

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OAH File No. 20070100

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-06-482

ORDER UPON MOTION TO STRIKE

Otter Tail Corporation and Montana-Dakota Utilities Co. (collectively “Applicants”) have jointly moved for an order striking portions of the direct testimony of David A. Schlissel (“Schlissel”) filed on behalf of the Dakota Resource Counsel and Mark Trechock (collectively “Intervenors”) in the above matter upon the grounds that it is, in part, prohibited by the Order Granting Motion In Limine issued for these matters dated April 24, 2007; and that it is, in part, inadmissible as hearsay or speculation. The Applicants have filed with their motion a copy of Schlissel’s direct testimony, marked “Exhibit A,” with the parts of his testimony objected to as prohibited by the order highlighted in orange, and the parts of his testimony objected to as hearsay or speculation highlighted in green and blue, respectively. Exhibit A for the Applicant’s motion is adopted and incorporated by reference for this order.

Having considered the Applicants’ motion and the Intervenors’ response, and considering that N.D.C.C. § 49-02-23 specifically and only prohibits “environmental externality values” as

numerical costs or quantified values that are assigned to represent the alleged costs of complying with future environmental laws or regulations that have not yet been enacted, it is

Ordered, that the Applicants' motion for an order striking portions of the testimony of David A. Schlissel, as prohibited by the Order Granting Motion In Limine issued for these matters, shown highlighted in orange in Exhibit A, is granted, excepting the following portions of that testimony which do not specifically state numerical costs or quantified values and shall therefore be allowed:

- p. 3, ll. 11–14, ending with the word “so”;
- p. 6, ll. 4–6;
- p. 7, l. 13 and l. 17;
- p. 22, all;
- p. 23, all;
- p. 24, all;
- p. 25, all;
- p. 26, all;
- p. 28, all;
- pp. 30–38, all, but not including p. 38, ll. 1–6;
- p. 39, ll. 11–20;
- p. 49, all;
- p. 50, ll. 1–14 and l. 15 ending with the word “No”;
- p. 55, all;
- p. 57, all;

and also excepting the following portions of Exhibit DAS-4 for the testimony of Schlissel highlighted in orange which for the same reason shall be allowed:

- pp. 37–38, § 6;
- p. 39, § 6.1, but not including the first two sentences of the second paragraph;

- pp. 39–40, § 6.2, but not including the fourth and fifth sentences of the third paragraph, the last sentence of the fifth paragraph, and Table 6.1;
- pp. 41–44, § 6.3, but not including Figure 6.2, p. 44, through the end of the section;
- pp. 46–50, § 6.4; and
- p. 53, § 7.


Further considering the Applicants' motion and Intervenors' response, and considering that Applicants do not dispute Schlissel's qualifications to testify as an expert witness, that his advice and opinions are all within the scope of expert testimony in accordance with N.D.R.Ev. 703 upon a foundation that the facts and data he relies upon for his advice and opinions is of the type relied upon by experts for their advice and opinions for the consideration and determination of issues such as those presented for these consolidated hearings, and N.D.R.Ev. 704 and 705, and that the commissioners and the persons who are the Commission's staff for these matters are each specially informed and well able to evaluate the advice and opinions of Schlissel for these consolidated hearings, it is

Ordered, that the Applicants' motion for an order striking portions of the testimony of Schlissel objected to as hearsay or speculation shown highlighted in green and blue, respectively, in Exhibit A, is denied; subject, however, to provision of the foundation required by N.D.R.Ev. 703.

Dated at Bismarck, North Dakota, this 22 nd day of June, 2007.

State of North Dakota
Public Service Commission

By: _____


Al. Wahl, Administrative Law Judge
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CERTIFICATE OF SERVICE

The undersigned certifies that true and correct copies of the **ORDER UPON MOTION TO STRIKE** were sent by electronic mail on the 22nd day of June, 2007, to:

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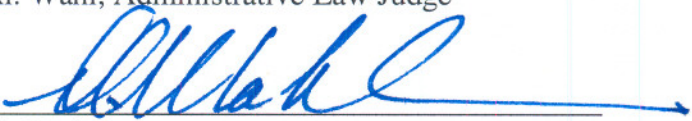
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Al. Wahl, Administrative Law Judge


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