

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Corporation

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

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

**Advance Determination of Prudence
Application**

**INTERVENORS' MOTION TO
SUSPEND PROCEDURAL
SCHEDULE AND MOTION TO
TAKE ADMINISTRATIVE NOTICE**

Intervenors hereby move to suspend the procedural schedule in Otter Tail Power and Montana-Dakota Utilities' ("Applicants") Advance Determination of Prudence Application in this docket ("Application"), and move that this Commission take administrative notice of a May 9, 2008 report by Minnesota Administrative Law Judges to the Minnesota Public Utilities Commission (MN PUC) in the MN PUC docket regarding transmission infrastructure for Big Stone 2, and in support thereof state:

1. The joint dockets for advanced determination of prudence for an electrical generating station at Big Stone City, South Dakota, opened with the submission of application documents by Applicants on November 14 and 15, 2006. The original application included, as an integral part of the project, two transmission lines sited almost entirely in Minnesota and requiring the approval of the Minnesota Public Utilities Commission (MN PUC). Proceedings in Minnesota regarding the transmission lines have run concurrently with proceedings regarding this facility in South Dakota and North Dakota.
2. By letter of October 4, 2007, Applicants informed the Commission that in light of withdrawal from the Big Stone 2 project of two participants, it would be important to supplement the record in this combined case with additional resource planning analysis. At that time, Applicants stated that "(t)here is no intent on the part of the Applicants ... to make any changes to the proposed transmission facilities."¹
3. In the October 4, 2007 letter, Applicants acknowledged that withdrawal of the two partners rendered it "prudent to conduct additional resource planning analysis to reevaluate and confirm whether the Big Stone II project remains their best, most cost effective baseload generation option." The letter proposes an amended procedural schedule and supplementation of the record, to include "information from the project's transmission experts regarding the continued appropriateness of the transmission facilities."

¹ Letter from Todd Guerrero to ND PSC, October 4, 2007.

4. Applicants further acknowledged in the October 4, 2007 letter that they would amend their Minnesota PUC Certificate of Need application and wished “to avoid schedules that may unduly overlap between the two cases”.
5. On January 8, 2008, Applicants filed a Motion for Scheduling Conference, Request for Supplemental Hearings, Memorandum in Support of Motion for Scheduling Conference, and Request for Supplemental Hearings in this docket. Repeating their desire to avoid overlap in the Minnesota and North Dakota proceedings, Applicants stated in the motion that the MN PUC hearings in this matter were scheduled for January 23 and 24, 2008, and that a final decision from the MN PUC was expected mid-April. Applicants therefore proposed supplemental hearings before this Commission the week of March 24.
6. On January 14, 2008, in a letter to Administrative Law Judge Wahl in response to Applicants’ Motion for Scheduling Conference and Request for Supplemental Hearings, Intervenor expressed the concern that “Applicants’ proposed procedural schedule also poses the risk of wasting state resources. The Minnesota PUC is expected to hand down its decision on the Big Stone II transmission application at some point in April.... This order could have a transformative impact on the application that ultimately reaches the ND PSC, or moot that application altogether. It would be a more prudent use of state resources for the PSC to wait to consider Applicants’ Supplemental Testimony until after Minnesota has acted, so that state resources will not be wasted in considering an application that may have to be revised significantly or even withdrawn in compliance with the Minnesota order.”
7. The parties ultimately agreed on the April 28-30, 2008 hearing date, based on assumptions and representations that the MN PUC order would likely be issued by mid-April, which it ultimately was not.
8. On May 9, 2008, Minnesota Administrative Law Judges (MN ALJs) Steve M. Mihalchick and Barbara L. Neilson ruled in Minnesota Public Utilities Commission (MN PUC) Docket No. ET-6131, ET-2, ET-6130, ET-10, ET-6444, E-017, ET-9/CN-05-619, regarding proposed transmission lines to serve Big Stone 2, that the MN PUC “should not issue a Certificate of Need or Route Permits to the Applicants for the construction and operation of the proposed transmission lines”.² The MN ALJs further ruled that if Route Permits are granted, they should be subject to conditions recommended by the Office of Energy Security, detailed in the Report, which would alter the Applicants’ financial obligations.³
9. The MN ALJs made other relevant findings of fact based on the same evidence presented to this Commission, such as a finding that Montana-Dakota Utilities failed to demonstrate the reasonability of its demand forecasts.⁴

² *In the Matter of the Application of Otter Tail Power Company and Others for Certification of Transmission Facilities in Western Minnesota*, Supplemental Findings of Fact, Conclusions of Law, and Recommendation (May 9, 2008) at 3 (attached).

