

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

---

**IN THE MATTER OF THE  
COMPLAINT OF VALLEY QUEEN  
CHEESE FACTORY, INC. AGAINST  
OTTER TAIL POWER COMPANY**

---

\*  
\* **STAFF’S RESPONSE TO OTTER TAIL**  
\* **POWER COMPANY’S MOTION TO**  
\* **DISMISS**  
\*  
\* **EL25-026**  
\*

The Commission Staff, by and through its attorney of record, hereby files this response in the above-captioned siting proceeding.

**I. Preliminary Statement.**

For purposes of this brief, the South Dakota Public Utilities Commission shall be referred to as the “Commission”; Commission Staff shall be referred to as “Staff”; Otter Tail Power Company shall be referred to as “Otter Tail”; and Valley Queen Cheese Factory, Inc. shall be referred to as “Valley Queen.”

**II. Jurisdictional Statement and Authority.**

The Commission has jurisdiction over this matter pursuant to SDCL Chapter 1-26, Chapter 15-6, Chapter 49-1 and Chapter 49-34A, specifically, SDCL 49-1-11(2), SDCL 49-34A-4(6) and SDCL 49-34A-26, and ARSD 20:10:01:07.01, ARSD 20:10:01:15 and ARSD 20:10:01:11:01.

**III. Background and Facts.**

On July 9, 2025, Valley Queen filed a Consumer Complaint (Complaint) against Otter Tail. On the same day, the Commission served a Notice of Complaint, Deadline for Answer on Otter

Tail. The Complaint alleged the “application of the PIR [Phase In Rider] to Otter Tail’s RTP [Real Time Pricing] tariff is unjust and unreasonable because the application is not reasonably related to the purpose served by the PIR, it results in a windfall to Otter Tail, and it is inconsistent with the Commission’s treatment of the Energy Adjustment Rider.”<sup>1</sup> Valley Queen requested “the Commission: (1) enter an order determining that the PIR should not apply to the RTP tariff and amending the Mandatory Riders—Applicable Matrix; (2) require that Otter Tail credit Valley Queen for the charges it has paid since at least June 2023 due to application of the PIR to the RTP tariff; (3) award Valley Queen its costs and disbursements in this matter; and (4) grant any other relief that the Commission deems just and equitable.”<sup>2</sup>

On July 23, 2025, Valley Queen, Otter Tail, and Staff (together “Parties”) filed a Stipulation and Request for Waiver of ARSD 20:10:01:09, requesting to set Otter Tail’s answer deadline on August 5, 2025. Otter Tail filed its Answer to Consumer Complaint on August 5, 2025, and on August 15, 2025, filed a Motion to Dismiss and Motion for Hearing. On August 26, 2025, the Commission issued an Order for and Notice of Hearing on the Motion to Dismiss.

Specifically, Otter Tail claims Valley Queen’s Complaint should be dismissed because:

1. The Commission lacks subject matter jurisdiction over the Complaint. Specifically, Valley Queen lacks standing to bring its Complaint under SDCL 49-34A-10 and SDCL 49-34A-26. And,
2. The Complaint fails to state a claim upon which relief can be granted.

#### **IV. Analysis**

---

<sup>1</sup> Petition, page 6.

<sup>2</sup> Petition, page 6.

**1. Valley Queen lacks standing to file a Complaint by itself under SDCL 49-34A-26, however, the Commission does have jurisdiction to investigate the rate and the merits of the Complaint on its own motion.**

Staff agrees with Otter Tail's Motion as it relates to Valley Queen's standing to file a complaint pursuant to SDCL 4-34A-26 on its own. Though Valley Queen filed this matter as a Consumer Complaint, relying on SDCL 49-1-11(2), SDCL 49-34A-4(6) and ARSD 20:10:01:07.01, this matter should be considered under SDCL 49-34A-26. ARSD 20:10:01:07.01 is a general rule that provides a general process for consumers to file a complaint if a company violated a rule, statute, order, or law. SDCL 49-34A-26 provides a specific process for a complaint that a tariff is unreasonable, the actual issue alleged in Valley Queen's Complaint. When there are two statutes that may apply to a situation, in this case providing two potential avenues to file a complaint against a utility, it is recognized that a specific statute takes precedence over a general rule<sup>3</sup>. In this situation, because Valley Queen's complaint is claiming a tariff is unreasonable, a specific scenario addressed in, SDCL 49-34A-26, that statute should be applied over the general administrative rule providing for consumer complaints alleging a violation of law, rule, or Commission Order.

