

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

**Otter Tail Power Company  
Economic Development  
Rates**

**Case No. PU-22-322**

**STAFF RESPONSE TO APPLICATION FOR PROTECTION OF INFORMATION**

On July 14, 2022, Otter Tail Power Company (Otter Tail) filed an Application for Protection of Information to protect certain information in the captioned case. The application was supplemented on August 15, 2022 at the request of commission staff.

The specific information for which Otter Tail seeks trade secret protection includes the following items contained in the above referenced case. Confidential not public information noted in the Application:

- Customer load details (p.3)
- Company related marginal costs and investments necessary to serve the Customer which are components of Attachment 1 (pp. 3-4).
- Cumulative five year contribution of new customer to Otter Tail system which is also included in Attachment 2 (p. 5)
- Otter Tail's Economic Development Rider ("EDR") pricing model, which is designated as Attachment 1 to Otter Tail's EDR and ESA application.

Attachment 1, a spreadsheet provided on a USB storage drive, includes all company-related marginal costs and proposed investments to serve potential customers as well as estimates of customer billing determinants and related bill calculations.

- Attachment 2, also provided on a USB storage drive, is Otter Tail's summary of net benefits stemming from pricing model output and allocation of the discount between the new customer and the contribution to existing customers.
- Attachment 3, the Electric Service Agreement (ESA) which contains numerous provisions that reflect both rate and the customer's operational details.
- Certain references within the application which contain references to information in the Attachments or that otherwise contain the customer's trade secret information.

The Company states that this information is commercial information because it is "information pertaining to buying and selling of goods and services that has not been previously publicly disclosed and that if the information were to be disclosed . . . 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 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).

Otter Tail's customer intends to operate an agricultural processing facility. If publicly available, competitors at any level (international, national, regional, local) would have

access to the customer's confidential pricing inputs (electric rates) and operational data in the form of projected load and demand data. It is reasonable to conclude that agricultural processing competitors could use information to their economic advantage in numerous ways, including but not limited to securing raw materials, product pricing, securing vendors and buyers for the processed materials, to the detriment of the customer and eventually to Otter Tail customers because of the erosion of net system benefits upon which the EDR is based.

The disclosure of this information could provide Otter Tail competitors valuable competitive information, specifically about Otter Tail's marginal pricing and calculations concerning net benefits. Vendors, competitors and prospective EDR eligible customers would have an opportunity to obtain economic value from disclosure or use of the information to the detriment of Otter Tail and the customers we serve.

The confidentiality of this information has been maintained by Otter Tail. 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.

Staff believes that Otter Tail's application satisfies the requirements of the North Dakota Century Code for protection of the information, which is the subject of this request. Staff also requests that the information contained on the USB drive be exempted from the public redaction requirement of North Dakota Administrative Rules 69-02-09-01 as redaction would be burdensome and very little information would remain after redaction as the information as much of the information is formulaic in nature.

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

Dated this 17<sup>th</sup> day of August 2022.



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