

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

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In the Matter of the Complaint of Valley Queen  
Cheese Factory, Inc., Against Otter Tail Power  
Company

**EL25-026**

**OTTER TAIL POWER COMPANY'S  
ANSWER TO CONSUMER  
COMPLAINT**

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COMES NOW Otter Tail Power Company ("***Otter Tail***") and answers the Complaint filed with the Public Utilities Commission ("***Commission***") by Valley Queen Cheese Factory, Inc. ("***Valley Queen***") dated July 9, 2025 (the "***Complaint***").

ARSD 20:10:01:02:03 requires that pleadings filed with the Commission include statements of fact and law set forth in separately numbered paragraphs. Portions of Valley Queen's Complaint combine multiple allegations of fact or law combined into single numbered paragraphs. Otter Tail has attempted to address each allegation included in each paragraph in the Complaint. Nevertheless, to the extent the Complaint is deemed to contain an allegation to which there has been no response, that allegation should be deemed denied.

**ANSWER**

1. Otter Tail denies each and every matter, allegation, and thing in the Complaint except as expressly admitted below.
2. Otter Tail admits the allegations in paragraph 1 of the Complaint.
3. With regard to paragraph 2 of the Complaint, upon information and belief, Otter Tail is aware of Valley Queen's expansion and that the expansion was operational on or about January 1, 2025. Otter Tail is without sufficient information to admit or deny the remaining allegations in paragraph 2 of the Complaint and thus denies the same and remits Valley Queen to strict proof thereof.
4. Otter Tail admits the allegations in paragraph 3 of the Complaint.
5. With regard to paragraph 4 of the Complaint, Otter Tail admits that the Commission generally has jurisdiction to hear consumer complaints, but Otter Tail denies that the Commission has jurisdiction over Valley Queen's complaint in this matter.
6. With regard to paragraph 5 of the Complaint, Otter Tail admits that Valley Queen is located within Otter Tail's approved geographic service territory in South Dakota and that Otter Tail, with inapplicable exception, is the sole provider of electricity to Valley Queen. Otter Tail denies that it has a monopoly on the sale of electricity at retail to Valley Queen in all circumstances.

7. Otter Tail admits the allegations in paragraph 6 of the Complaint.
8. With regard to paragraph 7 of the Complaint, admitted in part and denied in part. Otter Tail admits that “[t]he pricing methodology is stated in the tariff as follows: ‘Hourly prices are determined for each day based on projections of the hourly system incremental costs, losses according to voltage level, hourly outage costs (when applicable), and profit margin.’” However, this is only a part of the pricing methodology. Renewable generation resources recovered through the Phase in Rider are a key component of the RTP pricing methodology. These renewable generation resources are part of Otter Tail’s generation stack that provides an alternative to the MISO Day Ahead Locational Marginal Price (LMP) market. If Otter Tail did not make investments in these renewable energy resources, the number of hours that Valley Queen is subject to the MISO Day Ahead LMP market would be greater. It is also important to note that the renewable energy investments Otter Tail makes, and which are recovered in the Phase in Rider, are driven in part by Valley Queen’s load and the corresponding capacity that Otter Tail must secure to serve that load. These are reasons why the Phase in Rider applies to RTP tariff billings.

Otter Tail admits that “Otter Tail has told Valley Queen that its RTP rates are set using MISO day-ahead Locational Marginal Pricing.” However, each hour’s energy price is not exclusively determined by MISO Day-Ahead LMPs. Each hour’s energy price, for the next day, is determined by an analysis of Otter Tail’s generation stack relative to Otter Tail’s system load. If Otter Tail’s generation assets (some of which, importantly, are recovered through the Phase in Rider) will be sufficient to serve Otter Tail’s system load, then the hourly price for the hour so analyzed is the marginal unit cost of Otter Tail’s generation stack. If Otter Tail’s generation stack is insufficient to serve its system load in the hour in question, then the hourly price is based on the MISO Day Ahead LMP price.

