

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**In the Matter of Otter Tail Power
Company's Application for Approval of
Economic Development Rider Rate and
Electric Service Agreement**

Case No. PU-22-

APPLICATION FOR TRADE SECRET PROTECTION

Pursuant to N.D. Admin. Code Chapter 69-02-09, Otter Tail Power Company (Otter Tail) respectfully requests that the Commission issue a trade secret protective order in the above-referenced case. The purpose of the requested protective order is to protect against public disclosure of trade secret or proprietary information, as defined by NDCC §§ 47-25.1-01(4) and 44-04-18.4.

The information for which Otter Tail seeks protection from public disclosure falls in the following general categories:

1. Customer load, service and rate information set forth in the Application and the proposed Electric Service Agreement (ESA).
2. Otter Tail's Economic Development Pricing Model and all inputs and outputs thereto, including marginal pricing and the results of the application of Otter Tail's EDRM to the customer's load and service information, including Economic Development Rider rates.

Customer Load, Service and Rate Information.

The customer's projected load and demand information, certain service terms related to customer's operations, and the Economic Development Rate Rider (EDR) rate applicable to this customer¹ are individually and collectively confidential customer information Otter Tail is obligated to keep confidential under the EDR tariff, non-disclosure contractual obligations, and Company policies.

The above-referenced information is not publicly available, is confidential, and was provided by the customer for the specific purpose for seeking Commission approval of an EDR rate for this customer. Otter Tail's Commission-approved EDR under which this information is provided specifically states the information will be provided *only* to

¹ This information is marked as Protected on page 4 of the Application and in customer-specific portions of the proposed Electric Service Agreement.

Commission and Commission Staff. The information, therefore, is not readily ascertainable by proper means by other persons.²

The 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.

Otter Tail Confidential Information

In addition to Customer-related information noted above, Otter Tail seeks trade secret protection for the following:

1. Confidential not public information noted in the Application:
 - a) Company related marginal costs and investments necessary to serve the Customer which are components of Attachment 1.
 - b) Cumulative five-year contribution of new customer to Otter Tail system which is also included in Attachment 2.
2. Otter Tail's Economic Development Rate Model (EDRM), 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.
3. 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.
4. Portions of Attachment 3 (the proposed ESA) setting forth the EDR rate and customer's operational details.
5. Certain references within the Application which contain references to information in the Attachments or that otherwise contain the customer's trade secret information.

² Otter Tail Economic Development Rate Rider, https://www.otpc.com/media/2631/nd_1413.pdf

The above-referenced information is not publicly available, is confidential business information, and was prepared specifically by Otter Tail with data inputs unique to Otter Tail. The confidentiality of this information has been maintained by Otter Tail. Otter Tail's Commission-approved tariff under which this information is being filed specifically states the information will be provided only to Commission and Commission Staff. The information, therefore, is not readily ascertainable by proper means by other persons.

The disclosure of this information could provide Otter Tail competitors valuable competitive information, specifically with regard to Otter Tail 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.³ Therefore it is appropriate to protect this information from public disclosure.

Dated: September 16, 2022

Respectfully submitted,

OTTER TAIL POWER COMPANY

/s/ CARY STEPHENSON

Cary Stephenson
Associate General Counsel
Otter Tail Power Company
215 S. Cascade Street
Fergus Falls, MN 56537
(218) 739-8956

³ Competitors include other entities seeking to attract large agricultural and industrial loads, including electric cooperatives and other investor-owned utilities. This includes regional and national electric and gas utilities. Competitors can also include third party developers seeking to develop alternative generation resources. Moreover, access to OTP marginal pricing and inputs/outputs of the EDRM could be used by parties seeking to negotiate purchase power arrangements with OTP to the detriment of Otter Tail customers. The same is true of potential EDR customers, who would be better positioned to secure favorable terms to the detriment of Otter Tail's customers. Vendors could also use this information to target their procurement efforts with respect to the infrastructure investments necessary to serve this particular EDR customer.