

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT
AND PETITION OF VALLEY QUEEN
CHEESE FACTORY, INC., OTTER TAIL
POWER COMPANY, RESPONDENT.

CE15-001

**ANSWER TO CONSUMER
COMPLAINT**

Valley Queen Cheese Factory, Inc. (“Valley Queen”) filed a Consumer Complaint dated May 20, 2015 (“Complaint”), that is virtually identical to a complaint Valley Queen filed in the United States District Court for the District of South Dakota (“Federal Complaint”), which is attached as Exhibit A.¹ After filing the Federal Complaint on May 11, 2015, Valley Queen filed the Complaint in this matter. Otter Tail Power Company (“Otter Tail”) answers the Complaint pursuant to ARSD 20:10:01:11:01 as follows:

ANSWER

1. Otter Tail denies any and all allegations in the Complaint except as specifically admitted herein.
2. In answering paragraph 1 of the Complaint, Otter Tail admits that Valley Queen has a factory located in Milbank, South Dakota, that manufactures cheese and other dairy products. Otter Tail is without sufficient information to admit or deny the remaining allegations in paragraph 1 of the Complaint, and thus, Otter Tail denies the same and remits Valley Queen to strict proof thereof.
3. Otter Tail admits paragraph 2 of the Complaint.
4. Otter Tail admits paragraph 3 of the Complaint.

¹ The Federal Complaint is subject to a pending motion to dismiss filed by Otter Tail. (Exhibit B attached).

5. Otter Tail admits paragraph 4 of the Complaint.

6. In answering paragraph 5 of the Complaint, what occurs “by virtue of South Dakota law,” is a statement of law which does not require an admission or denial, and to the extent an admission or denial is required, Otter Tail denies the same and remits Valley Queen to strict proof thereof. Otter Tail admits that it is the sole provider of retail electricity within the geographic territory of Otter Tail’s municipal franchise. Otter Tail denies that all of Milbank, SD is located in Otter Tail’s geographic territory but Otter Tail admits Valley Queen is located in Otter Tail’s geographic territory.

7. In answering paragraph 6 of the Complaint, Otter Tail admits the first sentence. Otter Tail denies the remainder of paragraph 6 of the Complaint.

8. Otter Tail admits paragraph 7 of the Complaint.

9. In answering paragraph 8 of the Complaint, Otter Tail does not know what “all times material” refers to in paragraph 8 of the Complaint, and thus, Otter Tail denies the same. Otter Tail admits that from 2009 through present date, other than its self-generated electricity, Valley Queen purchased all of its electricity from Otter Tail.

10. In answering paragraph 9 of the Complaint, Otter Tail denies it is a “monopoly.” Otter Tail admits it is the sole provider of electricity purchased by Valley Queen. Otter Tail admits the remaining allegations contained in paragraph 9 of the Complaint.

11. In answering paragraph 10 of the Complaint, Otter Tail affirmatively alleges that the tariff described in paragraph 10 of the Complaint speaks for itself. The tariff is attached as Exhibit C to this answer. Otter Tail denies that Valley Queen’s characterization of the tariff in paragraph 10 of the Complaint is a complete and accurate description of the terms of the tariff.

12. In answering paragraph 11 of the Complaint, Otter Tail alleges that the tariff described in paragraph 11 of the Complaint speaks for itself. The tariff is attached as Exhibit D to this answer. Otter Tail denies that Valley Queen's characterization of the tariff in paragraph 11 of the Complaint is a complete and accurate description of the terms of the tariff.

13. In answering paragraph 12 of the Complaint, Otter Tail alleges that South Dakota Public Utilities Regulation ARSD 20:10:17:01 speaks for itself, and Otter Tail denies Valley Queen's characterization of the regulation.

14. In answering paragraph 13 of the Complaint, Otter Tail is without sufficient information to admit or deny the first sentence and the third sentences of paragraph 13 of the Complaint, and thus Otter Tail remits Valley Queen to strict proof thereof. In answering the second sentence of paragraph 13 of the Complaint, Otter Tail admits that in June of 2009 it was aware that Valley Queen's load factor had decreased. Otter Tail denies the remainder of the second sentence to paragraph 13 of the Complaint.

15. Otter Tail admits paragraphs 14 and 15 of the Complaint.

16. In answering paragraph 16 of the Complaint, Otter Tail admits that it inaccurately told Valley Queen in May of 2009 that the boiler contract would expire effective June 1, 2009. Otter Tail admits to communicating to Valley Queen that Valley Queen could select a new rate for the boiler. Otter Tail denies imposing a June 12, 2009, deadline for Otter Tail to select the new rate for the boiler.

17. In answering paragraph 17 of the Complaint, Otter Tail admits the first sentence of paragraph 17. Otter Tail also admits that Valley Queen agreed to purchase electricity under Otter Tail's Large General Service – Time of Day rate ("LGS-TOD") for both the plant and the boiler, effective July 1, 2009. Otter Tail admits to providing information to Valley Queen to

assist Valley Queen in selecting the appropriate rate. Otter Tail is without sufficient information to admit or deny why Valley Queen chose the Large General Service – Time of Day rate, and thus, Otter Tail denies the same and remits Valley Queen to strict proof thereof.

