CONTRACT NUMBER PU-891-24

Administrator:

State of North Dakota
Public Service Commission
State Capitol - 12th Floor
Bismarck, ND 58505-0480
(701) 328-2400

Date: 1/31/24

Case No. PU-23-342

St Kahl

Steve Kahl
Executive Director

Contractor

PCMG and Associates, LLC
Name

22 Brookes Avenue — **Address**
Gaithersburg, MD 20877 — **City/State/Zip**
202-422-2720 — **Phone**

Karl Richard Pavlovic — **Typed Name**
Managing Director — **Title**

Karl R Pavlovic — **Signature**
1/30/24 — **Date**

Agreement Information

Contract No.:	PU-891-24
Start Date:	Upon Execution
End Date:	December 31, 2024
Case No.	PU-23-342

Type of Contract: (X) Fixed Price
(   ) Cost Reimb.   (   ) Unit Price
(   ) Other

Budget Information

Cost Center:	7300
Services:	Consulting Services
Expenses:	$90,750

Type of Contractor: (   ) Individual
(   ) Corporation   (   ) Partnership
(   ) Public Agency
(   ) Nonprofit Organization
(X) Other

This Contract is entered into between the State of North Dakota acting through the Public Service Commission (STATE) and PCMG and Associates, LLC (CONTRACTOR). This contract consists of this sheet, general provisions and specific provisions.

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Executed Contract
Public Service Commission

PURCHASE OF SERVICE CONTRACT

The parties to this contract are the State of North Dakota, acting through its North Dakota Public Service Commission, Public Utilities Division (STATE) and PCMG and Associates, LLC 22 Brookes Avenue Gaithersburg, MD 20877-2717 (CONTRACTOR).

1. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, agrees to provide the services enumerated below. CONTRACTOR shall be registered with the North Dakota Secretary of State and the North Dakota State Procurement Office prior to Contract execution.

CONTRACTOR agrees to perform services outlined in "Section 3 Scope of Work" per the schedule outlined within that section of RFP number 408.23.12.014 and CONTRACTOR's January 11, 2024, response to RFP number 408.23.12.014 (the "CONTRACTOR's Proposal"). The written proposal provided by CONTRACTOR is attached to and incorporated into this agreement.

2. COMPENSATION

Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed $90,750. For the purposes of clarity, the services included in the contractual amount are located in section III "Scope of work strategy (RFP Section 4.4.3) on Pages 2 through 13 in the CONTRACTOR'S Proposal.

The Contractual Amount is firm for the duration of the Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract, unless amended, regardless of this difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

The STATE will make payments based on a monthly payment schedule. Each billing must consist of an invoice listing the contract number, hours worked at the contract rate, the staff person completing the work, and include a progress report. No payment will be made until the Project Manager has reviewed the progress report and approved the invoice.

Adam Renfandt – Project Manager
Public Utility Analyst – North Dakota Public Service Commission
600 E Boulevard Ave, Dept 408
Bismarck, ND 58505-0480
arenfandt@nd.gov
701-328-4153

Payment

A. Payment made in accordance with this Compensation section constitutes payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR will not receive any additional compensation hereunder.

B. STATE will make every attempt to make payment under this Contract within forty-five(45) calendar days after receipt of an approved invoice.

C. Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation to this contract. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

D. For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from the payments that are or will become due and payable to CONTRACTOR under this Contract.

Travel

CONTRACTOR acknowledges travel costs are included in the Contractual Amount and may include travel costs in the monthly invoices submitted to STATE.

Prepayment

STATE will not make any advance payments before full performance by CONTRACTOR under this Contract.

Payment of Taxes by STATE

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish certificates of exemption upon request by the CONTRACTOR.

Taxpayer ID

CONTRACTOR shall provide STATE with its federal employer ID number and North Dakota tax ID number upon request.

3. TERM OF CONTRACT

This Contract begins on the date the last party has fully executed the Contract, and ends on December 31, 2024.

No Automatic Renewal

This Contract will not automatically renew.

Extension Option

STATE reserves the right to extend the Contract up to three times for an additional period of time not to exceed 12 months per extension.

Renewal Option

STATE may renew this Contract upon satisfactory completion of the initial Contract term. STATE reserves the right to execute up to three options to renew this Contract under the same terms and conditions for a period of twelve months each.

4. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the parties.

5. TERMINATION OF CONTRACT

Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both parties, executed in writing.

Termination without Cause

STATE may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.

Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

Termination for Lack of Funding or Authority

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

A. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

B. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

C. If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.

Termination for Cause

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

A. If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by STATE; or

B. If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

6. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

7. INDEMNITY

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (STATE), from and against claims based on the vicarious liability of the STATE or its agents, but not against claims based on the STATE's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. The legal defense provided by CONTRACTOR to the STATE under this provision shall be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary. An attorney appointed to represent the STATE shall first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under North Dakota Century Code section 54-12-08. CONTRACTOR also agrees to defend, indemnify, and hold the STATE harmless for all costs, expenses, and attorneys' fees incurred if the STATE prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation continues after the termination of this agreement.

8. INSURANCE

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require from all subcontractors, prior to commencement of an agreement between Contractor and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

A. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of $2,000,000 per occurrence.

B. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of $500,000 per person and $2,000,000 per occurrence.

C. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract.

D. Employer's liability or "stop gap" insurance of not less than $2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.

E. Professional errors and omissions with minimum limits of $1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change of cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

A. Any deductible or self-insured retention amount or other similar obligation under the policies is the sole responsibility of CONTRACTOR. The amount of any deductible or self-retention is subject to approval by the STATE.

B. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the STATE. The policies must be in form and terms approved by the STATE.

C. The duty to defend, indemnify, and hold harmless the STATE under this agreement is not limited by the insurance required in this agreement.

D. The State of North Dakota and its agencies, officers, and employees (STATE) shall be endorsed on the commercial general liability policy, including any excess policies (to the extent applicable), as additional insured. The STATE shall have all the benefits, rights and coverages of an additional insured under these policies that may not be limited to the minimum limits of insurance required by this agreement or by the Contractual indemnity obligations of CONTRACTOR.

E. The insurance required in this agreement, through a policy or endorsement, must include:

   i. "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the STATE;

   ii. a provision that CONTRACTOR'S insurance coverage is primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the STATE and that any insurance, self-insurance or self-retention maintained by the STATE is in excess of the CONTRACTOR'S insurance and does not contribute with it;

   iii. cross liability/severability of interest for all policies and endorsements;

   iv. The legal defense provided to the STATE under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the STATE is necessary;

v. The insolvency or bankruptcy of the insured CONTRACTOR does not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.

F. CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement. All endorsements must be provided as soon as practicable.

G. Failure to provide insurance as required in this agreement is a material breach of Contract entitling the STATE to terminate this agreement immediately.

H. CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to these policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided 10 days prior to coverage expiration. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

9. WORKS FOR HIRE

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE is the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

10. WORK PRODUCT

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

11. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

STATE:	CONTRACTOR:
Steve Kahl, Executive Director	Karl Pavlovic
Public Service Commission	PCMG and Associates, LLC
600 E. Boulevard Avenue, Dept. 408	22 Brookes Avenue
Bismarck, ND 58505-0480	Gaithersburg, MD 20877

Notice provided under this provision does not meet the notice requirements for monetary claims against the STATE found at North Dakota Century Code section 32-12.2-04.

12. CONFIDENTIALITY

CONTRACTOR shall not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, North Dakota Century Code chapter 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Contract.

13. COMPLIANCE WITH PUBLIC RECORDS LAW

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such request.

14. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR'S activities and responsibilities under this Contract, except to the extent specified in this Contract.

15. ASSIGNMENT AND SUBCONTRACTS

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate without cause.

CONTRACTOR may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR does not have authority to contract for or incur obligations on behalf of STATE.

16. SPOLIATION – NOTICE OF POTENTIAL CLAIMS

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect the evidence, including the scene of an accident.

17. MERGER AND MODIFICATION

This Contract, including the following documents, constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented or amended, in any manner, except by written agreement signed by both parties.

Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Contract, the documents shall control in this order of precedence:

a. The terms of this Contract as may be amended;

b. STATE RFP number 408.23.12.014

c. CONTRACTOR's written negotiated proposal dated January 11, 2024.

d. All terms and conditions contained in any end user agreements (e.g. automated click-throughs, shrink wrap, or bonus wrap) are specifically excluded and null and void, and may not alter the terms of this Contract.

