



Public Service Commission State of North Dakota

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December 6, 2021

Mr. Steve Kahl
Executive Secretary
ND Public Service Commission
600 E Boulevard Avenue Dept. 408
Bismarck, ND 58505-0480

via Hand Delivery

Re: Case No. PU-21-364
Otter Tail Power Co/Northern Plains Electric Coop
Jamestown, North Dakota
Service Area Agreement

Case No. PU-21-365
Otter Tail Power Company
Jamestown, North Dakota
Public Convenience & Necessity

Case No. PU-21-366
Otter Tail Power Company
Super Large General Service Agreement
Rates

Dear Mr. Kahl:

Enclosed is a copy of the Staff Response to Application for Protection of Information to be filed in the above captioned cases.

Best Regards,

Brian Johnson
Legal Counsel

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Staff Response to Application for Protection of Information

Public Service Commission
Brian Johnson-Legal Counsel

Enclosure **24** **PU-21-364** Filed: 12/6/2021 Pages: 4
Staff Response to Application for Protection of Information

Public Service Commission
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Staff Response to Application for Protection of Information

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Power Co/Northern Plains Electric Coop
Jamestown, North Dakota
Service Area Agreement**

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Rates**

Case No. PU-21-366

STAFF RESPONSE TO APPLICATION FOR PROTECTION OF INFORMATION

On September 17, 2021, Otter Tail Power Company (OTP) filed an Application for Protection of Information to protect certain information in the captioned cases.

The information for which the Company seeks protection includes the location of the facility and maps as well as specific portions of the Service Area Agreement.

The Company states that this information is commercial information because it is “information has independent economic value and is not publicly known . . . would cause substantial competitive injury to the person from which the information was obtained,” as provided in N.D.C.C. § 44-04-18.4(2)(a).

The Company further states that the information is trade secret because it is information that “(1) [d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons that can obtain economic value from its disclosure or use; and (2) [i]s the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information,” as provided in N.D.C.C. § 44-04-18.4(2)(d). The Company further states that the information sought to be protected meets the definition of “trade secret” set forth in

N.D.C.C. § 47-25.1-01(4). Such information has been marked as TRADE SECRET in OTP's responses to data requests and in the pre-filed testimony submitted by OTP, or may arise or be discussed in the hearing or hearings in this matter.

Vendors and competitors would have an opportunity to obtain economic value from disclosure or use of the information, to the detriment of the prospective customer, Otter Tail, and the customers they serve. If publicly available, competitors to the prospective customer, vendors and others could use the information to their advantage in competing for project procurement opportunities and competitors could use the information to Otter Tail's detriment.

The application further states that the information is confidential business information and was prepared specifically for Otter Tail with data inputs unique to Otter Tail and the prospective customer. The confidentiality of this information has been maintained by Otter Tail. Otter Tail is bound by the terms of a non-disclosure agreement to protect information provided to it by its prospective customer. Such a result could be harmful for the Company's customers, now and in the future.

The confidentiality of this information has been maintained by OTP. The information is not disclosed to the public or to persons other than employees or authorized agents who need to know the information to fulfill their responsibilities in connection with the subject matter of the information.

The location of the facility does not meet the qualifications for protected information. The location of the facility has since the hearing become known to the public as a public groundbreaking was held and can easily be ascertained by proper means by other persons.

Staff believes that OTP's application satisfies the requirements of the North Dakota Century Code for protection of the information for the redacted portions of the Service Area Agreement pertaining to buying or selling of goods and services that has not been previously publicly disclosed and which is the subject of this request. The location of the facility and accompanying maps are not protected.

For reasons set forth above, Staff recommends that the Commission grant the application of OTP to protect certain information filed in the captioned cases.

Dated this 2nd day of December 2021.



Brian Johnson
Special Assistant Attorney General Bar ID 07397
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