³ *Id.* at 37-40.

⁴ *Id.* at 9.

10. The MN PUC may accept, modify, condition, or reject this Report of the Administrative Law Judges and that this Report has no legal effect unless expressly adopted by the PUC.⁵
11. NDCC § 49-05-16, the Advanced Determination of Prudence statute, states that this proceeding is available to “[a] public utility proposing to construct, lease, or make improvements to an energy conversion facility, renewable energy facility, transmission facility, or proposed energy purchase contract from another entity or person for the purpose of ensuring reliable electric service to its customers”.
12. NDCC § 49-05-16 further states that the Commission “may issue an order approving the prudence of an electric resource addition if ... [t]he public utility files with its application a projection of costs to the date of the anticipated commercial operation of the electric resource addition.”
13. The Application currently under consideration by the North Dakota Public Service Commission includes “estimated transmission costs required for delivery” in the amount of \$238,130,000, updated in later filings by a simple formula in lieu of updated cost modeling.⁶
14. Transmission infrastructure subject to the jurisdiction of MN PUC is an integral part of the proposed electric resource addition presented to this Commission in this proceeding. At no time have Applicants proposed that the Big Stone 2 project be built without the proposed Minnesota transmission infrastructure.
15. The ruling by the Minnesota ALJs against the granting of a Certificate of Need and Route Permits works a potentially fatal alteration on the Application currently pending before this Commission, rendering the approval of the proposed transmission infrastructure very unlikely, significantly changing the feasibility of the entire project, and rendering many factual representations in the original Application moot or unreliable.
16. The Application no longer complies with NDCC § 49-05-16 because the Application no longer contains a credible representation of the estimated costs of the project, the projected commercial operation date is thrown into uncertainty, and a serious question arises as to whether Big Stone 2 will be viable at all without the proposed Minnesota transmission lines.
17. Applicants’ own statements cited herein acknowledge that undue overlap of the Minnesota and North Dakota proceedings should be avoided, and that major changes to the status of the project render a prudency ruling impossible until Applicants submit the necessary amendments to the Application.
18. Further, NDCC § 45-05-16(5) states:

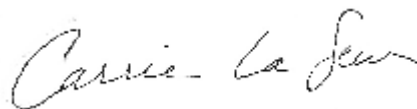
⁵ *Id.* at 2.

⁶ OTP Application for Advanced Determination of Prudence, PU-06-481 (November 14, 2006) at 2 and Exhibit 1; MDU Application for Advanced Determination of Prudence, PU-06-482 (November 15, 2006) at 2 and Exhibit 1.

If at any time following an initial commission order, the commission, following a subsequent hearing, determines that continuation of a project is no longer prudent or that its prior order should be modified, the public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expended, incurred, or obligated on a project, including interest expense and a return on equity invested in the project up to the time the new order is entered even though the project may never be fully operational or used by the public utility to serve its customers.

19. If the commission issues an order regarding a prudency determination on the existing record without waiting until the MN PUC issues its final order, and Applicants act upon that order and incur expenses for project investments, ratepayers may be harmed. If an initial prudency determination is reconsidered after an initial order in light of the MN PUC's final order, Applicants' ratepayers may be harmed by being required to pay for the Applicants' expenses through higher rates, in accordance with NDCC § 45-05-16(5).
20. NDCC § 49-01-07 is titled "Proceedings of public service commission," and states, in part, "The commission in all cases may conduct its proceedings, when not otherwise particularly prescribed by law, in a manner most conducive to the proper dispatch of business and to the ends of justice.
21. Avoiding unnecessary costs to the State of North Dakota is proper to the dispatch of the commission's business and avoiding unnecessary costs to North Dakota citizens and ratepayers serves the ends of justice.
22. In light of the altered status of the Application, no prudency determination can be made based on the existing record.
23. Intervenors therefore hereby move for suspension of the procedural schedule of the Application for Advance Determination of Prudence in ND PSC Docket Nos. PU-06-481 and 482, until such time as the MN PUC has issued its final order in the concurrent Minnesota docket and Applicants have submitted an amended application reflecting Applicants' response to the final determination of the MN PUC.
24. Intervenors respectfully request an expedited hearing on this Motion at the Court's earliest convenience.

Respectfully submitted,



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Plains Justice

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