

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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

In the Matter of the Petition of Otter Tail  
Power Company to Revise its Cost of Energy  
Adjustment Tariff to Accommodate Purchased  
Energy from Renewable Resources

ISSUE DATE: July 12, 2006

DOCKET NO. E-017/M-03-970

ORDER GRANTING EXTENSION OF  
RECOVERY MECHANISM AND  
DIRECTING THAT REO ELIGIBILITY  
DETERMINATION BE MADE IN  
RESOURCE PLAN PROCEEDING

**PROCEDURAL HISTORY**

On June 27, 2003, Otter Tail Power Company (Otter Tail) filed a petition to revise its cost of energy adjustment clause tariff to permit the Company to use the tariff's automatic rate adjustment mechanism to recover the costs of purchased power generated by the use of wind or other renewable resources. Otter Tail's immediate purpose was to establish a recovery mechanism for the costs of a newly-executed purchased power agreement (PPA) for the combined output of 14 wind turbines, expected to total some 21 megawatts.

On October 21, 2003, the Commission issued an order adopting the parties' joint recommendation that resolved all issues between them. The Commission authorized Otter Tail to recover 90 percent of its purchased power costs for the wind generation at issue through the cost of energy adjustment clause and to defer the remaining 10 percent of these costs, with the potential for later true-up.

The Commission further directed Otter Tail to meet with the Department for additional discussions when the Company's wind generation was fully operative and accreditation data was available from the Mid-Continent Area Power Pool (MAPP).<sup>1</sup> The Commission also directed Otter Tail to file a tariff consistent with its agreement with the Department and stated that it would re-examine this tariff within twelve months of the date of that Order.

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<sup>1</sup>MAPP is being revised to be the MRO (Midwest Reliability Organization).

On October 21, 2004, Otter Tail filed a request to recover the wind power costs deferred between October 1, 2003 and August 31, 2004, but to continue deferring 10 percent of the costs incurred thereafter until sufficient data was available to calculate a capacity component.

On December 16, 2004, the matter came before the Commission. On January 13, 2005, the Commission issued an order, authorizing Otter Tail to recover 100 percent of the costs of purchases from the FPL Energy ND Wind II project (and any other purchases of wind-generated electricity it may make between the date of the order and June 30, 2006) through the fuel clause adjustment (FCA) until July 1, 2006.

The Commission also requested the Department to prepare a report regarding the appropriateness of continuing to allow recovery of 100 percent of the costs of purchasing wind-generated electricity through the FCA, and to submit it to the Commission before June 30, 2006.

On February 2, 2006, Otter Tail filed its request for removal of the sunset provisions included in the 2005 Order and for approval of tariff language. Otter Tail indicated that it had met the requirements of the current law related to expenditures incurred to meet the Renewable Energy Objectives (REO) requirement and requested the Commission to approve the automatic adjustment of charges to allow recovery of the expenditures.

The Department filed comments, and its report, on May 22, 2006.

On June 29, 2006, the Commission met to consider the matter.

## **FINDINGS AND CONCLUSIONS**

### **I. Positions of the Parties**

#### **A. Otter Tail**

In its February 2, 2006 petition, Otter Tail requested that the Commission remove the sunset provision in its cost of energy adjustment clause tariff with regard to purchased wind energy, as set forth in the Commission's January 13, 2005 Order.<sup>2</sup> In that order, the Commission authorized recovery of 100 percent of the costs of purchases from the FPL Energy ND Wind II project through the FCA until July 1, 2006.

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<sup>2</sup> *Order Temporarily Allowing Full Recovery Through Fuel Clause Adjustment and Requesting Report*, Docket No. E-017/M-03-070 (January 13, 2005).

In support of its petition, Otter Tail relied on the 2005 amendment to Minn. Stat. § 216B.1645,<sup>3</sup> which occurred after issuance of the January 13, 2005 Order. The Company asserted that the amendment to the statute now allows for recovery of all costs incurred to satisfy the REO, and eliminates the need for the Department to further report on the appropriateness of allowing 100 percent recovery of the costs of purchasing wind-generated electricity through the FCA. Otter Tail argued that under Minn. Stat. § 216B.1645, the Commission can approve expenditures and the approval of the contract is not required.

## **B. The Department**

The Department did not oppose continued recovery through the FCA of the FPL wind costs. The Department recommended that the REO eligibility of the project be determined either in the instant docket, or in the pending Otter Tail resource plan docket.<sup>4</sup> Further, the Department recommended changes in the language to replace provision 3 of the Company's cost of energy adjustment clause tariff, as set forth below:

The net energy cost of purchases from a qualifying facility, as that term is defined in 18 C.F.R. Part 292 and Minn. Rule 7835.0100, subp. 19, as amended, whether or not those purchases occur on an economic dispatch basis, and all expenses incurred by the Company pursuant to Minn. Stat. § 216B.1645.

