

132 FERC ¶ 61,138  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Otter Tail Power Company

Docket No. ER10-1494-000

ORDER CONDITIONALLY ACCEPTING FILING

(Issued August 17, 2010)

1. On June 18, 2010, Otter Tail Power Company (Otter Tail)<sup>1</sup> submitted an unexecuted Transmission Capacity Exchange Agreement (Agreement) between Otter Tail, ALLETE, Inc.,<sup>2</sup> Great River Energy,<sup>3</sup> Minnkota Power Cooperative, Inc. (Minnkota),<sup>4</sup> and Northern States Power Company (Northern States)<sup>5</sup> (collectively, Owners). The Agreement aligns the transmission capacity rights of the Owners with their respective overall investments in the proposed 230 kV Bemidji-Grand Rapids transmission line (Bemidji Project). In this order, we will accept Otter Tail's filing, as modified, to become effective upon execution of the Agreement, as requested, subject to a further compliance filing.

**I. Background**

2. As part of an effort to expand regional transmission infrastructure, the Owners are a part of a comprehensive regional planning initiative in the region known as

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<sup>1</sup> Otter Tail is a transmission-owning member of Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

<sup>2</sup> ALLETE, Inc. is a transmission-owning member of Midwest ISO.

<sup>3</sup> Great River Energy is a non-public utility generation and transmission cooperative, and it is a transmission-owning member of Midwest ISO.

<sup>4</sup> Minnkota is a non-public utility generation and transmission cooperative, and a member of the Mid-Continent Area Power Pool, but it is not a member of Midwest ISO.

<sup>5</sup> Northern States is a utility operating company affiliate of Xcel Energy Services, Inc., and it is a transmission-owning member of Midwest ISO.

Transmission Capacity Expansion Initiative by the Year 2020 (CapX2020).<sup>6</sup> The goal of CapX2020 is to construct transmission infrastructure needed to implement long-term and cost effective solutions for customers in the Upper Midwest region (i.e., Minnesota, North Dakota, South Dakota and Wisconsin) served by CapX2020 Utilities. CapX2020 Utilities are constructing transmission lines in phases that will serve the expected increase in demand and help begin to meet Minnesota's Renewable Energy Standard, which requires utilities serving Minnesota to deliver 25 percent or more of their retail electricity sales in Minnesota from renewable sources by 2025.

3. The Bemidji Project is a CapX2020 project. It is an approximately 68-mile long transmission line that will be a 230 kV transmission line circuit to be constructed from the Wilton Substation near Bemidji, Minnesota, to a new substation near Cass Lake, Minnesota continuing on to the Boswell Substation in Cohasset, Minnesota. The Bemidji Project is expected to cost approximately \$100 - \$130 million with a planned in-service date of 2012. Midwest ISO determined that the Bemidji Project is required for reliability in the region and has designated it as an Appendix A Baseline Reliability Project in the 2006 Midwest ISO Transmission Expansion Plan.

## II. Otter Tail's Filing

4. Otter Tail states that the Agreement aligns the transmission capacity rights of the Owner with that Owner's investment in the Bemidji Project as reflected by each Owner's percentage interest in the Bemidji Project. Otter Tail states that under the Agreement, changes to an Owner's percentage of ownership are expected to occur and that any such changes after the Agreement's effective date will be filed with the Commission. Otter Tail points out that the Commission has approved the allocation of capacity on this basis where the transmission capacity is made available pursuant to the Commission's open access policies.<sup>7</sup>

5. Otter Tail states that, to memorialize the understanding of the Owners regarding the development, construction, operation and maintenance of the Bemidji Project, they have filed the Agreement and in the future will file additional agreements in connection

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<sup>6</sup> The CapX2020 is a joint initiative of eleven transmission-owning electric utilities (CapX2020 Utilities) in Minnesota and the surrounding region to expand the electric transmission grid to ensure continued reliable and affordable service. The new transmission lines are intended to meet increasing demand in the region as well as to support renewable energy expansion. See <http://www.capx2020.com>.

<sup>7</sup> See Otter Tail Transmittal at 3, n.4 (citing *SunZia Transmission, LLC*, 131 FERC ¶ 61,162 (2010)).

with the Bemidji Project.<sup>8</sup> Otter Tail states that the Agreement includes terms and conditions typically found in contracts of this type, including the term and termination procedures (Article 2); the effect of force majeure (Article 6); the rights of the Owners to amend the Agreement (Article 7); and other miscellaneous provisions regarding remedies and the Agreement's status as a precedent agreement (Article 8).

