

ISSUE DATE: December 18, 1996

DOCKET NO. E-017/M-96-903

ORDER AUTHORIZING CERTIFICATION OF OTTER TAIL POWER COMPANY'S  
APPLICATION FOR ALLOWANCES FROM THE CONSERVATION AND RENEWABLE  
ENERGY RESERVE

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Joel Jacobs  
Marshall Johnson  
Dee Knaak  
Mac McCollar  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Request of  
Otter Tail Power Company for Commission  
Certification of Eligibility for Renewable  
Energy Allowances

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**PROCEDURAL HISTORY**

On August 5, 1996, Otter Tail Power Company (OTP or the Company) filed a petition requesting that the Commission certify certain items in connection with the Company's application to the Environmental Protection Agency's (EPA's) Conservation and Renewable Energy Reserve (CRER).

On October 4, 1996, the Minnesota Department of Public Service (the Department) filed comments.

On October 16, 1996, OTP filed reply comments.

On December 5, 1996, the Commission met to consider this matter.

**FINDINGS AND CONCLUSIONS**

**I. THE COMMISSION'S ROLE**

The allowance-award process established by the regulations adopted to implement the Federal Clean Air Act Amendments (CAAA) of 1990 involves a major screening role for the Commission. In determining who shall receive allowances and how many allowances they shall receive, the Environmental Protection Agency (EPA) relies substantially on the determinations of the Commission with regard to whether applicants meet the eligibility requirements for allowances from the Reserve.

The certification responsibilities of the State Utility Commission having rate-making jurisdiction over the applicant as configured on the EPA Form 7601-10 (1-93) are as follows:<sup>1</sup>

**First Certification:** The State Commission must certify that the applicant's least cost plan or least cost planning process meets the requirements of 40 CFR 73.82 (a) (4). In addition to five criteria that *describe* a qualified process/plan is a requirement that the plan or planning process be implemented "to the maximum extent practicable."

**Second Certification:** If the applicant is claiming savings for a conservation or renewable energy measure *not* listed in Appendix A of 40 CFR Part 73, the State Commission must certify that the measure meets the criteria of 40 CFR 73.81 (a) (2).

**Third Certification:** If the applicant claims that verification of its conservation measures has been performed by the State and the state authority has utilized a verification methodology to determine the applicant's entitlement to a performance-based rate adjustment, the State Commission must certify that the verification procedures meet the ratemaking entity's requirements and the information and calculations (claimed energy savings) contained in the applicant's form are true and correct. 40 CFR 73.81(a)(2).

## II. COMMISSION FINDINGS

### A. First Certification

The first certification must be based on two distinct findings:

- that OTP has a least cost planning process that meets the five EPA criteria set forth in (a) (4) (I) through (v); and
- that the Company is implementing that plan to the maximum extent practicable.

First finding: The Commission has already made the first finding in a generic proceeding, Docket No. E-999/CI-91-923. In its July 23, 1992 Order, the Commission established that Minnesota utilities are subject to a least cost planning process that meets the criteria for a "least cost planning process" as specified in the EPA regulations.

Second finding: that OTP is implementing its least cost plan to the maximum extent practicable. Based on its own review and the Department's recommendation, the Commission finds that, as of the date of this Order, the Company is implementing its least cost plan to the requisite maximum extent practicable.

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<sup>1</sup> See In the Matter of Minnesota Power's 1994 Biennial Resource Plan Filing, DOCKET NO. E-015/RP-94-291, ORDER APPROVING 1994 RESOURCE PLAN AND REQUIRING INTERIM REPORT (May 1, 1995).

## B. The Second Certification

The second certification listed in EPA Form 7610-101 (1-93) is only required if the applicant is claiming savings for a conservation or renewable energy measure *not* listed in Appendix A of 40 CFR Part 73. Most of the measures cited by OTP appear in Appendix A. For these measures, no certification is needed.

