

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

Otter Tail Power Company)	
2023 Renewable Resource Cost Recovery)	Case No. PU-22-429
Adjustment Factor Rates)	
)	
Otter Tail Power Company)	Case No. PU-23-27
2023 Fuel Clause Adjustment – EAR Tariff)	

**COMMENTS OF
MIDWEST LARGE ENERGY CONSUMERS**

I. Introduction

Midwest Large Energy Consumers (“MLEC”) appreciate the opportunity to provide comments associated with the North Dakota Public Service Commission’s (“Commission”) Notice of Opportunity for Consolidated Hearing issued on February 8, 2023 (“Notice”) in the above mentioned dockets.

In Case No, PU-22-429, Otter Tail Power Company’s (“OTP” or “Company”) petition includes annual updated actual and forecasted costs and collections to be recovered from the Renewable Resource Cost Recovery (“RRCR”). In addition, in the RRCR filings, OTP proposes changes in the E2 jurisdictional allocation factors for 2022 and 2023 to reflect updated jurisdictional sales and associated revenues upon which the rider applies. Updates to the E2 allocator historically have not/do not occur outside of a rate case. The Company proposes the updated rates, including the changes, go into effect April 1, 2023. OTP indicates that the North Dakota projected revenue requirement for the recovery period of April 1,2023 to March 31,2024 is \$17,006,718 of which\$12,671,288 is associated with updating the revenue requirement and the remaining amount is associated with changing the jurisdictional allocator.

In Case No. Pu-23-27, OTP's petition includes an update to its Energy Adjustment Rider ("EAR"), Tariff Section 13.01 to include Mid-Continent Independent System Operator (MISO) Planning Resource Auction (PRA) revenues and expenses in the calculation of monthly EAR or Fuel Clause Adjustment (FCA) rates. OTP realized approximately \$9.34 million of revenue from the sale of excess generation capacity in the 2022/2023 MISO Planning Resource Auction ("PRA") covering the June 2022 to May 2023 timeframe. These sales are generated from operations and capital paid for in ratepayers' base rates. The North Dakota share of the MISO PRA revenues is estimated to be over \$4 million based on the estimated E2 factor for North Dakota for 2023. OTP's petition indicates that it is advancing this proposed change to its EAR contingent on Commission approval of its proposal advanced in Case No. PU-22-429.

The Notice seeks comments in Case No. PU-22-429 on whether (a) the investments and associated costs for the resources qualify for recovery, the incurred costs are reasonable and prudent and (c) the rate adjustments are consistent with the terms of OTP's tariff. With regards to Case No. PU-23-27, the Notice seeks comments on whether the proposed tariff changes are reasonable and should be approved.

II. Detailed Comments

MLEC's comments are focused on the following issues:

1. Proposed change in jurisdictional allocation.
2. RCRR cost allocation to new customer on Super Large General Service ("SLGS") rate.
3. PRA credit contingent on the approval of the jurisdictional allocation and proposed changes to the EAR tariff

1. JURISDICTIONAL ALLOCATOR PROPOSAL

In Case No. PU-22-429, OTP proposes an increase in jurisdictional allocations for the North Dakota jurisdiction due to material increases in load. In particular OTP proposes to increase the E2 allocator from 37.557% to 41.783% in 2022 and another change in the 2023 North Dakota E2 allocation factor to 43.489%. Historically and as a basic principle of rate making, jurisdictional energy allocators (E2) are not increased between rate cases. As noted in Staff's Memorandum, the material change in load is due to the addition of Applied Digital taking service under the Super Large General Service ("SLGS") rate schedule. Eligible customers served under this rate schedule must have a load of at least 25 MW with a minimum load factor of 80%. According to recent quarterly reports, Applied Digital's first facility is in Jamestown, North Dakota with capacity of 100MW. While the load factor (and energy consumption) is likely higher, assuming a minimum load factor of 80% as prescribed in the SLGS schedule, Applied Digital's consumption is estimated at 700,800 MWh for its 100MW load.¹ From a contextual perspective, this estimated energy consumption is substantially higher than the South Dakota jurisdiction at 472,885 MWh, represents a 35% increase of energy requirements to North Dakota (700,800/1,980,855 MWh) and therefore is akin to wholesale load.²

