

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**In the Matter of the Application of Otter Tail
Power Company for Authority to Increase Rates
for Electric Service in North Dakota**

Case No. PU-23

APPLICATION TO PROTECT INFORMATION

Pursuant to N.D.A.C §§ 69-02-09-01 and 69-02-09-04, Otter Tail Power Company (OTP) respectfully requests that the Commission issue a protective order limiting disclosure of trade secret, proprietary, commercial or financial information, as defined in N.D.C.C. §§ 44-04-18.4 and 47-25.1-01(4), included in OTP's filings in the above referenced case. The purpose of the requested protective order is to protect such information from public disclosure under N.D.C.C. § 44-04-18 *et seq.* or any other applicable public disclosure laws.

Attachment A to this Application identifies the portions of OTP's initial rate case filing that contain information OTP seeks to protect from public disclosure.¹ OTP has provided one, unredacted copy of these documents to the Commission in accordance with N.D.A.C. § 69-02-09-02, labeled **PROTECTED INFORMATION – PRIVATE**.

1. General Description of the Nature of the Information Sought to be Protected.

OTP seeks to protect the following types of information in this case:

- *Customer-Specific Sales and Revenues:* OTP's initial filing includes information regarding the annual and seasonal energy (kilowatt hour (kWh)) and demand (kilowatt) (kW) of individual customers. This customer-specific data is used in OTP's sales and revenue forecasts, class cost allocation and rate design.² The initial filing also contains information regarding base rate revenue collected from individual customers under present and proposed.³ As the case develops, it is possible that more granular (i.e., monthly) customer-specific energy usage information, or other customer-specific information could be provided through discovery or in subsequent filings.

¹ While Attachment A identifies portions of OTP's initial rate case filing that contain information OTP seeks to protect from public disclosure, OTP requests the protective order be broad enough to cover all additional information exchanged during this proceeding and qualifying for protection.

² In some instances, OTP has aggregated class-level data in order to avoid disclosing individual customer information. Further, OTP has generally protected all Large General Service class data so as to protect the individualized information of certain customers within that class.

³ As discussed in the Direct Testimony of OTP witnesses Mr. Bruce G. Gerhardson and Mr. David G. Prazak, OTP is proposing to update the individualized pricing for one customer taking service under OTP's Super Large General Service tariff. Given the sensitive nature of this information, the updated pricing is being provided directly to the customer.

- *OTP Proprietary Modeling and Confidential Information:* Several of the inputs and outputs to the sales and revenue forecast constitute propriety models or work product developed by OTP. Further, OTP's initial filing provides selected wage and compensation data.
- *Proprietary Information of Third Parties:* OTP's initial filing contains information licensed or sold to OTP pursuant to contractual arrangements with third parties. Such information includes actuarial studies, employee compensation and benefits data, surveys, and benchmarking.

Additional information on the nature of the information sought to be protected is provided in Attachment A.

2. The Specific Law or Rule on which Protection is Based

OTP's request for protection is based upon N.D.C.C. § 44-04-18.4 and N.D.A.C. Ch. 69-02-09.

3. Justifications for Trade Secret Status

Each of the categories of information described in subpart (1), above, constitutes "trade secret information" as defined in N.D.C.C. §§ 44-04-18.4(2)(d) and 47-25.1-01(4) because all of that information: (1) derives 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) is the subject of efforts that are reasonable under the circumstances to maintain the secrecy of the information. OTP does not disclose this information publicly absent appropriate procedural protections limiting its access. Further, this information is not readily ascertainable by proper means by other persons because it is either information directly in OTP's systems (i.e., sales and revenue data) or has been provided directly to OTP from customers or vendors under an obligation by OTP to maintain its confidentiality.

Regarding independent economic value:

- *Customer-Specific Sales and Revenues:* This information has value to alternative energy suppliers that could be competing with OTP for service to existing customers or in efforts to attract new customers. It also could be used by market participants in bidding or other strategies, to the detriment of OTP's customers. Further, customer-specific information has independent economic value to those customers themselves, who derive value from OTP's efforts to maintain its confidentiality.
- *OTP Proprietary Modeling and Confidential Information:* Some of this information has value to alternative energy suppliers that could be competing with OTP for service to existing customers or in efforts to attract new customers. It also represents significant work product of OTP, the cost of which generally is borne by

customers through the payment of the cost of service. This modeling could be used by market participants in bidding or other strategies, to the detriment of OTP's customers. Finally, contractual counterparties could use this information in negotiations to extract additional value from OTP and its customers.