6. The Owners also include in the Agreement more specific provisions which are included in Articles 3, 4, and 5. Specifically, Article 3 of the Agreement describes the rights and benefits of the Owners in the Bemidji Project. Importantly, section 3.1 provides that each Owner grants to the other Owners all rights and benefits of ownership of the Bemidji Project and the right to use the capacity and associated transfer capability of the Bemidji Project for all purposes associated with the transmission of electric energy and data for electric utility communications, in proportion to that Owner's percentage ownership interest. In addition, section 3.1 states that each Owner has the right to recover its investment in the Bemidji Project through its revenue requirement in proportion to its percentage ownership interest. For Owners that are Midwest ISO transmission owners, their revenue requirement will be recovered through the Midwest ISO Tariff.<sup>9</sup> For Owners that are not Midwest ISO transmission owners, their revenue requirement will be recovered from their respective loads or through transmission service provided pursuant to their tariffs.

7. Article 4 clarifies the nature of the services provided by the Owners to each other under the Agreement. Specifically, section 4.1 states that all requests for transmission, distribution, interconnection, energy, power, ancillary services or any other similar service will be processed under the applicable tariff, schedule or other arrangement applicable to the Owner to which the request is directed. Otter Tail states that each Owner's portion of the Bemidji Project will remain in the exclusive ownership, possession and control of that Owner. Section 4.3 provides that nothing in the Agreement establishes rates for transmission service over the Bemidji Project, and that all

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<sup>8</sup> Otter Tail states that the Owners will soon file with the Commission additional agreements that govern the relationship among the Owners participating in the Bemidji Project. These include a construction management agreement, an operation and maintenance agreement, and certain interconnection and facility construction agreements needed to interconnect the Bemidji Project with existing transmission facilities. *See* Otter Tail Transmittal at 2.

<sup>9</sup> All Owners of the Bemidji Project provide access to their transmission systems under the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff), except for Minnkota Power Cooperative, which has its own open access transmission tariff available for service over its facilities.

rates for service utilizing the Bemidji Project capacity of an Owner are governed by the applicable transmission provider's open access transmission tariff or other wholesale or retail tariff. Section 4.4 states that no Owner has liability to the other Owners for real power or transmission losses. Section 4.5 provides that an Owner may not deny any request for interconnection or transmission service over the Bemidji Project with respect to the capacity allocated to any other Owner under the Agreement.

8. Article 5 of the Agreement describes the operational services. Specifically, section 5.1 provides that the Bemidji Project will be operated under the authority of one or more reliability coordinators in compliance with the functional model of the North American Electric Reliability Corporation. Otter Tail states that the intention of the Owners is that Midwest ISO will be the initial Reliability Coordinator for the Bemidji Project. Section 5.2 states that each Owner will arrange with the applicable transmission provider with functional control of the Owner's transmission system to coordinate: (1) the sharing of information and data; (2) the development of protocols to calculate total and available transmission capacity; (3) the adoption of congestion management procedures with respect to constrained transmission facilities; and (4) the coordination of transmission outage procedures. Otter Tail states that Midwest ISO will provide these functions for each Owner that is a transmission owner under the Midwest ISO Tariff. Other Owners will arrange for this service through the Midwest ISO's Module F or, in the case of Minnkota, through other arrangements with the control area authority in which it is embedded.

9. Four schedules are also included in the Agreement. Schedule 1 is a set of generally applicable provisions which the Agreement shares with the other project agreements entered into among various CapX2020 Utilities for this and other CapX2020 transmission projects. Schedules 2, 3 and 4 show the Owners' percentage ownership interests in the Bemidji Project, and describe the project facilities that make up the Bemidji Project and the real property interests on which certain of the Bemidji Project facilities are located and over which the Owners grant each other a non-exclusive easement for the transmission of electricity and data for electric utility communications. Otter Tail states that schedules 2, 3 and 4 will each be updated as the Bemidji Project construction progresses. Otter Tail also states that it will submit a filing containing the final versions of schedules 2, 3 and 4. That filing will detail the final percentage ownership interests; and describe the project facilities and the real property interests over which easements are granted.