Based on a review of OTP's application to seek approval of the Electric Service Agreement ("ESA") with Applied Digital in Case No. PU-21-366, it is MLEC's understanding that the rate must cover marginal costs to serve this customer and incorporates some contribution to fixed costs. OTP also provided assurances in the ESA proceeding that current customers would not be harmed and would be materially advantaged by rider rate reductions as a result of the new customer on the SLGS rate.

¹ Energy consumption is estimated using public data since actual data is not publicly available.

² Based on E2 jurisdictional allocator calculations in docket PU-17-398.

MLEC is concerned regarding the following issues with regards to changing the jurisdictional allocator: (1) changing the policy of increasing E2 only in rate cases, and (2) Margin sharing condition, if jurisdictional allocation of costs to new SLGS customer that is driving the change.

Policy Change from increasing E2 only in rate cases. It is important to note that the jurisdictional allocators are typically increased in a rate case setting when the cost of service and revenues are fully analyzed. Changing the allocations in a piece-meal fashion may result in an inconsistent matching of costs and revenues with regards to other components of the cost of service when the driving factor is an increase in North Dakota energy and demand requirements that includes an increase in base rate revenue. For example, additional revenues received, and the revenue requirement impacts as a result of serving the new load are not considered or addressed by changing jurisdictional allocations for rider recovery alone. Further, in Case No: PU-21-366, the proceeding in which the special contract was approved, OTP indicated, in part, that customers are materially advantaged from the addition of this new customer in the form of rider rate reductions. However, OTP did not provide any analysis on the impacts of or even proposed changes in jurisdictional allocators at that time. If such changes were warranted, the change should have been requested at that time the approval of the ESA was requested, when the total impact of adding the new customer could have been analyzed.

OTP notes that changing the E2 jurisdictional allocation would result in increasing the North Dakota revenue requirement by \$4.4 million. Such a proposed change is not consistent with OTP's assurances in the ESA proceeding that customers will not be harmed, but in fact would benefit from adding the new customer to be served under the SLGS rate.

MLEC is not aware of a circumstance where the jurisdictional allocator was increased in between rate cases. In case PU-16-14, at the request of Staff, the E2 allocator was decreased by

approximately 2% due to growth in sales in other jurisdictions and to temper earnings. The current situation is vastly different in that OTP's proposed approach adversely impacts customers and results in the utility not fulfilling its commitments made in the ESA proceeding, while taking the profits from increased base rate revenues. Under the current situation, (a) OTP proposes to increase the jurisdictional allocator while retaining the net revenues or margin gained by acquiring the new SLGS customer and (b) pass to customers increased expenses, contrary to OTP's commitment in the ESA proceeding, ensuring customers will not be harmed and will in fact benefit by acquiring the new SLGS customer load.

Thus, is appropriate to retain the existing jurisdictional allocators for the following reasons:

- (a) E2 allocators have not historically been allowed to be increased between rate cases and it is inconsistent with common utility industry practice;
- (b) OTP did not request a jurisdictional change or provide adequate analysis justifying a potential change in jurisdictional allocation in the ESA proceeding; and
- (c) OTP assured that there would be no harm to customers with approval of the ESA and that customers would materially benefit by rider reductions, it is appropriate to retain the existing jurisdictional allocators.

Without the change in the jurisdictional allocator, \$4.4 million will not be included in the RCRR cost recovery from North Dakota's retail customers and customers will not be harmed.³ Further, as discussed further below in #2, the cost allocation to the new customer on the SLGS rate should be corrected so that all other North Dakota's retail customers properly realize the benefit.

