

131 FERC ¶ 61,129
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Otter Tail Power Company

Docket No. ER10-183-001

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING AND ORDERING
FURTHER COMPLIANCE

(Issued May 10, 2010)

1. On January 29, 2010, Otter Tail Power Company (Otter Tail) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) (collectively, Applicants) submitted a filing to comply with the Commission's December 30, 2009 Order in this proceeding.¹ The December 30 Order addressed the Applicants' request for approval of various transmission infrastructure investment incentives and revisions to Otter Tail's transmission formula rate under Attachment O of the Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff),² pursuant to sections 205 and 219 of the Federal Power Act (FPA).³ In this order, we conditionally accept the Applicants' compliance filing, to become effective on January 1, 2010, as requested, subject to a further compliance filing.

I. Background and Description of Compliance Filing

2. Otter Tail is a Minnesota corporation, providing electricity to 423 communities in western Minnesota, northeastern South Dakota, and eastern North Dakota. Otter Tail owns and operates approximately 5,300 miles of transmission facilities and owns

¹ *Otter Tail Power Co.*, 129 FERC ¶ 61,287 (2009) (December 30 Order).

² Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, FERC Electric Tariff, Fourth Revised Volume No. 1.

³ 16 U.S.C. §§824d; 824s (2006).

approximately 770 megawatts of generation capacity in three states. Otter Tail is a transmission-owning member of Midwest ISO.⁴ Otter Tail operates in a joint pricing zone with Great River Energy (Great River) and Northern States Power Company. Otter Tail collects its annual transmission revenue requirement using Midwest ISO Tariff Attachments O and GG formula rates.⁵

3. On October 30, 2009, Otter Tail proposed changes to its Attachment O-Otter Tail to the Midwest ISO Tariff to permit recovery of two types of incentive rate treatments for its investment in certain regional transmission infrastructure upgrades (Otter Tail CapX2020 Projects) (October 30 Filing). In particular, Otter Tail requested recovery of: (1) 100 percent of prudently incurred Construction Work in Progress (CWIP) in rate base (100 percent CWIP Recovery), and (2) 100 percent of prudently incurred costs of transmission facilities that are cancelled or abandoned for reasons beyond Otter Tail's control (Abandoned Plant Recovery). Otter Tail also proposed changes to its Attachment O-Otter Tail to recover its revenue requirement under a forward-looking formula rate using projected test period cost inputs with an annual true-up, rather than a formula rate based on historical test period data.

4. On December 30, 2009, the Commission issued an order conditionally granting the transmission rate incentives and accepting Otter Tail's tariff revisions to its forward-looking formula rate. The Commission directed Otter Tail to submit a compliance filing making certain modifications to Attachment O-Otter Tail, to submit a new Attachment GG-Otter Tail, and to provide further explanation regarding Otter Tail's proposed accounting procedures for the 100 percent CWIP Recovery and Abandoned Plant Recovery incentives.

5. On January 29, 2010, Otter Tail submitted a filing with proposed tariff revisions and accounting information to comply with the filing directives set forth in the December 30 Order (January 29 Compliance Filing).

II. Notice of Filings and Responsive Pleadings

6. Notice of Otter Tail's filing was published in the *Federal Register*, 75 Fed. Reg. 6652 (2010), with interventions and comments due on or before February 19, 2010. On February 19, 2010, Great River submitted a motion to intervene and comments. On March 3, 2010, Otter Tail filed a motion to answer and answer to Great River's comments.

⁴ See *Otter Tail Power Co.*, 97 FERC ¶ 61,226 (2001); see also *Otter Tail Power Co.*, 98 FERC ¶ 62,218 (2002).

⁵ Exhibit No. OTP-5 at 13.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Otter Tail's answer because it provides information that assisted us in our decision-making process.