Otter Tail denies that RTP rates “are not known ahead of time and cannot be predicted.” Under the RTP tariff, Otter Tail quotes Valley Queen an hourly energy price for each hour of the day for the next day. Therefore, Valley Queen knows a day in advance what its energy price will be hour by hour. The next day’s hourly price schedule allows Valley Queen to adjust its plant operations and energy consumption based on a fixed and known energy price for each hour of the day.

Otter Tail denies that “a customer electing the RTP rate bears the risk of market changes” in the manner alleged by Valley Queen. Because Valley Queen knows the RTP rates for the next day, Valley Queen can adjust its plant operations and energy consumption based on a fixed and known energy price for each hour of the day. Valley Queen takes no real time market pricing risk. To the contrary, Otter Tail assumes real time market risk if Valley Queen’s energy consumption deviates from a forecast prepared by Otter Tail. The only market risk to which Valley Queen is subject to are changes in MISO Day Ahead LMP market, which Valley Queen knows a day in advance and can manage by adjusting its operations.

9. Otter Tail admits the allegations in paragraph 8 of the Complaint.

10. Otter Tail admits the allegations in paragraph 9 of the Complaint.
11. Otter Tail admits the allegations in paragraph 10 of the Complaint. Valley Queen had the opportunity to object to the Phase in Rider being applied to the RTP Tariff and did not do so.
12. Otter Tail admits the allegations in paragraph 11 of the Complaint.
13. Otter Tail admits the allegations in paragraph 12 of the Complaint.
14. Otter Tail admits the allegations in paragraph 13 of the Complaint.
15. With regard to paragraph 14 of the Complaint, admitted in part and denied in part. Otter Tail admits that “the Commission has approved application of the PIR [Phase in Rider] to Otter Tail’s RTP tariff and Valley Queen has not previously objected before the Commission. . .” Valley Queen previously had the opportunity to object to the Phase in Rider being applied to the RTP Tariff and did not do so.

Otter Tail denies the remainder of paragraph 14. Valley Queen’s description of its costs and the price methodology for RTP is incomplete. Renewable generation resources recovered through the Phase in Rider are a key component of the RTP pricing methodology. Renewable generation resources are part of the Otter Tail generation stack that directly influences which Otter Tail generation resource or MISO Day Ahead LMP price sets an hourly price. If Otter Tail did not make investments in these renewable energy resources, the number of hours that Valley Queen is subject to MISO Day Ahead LMPs would be greater. It is also important to note that the renewable energy investments Otter Tail makes, and which are recovered in the Phase in Rider, are driven in part by Valley Queen’s load and the corresponding capacity that Otter Tail must secure to serve that load.

Further, under the RTP tariff, Otter Tail quotes Valley Queen an hourly energy price for each hour of the day for the next day. Each hour’s energy price, for the next day, is determined by an analysis of Otter Tail’s generation stack relative to Otter Tail’s system load. If Otter Tail’s generation assets (some of which, importantly, are recovered through the Phase in Rider) will be sufficient to serve Otter Tail’s system load, then the hourly price for the hour so analyzed is the marginal unit cost of Otter Tail’s generation stack. If Otter Tail’s generation stack is insufficient to serve its system load in the hour in question, then the hourly price is based on the MISO Day Ahead LMP price.

As such, Valley Queen knows a day in advance what its energy price will be hour by hour. The next day’s hourly price schedule allows Valley Queen to adjust its plant operations and energy consumption based on a fixed and known energy price for each hour of the day. Valley Queen takes no real time market pricing risk. Otter Tail assumes real time market risk if Valley Queen’s energy consumption deviates from a forecast prepared by Otter Tail.