SLG Margin Sharing Condition if Jurisdictional Allocator is Changed. Absent a rate case, it is important that costs and revenues be properly matched. If new revenues are not accounted for, new fixed and variable expenses associated with the new revenue should not be passed through. Since the jurisdictional allocation change has historically occurred during rate

³ Notably, as set forth in Section 2. below, OTP has retained an additional \$10 million in base rate revenues which is likely attributable the new SLGS customer.

cases and OTP's desire is to seek "right recovery" across all jurisdictions due to material load shifts outside of a rate case, it stands to reason that the net revenues or margins are also fairly addressed between OTP and its North Dakota customers. While OTP asserts that retaining the margin helps in delaying rate cases, MLEC believes that, if the E2 allocator is updated and North Dakota ratepayers pay more expenses from new load, it is more important for current rates to reflect the benefits associated with the large new load addition.

It is also worth noting that OTP is not in a situation of under recovery based on the E2 allocator changes resulting from the SLGS customer. This is because the new SLGS customer addition was not incorporated in the 2020 Minnesota rate case and other rate cases in North and South Dakota occurred prior to the Minnesota rate case – each jurisdiction should be relatively close to historical usage and OTP should be recovering for close to 100% of its costs in total. Further, if there is concern with rates increasing due to a new rate case, OTP's history is to recover far less than it suggests it is entitled to both in North Dakota as well as other jurisdictions that have sometimes resulted in a rate reduction. Due to relatively few investments made and unrecovered through riders as well as new North Dakota load, it may well be that a rate decrease is achieved. A rate case setting would help ensure that a utility is recovering its costs to serve, and ratepayers rates are just and reasonable.⁴

If the Commission determines that it is appropriate to increase the jurisdictional allocator without a rate case, MLEC recommends that the margins or net revenues earned by OTP as a result of the new SLGS customer should also be credited to customers. Implementing this recommendation will help to restore the matching of costs and revenues in the absence of a rate case and result in demonstrable benefit to customers. Further, if E2 is increased, as discussed

⁴ Note that OTP over-earned, with respect to its approved earnings, in 2021 with an ROE of 10.09% prior to the new load addition. 2021 is the most recently filed information available.

below in Section 2, the cost allocation to the new customer on the SLGS rate should be corrected so that all other North Dakota's retail customers are not harmed by the increase in the jurisdictional allocator.

2. RCRR COST ALLOCATION TO NEW CUSTOMER ON SUPER LARGE GENERAL SERVICE ("SLGS") RATE.

As noted earlier, the new SLGS customer adds a substantial amount of energy requirements to the North Dakota jurisdiction. At a threshold load factor of 80% prescribed in the SLGS tariff, MLEC estimates 700,800 MWh are associated with a 100 MW load addition and is much higher than South Dakota's energy requirements at 472,885 MWhs. The current North Dakota E2 jurisdictional allocation of 37.577% was approved in the 2017 rate case and was based on 1,980,055 MWh. OTP proposes an increase in the E2 allocator to 41.783 in 2022 (contrary to retroactive ratemaking principles) and 43.489% in 2023, which is likely due, primarily to the new SLGS customer. The increase in revenue requirements by changing the jurisdictional allocator is approximately \$4.4 million.

If E2 is increased, to ensure proper cost allocation (cost causation) and no harm to all other customers, the increase in cost recovery due to the change in jurisdictional allocators must be directed to the large load addition. The percent of bill allocation entails base rate revenues only and since the SLGS rate incorporates significant discounts, the cost allocation to this customer using the percent of bill is lower than appropriate – this is further illustrated by the fact that the percent of bill charge jumps from 11.579% to 15.541%, after changing the jurisdictional allocator, as seen in Attachment 3 of the Application. The base rate revenue in the 2021 RCRR update prior to the new load addition was \$99.4 million and in the current filing is \$109.4 million.⁵ If customers were treated the same with or without the new SLGS customer, their rates would stay the same

⁵ Base rate revenue in the 2022 filing was similar to 2023 update at \$110 million in Case No: PU-22-19.

percentage, with or without them – not jump 4% for current ratepayers. In other words, as a result of the SGLS rate design and related ESA which incorporates discounts compared to the standard LGS rate, the percent of bill method under allocates the costs to the new SLGS customer. The outcome is that other customers are harmed which is contrary to the basis on which the ESA was approved.