The confidential information in the initial filing includes wage and compensation data, which could be used by entities seeking to hire OTP personnel, in the labor market generally to inhibit OTP's ability to hire new individuals, or in future contractual negotiations.

- *Proprietary Information of Third Parties:* This information has value to alternative energy suppliers that could be competing with OTP for service to existing customers or in efforts to attract new customers. Some of this information could assist entities in hiring away talent from OTP or generally inhibiting OTP's ability to retain and attract members of its workforce. It also represents significant work product of OTP's vendors. Not protecting this information could jeopardize OTP's ability to work with these vendors in the future or increase the cost of any future engagements, all to customers' detriment. Finally, contractual counterparties could use this information in negotiations to extract additional value from OTP and its customers.

4. Other Bases Upon Which Information Qualifies for Protection

The categories of information in subpart (1) also constitute "commercial information," as defined in N.D.C.C. § 44-04-18.4(2)(a), "financial information," as defined in N.D.C.C. § 44-04-18.4(2)(b), and "proprietary information" pursuant to N.D.C.C. § 44-04-18.4(2)(c)(5). To the extent OTP is required to produce any proprietary modeling, that information would constitute "proprietary information" pursuant to N.D.C.C. § 44-04-18.4(2)(c)(7) and (8).

OTP has prepared a proposed protective order and protective agreement for the Commission's consideration, copies of which are provided as Attachments B and C to this Application.

Dated: November 2, 2023

Respectfully submitted,

OTTER TAIL POWER COMPANY

By: /s/LAUREN D. DONOFRIO

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Attachment A

Location and General Description of Protected Information in OTP Initial Filing

Location in Initial Filing	Category of Protected Information	Description of Protected Information
Gerhardson Direct	Customer-Specific Sales and Revenues	Anticipated energy use of an individual customer. Anticipated reduction in energy use and reasons for reduction for an individual customer. Base rate revenue impacts for individual customer.
Peterson Direct, Schedules 13 and 14	Proprietary Information of Third Parties	Mercer five-year projection for pension and postretirement medical plan costs.
Bulkley Direct	Customer-Specific Sales and Revenues	Amount of 2024 Test Year sales attributed to an individual customer.
Mortenson Direct and Mortenson Direct, Schedule 2	Customer-Specific Sales and Revenues OTP Proprietary Modeling and Confidential Information	Historical and projected energy use of individual customers. Use of system marginal energy pricing allocation in OTP's revenue model.
Prazak Direct, Schedule 3	Customer-Specific Sales and Revenues	Proposed base rate revenue for individual customer.
Wasberg Direct and Wasberg Direct Schedules 2, 3, 5 and 6	Proprietary Information of Third Parties OTP Proprietary Modeling and Confidential Information	Employee compensation established pursuant to collective bargaining agreements. Employee compensation associated with the 2024 Test Year annual incentive program for certain employee groups. Mercer study of the competitiveness of OTP compensation program. Mercer study of the competitiveness of OTP executive compensation BenVal study of the competitiveness of OTP employee benefits offerings. Benefits renewal cost study performed by Mercer.
Interim Schedules – Vol. 1	Customer-Specific Sales and Revenues	Rate revenue and billing determinants of individual customers.
Supporting Information – Vol. 3	Customer-Specific Sales and Revenues	Rate revenue and billing determinants of individual customers.

Attachment A

Location and General Description of Protected Information in OTP Initial Filing

Location in Initial Filing	Category of Protected Information	Description of Protected Information
Workpapers – Vol. 4a	Customer-Specific Sales and Revenues Proprietary Information of Third Parties	Rate revenue and billing determinants of individual customers. Information of SNL, RRA, S&P and other commercial data providers used by Ms. Bulkley in certain calculations and workpapers.

Attachment B

Proposed Protective Order

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**In the Matter of the Application of Otter Tail
Power Company for Authority to Increase Rates
for Electric Service in North Dakota**

Case No. PU-23-~~XXX~~

OAH File No. 2023~~XXXX~~

[PROPOSED] ORDER PROTECTING INFORMATION

1. On November 2, 2023, Otter Tail Power Company (OTP or the Company) requested the Commission issue a protective order limiting disclosure of trade secret, proprietary, commercial or financial information, as defined in N.D.C.C. §§ 44-04-18.4 and 47-25.1-01(4), included in OTP's filings in the above referenced case.