18. In answering paragraph 18 of the Complaint, Otter Tail admits to petitioning the South Dakota PUC for a rate increase on October 31, 2008. Regarding the remaining allegations in paragraph 18 of the Complaint, Otter Tail states that the petition for the rate increase speaks for itself, and Otter Tail denies Valley Queen’s characterization of the petition for the rate increase in paragraph 18 of the Complaint as complete and accurate statement of the contents of the petition.

19. In answering paragraph 19 of the Complaint, Otter Tail states that the real time pricing rate described in paragraph 19 of the Complaint is contained within a tariff approved by Public Utilities Commission for the State of South Dakota. Otter Tail states that the tariff speaks for itself, and Otter Tail denies Valley Queen’s characterization of the tariff in paragraph 19 of the Complaint. Otter Tail affirmatively alleges that there is much more complexity indicated in the RTP pricing rather than RTP charges merely being calculated employing Customer’s Baseline Load (CBL), which was explained to Valley Queen.

20. In answering paragraph 20 of the complaint, Otter Tail affirmatively alleges that the tariff addressing the RTP rate speak for itself, and Otter Tail denies Valley Queen’s characterization of the tariff.

21. Otter Tail admits paragraphs 21 and 22 of the Complaint.

22. Otter Tail denies paragraph 23 of the Complaint.

23. In answering paragraph 24 of the Complaint, Otter Tail is without sufficient information to admit or deny the allegations in the first sentence of paragraph 24. In answering

the second sentence of paragraph 24 of the Complaint, Otter Tail admits that it was aware there was construction occurring at Valley Queen's facility in 2009. Otter Tail denies the remaining allegations in the second sentence of paragraph 24 of the Complaint.

24. In answering paragraph 25 of the Complaint, Otter Tail admits that Valley Queen's electricity demand has increased from January 1, 2009 through 2014, albeit it not in a linear fashion. From its internal records, Otter Tails has attempted to verify the percentage increases and demand levels identified in paragraph 25 of the Complaint but has not been able to do so. Otter Tail thus denies that paragraph 25 completely and accurately states Valley Queen's increased consumption of electricity from January 1, 2009, through 2014.

25. In answering paragraph 26 of the Complaint, Otter Tail admits that it was discovered in 2013 that there was a mutual mistake made by Otter Tail and Valley Queen regarding the expiration of the boiler contract. Otter Tail further admits that after discovering the mistake, Otter Tail credited Valley Queen's bills \$31,633.94. Valley Queen has never communicated that it disagreed with receiving credit. Valley Queen denies the remaining allegations in paragraph 26 in the Complaint.

26. In answering the first sentence of paragraph 27 of the Complaint, Otter Tail admits that it engaged in an analysis of Valley Queen's rate options in 2013 when requested to do so by Valley Queen. Otter Tail denies the remaining allegations in paragraph 27 of the Complaint.

27. Otter Tail denies paragraphs 28, 29 and 30 of the Complaint.

28. Otter Tail denies the request for relief in the Complaint.

DEFENSES

29. The Complaint fails to state a claim upon which relief can be granted.

30. Valley Queen's claims are barred, in whole or in part, by the filed rate doctrine.

31. Valley Queen's claims are barred, in whole or in part, by the intervening cause doctrine.

32. Valley Queen's claims are barred, in whole or in part, by Valley Queen's failure to mitigate damages.

33. Valley Queen's claims are barred, in whole or in part, by Valley Queen's contributory negligence.

34. Valley Queen's claims are barred, in whole or in part, by Valley Queen's assumption of the risk.

35. Valley Queen's claims may be barred by the doctrines of issue preclusion and claim preclusion arising from the pending action in the United States District Court for the District of South Dakota.

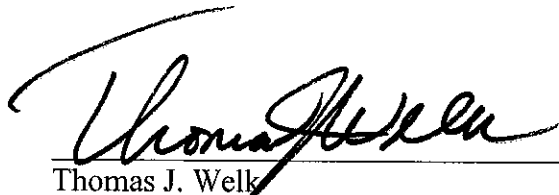
36. Valley Queen's claims are barred, in whole or in party, by Valley Queen's attempt to split its cause of action by filing its claims in both the United States District Court for District of South Dakota and before the Public Utilities Commission of the State of South Dakota. Attached as Exhibit A is Valley Queen's complaint filed in the United States District Court for the District of South Dakota. Attached as Exhibit B is the pending motion to dismiss filed by Valley Queen along with the supporting documents.

Based on the foregoing, Otter Tail prays for the following relief:

1. The Public Utilities Commission of the State of South Dakota to assume jurisdiction, schedule a contested case hearing, and adjudicate the matter by dismissing the Complaint with prejudice;
2. Awarding Otter Tails its costs and disbursements incurred in this action; and

3. Any and all other relief deemed just by the Public Utilities Commission of the State of South Dakota.

Dated this 7th day of July, 2015.

A handwritten signature in cursive script, appearing to read "Thomas J. Welk", written over a horizontal line.

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