BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE PETITION OF OTTER TAIL POWER COMPANY FOR APPROVAL OF A DEPARTURE FROM ITS FUEL CLAUSE ADJUSTMENT	**)))))**	**FINDINGS OF FACT AND CONCLUSIONS OF LAW; NOTICE OF ENTRY OF ORDER EL00-002**

On January 27, 2000, the Public Utilities Commission (Commission) received a petition from Otter Tail Power Company (Otter Tail) for permission to depart from the specific wording of its Fuel Adjustment Clause to allow the pass-through of litigation expenses that have resulted in ratepayer savings. An intervention deadline of February 18, 2000, was set by the Commission. No petitions to intervene were filed.

On February 10, 2000, the Commission received a petition from Montana-Dakota Utilities Co. (MDU) for approval of a waiver of Fuel Clause Rate 58. Docket EL00-003. The petition stated that "[t]he waiver is requested to allow the pass-through, in the fuel cost adjustment (FCA), of arbitration costs that have resulted in savings to retail customers." An intervention deadline of March 3, 2000, was set by the Commission. No petitions to intervene were filed.

On March 20, 2000, the Commission received a petition from NorthWestern Public Service (NWPS) for approval of its proposed plan to credit $682,996.65 to its South Dakota retail electric customers. Docket EL00-009. The credit is due to an arbitration proceeding involving a lignite coal contract. The petition stated that the "plan would utilize its adjustment clause to credit to its retail electric customers (all of whom it serves in South Dakota) the retail portion of the arbitration damage award and interest, less its costs related to its efforts in receiving not only the damage award, but also ongoing coal price reduction and other favorable Coal Agreement provision changes." An intervention deadline of April 7, 2000, was set by the Commission. No petitions to intervene were filed.

On April 27, 2000, the Commission received a Stipulation to Consolidate Dockets EL00-002, EL00-003, and EL00-009. The stipulation stated that Otter Tail, MDU, NWPS, and Commission Staff had agreed to consolidate the dockets due to common questions of law and fact.

The Commission approved the consolidation of the dockets for purposes of the hearing. A hearing was held as scheduled on May 15, 2000, beginning at 10:00 o'clock A.M., CDT, in Room 412, State Capitol Building, 500 E. Capitol, Pierre, South Dakota. The issue at the hearing was whether the Commission should approve, in whole or in part, the petitions filed by Otter Tail, MDU, and NWPS. With respect to Otter Tail's petition, the Commission voted unanimously to approve Commission Staff's recommendation that allowed for the deduction of certain litigation expenses incurred during an arbitration proceeding. The arbitration decision lowered fuel costs retroactively, resulting in a refund being issued to Otter Tail. The Commission also granted the tariff waiver as requested by Otter Tail, and required Otter Tail to issue the refund during the months of June, July, and August, 2000.

Based on the evidence of record, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. On January 27, 2000, the Commission received a petition from Otter Tail for permission to depart from the specific wording of its Fuel Adjustment Clause to allow the pass-through of litigation expenses that have resulted in ratepayer savings. An intervention deadline of February 18, 2000, was set by the Commission. No petitions to intervene were filed.

2. Otter Tail, NWPS, the Northern Municipal Power Agency, and MDU own the Coyote Power Plant. Tr. at 12. They entered into a 35-year contract with the Knife River Coal Company (Knife River) for

delivery of coal. *Id*. To determine the price of the coal, the contract uses various indexed price components, some actual cost price components, with quarterly price adjustments. *Id*. An addendum to the contract required that the pricing mechanism within the contract would result in prices that were comparable to similar mines developed at similar time frames. Tr. at 13.

3. The owners of the Coyote Power Plant, with the exception of MDU, disputed the prices charged by Knife River through an arbitration proceeding. Tr. at 14. MDU was named as an initial party in the arbitration but sought removal from the arbitration proceeding because MDU Resources owns Knife River and, thus, there was a possible conflict of interest. Tr. at 100. The initial arbitration decision in March of 1999, lowered the coal prices charged by Knife River, beginning the fourth quarter of 1996 up until the time of decision. Tr. at 15. The arbitration decision also requested that the parties modify the pricing procedure within the contract. *Id*. The parties were unable to come to an agreement so that issue went back to arbitration and the decision of the arbitration panel was to essentially accept Knife River's pricing procedure modification and to accept the profit limitation recommendations of the Coyote Power Plant owners. *Id*.

