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June 12, 2017

Darrell Nitschke  
Executive Secretary  
ND Public Service Commission  
600- East Boulevard Avenue  
Bismarck, ND 58505-0480

**RE: Otter Tail Power Company's Application for Merricourt Wind Project.  
Case No. PU-17-141 and PU-17-143  
OAH File No. 20170221, 20170222  
Response**

Dear Mr. Nitschke:

Enclosed please find an original and seven (7) copies of Otter Tail Power Company's Response To Advocacy Staff Objection To Portion Of Otter Tail's Trade Secret Application

An electronic copy of this filing is being sent to you at [dnitschk@nd.gov](mailto:dnitschk@nd.gov) and to [ndpsc@nd.gov](mailto:ndpsc@nd.gov).

If you have any questions regarding this filing, please contact me at 218-739-8956 or [cstephenson@otpc.com](mailto:cstephenson@otpc.com)

Sincerely,

/s/ Cary Stephenson  
Cary Stephenson  
Associate General Counsel

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Enclosures

Cc: Patrick J. Ward  
Mitchell Armstrong  
Sarah Kuntz  
Illona Jeffcoat-Sacco

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Otter Tail Power Company  
Cary Stephenson, Assoc. General Counsel

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Response to Advocacy Staff's Response to Application for Trade Secret Protection  
Otter Tail Power Company  
Cary Stephenson, Assoc. General Counsel

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

Otter Tail Power Company  
Advance Prudence – Merricourt Wind  
Application

Case No. PU-17-141  
OAH File No. 20170221

Otter Tail Power Company  
PC&N – Merricourt Wind  
Application

Case No. PU-17-143  
OAH File No. 20170222

**RESPONSE TO ADVOCACY STAFF OBJECTION  
TO PORTION OF OTTER TAIL’S TRADE SECRET APPLICATION**

On April 10, 2017, Otter Tail Power Company (Otter Tail or the Company) filed an application for trade secret protection in the above-referenced dockets. North Dakota Public Service Commission Advocacy Staff (Advocacy Staff) responded on May 19, 2017, stating it did not object to Otter Tail’s trade secret application with the exception of the estimated total capital cost of the Merricourt Project. Advocacy staff noted the following:

OTP seeks protection of specific cost estimate data related to stages of the project. Advocacy Staff does not object to the application for trade secret protection for this information as it appears it has independent economic value (actual or potential) as explained in OTP's trade secret application, with one exception. Advocacy Staff does not believe the estimated total capital cost of the project is subject to trade secret protection. While the other factors listed in the application could derive independent economic value, the total capital cost (p. 7, first claimed protection; Synsteliem Direct p. 1, lines 1-2; McMahon Direct, p. 4, lines 15-16) does not appear to derive independent economic value, and is an important piece of information for the public's knowledge with respect to the application and requested prudence determination. Therefore, Advocacy Staff objects to trade secret protection for the estimated total capital cost of the project, but does not object to the remainder of the application for trade secret protection.

By an order dated June 2, 2017, the ALJ gave Otter Tail until June 12, 2017, to respond to Advocacy Staff's objection. For the reasons stated in Otter Tail's initial application and as supplemented herein, the Commission should reject Advocacy Staff's position and grant trade secret protection for total estimated capital costs of the Merricourt Project.

As noted in Otter Tail's Application for an Advance Determination of Prudence, the Merricourt Project will be a 150 MW wind energy generation facility located near Merricourt, North Dakota. The 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 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 Project have not yet been determined.