### **III. Notice of Filing and Responsive Pleadings**

10. Notice of Otter Tail's filing was published in the *Federal Register*, 75 Fed. Reg. 37,423 (2010), with interventions and protests due on or before July 9, 2010.

11. Minnkota, Great River Energy, and Missouri River Energy Services filed timely motions to intervene without substantive comment. Xcel Energy Services, Inc., filed a motion to intervene on behalf of Northern States in support of the filing. Xcel Energy Services, Inc., on behalf of Northern States, and ALLETE, Inc, filed certificates of concurrence to certify that they agree with and adopt the contents of the transmittal letter contained in Otter Tail's filing.

#### **IV. Discussion**

##### **A. Procedural Matters**

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), Minnkota's, Great River Energy's, Missouri River Energy Services' and Xcel Energy Services, Inc.'s timely, unopposed motions to intervene serve to make them parties to this proceeding.

##### **B. Substantive Matters**

13. We will accept the Agreement, subject to clarification of certain language, as discussed below. Our examination of the filing reveals that the Agreement serves as a suitable basis to allocate transmission capacity rights, to each Owner based on that Owner's investment in the Bemidji Project, for the purpose of providing each Owner all rights and benefits of ownership of the Bemidji Project for all purposes associated with the transmission of electric energy and with recovery of an appropriate revenue requirement. However, the extent to which each Owner acquires transmission service rights on the Bemidji Project is governed by the Commission's open access policies.<sup>10</sup> As proportionate owners of the Bemidji Project, the Owners are responsible for providing access to transmission service rights on their respective portions of the Bemidji Project in a fair, open, and transparent manner consistent with the Commission's open access policies.<sup>11</sup> Such Owners may therefore set aside capacity for their own use only to the

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<sup>10</sup> See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh'g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

<sup>11</sup> *Id.* Our determination addresses only the portion of the Bemidji Project under the ownership or control of a public utility, not the portion owned and controlled by Minnkota, which is not a public utility entity (or even a transmission-owning member of Midwest ISO). However, the Commission has stated that where a transmission facility is jointly owned by a public utility subject to the Commission's jurisdiction and a non-public utility entity, the public utility is required to offer open access transmission service

(continued...)

extent that they comply with the requirements of Order Nos. 888 and 890.<sup>12</sup> While Otter Tail represents that section 4.1 provides that availability of transmission service over the Project Facilities will be governed by the applicable open access transmission tariff of each Owner,<sup>13</sup> section 4.1 is unclear as it would apply to service over each Owner's Bemidji Project capacity rights for its own use, as opposed to requests to provide service to other Owners or third parties.<sup>14</sup> Therefore, we will require Otter Tail to revise section 4.1 of the Agreement to clarify that all service over the portion of the Bemidji Project

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over its share of the joint facilities and any joint ownership contracts must not include restrictions on the usage of jointly owned transmission facilities by third parties. *See Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,691-92 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

<sup>12</sup> *See supra* notes 10-11.

<sup>13</sup> *See* Otter Tail Transmittal at 4.

<sup>14</sup> Section 4.1 provides:

This Agreement does not require the provision of any transmission, distribution, interconnection, energy, power or ancillary service by an Owner. Any and all requests for transmission, distribution, interconnection, energy, power, ancillary or any other similar service must be processed under the applicable guideline, schedule, tariff or other arrangement applicable to the Owner to which the request is directed. The exchange of transmission capacity undertaken by each Owner under this Agreement will not constitute the dedication of the undertaking Owner's Electric System or any portion thereof by the undertaking Owner to the public, to any other Owner or to any Third Party. Each Owner's Electric System will at all times be, and remain, in the exclusive ownership, possession and control of that Owner and nothing in this Agreement will be construed to give any other Owner or Third Party any right of ownership, possession or control of such Electric System or any portion thereof.

facilities under the ownership or control of a public utility will be available on an open access, non-discriminatory basis in accordance with the applicable open access transmission tariff.

14. Based on the foregoing, we accept the Agreement, subject to the compliance filing ordered below.

The Commission orders:

(A) Otter Tail's filing is hereby accepted, as modified, effective upon execution, as requested, subject to a compliance filing.

(B) Otter Tail is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) Otter Tail is directed to file, a revised Agreement within 10 days of it becoming effective, reflecting the effective date of the Agreement.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.