The Department further recommended that only the energy portion of PPAs for wind-generated electricity from non-REO qualifying facilities with capacity exceeding 100 kW be allowed recovery through the FCA. The Department recommended the use of the MAPP/MRO method for estimating the capacity value of wind-generated electricity from non-REO qualifying facilities.

Finally, the Department concluded that non-REO qualifying facilities with capability of over 100 kW should no longer be allowed 100 percent recovery of costs of wind purchases through the FCA. The capacity portion should be recovered through base rates developed in rate proceedings. In its January 13, 2005 Order, the Commission requested the Department to report on the

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<sup>3</sup> **Minn. Stat. § 216B.1645.** Power purchase contract investment.

Subdivision 1. Commission authority. Upon the petition of a public utility, the Public Utilities Commission shall approve or disapprove power purchase contracts, investments, or expenditures entered into or made by the utility to satisfy . . . the renewable energy objectives set forth in section 216B.1691 . . . .

Subd. 2. Cost recovery. The expenses incurred by the utility over the duration of the approved contract or useful life of the investment and expenditures made pursuant to section 116C. 779 shall be recoverable from the ratepayers of the utility, to the extent they are not offset by utility revenues attributable to the contracts, investments, or expenditures. Upon petition by a public utility, the commission shall approve or approve as modified a rate schedule providing for the automatic adjustment of charges to recover the expenses or costs approved by the commission, . . .

<sup>4</sup> Docket No. E-017/RP-05-968.

appropriateness of continuing to allow recovery of 100 percent of the costs of purchasing wind-generated electricity through the FCA. The Department completed its review and filed its report on May 22, 2006.

The Department advanced the position that the amendment to Minn. Stat. § 216B.1645 to allow recovery of costs incurred for approved REO projects has alleviated much of the concern since, it theorized, most wind projects undertaken would likely be intended to qualify for recovery under the statute. The Department also reasoned that if non-REO eligible qualifying facilities larger than 100 kWh are proposed for recovery through the FCA, MAPP/MRO methodology could be used to estimate the capacity value to exclude from recovery under the FCA. The Department argued that only the energy portion should be allowed recovery pursuant to the FCA, while the capacity portion would be eligible for recovery in a rate case.

## **II. Commission Action**

In the Commission's January 13, 2005 Order in this matter, the Commission allowed full recovery of the costs under the FPL wind contract through the FCA until July 1, 2006. Since the January 13, 2005 Order, however, Minn. Stat. § 216B.1645 has been amended to offer the potential for full recovery of costs incurred under an approved PPA entered into to meet the REO.

Otter Tail now seeks the removal of the sunset provisions contained in the 2005 Order to permit the continued full-recovery of the costs incurred under the PPA, according to the terms of the revised statute. Consequently, the timing of this wind project, with the revision of Minn. Stat. § 216.1645, allows it to be determined by two different methods of analysis. The record in this matter was developed under the theory of determining the capacity component to recognize for FCA purposes, while the instant request is focused on implementing the new recovery provisions of the statute.

After review of the record in this proceeding, and listening to the arguments of the parties, the Commission concludes that an extension of the recovery mechanism in place under the January 13, 2005 Order is necessary until a final Order can be issued in this proceeding. Importantly, this will allow Otter Tail to continue to obtain full recovery of costs incurred under the PPA.

As a precursor to granting the requested recovery under the REO provisions of Minn. Stat. § 216B, the Commission will require Otter Tail to file the PPA with the Commission. While the Commission acknowledges that Otter Tail has already filed the PPA with the Department, the PPA has not been filed for Commission approval under Minn. Stat. § 216B.1645. Further, although the Commission has allowed recovery of the charges incurred under the PPA in its earlier orders in this matter, the record remains scant with respect to the appropriateness of the PPA. Accordingly, the Commission will also extend the opportunity for comment regarding the PPA to the Department as well as other interested parties.

Finally, the record in this proceeding did not focus on the development of evidence upon which a determination of REO eligibility could be determined. The issue of REO eligibility of the FPL project has instead been developed in Otter Tail's resource plan proceeding,<sup>5</sup> which is not expected to be completed until later in 2006. The Commission will therefore direct that the determination of REO eligibility be made when the resource plan proceeding concerning Otter Tail returns to the Commission.

The Commission will defer all other issues related to this docket until it returns to the Commission on REO eligibility and PPA approval.

### **ORDER**

1. The Commission grants an extension of the recovery mechanism in place under the January 13, 2005 Order until a final Order is issued in this proceeding, and directs the Company to revise its tariff as appropriate.
2. Otter Tail shall file the PPA for approval in this proceeding within 30 days of the date of this Order.
3. The Commission requests the Department and interested parties to make comments in the filing under the time frames to be set by separate notice.
4. The Commission defers the issue of REO eligibility to the resource plan proceeding concerning Otter Tail, Docket No. E-017/RP-05-968.
5. The Commission will defer other determinations until this docket returns to the Commission on REO eligibility and PPA approval.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

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<sup>5</sup> Docket No. E-017/RP-05-968.