B. Substantive Matters

1. Abandoned Plant Recovery

9. In the December 30 Order, the Commission directed Otter Tail to file a new Attachment GG which properly reflects the requested Abandoned Plant Recovery incentive. Specifically, the Commission required Otter Tail to include, in its Attachment GG, the unamortized balance of abandoned plant in project net plant amounts so that customers taking service under Schedule 26 will be charged the return on any future abandoned plant costs, to the extent that the Otter Tail CapX2020 Projects qualify for regional cost-sharing under Attachment FF of Midwest ISO's Tariff, so that such costs will not be fully born by those customers taking service under Schedules 7, 8 and 9.⁶ Otter Tail proposes to adopt Attachment GG-Otter Tail that will, if any of the Otter Tail CapX2020 Projects become abandoned,⁷ reflect the amounts of abandoned plant in line 23b of Attachment O-Otter Tail (Unamortized Balance of Abandoned Plant) and in the calculation of "Net Transmission Plant – Total" on line 2 of the Attachment GG.

10. Great River comments that to ensure consistency, Otter Tail should amend Note D to Page 2 of Attachment GG-Otter Tail as follows to include additional language (underlined):

Project Net Plant is the Projected Gross Plant Identified in Column 3 less the associated Accumulated Depreciation and shall include the Unamortized Balance of Abandoned Plant.

⁶ December 30 Order, 129 FERC ¶ 61,287 at P 42.

⁷ To recover any such abandoned plant costs Otter Tail must file under section 205 of the FPA, demonstrating that the projects were abandoned for reasons beyond Otter Tail's control, and that costs were prudently incurred.

Great River notes that the revisions are consistent with the recent Commission order granting Great River incentive rate treatment similar to that granted Otter Tail.⁸ Great River states that it was also required to make a compliance filing in which it made the above change to its own Attachment GG.

11. Otter Tail filed an answer to Great River's comments, agreeing to the proposed change to Note D. Otter Tail requests that the Commission issue an order accepting the January 29 Compliance Filing subject to a further compliance filing to incorporate the language requested by Great River.

12. We conditionally accept the Attachment GG-Otter Tail, subject to Otter Tail filing a revised Attachment GG-Otter Tail incorporating the language discussed above. This compliance filing is to be submitted within 30 days of the date of this order.

2. CWIP Recovery

13. In the December 30 Order, the Commission required Otter Tail to make certain revisions to Attachment O-Otter Tail and also to include further explanation of Otter Tail's accounting procedures for CWIP.

14. First, the Commission directed Otter Tail, in order to avoid over recovery, to include in its pre-funded Allowance for Funds Used During Construction (AFUDC) (line 23a), 100 percent of the pre-funded AFUDC for projects that the Commission granted CWIP to be included in rate base on line 18a. Alternatively, if Otter Tail wanted to use a jurisdictional percentage less than 100 percent in its pre-funded AFUDC calculation, the Commission required that Otter Tail explain in its compliance filing how it would avoid double recovery of capitalized AFUDC and amounts related to CWIP in rate base.⁹ In the January 29 Compliance Filing, Otter Tail affirms that it will include 100 percent of the pre-funded AFUDC for only projects that the Commission has granted CWIP recovery to be included in rate base on line 18a, and that it will not make any adjustments to the Attachment O inputs to reflect any jurisdictional percentage.¹⁰ We find that this affirmation meets the requirements of the December 30 Order.

15. In the December 30 Order, the Commission also directed Otter Tail to modify the title to line 18a, and all related footnotes, to include only those projects authorized by the Commission for inclusion of CWIP in rate base.¹¹ In the compliance filing, Otter Tail

⁸ See *Great River Energy*, 130 FERC ¶ 61,001, at P 42 (2010).

⁹ December 30 Order, 129 FERC ¶ 61,287 at P 46.

¹⁰ January 29 Compliance Filing at 6.

¹¹ December 30 Order, 129 FERC ¶ 61,287 at P 47.

revises the title of line 18a of Attachment O-Otter Tail to read “100% CWIP Recovery for Commission Approved Order No. 679 Transmission Projects.” Otter Tail states that it found no related footnotes where this change would be applicable.¹² We find that this change complies with the Commission’s directives in the December 30 Order.