The Merricourt Project will be developed and constructed by subsidiaries of EDF Renewable Energy, Inc. (EDF). There are two primary agreements between Otter Tail and EDF: (1) an Asset Purchase Agreement (APA) under which the Company will purchase the development assets of the Project, and (2) a corresponding Turnkey Engineering, Procurement, and Construction (TEPC) Agreement, under which EDF will construct the Project on a turnkey basis. Numerous conditions must be satisfied prior to closing of the asset purchase under the APA, including EDF securing a final and binding generator interconnection agreement (GIA). It is EDF's responsibility to obtain the GIA.<sup>1</sup>

Otter Tail has disclosed total Merricourt Project costs except for Otter Tail's direct costs. Otter Tail witness Harvey McMahon provided the following high level categorization of the estimated costs of the Merricourt Project:

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<sup>1</sup> *Direct Testimony of Harvey McMahon, April 10, 2017 at 12.*

Category	Cost Estimate
APA Costs	\$34.7 million
TEPC Costs	\$200.5 million
Otter Tail Direct Costs	[NOT PUBLIC DATA BEGINS... NOT PUBLIC DATA ENDS]
Total	[NOT PUBLIC DATA BEGINS... NOT PUBLIC DATA ENDS] <sup>2</sup>

Advocacy Staff's position would require Otter Tail to reveal the total anticipated capital cost of the Merricourt Project, which in turn would allow the calculation of Otter Tail's projected direct costs. As noted below, this would put Otter Tail and its customers at a disadvantage, ultimately contributing to potentially higher project costs.

The key to understanding Otter Tail's concern is the fact that the majority of its direct costs<sup>3</sup> are interconnection costs and these costs have not yet been determined.<sup>4</sup> Otter Tail has estimated final interconnection costs for the Project in a range provided in Mr. McMahon's non-public testimony.<sup>5</sup> This is relevant because the APA provides a mechanism for sharing of interconnection costs between EDF and Otter Tail.<sup>6</sup> The APA also provides a cap on the amount of interconnection costs the parties are obligated to share.<sup>7</sup> If the interconnection costs are greater than the cap, the APA automatically terminates unless one of the parties provides notice

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<sup>2</sup> *Direct Testimony of Harvey McMahon, April 10, 2017, at 4.*

<sup>3</sup> Otter Tail's direct costs for the Project include: (1) internal management costs; (2) taxes; (3) interconnection costs; and (4) project contingency. Interconnection costs make up the majority of Otter Tail's projected direct costs. *See Direct Testimony of Harvey McMahon, April 10, 2017, at 4-7.*

<sup>4</sup> EDF has entered the Midcontinent Independent System Operator, Inc. (MISO) interconnection queue for this Project and has been assigned a queue number. The interconnection request is in the August 2016 MISO study group. The Company currently estimates that studies for the August 2016 MISO study group will begin in the summer of 2017, with initial identification of necessary interconnection costs becoming available in late fall of 2017.

<sup>5</sup> *Direct Testimony of Harvey McMahon, April 10, 2017, at 6.*

<sup>6</sup> *See id.*; *see also Application for Advance Determination of Prudence and Certificate of Public Convenience and Necessity [hereinafter Application], at 18.*

<sup>7</sup> *See Application, at 18.*

that it will pay the exceedance, or the parties otherwise negotiate additional capital contributions above the cap.<sup>8</sup>

In this context, the total capital cost of the Merricourt Project has significant independent economic value from not being disclosed, and should be protected as a trade secret as defined by N.D. Cent. Code §§ 47-25.1-01(4) and 44-04-18.4. The disclosure of the total capital cost of Merricourt Project will reveal Otter Tail's estimated direct costs. This, in turn, could effectively reveal or allow EDF and others to reasonably estimate the extent (if any) Otter Tail is prepared to contribute additional interconnection costs. This would weaken Otter Tail's negotiating position with EDF if the interconnection cost cap is exceeded, and potentially increase the overall cost of the Merricourt Project to the detriment of Otter Tail's customers. This could also impact EDF's efforts to secure an acceptable final GIA, adding additional cost to the Merricourt Project to the detriment of Otter Tail's customers.

For the foregoing reasons, Otter Tail respectfully requests that it be granted a Trade Secret Protective Order as requested in its initial application for trade secret protection.

DATED: June 12, 2017

Respectfully submitted,

/s/ Cary Stephenson  
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<sup>8</sup> *Id.*