SDCL 49-34A-26 provides:

**On its own motion or 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 or any regulation, measurement, practice, act or omission affecting or relating to the transmission, delivery or furnishing of natural gas or electricity or any service in connection therewith is in any respect unreasonable, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the Public Utilities Commission shall**

---

<sup>3</sup> *Meyerink v. Northwestern Public Service Company*, 391 N.W.2d 180, 183-84 (S.D. 1986) (citations omitted). *See also Martinmass v. Englemann*, 2000 S.D. 85, ¶ 49, 612 N.W.2d 600, 611.

**proceed, with notice, to make such investigation as it may deem necessary and take such action as deemed necessary and appropriate.** (emphasis added).

Pursuant to this statute, if a complaint is filed by a listed entity or group of twenty-five customers, the Commission is required, by the key term “shall” to “proceed, with notice, to make such investigation as it may deem necessary and take such action as deemed necessary and appropriate.” Because Valley Queen is not a governing body of a political subdivision, a public utility, or joined by twenty-four other customers, Valley Queen does not have standing under the statute on its own to file a complaint under 49-34A-26, requiring the Commission to proceed, with notice, to make such investigation as it may deem necessary.

Nevertheless, SDCL 49-34A-26 also provides that “[o]n its own motion **or** upon a complaint... the Public Utilities Commission shall proceed with notice, to make such investigation as it may deem necessary and take such action as deemed necessary and appropriate.” The “or” in the first line of the statute creates two potential paths in which the Commission shall proceed with notice to make necessary investigation into a tariff, on its own motion, or upon complaint. This language is evident that the Commission may initiate a proceeding and an investigation independently from a complaint filed pursuant to SDCL 49-34A-26. It is also well within the Commission’s jurisdiction and regulatory duties, as established in SDCL Chapter 49-34A, to review concerns brought to the attention of the PUC by the public and ensure just and reasonable rates. If the Commission receives information that indicates a rate is unjust or unreasonable, the language of 49-34A-26 appears to allow the Commission to initiate an investigation on its own motion. In this case, regardless of whether Valley Queen has individual standing to file a complaint against Otter Tail under state law, the Commission does have authority to review the information

provided by Valley Queen, and, if there is a sufficient basis, to, on its own motion, proceed with notice and an investigation of this matter.

**2. The Complaint does not completely fail to state a claim upon which relief can be granted.**

Staff agrees that some of Valley Queen's requests for relief cannot be granted by the Commission, but at least one of Valley Queen's requests could be Ordered by the Commission if supported by the facts. In this case, Valley Queen specifically "requests that the Commission: (1) enter an order determining that the PIR should not apply to the RTP tariff and amending the Mandatory Riders—Applicable Matrix; (2) require that Otter Tail credit Valley Queen for the charges it has paid since at least June 2023 due to application of the PIR to the RTP tariff; (3) award Valley Queen its costs and disbursements in this matter; and (4) grant any other relief that the Commission deems just and equitable."<sup>4</sup> Otter Tail argues that the Complaint fails to state a claim upon which relief can be granted, claiming that Valley Queen does not seek prospective changes to the tariff. Staff agrees the Commission is prohibited from retroactive ratemaking, which would prevent the Commission from ordering Otter Tail to credit Valley Queen for past PIR payments. The PUC is not a court and does not have general jurisdiction, and therefore the PUC is limited by statute in the remedies it may order. While the Commission has broad authority to implement Chapter 49-34A, the Commission can only award costs and disbursements if specifically authorized by statute. In this case, Valley Queen has not cited an authority that authorizes the Commission to award costs and disbursements, therefore Staff agrees that Valley

---

<sup>4</sup> Complaint, page 6.

Queen's requests for a credit for previous charges and for costs and disbursements cannot be granted by the Commission.

That being said, Valley Queen's Complaint does specifically request the Commission "(1) enter an order determining that the PIR should not apply to the RTP tariff and amending the Mandatory Riders—Applicable Matrix." Contrary to Otter Tail's assertion, this request does specifically seek prospective relief. Should the Commission find sufficient reason to open an investigation, the Commission would have jurisdiction to order the PIR should not prospectively apply to the RTP as requested by Valley Queen.

