

# MONTANA-DAKOTA

UTILITIES CO.

A Division of MDU Resources Group, Inc.

400 North Fourth Street  
Bismarck, ND 58501  
(701) 222-7900

June 13, 2007

Illona Jeffcoat-Sacco  
Executive Secretary  
North Dakota Public Service Commission  
State Capitol  
Bismarck, ND 58505

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

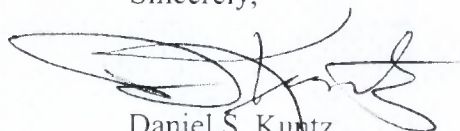
**In the Matter of the Advance Determination of Prudence Application of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. Case No. PU-06-482**

Dear Ms. Jeffcoat-Sacco:

Please find enclosed for filing the original and seven copies of the following documents:

1. Applicants' Motion to Strike Portions of the Direct Testimony of David A. Schlissel and Memorandum in Support of Motion to Strike;
2. Notice of Intent to File Rebuttal Testimony;
3. Applicants' Request to Present Rebuttal Testimony of Jeff Grieg by Telephone; and
4. Affidavit of Service.

Sincerely,



Daniel S. Kuntz  
Associate General Counsel

c: The attached service list with attachments

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Applicant's motion to strike portions of D. Schlissel test, et. al by Montana-Dakota Utilities Co., a Division of MDU Resou 06/13/2007 Comm, Legal Illona, Annette Mike, ALJ ...

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**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Otter Tail Corporation and Montana-Dakota Utilities Company, a Division of MDU Resources Group, Inc., Advance Determination of Prudence Applications

**APPLICANTS' MOTION TO STRIKE  
PORTIONS OF THE DIRECT  
TESTIMONY OF DAVID A.  
SCHLISSEL and MEMORANDUM IN  
SUPPORT OF MOTION TO STRIKE**

Case Nos. PU-06-481, PU 06-482

**MOTION TO STRIKE**

**PLEASE TAKE NOTICE** that pursuant to N. D. R. Civ. P. 12(f) Applicants Otter Tail Corporation ("Otter Tail") and Montana-Dakota Utilities Co. ("Montana-Dakota") (collectively "Applicants") hereby move for an Order striking portions of the direct testimony of David A. Schlissel submitted on behalf of the Dakota Resource Council in the above matter, as indicated in the attached Exhibit A.

**MEMORANDUM IN SUPPORT OF MOTION TO STRIKE**

**A. Evidence of the Alleged Costs of Complying with Future Environmental Laws or Regulations Concerning Global Warming is Prohibited From Being Offered in This Matter and Must Not Be Admitted in the Record.**

On April 10, 2007 Applicants brought a motion *in limine* seeking to prevent the Dakota Resource Council from submitting evidence regarding the cost of complying with future regulations concerning CO<sub>2</sub> emissions. On April 24, 2007 the Administrative Law Judge granted the Applicants' request, indicating his intent to stick to a "strict application of [N.D.C.C. § 49-02-23]." ALJ Order dated April 24, 2007, and accompanying letter. The Dakota Resource Council did not contest that determination.

In significant portions of the May 31, 2007 David Schlissel testimony, the Dakota Resource Council essentially ignores the ALJ's Order. Instead of heeding the ALJ's Order (and the statute), the Dakota Resource Council argues that the Applicants' decision to invest in new baseload facilities is imprudent because, in large part, the Applicants did not use a carbon price forecast in their resource planning like the one Mr. Schlissel has proposed in this matter. Specifically, Mr. Schlissel argues that Applicants should have applied his range of "Low CO<sub>2</sub> Price," "Mid CO<sub>2</sub> Price" and "High CO<sub>2</sub> Price" scenarios (or something very similar) in their resource planning models. These "carbon price forecasts" are *exactly* the type of environmental cost values that N.D.C.C. § 49-02-23 was specifically enacted to prevent.

That statute provides:

The commission may not use, require the use of, or allow electric utilities to use environmental externality values in the planning, selection, or acquisition of electric resources or the setting of rates for providing electric service. Environmental externality values are numerical costs or quantified values that are assigned to represent either:

1. Environmental costs that are not internalized in the cost of production or the market price of electricity from a particular electric resource; or
2. *The alleged costs of complying with future environmental laws or regulations that have not yet been enacted.*

(Emphasis added).