18. SEVERABILITY

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain that term.

19. APPLICABLE LAW AND VENUE

This Contract is governed by and construed in accordance with the laws of the STATE. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or forum non conveniens.

20. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

21. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by North Dakota Century Code section 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

22. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (See N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

23. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

II. RFP Amendments (RFP Section 4.4.2)

No solicitation amendments were issued for this RFP.

III. Scope of Work Strategy (RFP Section 4.4.3)

A. Strategy for Scope of Work Requirements

The North Dakota Public Service Commission, Public Utilities Division (Division), is soliciting proposals for (1) a thorough analysis of the rate increase application, (2) written testimony and effective oral testimony at hearing, and (3) assistance in the preparation of pre- and post-hearing documents and possibly application dismissal documents.

Specifically, regarding the analysis of the rate increase application, the Public Utilities Division requests a detailed analysis and conclusions related to the appropriate rate base, cost of capital, income, expenses, class cost of service study, revenue allocation to the classes and rate design for Otter Tail Power Company, (Otter Tail or Company) 2023 Electric Base Rate Increase application for the North Dakota electric operations.

The Divisions estimates (subject to change) the following schedule for this proceeding.

- Contract start date: January 25, 2024
- Testimony of the selected offeror, ratepayer advocacy staff and any other intervenor: March 26, 2024
- Rebuttal Testimony of all parties: April 26, 2024
- Surrebuttal Testimony of all parties: May 9, 2024
- Technical Hearings: Last part of May 2024
- Initial Briefs: TBD
- Reply Briefs: TBD

Responses to data requests due 10 days after receipt.

Based on its analysis of the Company's application below (III.B), the PCMG project team (see Section IV below) proposes to provide the requested assistance to the Public Utilities

Division through the following six work plan deliverables to the estimated schedule or subsequent revisions of the schedule.

The work will be performed at PCMG's offices with attendance at hearing performed at the North Dakota Public Service Commission in Bismarck. No State furnished property and services will be required, other than consultation with the Commission's ratepayer advocacy staff.

Deliverable 1 – Review, Analysis and Critique of the Company's Rate Increase Filing

PCMG will undertake a thorough analysis of the Company's application in light of (1) the evidentiary record and rate directives from prior relevant Commission Orders, (2) regulatory ratemaking theory and practice, (3) the Commission's past policy determinations with regard to gas utility rates and costs, (4) relevant North Dakota and Commission statutory and regulatory requirements, and (5) information and data received in response to identified-issue-targeted discovery prepared by PCMG. This analysis will focus on appropriate rate base, cost of capital, income, expenses, class cost of service study, revenue allocation to the classes, and tariff rate design.

The results of this analysis will be memorialized in a report to the Division. In addition to PCMG's findings, the report will include recommendations with regard to the issues identified and thoroughly document all qualitative and quantitative analyses performed. In the event that there are delays in the discovery process, PCMG will produce a preliminary report into which findings and recommendations based on discovery can be incorporated as they become available. The report will form the initial basis for written testimony prepared in consultation with the Division (see Deliverables 2-4).

Deliverable 2 – Direct Testimony and Exhibits

PCMG will draft and finalize direct testimony and relevant exhibits in support of its conclusions and recommendations for review by the Division and respond to discovery directed to its testimony.

Deliverable 3 – Rebuttal Testimony and Exhibits

PCMG will review, analyze and summarize intervenor testimony and draft discovery regarding the positions and issues articulated therein, provide written rebuttal testimony as required, respond to any discovery directed to PCMG's testimony, and provide any other assistance required by the Division.

Deliverable 4 –Surrebuttal Testimony and Exhibits

PCMG will review, analyze and summarize Company and intervenor testimony and draft discovery regarding the positions and issues articulated therein, provide written surrebuttal testimony as required, respond to any discovery directed to PCMG's testimony, and provide any other assistance required by the Division.

Deliverable 5 – Cross-Examination and Testimony at Hearing

At hearing PCMG will assist the Division with the preparation and conduct of cross-examination of intervenor and Company witnesses, present oral testimony if required, and respond to cross-examination.

Deliverable 6 – Assistance on Brief

PCMG will provide the Division with assistance on initial and reply briefs and any other assistance required by the Division.