**3. There may be grounds for the Commission to initiate an investigation on its own motion.**

While not precedent setting, the Commission has recognized the Commission does have the authority under SDCL 49-34A-26 to initiate an investigation in at least two previous dockets, CE03-003 and CN03-003. In these dockets, an individual ratepayer filed a complaint against a utility regarding a tariffed rate. In each of these dockets, a Motion to Dismiss was filed and the Commission ultimately granted the motions. In each of these dockets, the Commission specifically recognized the Commission has broad discretion to initiate an investigation. Though the Commission declined to open an investigation in these dockets, the Commission's Orders did provide some guidance regarding when initiating an investigation may be appropriate. The Orders in these dockets found there was not a sufficient basis to open an investigation because "the Complaint does not state facts that are different from the general policy factor considered by the Commission in the numerous instances...in which the Commission has had to balance the competing economic and social interests involved in fairly apportioning directly assignable fixed

customer service costs between fixed charges and usage-based charges.”<sup>5</sup> Following this rationale, if the Commission finds that Valley Queen raised new facts that were not considered previously by the Commission, it may be appropriate to initiate an investigation to ensure the tariff is reasonable when specifically considering those new facts. But if no new facts are alleged beyond general policy factors already considered by the Commission, there is likely not a sufficient basis to open an investigation.

In this case, Valley Queen asserted that the application of the PIR to the RTP is unreasonable because “Otter Tail’s RTP rates are set using MISO day-ahead LMP’s. These costs are mostly dependent on the market and not on Otter Tail’s embedded costs” and Valley Queen “should not also pay an additional percentage of that rate to cover Otter Tail’s revenue requirement because the pricing methodology for the RTP tariff bears no relationship to Otter Tail’s revenue requirement.”<sup>6</sup> Valley Queen also asserted that “[i]t is inconsistent 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” because “[t]he theoretical basis for the Energy Adjustment Rider is the same as the PIR” and “[b]ecause the PIR includes certain wind resources, applying the PIR to the Tail Winds rider would double count wind costs. In other words, the cost of the wind is factored into the rider, so the PIR should not, and does not, apply.”<sup>7</sup> Valley Queen further claimed that “[i]t does not appear from a review of the docket in EL19-025 that any party raised as an issue for the Commission’s consideration whether the PUC should apply to the RTP tariff.”<sup>8</sup>

---

<sup>5</sup> See CN03-003, Order Granting Motion to Dismiss Complaint and Closing Docket, paragraph 7. See Also CE03-003, Order Granting Motion to Dismiss Complaint and Closing Docket, paragraph 7.

<sup>6</sup> Complaint, page 4.

<sup>7</sup> Complaint, page 5.

<sup>8</sup> Complaint page 3, paragraph 10.

At this point, it is not clear if the Commission considered the specific issues raised in Valley Queen's Complaint when the application of the PIR to the RTP was approved. If the Commission did not consider the specific concerns raised by Valley Queen's Complaint when approving the yearly PIR and the RTP filings that applied the PIR to the RTP, there may be sufficient grounds for the Commission to open an investigation into the rates on its own motion. Staff is currently investigating the merits of Valley Queen's allegations and whether these issues were specifically considered by the Commission when the PIR and RTP were approved and respectfully reserves the right to provide a recommendation on the merits of the Complaint at a later date.

## **V. Conclusion**

In this case, although the Complaint does seek relief the Commission could ultimately grant, Staff agrees that Valley Queen simply does not have standing to file this type of Complaint against Otter Tail on its own, therefore the Motion to dismiss should be granted. However, the Commission does have jurisdiction to open an investigation into the rate on its own motion if the facts provide a sufficient basis for an investigation. Because Staff is still investigating the merits of the Complaint, Staff does not have a firm recommendation at this point as to whether an investigation into this rate should be opened. Though if the Commission determines an investigation is necessary based on the information available, Staff recommends the most appropriate forum for that investigation is likely within the next Phase-In Rider docket filed by Otter Tail, or within Docket EL25-022, Otter Tail's request to increase electric rates currently filed with the Commission.

Dated this 30<sup>th</sup> day of September 2025

  
Amanda M. Reiss



Amanda M. Reiss  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
Phone (605) 773-3201  
[Amanda.reiss@state.sd.us](mailto:Amanda.reiss@state.sd.us)