However, OTP's Appliance Recycling-Refrigerators and Appliance Recycling-A/C Units projects do not appear in Appendix A. To be eligible for certification, therefore, these projects must meet the criteria of 40 CFR 73.81 (a)(2):

- (i) The measure is a cost-effective demand-side measure consistent with an applicable least-cost plan or a least cost planning process that increases the efficiency of the customer's use of electricity (as measured in accordance with Minn. Stat. § 73.82 (c)) without increasing the use by the customer of any fuel other than qualified renewable energy, industrial waste heat, or, pursuant to paragraph (b)(5) of this section, industrial waste gases.
- (ii) The measure is implemented pursuant to a conservation program approved by the utility regulatory authority, which certifies that it meets the requirements of paragraph (a)(2)(i) of this section and is not excluded by paragraph (b) of this section; and
- (ii) The measure is reported by the applicant in its application to the Reserve.

The Department argued that OTP's Appliance Recycling-Refrigerators and Appliance Recycling-A/C Units project were not cost-effective in 1994 and 1995, as required by 40 CFR 73.81 (a)(2)(i) and were, therefore, ineligible for certification.

The cost savings in question occurred in 1994 and 1995, but were the result of 1992 and 1993 recycling activities. The issue, then, is not whether the programs were cost-effective in 1994 and 1995, but whether they were cost-effective in 1992 and 1993.

In a previous Order, the Commission accepted the Department's recommendation and approved the savings resulting from the 1992 and 1993 recycling programs. Docket No. E-017/M-95-307. Similarly, in an August 19, 1991 memo in CIP Docket No. E-017/CIP-90-552, Department staff argued that the refrigerator project would be cost-effective, stating

... recipients of audits will be pre-qualified for the refrigerator change-out project by service personnel, making this project **very cost-effective**. Also, by requiring customers to give up their old, inefficient refrigerators, OTP will ensure that customers do not add to load by purchasing new, energy-efficient refrigerators while still keeping their old ones. (Emphasis added.)

The Commission finds no information in this record upon which to reverse its previous finding and determine that OTP's appliance programs were not cost-effective during the years in question, 1992 and 1993. Information cited by the Department as the basis for its allegation in this docket that the programs were not cost effective in 1992 and 1993 was **gathered** by OTP in 1992 and 1993 but simply indicates that these programs would not be cost effective *for the future*. The Company's recommendation in its 1995 compliance filing, being forward looking, did not contradict the Department's earlier analysis that the programs would be cost effective, at least as regards 1992 and 1993.

Accordingly, the Commission finds that OTP's appliance recycling projects meet the criteria of 40 CFR 73.81(a)(2) and will so certify.

### **C. The Third Certification: Verification of Savings**

OTP plans to apply to the EPA for 198 allowances from the CRER. The calculation of 198 allowances is based on energy saved in 1994 and 1995 through conservation measures. The energy savings cited on the CRER application were taken directly from the Lost Margin Calculation of the Company's April 1, 1995 and April 1, 1996 "Demand Side Management Financial Incentive Pilot Project" filings (Docket No. E-017/M-95-287 and Docket No. E-017/M-96-331). In its June 28, 1995 Order in Docket No. E-017/M-95-287 and its June 25, 1996 Order in Docket No. E-017/M-96-33, the Commission adopted the Department's recommendations to accept the Company's year end Conservation Improvement Program (CIP) tracker balance and allowed OTP to apply a surcharge to its customer bills to recover the portion of the CIP tracker balance not recovered in base rates.

The Commission concludes, therefore, that the savings claimed by the Company in its application to the EPA are correct and accurate.

## **VI. COMMISSION ACTION**

The Commission has carefully reviewed the requirements which the Commission is asked to certify under the CAAA rules. In accord with the preceding analysis and findings, therefore, the Commission is prepared to fully certify OTP's proposal to the EPA, as required by the CAAA rules.

Specifically, the Commission will authorize the Executive Secretary to complete Step 12 of the Company's EPA Form 7610-10(1-93), indicating on behalf of the Commission that

1. OTP is subject to a least cost planning process that meets the established criteria;
2. that the utility is implementing a Commission-approved least cost planning process to the maximum extent practicable; and
3. that the energy savings claims OTP has made in its application to the EPA are

correct and accurate.

**ORDER**

1. The Commission's Executive Secretary is hereby authorized and directed to certify, on behalf of the Commission, the items listed in Step 12 of EPA Form 7610-10 (1-93) and take such other steps to communicate with the EPA consistent with this Order.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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