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## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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February 15, 2011

Patricia Van Gerpen  
Executive Director  
SD Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501

**Re: EL10-015 - In the Matter of the Petition of Otter Tail Power Company to Establish a Transmission Cost Recovery Tariff**

Dear Ms. Van Gerpen:

On November 5, 2010, the Commission received a petition from Otter Tail Power Company ("Otter Tail") requesting approval to establish a Transmission Cost Recovery Tariff ("TCR"). Otter Tail has proposed an effective date of March 1, 2011. In Part E of this petition, Otter Tail asserts:

*"The Administrative Rules of South Dakota ["ARSD"] require a 30-day notice to the Commission of a proposed change in a utility's tariff schedule, **after which time the proposed changes take effect unless suspended.** Because no determination of Otter Tail's general revenue requirement is necessary, **the report called for under Part 20:10:13:26 and the general notice provisions applicable to changes in rates is not applicable in this filing.**" (emphasis added).*

Prior to this petition, no utility operating in the State of South Dakota proposed application of the "effective unless suspended" rule for a TCR filing. In addition, other filings submitted under SDCL 49-34A-25.1 through 25.4 have complied with the reporting requirements of ARSD 20:10:13:26 and the general notice requirements. The statutes governing TCR's have been effective only since 2006 and the processing procedure for these filings remains undefined. Due to past standards of practice and uncertainty in the proper application of various provisions of the ARSD, Staff submits this request for clarification on the application of existing rules.

As stated in Otter Tail's petition, ARSD 20:10:13:15 addresses certain reporting and notice requirements that generally apply to a request for a change in rates or change in tariff provision.

*"Notice to the commission of a change of rates or other provisions of a tariff schedule shall be given by a utility by delivering to the commission one complete copy of the new tariff schedule or the revised sheets with a statement of all the rates and other provisions it proposes to adopt at least 30 days prior to the proposed effective date. The tariff schedule shall be accompanied by the report required by § 20:10:13:26 and by a certificate to the effect that notice has been or is being given to the public in all respects as required by §§ 20:10:13:17 to 20:10:13:19, inclusive, and if the proposed change results in an increase or decrease, the estimated annual effect on revenues."*

ARSD 20:10:13:24 provides the "effective unless suspended" offered by Otter Tail.

*"When a new tariff schedule has been issued and proper notice given to the commission and the public, the tariff schedule will become effective on the date stated in the tariff, unless the commission, by order, suspends the operation of the rates and regulations pending investigation concerning the propriety of the proposed rates or regulations."*

There is no language contained in these rules to indicate they do not apply to TCR filings. Despite the absence of specific language, however, it is clear the TCR's do not fit neatly within ARSD chapter 20:10:13. For instance, a utility filing a petition to establish a TCR would not be expected to fulfill the reports required in ARSD 20:10:13:51 through ARSD 20:10:13:102 ("Statements A – R").

Due to the differing interpretations offered of ARSD provisions applicable to this filing, Staff requests clarification on the proper use of these rules. Specifically, Staff requests the Commission determine whether:

- (i) All applicable rate change and or tariff change statutes and administrative rules apply to this filing.
- (ii) In the event the Commission determines rate and or tariff change statutes and administrative rules do apply to this filing, Staff requests the Commission suspend the application of Otter Tail's request pursuant to SDCL 49-34A-14, to allow for sufficient time to review the petition.
- (iii) In the alternative, if the Commission determines none or limited statutes and administrative rules apply to this filing, Staff asks for direction regarding how to proceed.

Sincerely,



Ryan Soye

cc Bruce Gerhardson