



Gary Hanson, Chair
Steve Kolbeck, Vice Chair
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SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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March 31, 2008

Patricia Van Gerpen
Executive Director
500 E. Capitol
Pierre, SD 57501

**RE: In the Matter of the Filing by Otter Tail Power Company for Approval
of its Proposed Energy Efficiency Partnership Plan for 2008
EL07-011**

Dear Ms. Van Gerpen:

On March 26, 2008, at the Commission's Ad Hoc meeting, John Smith inquired of Staff and Otter Tail Power Company as to the Commission's jurisdiction regarding the above-captioned matter. Specifically he asked if jurisdiction was most appropriately found under SDCL 49-34A-8.2, 49-34A-12, or 49-34A-25.

It is Staff's opinion that SDCL 49-34A-8.2 (see below) is the most appropriate statute as it speaks directly to performance based incentive rates.

49-34A-8.2. Incentive rates for improved performance and efficiency. In addition to any other rate authorized by this chapter, the commission may approve incentive rates to encourage improvement in the performance and efficiency of public utilities. The rates shall be in the form of preapproved rate models made applicable as levels of performance are attained by the utility. If approved, no such incentive rate constitutes a violation of § 49-34A-3 or a change in rates pursuant to § 49-34A-12. The provisions of this section apply to any incentive rate tariff approved by the commission in existence on July 1, 1996.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Karen E. Cremer
Staff Attorney

cc: Mr. Brian Rounds
Mr. Dave Jacobson
Mr. Bob Knadle
Company Representatives