Accordingly, Applicants move to strike portions of Mr. Schlissel's direct testimony as being incompatible with the ALJ's Order and N.D.C.C. § 49-02-23. The testimony proposed to be stricken is highlighted in **orange** in Mr. Schlissel's May 31, 2007 direct testimony, attached as Exhibit A. This motion covers much if not all of Section VI of Mr. Schlissel's direct testimony.

**B. All Hearsay and Speculative Testimony is Inadmissible and Should Be Stricken From the Record.**

In addition, under N. D. R. Ev. 402 Applicants' object to portions of Mr. Schlissel's direct testimony on the grounds that the testimony is speculative and not relevant to an advanced prudence determination as contemplated by N.D.C.C. § 49-05-16. The testimony proposed to be stricken as speculative and therefore inadmissible, is highlighted in **blue** in Exhibit A.

Applicants also object to portions of the testimony on the grounds that it is hearsay and therefore inadmissible pursuant to N. D. R. Ev. 801 and 802. The testimony proposed to be stricken based on hearsay is highlighted in **green** in Exhibit A.

**CONCLUSION**

For the reasons stated above, the Applicants respectfully request that portions of Mr. Schlissel's direct testimony, as indicated in Exhibit A, be stricken and not be admitted as evidence in this proceeding.

Dated: June 13, 2007.

Respectfully submitted,

Montana-Dakota Utilities Co., a Division of MDU  
Resources Group, Inc.

By: 

Daniel S. Kuntz, ID No. 03490

Its: Associate General Counsel

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**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Otter Tail Corporation and Montana-Dakota Utilities Company, a Division of MDU Resources Group, Inc., Advance Determination of Prudence Applications

**APPLICANTS' NOTICE OF INTENT  
TO FILE REBUTTAL TESTIMONY**

Case Nos. PU-06-481, PU 06-482

**NOTICE OF INTENT TO FILE REBUTTAL TESTIMONY**

**PLEASE TAKE NOTICE** that Applicants Otter Tail Corporation ("Otter Tail") and Montana-Dakota Utilities Co. ("Montana-Dakota") (collectively "Applicants") hereby notify the Commission and Intervenors of their intent to file written rebuttal testimony on or before June 21, 2007.

Intervenors and Commission Staff filed direct testimony on May 31, 2007. Applicants have reviewed this written testimony and have determined that some limited, pre-filed written rebuttal testimony is necessary and would be helpful in keeping the June 26-28 hearing ("June Hearing") as efficient as possible. Applicants' intent is that by providing written rebuttal testimony prior to the hearing, Applicants will have provided Intervenor Dakota Resource Council, Staff and the Commission more of an opportunity to review Applicants' rebuttal testimony and be better prepared to ask questions about it than if Applicants were to present the rebuttal at the June Hearing, which would otherwise be the case. In addition, there are certain clarifications that would be more efficient if they were addressed in written rebuttal versus spending time addressing them at the June Hearing. For instance, Special Consultant Terry Deason on behalf of Staff raised several points in his direct testimony that Applicants believe

would be more efficiently addressed in written testimony rather than *solely* through live testimony at the June Hearing. For example, Mr. Deason, at page 15 of his testimony, discusses what he views as inconsistencies regarding wind energy in the report filed by Montana-Dakota's witness James Heidell and the Burns and McDonnell report submitted by Applicants' witness Mark Rolfes. Mr. Deason specifically requests that Applicants clarify these and other questions that he has. Applicants believe that it will be much more efficient to address these issues in written rebuttal testimony, and that by doing so the June Hearing will be much more streamlined and productive.

Accordingly, Applicants intend to submit written rebuttal testimony from the following persons:

**James Heidell**, Managing Consultant at PA Consulting Group

**Mark Rolfes**, Big Stone Unit II Project Manager

**Bryan Morlock**, OTP's Manager of Resource Planning

**Jeff Greig**, General manager, Business and Technology Services, Burns & McDonnell Engineering Co. (and principal author of the Analysis of Baseload Generation Alternatives, attached as an exhibit to the direct testimony of Mark Rolfes).

**Kermit Trout**, Vice President, Senior Project Manager, Black & Veatch Corporation

**Ward Uggerud**, Senior Vice President, Otter Tail Power Company

**Andrea Stomberg**, Vice President, Energy Supply, Montana-Dakota Utilities Co.

Dated: June 13, 2007.