4. The prices were adjusted downward and the retroactive adjustment of the prices resulted in a refund to the owners. Tr. at 16. Otter Tail's share of the award was $2,884,000.00, which was reduced to $2,576,000.00 to reflect the amount of the award associated with serving Otter Tail's retail load. Tr. at 32, 35. The costs of the arbitration were allocated to the owners based on each owner's plant ownership percentage. Tr. at 21. Otter Tail's South Dakota retail customers' share of the award was around 7% of Otter Tail's retail share. Tr. at 35. Otter Tail requested that it be allowed to deduct its arbitration costs from its share of the refund and then pass the net amount to its customers through the fuel clause. Tr. at 36-37.

5. Otter Tail also estimated that, on a going-forward basis, the result of the arbitration decision would result in additional fuel cost savings of around $750,000.00 per year. Tr. at 24-25.

6. At the hearing, the Commission was informed that Otter Tail and Commission Staff had entered into a stipulation that reduced Otter Tail's arbitration costs by $139,635.00. Tr. at 55, 113. Otter Tail agreed to remove $103,075 in litigation expenses that were not shared by the other owners. Tr. at 113. In addition, Otter Tail agreed to remove labor expenses of approximately $33,000.00 and miscellaneous expenses of approximately $3,300.00. *Id*.

7. Michele Farris, utility analyst for the Commission, recommended that Otter Tail be allowed to deduct litigation expenses of $850,305.00 from its total damage award of $2,884,172.00. Exhibit B. The net damage award was further reduced by excluding wholesale sales, for a total refund of $1,810,142.00. *Id.* The amount allocated to Otter Tail's South Dakota customers was 7% which was based on 1998 allocation factors used to allocate fuel costs. Tr. at 35; Exhibit B. The total amount of the refund to Otter Tail's South Dakota customers would be $126,710.00, plus earned interest. Exhibit B.

8. Ms. Farris also recommended that Otter Tail issue the refund to customers through its fuel clause during the months of June, July, and August. Tr. at 116.

9. The Commission finds that Staff's recommendation is fair and reasonable and will allow Otter Tail to deduct its litigation expenses of $850,305.00 from its total damage award of $2,884,172.00. The Commission further finds that Otter Tail shall refund an amount of $126,710.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000. The Commission further grants to Otter Tail a waiver from its fuel adjustment rate schedule to allow the deduction of litigation expenses from the refund.

10. The Commission further finds that this allowance of the deduction of litigation expenses is not to be interpreted as allowing future litigation expenses to be recovered through the fuel clause. The Commission's decision in this case is based on the facts of this case and any future recovery of litigation expenses must be approved by the Commission.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-3, 49-34A-4, 49-34A-6, 49-34A-8, 49-34A-10, 49-34A-11, 49-34A-13, 49-34A-19.2, 49-34A-25, 49-34A-26, and 49-34A-27.

2. The Commission finds that Staff's recommendation is fair and reasonable and will allow Otter Tail to deduct its litigation expenses of $850,305.00 from its total damage award of $2,884,172.00. The Commission further finds that Otter Tail shall refund an amount of $126,710.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000. The Commission further grants to Otter Tail a waiver from its fuel adjustment rate schedule to allow the deduction of litigation expenses from the refund.

3. The Commission further finds that this allowance of the deduction of litigation expenses is not to be interpreted as allowing future litigation expenses to be recovered through the fuel clause. The Commission's decision in this case is based on the facts of this case and any future recovery of litigation expenses must be approved by the Commission.

It is therefore

ORDERED, that Otter Tail may deduct its litigation expenses of $850,305.00 from its total damage award of $2,884,172.00 and shall refund an amount of $126,710.00, plus interest earned up until the time of the refund, to its South Dakota customers during the months of June, July, and August, 2000; and it is

FURTHER ORDERED, that Otter Tail is granted a waiver from its fuel adjustment rate schedule to allow the deduction of litigation expenses from the refund.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 28th day of June, 2000. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 28th day of June, 2000.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.

By:_____

Date:_____

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

_____
JAMES A. BURG, Chairman

_____
PAM NELSON, Commissioner

_____
LASKA SCHOENFELDER, Commissioner