B. Preliminary Identification of Issues

On November 2, 2023, Otter Tail Power Company (Otter Tail or Company), filed a petition with the North Dakota Public Service Commission (Commission) requesting (1) an increase in its electric distribution service by approximately $17.358 million or 8.43% over current rates and (2) moving $3.547 million of Transmission Cost Recovery Rider costs; (3) moving $3.596 of Generation Recovery Rider costs; (4) moving $618,840 of Metering and Distribution Cost Recovery Rider costs and; (5) moving $15.540 million of Renewable Resource Recovery costs into base rates. The total rider costs to be moved into base rates are $23.302 million, and when added to the revenue requirement increase proposal of $17.358 million, results in total 2024 revenue requirement of $40.661 million increase to base revenues. The Company is also requesting interim rate relief of $34.451 million or 6.03% increase including rider revenues effective January 1, 2024, subject to refund, until final rates are placed into effect. The Company's request is based on a 2022 projected future test year period. The Company is proposing an overall rate of return of 7.85% which includes a return on equity of 10.60%. The Company is proposing a Test Year Period (calendar year) of 2024 based upon an average forecasted Rate Base balance of $661.734 million. The Company's Operating Revenues at current rates present rates is $204.522 million. Under the test year 2024 period, the overall revenue requirement is proposed to be $223.347 million. The Company provides service to customers in North Dakota, Minnesota and South Dakota. The Company utilizes a uniform jurisdictional allocation procedure to accurately recover its costs of providing service across its entire service territory.

The Company's last base rate case proceeding was approved in Case No. PU-17-398 which employed a 2018 test year period. The revenue deficiency in this proceeding is due to significant market changes in the areas of labor, materials and equipment. High inflation also caused the need for this rate application as well as increases in equipment and manufacturing backlog. The Company has experienced increases in investments in generation, transmission and distribution infrastructure which cannot be offset by customer growth or other cost reduction efforts.

Company witness Mr. Gerhardson stated that since the last rate case proceeding, the Company has invested in major generating facilities related to wind energy, natural gas generator, the purchase of Ashtabula III (previously a power purchase agreement), and the completion of Hoot Lake Solar Facility in 2023. Other investments included non-routine projects like the Merricourt Wind Energy Center, Astoria Station and large transmission projects. The Company's planned investments are $888 million through the 2024-2027 periods, with annual investments of $222 million. These projects include the wind farm upgrade project, the Advanced Metering Infrastructure, Demand Response, Outage Management Systems and new regional transmission projects.

PCMG has identified the following issues in the Company's filing:

1. Revenue Requirement

Rate Base

Company witness Ms. Peterson has proposed a Rate Base balance through the 2024 average test year period of $661.733 million and an Electric Plant in Service balance of $1.259 billion. The Company developed its capital budgeting using Power Plan and Utilities International. The Company capital projects are broken down by routine and non-routine projects. The Company the 2022 actual costs are adjusted for non-recurring events and other variances, (tree-trimming, unexpected equipment failures, rental expense and other mitigating circumstances). The Company has shown an Electric Plant in Service (EPIS) balance of $1.042 billion as of the end of 2022. The Company projected an EPIS balance in 2023 of $1.148 billion and a test year 2024 balance of $1.259 billion, or $217 million of additional EPIS.

Other Rate Base Components include Working Capital allowances, ($1.465 million), Materials and Supplies, ($14.738 million) Fuel Stock, ($4.495 million) Prepayments, ($18.631 million) Customer Advances of ($710,769) and Accumulated Deferred Income Taxes of ($175.769 million). .

A review of the Company's past plant additions (actual vs. budgeted) should be examined to determine whether the Company's projected balances between the last base rate case period 2017-2022, and through the 2024 average test year period, are reasonable, prudent and achievable. This review consists of (1) examination of updates to the Company's budget process and construction program, as to the timing of projects being placed in service, (2) determination of whether plant additions are mandatory in nature and in accordance with federal, state and local law, (3) determination of the need for the plant additions to provide safe and reliable gas utility service, and (4) determination of whether capitalization of costs allocated from the parent company are properly allocated to the North Dakota jurisdiction service area.

