

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

**In the Matter of the Application of Otter Tail )  
Power Company for Authority to Increase Its ) Motion in Limine  
Electric Rates )  
) EL18-021  
)**

Comes now Commission Staff and hereby files this Motion in Limine to define the scope of the hearing by precluding all evidence and testimony not directly related to the rate of return on equity.

**A. Rate of Return on Equity was the only issue noticed for hearing.**

On March 7, 2019, the Commission issued an Order for and Notice of Evidentiary Hearing.<sup>1</sup> In that Notice, the Commission stated that “[t]he issue to be determined by the Commission is: What is the appropriate return on equity to produce just and reasonable rates?” No other issues were noticed for hearing. Therefore, Staff is without adequate notice to allow additional issues to be brought into this hearing, and to do so would be a violation of due process and would be unduly prejudicial to Staff, all ratepayers, and the public at large.

**B. Any matter covered by the settlement agreement is not appropriate for this hearing.**

On February 15, 2019, Staff and Otter Tail entered into a Settlement agreement.<sup>2</sup> In the Joint Motion for Approval of Settlement Stipulation, both parties agreed that the settlement “represent[s] a negotiated settlement of the issues detailed in the Settlement Stipulation.” The parties further stipulated that “the terms of the Settlement Stipulation agreed upon are just and reasonable and consistent with South Dakota Law.” The Commission granted the Joint Motion

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<sup>1</sup> <https://puc.sd.gov/commission/orders/electric/2019/el18-021hearing.pdf>

<sup>2</sup> <https://puc.sd.gov/commission/dockets/electric/2018/EL18-021/jointmotion.pdf>

for Approval of Settlement Stipulation and approved the Settlement Stipulation on March 6, 2019.<sup>3</sup>

To allow Otter Tail to bring any aspect of the Settlement Stipulation into this hearing violates the very principles of a negotiated settlement. The fact that it was a negotiated agreement, a phrase even incorporated in the document, underscores the fact that any give on the part of one side was met with the same on the other. Thus, to allow Otter Tail to use any of its concessions to influence the single unresolved issue would leave Staff and ratepayers at a disadvantage, essentially stranding the many concessions that were made by Staff. Certainly, if we cannot have faith in our settlements, there is little purpose in entering into a settlement agreement. Should Otter Tail intend at the eleventh hour to add more benefit to its bargain, Staff must be afforded that same opportunity by litigating issues on which Staff conceded for the sole purpose of settlement.

Furthermore, the Settlement Stipulation included a provision that it could be withdrawn “in the event the Commission imposes any changes in or conditions to [the] Stipulation.” Should, for example, Otter Tail successfully argue that the moratorium agreed to by Otter Tail in exchange for Staff concessions should also serve as justification for a higher rate of return on equity, a new condition would be imposed on the Stipulation. In that case, Staff should have the opportunity to withdraw the Stipulation and litigate the issues it conceded in return for the moratorium.

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<sup>3</sup> <https://puc.sd.gov/commission/orders/electric/2019/el18-021stipulation.pdf>

For due process reasons, notice reasons, and to preserve the integrity of the settlement, all aspects of the settlement agreement should be precluded from being used as testimony or evidence, or in any way introduced into the evidentiary record.

**C. Prefiled testimony of witnesses not testifying directly on rate of return should be precluded.**

When the parties entered into the Settlement Stipulation, the parties stipulated that they “understand if the issues settled [therein] had not been settled, the Commission Staff would have filed direct testimony on those issues...” Therefore, any prefiled testimony to which Staff did not respond because the prefiled testimony covered issues settled by the Settlement Stipulation should be precluded. Should such testimony be made part of the record, Staff would be deprived of the right to file direct testimony, which both parties agreed it would have done had the issues not been settled.

**CONCLUSION**

Staff respectfully requests the Commission hear this Motion at the beginning of the evidentiary hearing, noticed to commence on March 26, 2019. Staff requests the Commission grant the Motion in Limine and preclude any evidence that would undermine or violate the Settlement Stipulation as detailed above, as well as any evidence not directly related to the determination of return on equity.

Respectfully submitted this 21st day of March 2019.



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