16. With regard to paragraph 15, Otter Tail admits that “as stated in the RTP Tariff, the pricing methodology is based on ‘projections of the hourly system incremental costs.’” Otter Tail

denies the remaining allegations contained in this paragraph of the Complaint for the reasons set forth in Otter Tail's Answer to paragraph 14 above.

17. With regard to paragraph 16, Otter Tail denies the allegations contained in this paragraph of the Complaint. It is correct to say that the higher the day ahead market, the higher the PIR charge per kWh. Put another way, if the next day per kWh price increases, the percentage of billed charges methodology used by the Phase in Rider will result in more Phase in Rider revenue. However, increases in kWh price do not directly cause an increase in Otter Tail's revenue because the Phase in Rider has a Commission-approved revenue requirement subject to an annual true up. Any over or under recovery in the Phase in Rider is carried forward and factored into the next recovery period's rate. Otter Tail only recovers the Commission-approved amount of revenue in the Phase in Rider.
18. Otter Tail denies the allegations contained in paragraph 17 of the Complaint. It is true that the Phase in Rider does not apply to Otter Tail's Energy Adjustment Rider. However, Otter Tail's Energy Adjustment Rider is not comparable, theoretically or otherwise, to the Phase in Rider. The Energy Adjustment Rider (EAR) and Phase in Rider are very different mechanisms. The EAR recovers fuel and purchased energy expenses on a straight pass-through methodology, whereas the Phase in Rider recovers Otter Tail's investments in assets used to serve customers and meet capacity requirements, including investments in generation resources benefiting Valley Queen, and meeting Valley Queen's portion of Otter Tail's capacity requirements as a firm load customer. The EAR is priced monthly, whereas the RTP is priced hourly, which gives Valley Queen flexibility and control of its energy costs.
19. Otter Tail admits the allegations contained in paragraph 18 of the Complaint in so far as the allegations provide a general description of the Voluntary Renewable Energy Rider (TailWinds). It is reasonable and appropriate not to apply the Phase in Rider to TailWinds, which is very different than the RTP tariff. TailWinds is a voluntary program that allows customers to pay an added charge to the applicable rate schedule the customer is already on. The current charge is \$3.84 per 100 kWh of contracted block. Tailwinds is for customers who want to use a dedicated renewable energy resource to increase the amount of energy supplied from renewable resources. Tailwinds is administered through renewable energy credits via a purchase power agreement. Customers do not pay EAR on the amount of Tailwind's energy in which they enroll. Customers do, however, pay Commission-approved Phase in Rider percent of bill charges, whether on TailWinds or not.
20. With regard to paragraph 19, Otter Tail denies the allegations contained in this paragraph of the Complaint. It is consistent and reasonable "not to apply the PIR to the Energy Adjustment Rider and the Voluntary Renewable Energy Rider, but to apply it to the Real Time Pricing Rider" as TailWinds (a/k/a Renewable Energy Rider) is an entirely different program from the RTP tariff. TailWinds is a voluntary program that allows customers to pay an added charge to the applicable rate schedule the customer is already on. TailWinds is for customers who want to assert they are using and supporting renewable energy. TailWinds is administered through renewable energy credits from a dedicated renewable resource via a purchase power agreement. Customers do not pay EAR on the amount of

TailWind's energy in which they enroll. Customers do, however, pay Commission-approved Phase in Rider percent of bill charges whether on TailWinds or not.

