

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayer
Marshall Johnson
Ken Nickolai
Thomas Pugh
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Petition by Otter Tail Power Company for Approval of its Capital Structure and Permission to Issue Securities for Calendar Year 2005

ISSUE DATE: May 31, 2005

DOCKET NO. E-017/S-05-397

ORDER APPROVING 2005 ESTIMATED CAPITAL STRUCTURE, EQUITY RATIO, AND TOTAL CAPITALIZATION

PROCEDURAL HISTORY

On March 4, 2005 Otter Tail Power Company (Otter Tail or the Company) filed a request pursuant to Minn. Stat. § 216B.49, subd. 3 for approval of its proposed capital structure and permission to issue securities for calendar year 2005.

On April 15, 2005 the Minnesota Department of Commerce (the Department) filed comments recommending the Commission approve Otter Tail's request with conditions.

On April 21, 2005, Otter Tail filed reply comments agreeing with all the Department's recommendations except its sixth recommendation:

In the event the Commission approves the exclusion of short-term debt from the calculation of AFUDC [Allowance for Funds Used During Construction] in Docket No. E-017/M-04-1751, require Otter Tail to re-file its capital structure for approval within 30 days of the Commission Order.

The Commission met on May 11, 2005 to consider this matter.

FINDINGS AND CONCLUSIONS

I. Otter Tail's Proposal

First, Otter Tail requested approval of a common equity ratio of 59.8 percent, along with a contingency range of 10.0 percent above and below the ratio, i.e., a ratio of 53.8 percent to 65.8 percent. The Company proposed that any equity ratio falling outside this range for a period to exceed sixty (60) days would first have to be approved by the Commission.

Second, Otter Tail sought approval of a total capitalization of \$761,228,000, with a contingency cap of ten percent above that figure for a total capitalization of \$837,351,000. Issuing securities causing total capitalization to exceed the contingency amount for a period to exceed sixty (60) days would require Commission pre-approval.

Third, Otter Tail requested that the Commission forego its review-for-approval over any issuance of securities in conjunction with the Rights Agreement dated January 27, 1997 between the Company and Norwest Bank of Minnesota as Rights Agent (the Rights Plan).

Finally, Otter Tail proposed a capital structure that it argued was reasonable and would allow the Company to maintain a strong credit rating and to attract capital on favorable terms.

II. The Department's Recommendations

The Department made the following recommendation regarding the Company's proposals with respect to the issuance of securities in conjunction with the Rights Agreement dated January 27, 1997 between the Company and Norwest Bank of Minnesota as Rights Agent (the "Rights Plan"):

1. allow Otter Tail to forego prior Commission approval to issue securities under the Rights Plan and require the Company to refile a revised capital structure petition for review and approval by the Commission within six months after a triggering event; and
2. require that if Otter Tail either amends or terminates its Rights Plan prior to January 27, 2007, the Company must notify the Commission as soon as possible after such decision is made, and not later than Otter Tail's next earliest capital structure filing following such termination or amendment.

The Department's other recommendations were:

1. approve Otter Tail's 2005 estimated capital structure, with such approval remaining effective until the Commission issues a new capital structure Order for 2006;
2. approve Otter Tail's equity ratio of 59.8 percent plus/minus 10 percent, stating that equity

ratios outside this range may not exceed a period of 60 days without prior Commission approval;

3. approve Otter Tail's total capitalization of \$761.228 million with a contingency cap of 10 percent of \$837.351 million, stating that the Company may not exceed its total capitalization including the requested contingency amount for a period exceeding 60 days without Commission approval;
4. approve any securities issuance during 2005 that would not result in an equity ratio outside the proposed range, or a total capitalization exceeding its proposed cap for more than 60 days;
5. require Otter Tail to obtain prior approval for issuance of any securities in calendar year 2005 that would result in an equity ratio outside the approved range, or a total capitalization exceeding its approved cap for more than 60 days;
6. in the event that the Commission approves the exclusion of short-term debt from the calculation of Allowance for Funds Used During Construction (AFUDC) in Docket No. E-017/M-04-1751, require Otter Tail to refile its capital structure for approval within 30 days of the Commission Order.