Operation and Maintenance Expense (O&M)

The Company proposed total O&M Expenses of $163.831 million as of the calendar year ending 2022. The Company booked an unadjusted 2024 balance of $178.785 million. The Company projected $179.322 million as of the end of the test year 2024. Company witness Ms.

Peterson stated that the O&M Budget for 2024 is developed in the first and second quarters of the year 2023 before the budget year for the 2024 budget year. The primary components of the O&M Expenses are labor costs based upon the number of employees in each department and each functional area. These projects are based upon recent historical employee levels.

The Company has provided a breakdown of specific O&M expense adjustments in its 2024 FTY Adjustment Summary

- Rate Case Expenses - $359,404 (3-year amortization)
- Normalized Langdon Upgrade Project - $489,384
- Normalized Pension and Postretirement and Medical (PRM) - $2.481 million
- Non-Employee Director Restricted Stock - $262,850
- Executive Survivor & Supplemental Retirement Plan (ESSRP) - $61,296
- Employee Recognition and Gifts - $96,967
- Investor Relations - $102,431
- Long-Term Inventive - $1.221 million

The Company proposed a Depreciation Expense balance of $33.093 million for the 2024 test year period. The Company made adjustments to its Electric Vehicle expenses reducing the Depreciation Balance by $78,037, its General Interconnection Procedures (GIPs) Projects by $311,858, its Hoot Lake Solar project by $685,029, and its Transmission Recovery by $1.325 million, as well as other changes of $112 related to the allocations of normal adjustments.

Employee Compensation and Benefits

Company witness Mr. Wasberg testified to the level of employee compensation and benefits. Mr. Wasberg stated that the main components of compensation are (1) base salary and wages; (2) annual incentive compensation; (3) employee benefits plan including health care and dental; (4) a 401k retirement savings plan; (5) a defined benefits pension and post-retirement plan and; (6) a defined contribution 401k plan for other employees. Some key management employees also receive eligible long-term incentives. The Company has proposed increases for its management and executive employees of 4.00% as of April 1, 2024. Annual incentive expenses of $1.43 million are included in the revenue requirement calculation.

A review of the Company's projected O&M expenses from the period of 2022 (actual year) through the fully projected year of 2024 is required to be reviewed and examined to determine trends, prior years expense levels, and the averaging out certain expenses that are deemed to be fluctuating from year to year, volatile in nature and out of the Company's control. A review of the allocation method used to allocate costs from Otter Tail Power Company to the North Dakota jurisdiction operations, is required to determine whether any of the O&M costs allocated are consistent, necessary, appropriate, and applicable, and whether such costs are deemed prudent in the provision of utility service.

A similar review of the Company's remaining rate base components should also be undertaken to determine the appropriate allocation and the proper and reasonable level of costs through the end of the forecasted test year period for Materials and Supplies, Fuel Stock, Prepaids and Other, Cash Working Capital, and Customer Advances. The rate base components associated with the Company's projected EPIS such as Accumulated Depreciation, CWIP and Accumulated Deferred Income Taxes are computed based upon the Company's jurisdictional allocation on total Company and the North Dakota jurisdiction.

Revenues

Ms. Mortenson forecasted sales based upon a use-per-meter (UPM) and the number of meters served per customer. The Company has used a 20-year monthly historical data from 2003 through 2022 to estimate the sales revenue in the 2024 test year. The 20-year data includes normal weather conditions and forecasted economic and demographic conditions provided by Woods & Poole Economics, Inc. The Company started with the actual year 2022 sales revenue of $204.707 million. The Company adjusted this balance to the current period to $207.522 million. Through additional adjustments the Company proposed total Operating Revenues of $195,666,321, to calculate the revenue requirement increase of $40,660,558.

2. Cost of Capital (Bulkley Testimony, Wahlund Testimony)

Ann E. Bulkley testifies regarding return on equity (ROE) for Otter Tail. Ms. Bulkley recommends a ROE of 10.60 percent. Todd R. Wahlund provides testimony supporting the Company's requests for capital structure and overall rate of return (ROR). Mr. Wahlund's requested capital structure is 43.52 percent long-term debt, 2.98 percent short-term debt, and 53.50 percent common equity. The requested cost of long-term debt is 4.65 percent, and the requested cost of short-term debt is 5.25 percent. When these capital costs are combined with the requested ratios for the instruments the resulting weighted average cost of capital, or ROR, is 7.85 percent. (Wahlund testimony page 2). PCMG's cost of capital witness Dr. Marlon Griffing will critique the Company witnesses' analyses and perform his own analysis to arrive at an ROR for the Company.

