocacy Staff, each of which when so executed will be an original, but all of which together will constitute one and the same instrument.

CONCLUSION

OTP and Advocacy Staff have agreed to the foregoing terms to resolve the contested issues in the captioned proceedings. These terms are a result of negotiations between the Settlement Parties, are in the public interest, and will result in prudently incurred costs for the benefit of

North Dakota ratepayers. For these reasons, OTP and Advocacy Staff respectfully urge the Commission to approve the Settlement Agreement.

Authorized representatives of the Parties having caused this Settlement Agreement to be duly executed as of the date first set forth above.

Otter Tail Power Company,
a Minnesota corporation

By: 

Its: VP, Planning & Strategy

North Dakota Public Service Commission
Advocacy Staff

By: 

Its: Counsel