



# OFFICE OF ADMINISTRATIVE HEARINGS

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April 20, 2007

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Re: Otter Tail Corporation  
Advance Determination of Prudence Application  
Case No. PU-06-481

Montana-Dakota Utilities, Co., a Division of MDU Resources Group, Inc.  
Advance Determination of Prudence Application  
Case No. PU-06-481

OAH File No. 20070100

Dear Counsel,

Further to my recent communications concerning the prehearing conference for the captioned consolidated hearings, following are my questions, requests, and comments for your argument of the pending motions. I also add that I do not anticipate the usual standup, in-turn argument, but rather a roundtable discussion of the questions and requests I have made, as well as anything you wish to add to your respective motions, responses, and briefs. I'll try to see that the moving party has the last word, but I trust that none of you are shy and I expect that everyone will have their say.

1. Mr. Binek, how would we distinguish between "environmental issues" and "environmental externality values" as defined by N.D.C.C. § 49-02-23 for these hearings.
2. Mr. Breen, you need more specific case law to support your assertion that "N.D.C.C. § 49-02-23 applies only to proceedings that existed at the time of its enactment and does not apply to an advance determination of prudence

Mr. Gerhardson, Mr. Kuntz, Mr. Breen, and Mr. Binek  
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proceeding under N.D.C.C. § 49-05-16.” My present thought is that even if 49-02-23 and 49-05-16 may be at cross-purposes, I do not think that makes 49-02-23 ambiguous and allows a construction of the statute which exempts 49-05-16 from its application. *See Lawrence v. North Dakota Workers Compensation Bureau*, 2000 ND 60, ¶18, 608 N.W.2d 254, for a rough comparison.

3. Mr. Breen, please respond specifically to Mr. Binek’s contention, as I understand it, that whether or not CO<sub>2</sub> is classified as a “regulated pollutant” is irrelevant for the application N.D.C.C. § 49-02-23.

4. Mr. Breen, whatever the ruling on the motion in limine, you should be prepared to immediately identify Intervener’s discovery requests which are the subject of your motion to compel responses, and we will proceed directly to consider each in turn. Without particular reference to any of Applicants’ objections, please be prepared to respond to the objections, as appropriate, to articulate a reasonable expectation that the requested discovery, if allowed, would produce relevant admissible evidence. *Cf. Jensen v. State*, 373 N.W.2d 894, 901 (N.D. 1985).

5. And, Mr. Binek, I wonder whether the Commission’s advocacy staff have reviewed the Interveners’ discovery requests. If staff are interested, I would welcome your advice for the relevancy of the information the Interveners have requested.

6. Mr. Gerhardson, Mr. Kuntz, and Mr. Breen, I suggest that your best bet to revise the schedule for testimony, briefing and proposed orders is to discuss your proposals with Mr. Binek to try to find mutual agreement. Failing mutual agreement, please be prepared to respond in more specific detail to staff’s objection to show how the Commission’s consideration and determination would be better served by your proposals with due regard for staff’s commitments.

Thank you for your assistance and cooperation, counsel.

Sincerely,



Al Wahl  
Administrative Law Judge

AW/eap

Encl.