

123 FERC ¶ 61,247  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Otter Tail Power Company

Docket No. ER08-813-000

ORDER ACCEPTING UNEXECUTED SERVICE AGREEMENT AND DENYING  
WAIVER OF PRIOR NOTICE REQUIREMENT

(Issued June 5, 2008)

1. On April 9, 2008, Otter Tail Power Company (Otter Tail) filed an unexecuted service agreement (Service Agreement) between Otter Tail and Langdon Wind, LLC (Langdon). In this order, we accept the Service Agreement, effective June 9, 2008, deny waiver of the Commission's 60-day prior notice requirement, and require time value refunds.

**I. Background**

2. Langdon operates a 118.5 megawatt wind generating facility in Otter Tail's Balancing Authority and is required by section 2.1(c) of Otter Tail's Control Area Services and Operations Tariff (Control Area Tariff) to enter into a service agreement with Otter Tail.<sup>1</sup> Langdon commenced service in Otter Tail's Balancing Authority Area on December 31, 2007.

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<sup>1</sup> Otter Tail filed the Control Area Tariff with the Commission in 2002 to reflect the transfer of operational control of its transmission system to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and to limit operational disputes. The Otter Tail Control Area Tariff contains four main components: (1) ancillary services; (2) control area operations; (3) generation interconnections; and (4) tie-line or substation interconnection.

3. Due to Langdon's objections to several provisions in the Control Area Tariff, Otter Tail states that it filed the Service Agreement as unexecuted. Section 2.1(c) of the Control Area Tariff provides:

If the Eligible Customer does not execute the Service Agreement, then the Control Area Operator may file an unexecuted Service Agreement with the Commission. The Control Area Operator shall file any executed or unexecuted Service Agreement with the Commission no later than thirty (30) days after service to the Eligible Customer begins under this Tariff. With regard to unexecuted Service Agreements, the Company and the Customer shall be bound by whatever the Commission determines, subject to rehearing and judicial review.

An Eligible Customer includes any generator located in Otter Tail's Control Area that delivers electric energy into or through the control area.<sup>2</sup>

4. The control area services offered, required, and selected are listed in Attachment A1 to the Service Agreement. Otter Tail anticipates that Langdon's power purchase customers will be responsible for paying the charges under Schedule 1 (Scheduling, System Control and Dispatch Service), Schedule 2 (Reactive Power Supply from Generation Sources Service) and Schedule 3B (Generator Regulation and Frequency Response Service).<sup>3</sup> Service under Schedule 4 (Energy Imbalance Service) is provided by the Midwest ISO. Langdon is obtaining the operating reserves required by Schedules 5 (Operating Reserve – Spinning Reserve Service) and 6 (Operating Reserve – Supplemental Reserve Service) from Minnkota Power Cooperative, Inc. (Minnkota).<sup>4</sup>

5. On April 9, 2008, Otter Tail filed the Service Agreement and requested waiver of the Commission's prior notice requirement to allow an effective date of March 10, 2008.

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<sup>2</sup> Otter Tail's Filing at 2, citing Control Area Tariff, sections 1.23 (Eligible Customer) and 1.29 (Generator).

<sup>3</sup> Otter Tails states that if Langdon's customers cease to obtain these services, Langdon will become responsible for obtaining those services, as applicable.

<sup>4</sup> If Langdon ceases to obtain station service from Minnkota or another supplier, Langdon will become responsible for obtaining operating reserves, except as otherwise provided under the Control Area Tariff or Service Agreement.

## II. Notice of Filing

6. Notice of Otter Tail's filing was published in the *Federal Register*, 73 Fed. Reg. 22,147 (2008), with interventions and protests due on or before April 30, 2008. On May 2, 2008, Langdon filed a motion to intervene out-of-time and protest. On May 19, 2008, Otter Tail filed an answer.

7. Langdon states that it has not reached an agreement with Otter Tail on the scope and interpretation of Otter Tail's Control Area Tariff. Langdon requests that the Commission clarify: (1) that it will not enforce, as a violation of the Control Area Tariff, compliance with any reliability requirement standard, manual or guideline that has not been approved by the Commission under section 215 of the Federal Power Act (FPA),<sup>5</sup> and; (2) where the Control Area Tariff is inconsistent with the implementation of section 215 and the rules developed thereunder, that the Control Area Tariff cannot be used to thwart the Commission's determinations, the Commission-approved Reliability Standards, and the implementation and prosecution of those Standards.