16. Additionally, in the December 30 Order, the Commission found that Otter Tail’s use of “Net” in the title of line 23a, on Page 2 of the Attachment O formula rate (“Net Prefunded AFUDC on CWIP Included in Rate Base (Note Y and Note Z)) was unclear. The Commission directed Otter Tail to explain how Net Prefunded AFUDC in line 23a, would be determined.¹³ Otter Tail explains in its compliance filing that “Net” merely reflects that the amount on line 23a will be the net result of debits and credits from different projects at different stages, i.e., in CWIP or in-service.¹⁴ We accept the explanation provided by Otter Tail in the January 29 Compliance Filing.

17. Further, in the December 30 Order, the Commission required Otter Tail to file a new Attachment GG and state explicitly that a corresponding amount of prefunded AFUDC will be removed under the formula in Attachment GG for any associated CWIP balance included in rate base for the projects.¹⁵ To comply, Otter Tail proposes to modify the footnotes in Attachment GG to clarify that “Gross Transmission Plant – Total” and “Net Transmission Plant – Total” are calculated to include CWIP in rate base when authorized by the Commission, “less any prefunded AFUDC, if applicable.”¹⁶ In addition, Otter Tail states that “per footnote C of the Otter Tail-specific Attachment GG,” it will calculate “Project Gross Plant” for each specific project to include CWIP in rate base “less any prefunded AFUDC.” We accept the changes and find them to be consistent with the Commission’s requirements in the December 30 Order.

18. In the December 30 Order, the Commission also directed Otter Tail to describe its internal controls and procedures to calculate pre-funded AFUDC to ensure that it includes all AFUDC amounts related to CWIP included in rate base.¹⁷ Otter Tail’s compliance filing provides detailed procedures to ensure the proper tracking and accounting for

¹² January 29 Compliance Filing at 4.

¹³ December 30 Order, 129 FERC ¶ 61,287 at P 47.

¹⁴ January 29 Compliance Filing at 4.

¹⁵ December 30 Order, 129 FERC ¶ 61,287 at P 48.

¹⁶ January 29 Compliance Filing at 5.

¹⁷ December 30 Order, 129 FERC ¶ 61,287 at P 47, n.68.

prefunded AFUDC.¹⁸ We find that the description Otter Tail provides in the January 29 Compliance Filing satisfies the Commission's directives in the December 30 Order.

19. Finally, the Commission directed Otter Tail to modify its accounting treatment related to its 100 percent CWIP recovery incentive by crediting Account No. 407.4 (Regulatory Credits), rather than Account No. 405 (Amortization Expense). In the January 30 Compliance Filing, Otter Tail affirmed that it will modify its accounting treatment of CWIP. However, the Commission does not find this affirmation sufficient to meet the requirements of the December 30 Order. Therefore, we will require that Note Y of Attachment O-Otter Tail be amended to read as follows (additional language is underlined):

Page 2, Line 23a includes the net prefunded AFUDC on CWIP included in rate base and page 3 line 9a includes the annual amortization of the prefunded AFUDC amounts included in Account No. 407.4 as required by Commission Order 129 FERC ¶ 61,287 (2009).

Otter Tail must file a revised Attachment O-Otter Tail with the above changes in a compliance filing to be submitted within 30 days of the date of this order.

The Commission orders:

(A) Otter Tail's proposed revisions to Attachment GG-Otter Tail are hereby conditionally accepted, effective January 1, 2010, as discussed above.

(B) Otter Tail's proposed revisions to Attachment O-Otter Tail are hereby conditionally accepted, effective January 1, 2010, as discussed above.

(C) Otter Tail is ordered to make a compliance filing, to be submitted within 30 days of this order, with the modifications to Otter Tail's Attachment O and Attachment GG, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ January 29 Compliance Filing at 6-7.