

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation
Advance Determination of Prudence
Application

Motion to Recuse
Attorney William
Binek from
Participation in
PU 06-481 & 06-482

Montana-Dakota Utilities Co.,
a Division Of MDU Resources Group,
Inc.
Advance Determination of Prudence
Application

Case No PU-06-481
Case No PU 06-482

Intervenors

Motion to Recuse Attorney William Binek

Attorney William Binek filed an **Advocacy Response To Motion in Limine** (Applicants Motion) dated April 16, 2007. Said Response is adverse to Intervenors Memorandum in Opposition filed April 16, 2007.

The Advocacy Response to Intervenors Opposition Memorandum to Motion in Limine does not indicate any review or discussion of Intervenors Memorandum in Opposition which, inter alia, argues 49-02-23 does not apply to this prudence proceeding under 49-05-16.

The legislative history of NDCC 49-02-23 establishes Mr. Binek testified in support of NDCC 49-02-23 before the legislature on January 16, 1995. Attorney Binek's testimony is enclosed with the legislative history of NDCC 49-02-23 submitted with Intervenors Memorandum in Opposition filed

April 16, 2007.

Mr. Binek's testimony begins,

Mr. Chairman and members of the committee. My name is William Binek and I am Chief Counsel for the North Dakota Public Service Commission. The Commission has asked me to testify in support of HB 1312. (NDCC 49-02-23)

The Commission has taken a proactive role in the fight against the imposition of environmental externality costs that is arbitrarily assessed as a cost against different types of electric generating facilities. The Commission is providing technical assistance to the Attorney General and the North Dakota Lignite Energy Counsel in their challenge of the legislation enacted in MN which requires the MN Public Utilities Commission establish environmental costs for co2 emissions. The Commission has also aggressively opposed the assessment of environmental penalties against coal fired generating facilities in Northern States Power Companies generic competitive bidding procedure before the MN Public Utilities Commission.

The proposed legislation provides an important tool in the fight against the imposition of environmental externality costs targeted against North Dakota's Lignite Coal Industry.

Attorney Binek concludes, "The commission realizes that passage of this legislation may adversely affect some utilities, but the interests of North Dakota ratepayers must be protected."

Interveners' submit the above record establishes that in the Advocacy Staff Responses signed by Attorney Binek in the instant matter,

- a. does not offer an opportunity for neutral impartiality,
- b. does not create an appearance of impartiality, and
- c. shows advocacy for industry in that he has testified as an advocate for 49-02-23 in support of the ND Lignite Energy Counsel on January 16, 1995.

Attorney Binek's opinion fails to discuss;

- a. that Co2 has been declared a pollutant under the federal Clean Air Act and is subject to regulation by

the federal Environmental Protection Agency,
Massachusetts v. EPA, No 05-1120 (published April 2,
2007.

- b. that the code words "environmental externality"
clearly intend to be and are carbon dioxide
mitigation costs.
- c. that 49-02-23 does not apply to a prudence
proceeding, under 49-05-16.

Interveners request that Attorney Binek be recused from
further participation in this matter and that new counsel
of the PSC be assigned to this matter.

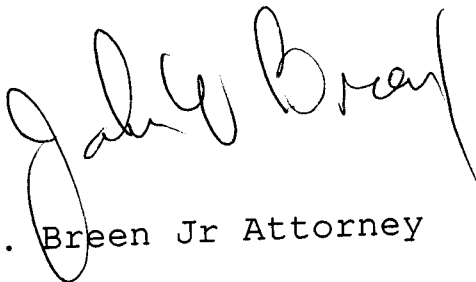
Submitted April 18, 2007

Interveners

Mark Trechock

Dakota Resources Council

By



John W. Breen Jr Attorney

717 Williams St

Bismarck, ND 58501

ND Bar ID 05492

By

Carrie La Seur Attorney

Plains Justice

319 3rd St. NW

Mount Vernon, Iowa 52314

Iowa Bar 52314

CORRECTED TESTIMONY ON HOUSE BILL 1312

Presented by: William W. Binek
Chief Counsel, Public Service Commission

Before: House, Industry, Business and Labor Committee

Date: January 16, 1995

Mr. Chairman and members of the committee. My name is William Binek and I am Chief Counsel for the North Dakota Public Service Commission. The Commission has asked me to testify in support of House Bill 1312.

"Environmental externality" is a term used to define the assessment of an artificial cost that is arbitrarily assessed as a cost against different types of electric generating facilities. The primary focus of the proponents of this artificial cost is the elimination of coal as a fuel to be used for generation of electricity.

The Commission has taken a proactive role in the fight against the imposition of environmental externality costs. The Commission is providing technical assistance to the Attorney General and the North Dakota Lignite Energy Council in their challenge of the legislation enacted in Minnesota which requires the Minnesota Public Utilities Commission establish environmental costs for CO₂ emissions. The Commission has also aggressively opposed the assessment of environmental penalties against coal fired generating facilities in Northern States Power Company's generic competitive bidding procedure before the Minnesota Public Utilities Commission.

The proposed legislation provides an important tool in the fight against the imposition of environmental externality costs targeted against North Dakota's Lignite

industry. Furthermore, this legislation protects North Dakota's electric ratepayers from artificially increased costs of electricity caused by self-serving and arbitrary actions of other states in the application of externality costs. The Commission realizes that passage of this legislation may adversely affect some utilities, but the interests of North Dakota ratepayers and taxpayers must be protected.

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Otter Tail Corporation **Case No PU-06-481**
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AFFIDAVIT OF SERVICE BY FIRST CLASS MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

John W. Breen Jr deposes and says

He is over 18 years of age, that he is not a party to this action, and believes in the obligation of an oath, and on the 18th day of April 2007 , he deposited in the United States Mail Bismarck ND three envelopes,

With first class postage prepaid a true copy of the attached:

1. Intervener's Motion to Recuse Attorney William Binek dated April 18, 2007.
(With Documents)

to

Bruce Gerhardson Associate General Counsel Otter Tail Corporation
215 S. Cascade St. Fergus Falls, MN 56538-0496

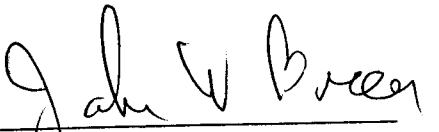
and

Daniel Kuntz Assistant General Counsel MDU Resources Group Inc.
PO Box 5650 Bismarck, ND 58506-5650

and

Donald Ball Vice President- Regulatory Affairs MDU
400 N 4th St. Bismarck ND 58501

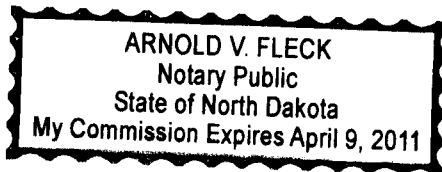
Which is the last know address of the parties.



John W. Breen Jr.

Subscribed and sworn to before me this 18th day April 2007





Notary Public, Burleigh County

North Dakota

My Commission Expires 04-09-2011