Capital Structure

Mr. Wahlund states that the requested capital structure is the Company's forecasted capital structure for the test year ending December 31, 2024. MDU's calculations of these ratios appear to be appropriate. The long-term debt balance is the average of the forecasted month-end balances for the 12 months ending December 2024, the short-term balance is the average of end-of-month balances for the 13 months for the period beginning December 2023 and ending December 2024, as is the common-equity balance. The Company does not identify any planned additions to long-term debt or common equity in 2024. However, the Otter Tail common equity total increases to a new level in June 2024. The reason for this increase will be addressed in discovery.

Dr. Griffing will request in discovery that Otter Tail confirm that its planned and actual securities issuances for the test year still apply. He will employ actual balances and costs of the elements of the Company's capital structure as they become available during the test year to develop a proposed capital structure.

Return on Equity

Ms. Bulkley applies screens to determine a proxy group of electric utilities similar in risk to Otter Tail. Her screens for this group, which she uses throughout her analyses, are reasonable. However, she omits showing why the several companies of her beginning electric utility pool are eliminated. This absence from her analysis must be addressed in discovery. She then uses the capital structures of the seventeen electric utilities in the proxy group to assess whether the requested Otter Tail capital structure is reasonable.

Dr. Griffing will perform a similar exercise on the proxy group that he selects for his analyses, with the difference that he will include Standard & Poor's (S&P) credit ratings as one of his screens. This screen provides a method of incorporating the effects on risk among the companies of several risk factors. He will show in his testimony why specific electric utilities are eliminated by the screens.

Ms. Bulkley develops four estimates of a ROE for MDU. Three of the four methods apply familiar financial models. The models are the discounted cash flow (DCF) model, the capital asset pricing model (CAPM), and the empirical CAPM (ECAPM). She adds the risk premium (RP) approach. The ECAPM, an extension of the CAPM, has not been verified in any refereed journals as a sound approach and should be eliminated. Further, the RP approach is historically based. Therefore, its result should be ignored because rate-setting is a forward-looking exercise.

Ms. Bulkley finds an ROE of 10.60 percent that she asserts reflects the range of results derived from her ROE analyses. Her recommended ROE value is in the upper half of the range. She justifies this placement by discussing Otter Tail's size, share trading volume, characteristics of share ownership, customer concentration, anticipated capital requirements, regulatory risk, and flotation costs as factors that indicate Otter Tail's risk relative to the risk of proxy group members is higher. She does not make explicit adjustments for these factors to her ROE, instead selecting the higher end of her range for her ROW. It is noteworthy, however, that recent academic research finds that the effect of firm size on ROE is illusory. Dr. Griffing cites those articles in his analysis. Furthermore, Dr. Griffing's use of credit rating as a proxy group selection screen means that the factors Ms. Bulkley relies on to support her ROE recommendation are included in his ROE analysis. Except for flotation cost, applying these factors in an ROE analysis is double counting.

In contrast, Dr. Griffing will apply recognized ROE models to his proxy group companies and weight the outcomes equally to determine his ROE. He uses the constant-growth and multistage versions of the DCF ROE model. His CAPM approach is forward-looking and follows recent Federal Energy Regulatory Commission (FERC) applications of the model. These processes remove much of the analyst discretion as to input values that characterize the CAPM. He uses two sources for the broad market return input to the CAPM thereby creating two CAPM results. Dr. Griffing will perform a flotation-cost analysis and add the result to the outcome of the weighted-average ROE produced by his two models. Finally, he checks the reasonableness of his ROE outcome against recent ROEs authorized for U.S. natural gas companies by state regulatory commissions.