2. On November 2, 2023, OTP filed its application in Case No. PU-23-_____. That application and supporting testimony and materials contained certain information OTP seeks to protect from public disclosure.

3. The specific information for which OTP seeks protection include the following items:

- *Customer-Specific Sales and Revenues:* OTP's initial filing includes information regarding the annual and seasonal energy (kilowatt hour (kWh)) and demand (kilowatt) (kW) of individual customers. This customer-specific data is used in OTP's sales and revenue forecasts, class cost allocation and rate design. The initial filing also contains information regarding base rate revenue collected from individual customers under present and proposed rates, and customer-specific pricing. As the case develops, it is possible that more granular (i.e., monthly) customer-specific energy usage information or other customer-specific information could be provided through discovery or in subsequent filings.
- *OTP Proprietary Modeling and Confidential Information:* Several of the inputs and outputs to the sales and revenue forecast constitute propriety models or work product developed by OTP. Further, OTP's initial filing provides selected wage and compensation data of OTP employees.
- *Proprietary Information of Third Parties:* OTP's initial filing contains information licensed or sold to OTP pursuant to contractual arrangements

Attachment B

Proposed Protective Order

with third parties. Such information includes actuarial studies, employee compensation and benefits data, surveys, and benchmarking.

4. OTP asserts each of these categories of information described constitutes “trade secret information” as defined in N.D.C.C. §§ 44-04-18.4(2)(d) and 47-25.1-01(4). OTP also contends the information is “commercial information,” as defined in N.D.C.C. § 44-04-18.4(2)(a), “financial information,” as defined in N.D.C.C. § 44-04-18.4(2)(b), and “proprietary information” pursuant to N.D.C.C. § 44-04-18.4(2)(c)(5). The information is not publicly available, is confidential and proprietary business information, was prepared specifically for OTP with data inputs unique to OTP or is subject to agreements that require the ongoing confidentiality of the information. This information's confidentiality has been maintained by OTP and is not ascertainable by proper means by other persons.

5. If not protected, vendors and competitors would have an opportunity to obtain economic value from disclosure or use of the information to the detriment of OTP and its customers. If publicly available, the information could be used by alternative energy suppliers to compete with OTP for service to existing customers or in efforts to attract new customers. It also could be used by market participants in bidding or other strategies, ultimately to the detriment of OTP’s customers. Further, customer-specific information has independent economic value to those customers themselves, who derive value from OTP’s efforts to maintain its confidentiality. Some of the information represents significant work product of OTP, the cost of which generally is borne by customers through the payment of the cost of service. Finally, entities could use the information to hire away talent from OTP or generally inhibit OTP’s ability to retain and attract members of its workforce.

6. I find for the reasons outlined above that the information is entitled to protection as requested.

THEREFORE, IT IS HEREBY ORDERED that protection is granted to OTP as requested with respect to identified filings in case number PU-23-_____. All access to such information shall be in accordance with N.D.A.C. § 69-02-09-07.

Attachment C

Proposed Protective Agreement

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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Case No. PU-23-~~XXX~~

OAH File No. 2023~~XXXX~~

[PROPOSED] PROTECTIVE AGREEMENT

I, the undersigned, acknowledge that I have read the attached **ORDER PROTECTING INFORMATION** dated _____, 20__ (the Order) in North Dakota Public Service Commission Case No. PU-23-~~XXX~~, OAH File No. 2023~~XXXX~~, and understand and agree to be bound by all of its terms. I further acknowledge that I have complied with all aspects of N.D.A.C. § 69-02-09-07(2) (as applicable) and have been granted authorization to access the information subject to protection under the Order.

I agree not to disclose to any person or entity not authorized to receive materials designated "**PROTECTED DATA**," "**NOT PUBLIC DATA**," "**TRADE SECRET INFORMATION**," "**NONPUBLIC DATA**," or other similar markings under the terms of the Order, or any copies or extracts of information derived from those items, which have been disclosed to me. I further agree to use any materials disclosed to me solely for this proceeding and no other purpose.

I submit myself to the jurisdiction of the Office of Administrative Hearings in North Dakota and the North Dakota Public Service Commission for the purpose of enforcing the Order.

Date: _____

Signature

Type or Print Name

Address

Name of Employer

Name of Party