



5. By virtue of South Dakota law, Otter Tail has a monopoly on the sale of electricity at retail in a geographic territory that includes Milbank, South Dakota, the location of Valley Queen's factory.

6. Milbank and Valley Queen's factory are within the Midcontinent Independent System Operator's (MISO) geographic footprint. MISO maintains a node near Milbank at which electricity is metered. The price for the purchase of electricity at wholesale at the node is set hourly by MISO and is called the locational marginal price (LMP). Otter Tail purchases electricity from MISO at the LMP and resells it at retail, including the electricity it provides to Valley Queen.

7. Otter Tail's retail sale of electricity, pursuant to South Dakota law, is regulated by the South Dakota Public Utilities Commission. The retail rates Otter Tail is permitted to charge and the conditions under which electricity is delivered to its customers are set forth in written Electric Rate Schedules, commonly called tariffs, which are approved by the SD PUC. Otter Tail can only sell electricity at retail in the manner and for the charge set out in the approved Electric Rate Schedules.

8. At all times material to the matters in issue, Valley Queen purchased all of its electricity from Otter Tail.

9. Because of Otter Tail's monopoly on the sale of electricity at retail in Milbank, Valley Queen must either purchase electricity from Otter Tail or generate its own electricity.

10. In June 2009, Otter Tail's then effective tariff, at Section No. 5-Sheet No. 1, second revision, provided, in part

Each customer should be served at the most advantageous rate schedule for which the customer can qualify. Where there are optional or alternative rate schedules the customer should have the opportunity . . . to select the most advantageous rate. Each Division office should periodically review billing of customers who might qualify for a more advantageous optional or alternative rate schedule. Customers who so qualify should be advised . . .

11. Otter Tail's current tariff, effective July 1, 2009, provides, at Section 2.01

If a customer is eligible to receive service under more than one rate schedule, the Company, upon notice of this fact, shall advise the Customer of all alternatives.

12. The current tariff parrots South Dakota Public Utilities Regulation ARSD

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13. At all times material hereto, Valley Queen operated an electric boiler as backup to its gas fired main boilers. In the period 2008-2009, the electric boiler was used on a limited basis, a fact well known to Otter Tail. The electric boiler must be operated at least once a week for blow-down and operational assurance purposes.

14. Valley Queen and Otter Tail had a contract that governed Otter Tail's supply of electricity to the electric boiler. The contract was effective June 2005 and expired in June 2010. The contract provided that boiler electricity would be billed at the Otter Tail's Bulk Interruptible Rate.

15. Valley Queen's Milbank plant and the electric boiler were separately metered. In 2009, Valley Queen purchased electricity from Otter Tail for the rest of its Milbank plant operations under Otter Tail's Large General Service Rate (LGS).

16. On May 29, 2009, Otter Tail told Valley Queen the boiler contract would expire June 1, 2009. Otter Tail gave Valley Queen until June 12, 2009, to select a new rate for the boiler.

17. On June 15, 2009, Valley Queen and personnel from Otter Tail met at Valley Queen's Milbank plant to discuss Valley Queen's electric service options going forward. Based on Otter Tail's recommendation, Valley Queen agreed to purchase electricity under Otter Tail's Large General Service-Time of Day Rate (LGS-TOD) for both the plant and boiler, effective July 1, 2009.

18. Otter Tail petitioned the South Dakota PUC for a rate increase October 31, 2008. The petition included a new rider with a rate for Real Time Pricing (RTP). The RTP rate for retail purchase of electricity is set out in Volume II, Section 14.02 of Otter Tail's Electric Rate Schedules.

19. RTP charges are calculated employing the Customer's Baseline Load (CBL). A customer's CBL is determined by averaging the customer's consumption of electricity in the 12 months preceding the commencement of LGS-RTP service.

20. Under the RTP rate, electricity consumed up to the CBL is billed at the LGS or TOD rate. Electricity consumed in excess of the CBL is billed at the LMP at the closest MISO delivery point, plus a mark-up for Otter Tail's overhead, return on investment and profit.