21. Otter Tail admits the allegations contained in paragraph 20 of the Complaint. Valley Queen has complained about the RTP tariff for some time now, and Otter Tail has responded each time, including a face-to-face meeting with Valley Queen representatives, and explained that it is reasonable to apply the Phase in Rider to the RTP tariff for the reasons previously noted.
22. Otter Tail is without sufficient information to admit or deny the allegations in paragraph 21 of the Complaint, and, as a result, Otter Tail denies the same and remits Valley Queen to strict proof thereof.
23. With regard to paragraphs 22 and 23, to the extent the allegations accurately reflect the language of the cited statute, Otter Tail admits. With respect to the application of the cited statutes, Otter Tail denies the allegations of Valley Queen and remits Valley Queen to strict proof thereof. It is true that a public utility has the burden of showing that any proposed tariff is just and reasonable. *See* SDCL 49-34A-11; *Application of Nw. Pub. Serv. Co.*, 297 N.W.2d 462, 464 (SD 1980). However, because the RTP tariff has been approved by order of the Commission, Valley Queen bears the burden of showing that application of the PIR to the RTP tariff is unjust and unreasonable. *See* SDCL 49-34A-61 ("In all proceedings before the Public Utilities Commission in which the modification or vacation of any order of the commission is sought, the burden of proof shall be on the person seeking such modification or vacation."); SDCL 49-34A-6 (requiring tariffs to be "just and reasonable").
24. With regard to paragraph 24, Otter Tail denies the allegations contained in this paragraph of the Complaint. Application of the Phase in Rider to Otter Tail's RTP tariff is just and reasonable. The Commission has approved the design and application of the Phase in Rider tariff. As previously discussed, the Phase in Rider has a revenue requirement that the Commission approves each time Otter Tail updates the rider and is subject to an annual true up, and the Phase in Rider does not create any windfall to Otter Tail. Further, it is entirely reasonable for the EAR to not be subject to the RTP tariff because the EAR is part of an entirely different program (TailWinds) than the RTP tariff as previously discussed. Finally, for reasons previously discussed, renewable generation resources recovered through the Phase in Rider are a key component of the RTP pricing methodology.

### **DEFENSES**

25. The Commission lacks subject matter jurisdiction over the claims asserted in Valley Queen's complaint under SDCL 49-34A-26 and SDCL 49-34A-10. Under SDCL 49-34A-10, a tariff approved by the Commission has the full force and effect of law. Further, under SDCL 49-34A-26, the Legislature has only granted the Commission the authority to open an investigation into a filed tariff in limited circumstances, namely, "[1] on its own motion or [2] upon a complaint made against any public utility, by the governing body of any political subdivision, by another public utility, or by any twenty-five consumers of the particular utility that any of the rates, tolls, tariffs, charges, or schedules or any joint rate .

...” SDCL 49-34A-26. SDCL 49-34A-26 does not authorize the Commission to open an investigation into the RTP tariff based on a complaint from a single customer.

26. The Complaint fails to state a claim upon which relief can be granted.
27. The Complaint is barred by the filed rate doctrine.
28. The Complaint is barred in whole or part by the bar against “retroactive lawmaking,” as initially set forth by the United States Supreme Court in *Arizona Grocery Co. v. Atchison, T. & S. F. Ry. Co.*, 284 U.S. 370, 389, 52 S. Ct. 183, 186, 76 L. Ed. 348 (1932); *see also See ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945, 967 (D.C. Cir. 2007) (discussing *Arizona* and its progeny). Under *Arizona*, the Commission cannot award Valley Queen reimbursement for the RTP tariff.
29. The Complaint is barred, in whole or in part, by the doctrine of waiver and/or estoppel.
30. The Complaint is barred, in whole or in part, by consent.
31. The Complaint is barred, in whole or in part, by ratification.

Based upon the foregoing, Otter Tail respectfully requests entry of a judgment providing the following relief:

- a. Dismissing the Complaint with prejudice and denying Valley Queen all its requested relief;
- b. Awarding Otter Tail its costs and disbursements; and
- c. Granting Otter Tail any and all other relief deemed just and equitable.

Dated this 5<sup>th</sup> day of August, 2025.

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### **CERTIFICATE OF SERVICE**

I, Paul W. Tschetter, do hereby certify that I am a member of Boyce Law Firm, LLP, attorneys for Otter Tail Power Company and that on the 5<sup>th</sup> day of August, 2025, a true and correct copy of the foregoing and this Certificate of Service were served via email to the following addresses listed:

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