The method used to allocate the RCRR related costs needs to be consistent with the increase in jurisdictional allocation to ensure that all other customers are not harmed – allocate increases related to SLGS solely to SLGS. Fundamental allocation principle of rates is to follow cost-causation – the one who causes the expense pays the cost.

To ensure proper cost allocation to classes, MLEC recommends that the amount associated with the jurisdictional increase first be allocated to the large load addition served under the SLGS rate. The substantive energy requirements associated with the SLGS customers are unique, substantially large and akin to adding a wholesale customer (with higher energy requirements than South Dakota) and allocating these costs similar to wholesale customers and separate from other retail customers is appropriate and necessary for proper cost allocation. To implement this recommendation, OTP should first allocate the revenue requirements using the E2 allocator to allocate costs between the SLGS customer and all other North Dakota customers. The revenue requirements after allocating to SLGS should then be allocated to all other customers using the current percent of bill method. The percent of bill method helps to retain the rate design elements and relationships authorized in the most recent rate case and continues to remain appropriate for allocating costs to all other customers. Implementing this recommendation would ensure that all other customers are not harmed while at the same time directing proper cost allocation to the new large load addition.

If the Commission determines that no changes to the jurisdictional allocator are necessary at the present time, MLEC continues to recommend the E2 allocation to the SLGS customer in the initial step and allocate the remaining revenue requirements to all other customers using the percent of bill method.

3. PRA CREDIT AND RELATED TARIFF CHANGE

OTP received \$9.3 million in net revenues from MISO's PRA for the Planning Year June 2022- May 2023. OTP proposes to credit North Dakota's jurisdictional share provided that the Commission accept the Company's proposed changes to the jurisdictional allocator in its RRRCR filing. OTP also indicates that given the uncertainty of impacts associated with future PRAs, it proposes to amend the EAR tariff to include a provision that "known MISO Planning Resource Auction capacity costs will be added to the energy adjustment rider or revenues will be credited (flow through) the energy adjustment rider."

Providing the PRA credit to customers must not be conditional. Since ratepayers have borne the costs of the generation infrastructure that has ultimately resulted in the Company receiving a net revenue \$9.3 million, North Dakota's share should be passed to customers without strings attached. Further, since MISO is transitioning to a seasonal construct starting June 2023, it is not clear whether future PRA prices for each of the four seasons will result in credits or charges. In this regard, it is reasonable to incorporate OTP's proposed tariff changes where the known PRA net costs or revenues will flow through the EAR rider. However, MLEC strongly opposes the notion that returning the credit should be conditional on jurisdictional changes.

Since the PRA credits are associated with capacity that is paid for by firm service customers, MLEC recommends that the large load addition (SLGS) should only be receiving

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**VIA EMAIL (NDPSC@ND.GOV) AND U.S. MAIL
OVERNIGHT DELIVERY**

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**RE: Otter Tail Power Company 2023 Renewable Resource Cost Recovery Adjustment
Factor Rates
PSC Case No. PU-22-429**

**Otter Tail Power Company 2023 Fuel Clause Adjustment – EAR Tariff
PSC Case No. PU-23-27**

Dear Mr. Kahl:

Enclosed please find an original and seven (7) copies of the Midwest Large Energy Consumers' Comments ("MLEC") in the above-referenced proceedings.

Please add the following to the official service list for this matter:

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Also, attached is the Certificate of Service.

Thank you for your attention to this matter. Please let me know if you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'R. Savelkoul', with a large, stylized flourish at the end.

Richard J. Savelkoul

Enclosures

cc: Service List (w/encl)

CERTIFICATE OF SERVICE

I hereby certify that the original and seven (7) copies of the foregoing documents were hand delivered/mailed/e-mailed, on this 15th day of March, 2023, to the following:

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