21. Otter Tail's RTP rate rider was approved by the South Dakota PUC effective July 1, 2009.

22. The first time Otter Tail offered the LGS-TOD rate and the RTP rate rider in South Dakota was in the new tariff that became effective July 1, 2009.

23. During discussions between Valley Queen and Otter Tail in June 2009, Otter Tail failed to advise Valley Queen of the new RTP rate. Otter Tail was legally obligated to tell Valley Queen about the RTP rate rider. Otter Tail was legally obligated to, and should have advised Valley Queen that combining the plant and the electric boiler on the LGS-TOD rate was not the most cost effective rate available. Otter Tail was legally obligated to, and should have advised Valley Queen that the most economical approach was to bill the main plant at the LGS-RTP rate and bill the boiler at the Controlled Service-Interruptible Load (commonly called Large Dual Fuel or LDF) rate.

24. In 2007, Valley Queen began construction of a \$40 million expansion of its operations. During the 2009 discussions between Valley Queen and Otter Tail, the construction was ongoing and readily apparent to Otter Tail's personnel when they met with Valley Queen.

25. Between 2009 and 2010, Valley Queen's consumption of electricity increased from approximately 2,500 kw to slightly more than 3,000 kw, a twenty percent increase. Between 2010 and 2011, consumption increased another ten percent, and has increased steadily since, reaching 3,600 kw in 2014.

26. In 2013, Valley Queen discovered Otter Tail was a year in error in determining the boiler contract expiration date. Otter Tail unilaterally credited Valley Queen \$31,633.94 on its billings to cover the error.

27. After discovering the contract expiration date error, Valley Queen evaluated its rate options, but only after repeatedly asking Otter Tail for assistance. In the period July 1, 2009 to December 31, 2014, Valley Queen would have paid materially less for electricity by having elected LGS with the RTP rate rider for the main plant and LDF for the boiler in 2009 (or 2010 when the contract for the boiler actually expired). Presuming Otter Tail had made it known those rates were available and/or fulfilled its legal obligation to advise Valley Queen of the best rates available to it, Valley Queen would have selected those rates in 2009.

28. Had Otter Tail complied with its contractual, regulatory, and tariff obligation to advise Valley Queen of all of the rate options in 2009 when the new rate choices were made, Valley Queen's CBL would have been approximately 2,450 kw.

29. Had Otter Tail fulfilled its obligations and made Valley Queen aware of the options available after the July 1, 2009, tariff became effective, even after taking into account the 2013 credit, Valley Queen would have saved more than \$1,400,000 in electricity charges through 2014.

30. Otter Tail breached its contractual, regulatory, and tariff obligations to Valley Queen in failing to advise Valley Queen of the most advantageous rate available in June of 2009 and has continued to breach its ongoing contractual, regulatory, and tariff obligations since that date.

### **REQUEST FOR RELIEF**

Wherefore, Valley Queen prays the Public Utilities Commission find that Otter Tail breached its contract with Valley Queen, failed to fulfill its tariff and regulatory duties and legal

obligations to Valley Queen, failed to allow Valley Queen to select rate options resulting in a CBL of approximately 2,450 kw, that Valley Queen was damaged thereby in the sum of at least one million four hundred thousand dollars (\$1,400,000), and direct Otter Tail pay Valley Queen all damages arising from the foregoing breach of contract and failure to fulfill tariff and regulatory duties and legal obligations, together with interest thereon, Valley Queen's costs and disbursements, and any other and further relief the Commission deems adequate in the premises.

Dated this 19 day of May 2015.

WOODS, FULLER, SHULTZ & SMITH P.C.

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Attorneys for the Valley Queen

Attestation:

Valley Queen Cheese Factory, Inc., by the signature of its officer hereon, affirms that the statement of facts incorporated into the foregoing Consumer Complaint are true and accurate to the best of the company's knowledge.

By: Mark Leddy  
Mark Leddy  
It's Secretary

Dated this 18<sup>th</sup> day of May 2015.