Respectfully submitted,

Montana-Dakota Utilities Co., a Division of MDU  
Resources Group, Inc.

By: 

Daniel S. Kuntz, ID No. 03490

Its: Associate General Counsel

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**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Otter Tail Corporation and Montana-Dakota Utilities Company, a Division of MDU Resources Group, Inc., Advance Determination of Prudence Applications

**APPLICANTS' REQUEST TO  
PRESENT REBUTTAL TESTIMONY  
OF JEFF GRIEG BY TELEPHONE**

Case Nos. PU-06-481, PU 06-482

**REQUEST TO TESTIFY BY TELEPHONE**

**PLEASE TAKE NOTICE** that Applicants Otter Tail Corporation (“Otter Tail”) and Montana-Dakota Utilities Co. (“Montana-Dakota”) (collectively “Applicants”) hereby request that the Commission allow Applicants’ proposed rebuttal witness, Mr. Jeff Grieg, General Manager of Business and Technology Services, Burns & McDonnell Engineering Co. (and principal author of the Analysis of Baseload Generation Alternatives which report was attached as an exhibit to the direct testimony of Applicants’ witness Mark Rolfes), to appear at the hearing scheduled for June 26-28 in Bismarck (“June Hearing”) by telephone for the purposes of answering any questions that might be put to him on cross-examination, for any re-direct testimony that may be necessary, and to answer any questions from the ALJ and the Commission.

In a separate Notice being filed along with the instant request, the Applicants have provided parties with notice that they intend to file written rebuttal testimony from, among other witnesses, Mr. Grieg no later than June 21, 2007. Applicants believe that Mr. Grieg’s rebuttal testimony will be necessary for the limited purposes of addressing questions raised in the May 31, 2007 direct testimony of Staff witness, Special Consultant Terry Deason, and to rebut certain

assertions made by Mr. Schlissel with respect to the Burns & McDonnell Analysis of Baseload Generation Alternatives, included as an exhibit with Applicants' Mark Rolfes' direct testimony. Unfortunately, Mr. Greig has a family vacation planned for the week of June 25. So as to interfere with Mr. Greig's vacation plans as little as possible, Applicants respectfully request that the Commission allow Mr. Grieg to appear by telephone for any cross-examination that Intervenor Dakota Resource Council or Staff may wish to undertake of Mr. Greig, for the purpose of any necessary re-direct examination, and for the purposes of taking questions from the ALJ and the Commission.

Ordinarily, Applicants would make all of our witnesses available for live examination. Under the circumstances, however, Applicants seek leave to allow Mr. Greig to appear by phone so as not to unduly cut into his summer vacation. Applicants do not anticipate that such request will inconvenience any party.

All of Applicants' other witnesses are scheduled to appear in person at the June Hearing.

Dated: June 13, 2007.

Respectfully submitted,

Montana-Dakota Utilities Co., a Division of MDU  
Resources Group, Inc.

By: 

Daniel S. Kuntz, ID No. 03490

Its: Associate General Counsel

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**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Otter Tail Corporation, Advance  
Determination of Prudence  
Application

**AFFIDAVIT OF SERVICE**

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

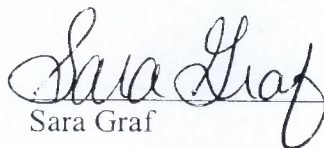
Case Nos. PU-06-481, PU 06-482

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Sara Graf, of Bismarck North Dakota, being sworn, says that on June 13, 2007, a copy of the following documents:

1. Applicants' Motion to Strike Portions of Direct Testimony of David A. Schlissel and Memorandum in Support of Motion to Strike;
2. Notice of Intent to File Rebuttal Testimony;
3. Applicants' Request to Present Rebuttal Testimony of Jeff Grieg by Telephone; and
4. Affidavit of Service

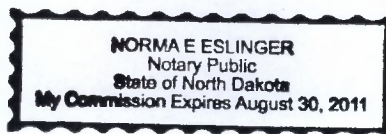
have been served upon the North Dakota Public Service Commission and the attached service list via United States Mail and email.

  
Sara Graf

Subscribed and sworn to before me  
this 13<sup>th</sup> day of June, 2007.

  
Notary Public

my Commission Expires:  
8-30-2011



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

Otter Tail Corporation, Advance  
Determination of Prudence  
Application

**SERVICE LIST**

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

Case Nos. PU-06-481, PU 06-482

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# **Exhibit A**