3. Class Cost of Service Study, Class Revenue Allocation, and Class Rate Design

In regulatory theory and practice the relationship between cost allocation and rate design and the utility's recovery of its approved revenue requirement is conceptually simple. If a utility's costs of providing service are not accurately allocated to its rate classes and rate class costs are not accurately reflected in the rate classes' tariff billing charges, then the utility will either over or under recover its costs of service or revenue requirement. The less accurately the costs are reflected in the rate classes' tariff billing charges, the greater the utility's under or over recovery of its costs will be. Regarding electric utilities, the primary drivers of costs are (1) the number of customers served by the utility's production and delivery system, (2) customer demand on the system, and (3) the volume of electric energy delivered to customers. In this proceeding the revenue requirement, class costs and tariff rates at issue concern Otter Tails's electric production, transmission and delivery systems serving North Dakota customers. Consequently, the fundamental issue is whether Otter Tail's proposed customer class cost allocations and tariff rates (1) accurately reflect the customer costs, demand costs, and commodity costs of its customers and (2) thus minimize the likelihood of either under or over recovery of Otter Tail's North Dakota electric revenue requirement.

For this rate proceeding Otter Tail has performed (1) a jurisdictional cost of service study to separate out its North Dakota jurisdictional costs, (2) a class cost of service study to then assign its North Dakota jurisdictional costs to its North Dakota customer classes and (3) a marginal cost study to design rate classes within each of the customer classes..

The testimony and exhibits of Christy L. Petersen present (1) the process (Exh. CLP-1, Sch. 2) and (2) the results (Exh. CLP-1, Schs. 6-9) of the embedded jurisdictional cost of service study (JCOSS) for the forecast year 2024. The JCOSS follows the standard approach of functionalizing, classifying, and then as appropriate directly assigning or allocating the costs to Otter Tail's North Dakota jurisdiction.

The testimony and exhibits of Amber M. Stalboerger present (1) the class cost allocation manual (Exh. AMS-1, Schs. 2-3), (2) the embedded class cost of service study (CCOSS) results (Exh. AMS-1, Sch. 6) and (3) the class revenue responsibilities (Exh, AMS-1, Sch. 7 and Table 5). The CCOSS also follows the standard approach of functionalizing, classifying, and then as appropriate directly assigning or allocating the JCOSS costs to Otter Tail's North Dakota customer classes. The allocators used are energy, demand and customers. The class revenue responsibilities are based on the CCOSS results but adjusted to meet the objectives of maintaining reasonable rate continuity and mitigating disproportionate or abrupt rate impacts.

The testimony and exhibits of David G. Prazak present (1) the rate design objectives of the proposed rate design and rates (Prazak at 2-3), (2) the roles that the embedded CCOSS and the marginal cost study results play in the proposed rate design and rates (Prazak at 3-4, 6-11 and Table 2), (3) the marginal cost study (Prazak at 4-6 and Exh. DGP-1, Schs. 2-3), and (4) the rate proposals (Prazak at 12-56, Tables 3-24 and Exh. DGP-1, Sch. 4).

Firmly established regulatory ratemaking theory requires that rates and charges reflect the costs incurred in providing service to the customer, modified only by compelling overriding policy considerations. The standard issues for review regarding class cost allocation and rate design (class revenue distribution and rate structure) are:

- Have the utility's costs been assigned to the proper functions?

- Have the functionalized costs been properly classified as customer, demand or volume related based on cost causation?

- Have the functionalized and classified costs been properly assigned to customer classes and rate classes or allocated using appropriate class allocators based on cost causation?

- Has the revenue requirement been properly assigned to classes giving appropriate weight to cost causation and relevant policy considerations?

- Do the class rate structures and rates properly reflect cost causation and relevant policy considerations?

Based on a preliminary analysis of Otter Tail's filing, PCMG has identified the following specific issue regarding Otter Tails cost studies and rate design proposals:

- The CCOSS uses the minimum size system method to classify as customer-related a portion Otter Tail's North Dakota distribution system plant. There is no justification in either theory or practice for minimum system customer classification of distribution plant,[1] the practical effect of which is both to over allocate costs to customer classes with large numbers of customers and to overstate the fixed costs of every rate class.

- The marginal cost study needs to be thoroughly evaluated.

- Are the proposed rate designs consistent with the sound rate design criteria of capital attraction, consumer rationing and fairness to ratepayers?

Discovery and thorough analysis of the cost studies and rate designs may identify further issues and potential errors in the proposed cost studies and rate designs.

[1] See Principles of Public Utility Rates, Bonbright et al, 2nd Ed., page 491.