III. Commission Analysis and Action

Minn. Rules, Parts 7825.1000 through 7825.1500 establish the filing requirements for a petition for approval of a capital structure. In its comments, the Department stated that Otter Tail has complied fully with these filing requirements and the Commission agrees.

Regarding the substance of the Company's proposal, the Commission is guided by Minn. Stat. § 216B.49, subd. 4, which states in part:

If the commission shall find that the proposed security issuance is reasonable and proper and in the public interest and will not be detrimental to the interests of the consumers and patrons affected thereby, the commission shall by written order grant its permission for the proposed public financing.

The Commission has reviewed the filings and heard the parties' oral presentations. The Commission concludes that it will adopt all the Department's recommendations except the final one regarding short-term debt in the calculation of AFUDC.

With respect to that issue, the Company argued that the Department's recommendation, as worded, could be taken as indicating that the Commission was not fully approving a capital structure for the Company, thereby potentially making it more difficult for the Company to obtain financing.

Based on the parties' discussion on this point the Commission understands that the Department's intent to coordinate the treatment of capital and the Company's desire for Commission

confirmation of its proposed capital structure can be accommodated by simply putting the Company on notice in this Order that if the Commission approves the exclusion of short-term debt from the calculation of AFUDC in Docket No. E017/M-04-1751 or other related docket, it may be necessary to revisit the issue of including short-term debt as part of the Company's capital structure approved in this docket.

Another issue discussed at the hearing was the filing date for the Company's next capital structure. The question addressed was whether the Company could adjust its work-flow to file its proposal earlier or move its requested effective date back so that the Commission would have adequate time between the filing date and the requested effective date to review and approve the capital structure. To move this matter forward, the Commission will direct the Company to be cognizant of the fact that sufficient review time is needed between when the Company files its 2006 capital structure petition and when the Company seeks to have the capital structure in effect and to use good faith efforts to file its 2006 capital structure petition as soon as it is reasonable to do so.

ORDER

1. Otter Tail's 2005 estimated capital structure is approved. Approval will remain effective until the Commission issues a new capital structure Order for 2006.
2. Otter Tail's equity ratio of 59.8 percent plus/minus 10 percent is approved. Equity ratios outside this range may not exceed a period of 60 days without prior Commission approval.
3. Otter Tail's total capitalization of \$761,228 million with a contingency cap of 10 percent of \$837.351 million is approved. The Company may not exceed its total capitalization including the requested contingency amount for a period exceeding 60 days without Commission approval.
4. Any securities issuance during 2005 that would not result in an equity ratio outside the proposed range, or a total capitalization exceeding its proposed cap for more than 60 days is approved.
5. Otter Tail shall obtain prior approval for issuance of any securities in calendar year 2005 that would result in an equity ratio outside the approved range, or a total capitalization exceeding its approved cap for more than 60 days.
6. The Company is hereby put on notice that if the Commission approves the exclusion of short-term debt from the calculation of AFUDC in Docket No. E017/M-04-1751 or other related docket, it may be necessary to revisit the issue of including short-term debt as part of the Company's capital structure approved in this docket.
7. Regarding the Rights Plan, Otter Tail is hereby allowed to forego prior Commission approval to issue securities under the Rights Plan. The Company shall refile a revised capital structure petition for review and approval by the Commission within six months after a triggering event.

8. If Otter Tail either amends or terminates its Rights Plan prior to January 27, 2007, the Company shall notify the Commission as soon as possible after such decision is made and no later than Otter Tail's first capital structure filing following such termination or amendment.
9. Otter Tail shall be cognizant of the fact that sufficient review time is needed between when the Company files its 2006 capital structure petition and when the Company seeks to have the capital structure go into effect. Accordingly, the Company shall file its 2006 capital structure petition as soon as it is reasonable to do so.
10. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

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