8. Langdon expresses concern that the good utility practice provisions in the Control Area Tariff could be used by Otter Tail as an alternative means of enforcement outside of the Reliability Standards approved by the Commission under section 215 of the FPA. Langdon also argues that provisions of the Control Area Tariff may be interpreted as converting certain voluntary criteria and guidelines into part of the mandatory Reliability Standard system.

9. Langdon requests that the Commission clarify that the Control Area Tariff should not be used to circumvent any liability determination associated with Commission-approved Reliability Standards. It states that the Commission should clarify that where the Control Area Tariff conflicts with the intent or terms of the mandatory Reliability Standards or the determinations by the Commission in enacting such standards, the Commission-approved Reliability Standards must control. In this case, it asserts, such a clarification would mean that Otter Tail cannot automatically pass through Reliability Standard Penalties, despite any provision in the Control Area Tariff.

10. Langdon further requests that the Commission clarify that the audit rights in the Control Area Tariff do not include any audit that would be subject to the initial auditing jurisdiction of the Midwest Reliability Organization. Langdon explains that Article 27 of the Control Area Tariff provides Otter Tail with certain audit rights associated with obligations arising under the Service Agreement.

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<sup>5</sup> 16 U.S.C. § 824o(a) (Supp. V 2005).

11. Otter Tail, in its answer, states that Langdon's protest is beyond the scope of this proceeding, which concerns only approval of the Service Agreement. Otter Tail argues that the proper course for the relief Langdon seeks is a complaint under FPA section 206<sup>6</sup> or a petition for declaratory order. Otter Tail states that the resolution of these issues will affect many stakeholders beyond Langdon and should not be decided in this narrow proceeding. Otter Tail also states that whether, and the extent to which, any conflicts between statutes, regulations and approved tariff provisions exists will depend on the facts of a particular case.

### **III. Discussion**

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

12. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214(d) (2007), the Commission will grant Langdon's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Otter Tail's answer because it has provided information that assisted us in our decision-making process.

#### **B. Analysis**

14. With respect to Langdon's protest, we find that it is beyond the scope of this proceeding, which concerns only whether the Commission should accept the proposed Service Agreement. Langdon's only expressed concerns are with potential conflicts between Otter Tail's Control Area Tariff and the implementation of section 215 of the FPA. Langdon does not provide any information regarding such potential conflicts. If Langdon wishes to pursue such issues, it must do so by either filing a complaint or petition for declaratory order with respect to Otter Tail's Control Area Tariff.

15. Our review indicates that the Service Agreement appears to be just and reasonable, and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept the Service Agreement, deny waiver of the prior notice requirement and make it effective June 9, 2008, which is after 60 days notice from when Otter Tail submitted the Service Agreement. We deny Otter Tail's

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<sup>6</sup> 16 U.S.C. § 824e (2000 & Supp. V 2005).

request for waiver of the Commission's prior notice requirement to permit an effective date of March 10, 2008.<sup>7</sup>

16. Under the Commission's time value remedy, for a cost-based rate, in cases where service commences before filing, and where waiver of the prior notice requirement is denied, the utility must refund the time value of revenues collected<sup>8</sup> for the time period the rate was collected without Commission authorization to the date that the utility ultimately issues refunds.<sup>9</sup>

17. Accordingly, we order Otter Tail to refund to Langdon, within 30 days of the date of this order, the time value of revenues collected for the period from December 31, 2007 to the date that Otter Tail makes the refunds. Further, we order Otter Tail to file a refund report with the Commission within 15 days of the date refunds are made.

The Commission orders:

(A) The Service Agreement between Otter Tail and Langdon is hereby accepted for filing to become effective June 9, 2008, as discussed in the body of this order.

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<sup>7</sup> See *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993). Otter Tail states that waiver is appropriate because the agreement is filed within 30 days of its effective date. However, that is not the standard for determining whether to grant waiver. Waiver of the Commission's prior notice requirement is appropriate if the service agreement is filed within 30 days after service commences (not within 30 days of an agreement's effective date). Additionally, we note that the Control Area Tariff specifically provides in section 2.1(c) that any executed or unexecuted Service Agreement shall be filed with the Commission no later than thirty days after service begins.

<sup>8</sup> 18 C.F.R. § 35.19a (2007).

<sup>9</sup> See *Carolina Power & Light Co.*, 84 FERC ¶ 61,103, at 61,522 (1998), *order on reh'g*, 87 FERC ¶ 61,083, at 61,356 (1999).

(B) Otter Tail is hereby directed to make time value of revenues refunds, within 30 days of the date of this order and to file a refund report with the Commission within 15 days thereafter.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.