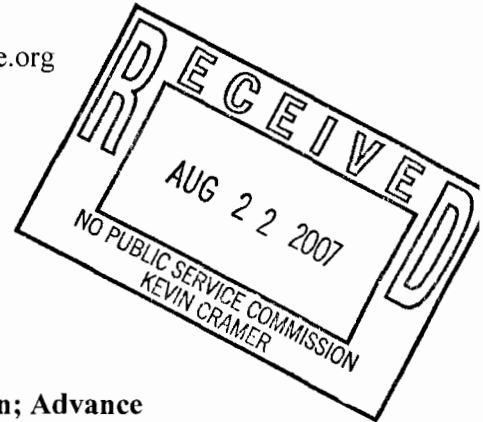




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23 August 2007

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



**Re: Montana Dakota Utilities Co., and Otter Tail Corporation; Advance
Determination of Prudence, Big Stone II Generating Station
Case Nos. PU-06-481 and PU-06-482**

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing please find Intervenors' Reply to Applicants' Response to
Commissioner Wefald's July 16, 2007 letter.

Thank you for your consideration.

Sincerely yours,

Carrie La Seur

cc: attached service list

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

INTERVENORS' REPLY TO
APPLICANTS' RESPONSE TO JULY
16, 2007 LETTER BY COMMISSIONER
SUSAN WEFALD

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

Background

Commissioner Wefald's July 16, 2007 letter made a few specific requests. In light of the scant benefit to North Dakota ratepayers of an out-of-state power plant burning out-of-state coal, the letter requests analysis of conditioning approval of the pre-prudency application on investment in North Dakota efficiency and renewable energy projects. Namely, the letter requests analysis of a potential order:

1. Approving 90MW of Big Stone II for each utility, but conditioning approval of the remaining 30MW for each company on implementation of 15MW new measurable demand side management (DSM) and 15MW of new renewable energy development, all in North Dakota; or
2. Approving 72M of Big Stone II for each utility, but conditioning approval of the remaining 48MW for each company on implementation of at least 15MW of new DSM and up to 33MW of new renewable energy development, all in North Dakota.

These are good and worthwhile questions. Unfortunately, at no point does Applicants' Response actually *respond* to these explicit requests for analysis.

Applicants' Response

While the Applicants' Response describes a few DSM projects that OTP and MDU currently operate in their service areas and chronicles the resource planning problems that could accompany the integration of additional conservation efforts, this information alone is unresponsive to the commissioner's request. The question is not whether the Applicants have

any DSM or conservation programs in their resource plans in general, rather it is about what additional DSM programs can be implemented in North Dakota and how North Dakota could capitalize on in-state renewable energy options. Applicants' Response evades the question of how OTP and MDU could implement more robust programs in North Dakota like the ones promulgated in Minnesota and South Dakota. In fact, even though Applicant's Response states that OTP currently manages a portfolio of conservation activities and programs in Minnesota and is awaiting approval from the South Dakota Public Utilities Commission for a conservation portfolio in South Dakota, it does not mention any similar portfolio in North Dakota, real or hypothetical.

Multi-State Projects Must Still Serve State Ratepayers' Best Interests

The bulk of Applicants' Response is in fact a critique of the Commissioner's hypothetical conditions as "unwarranted" due to purported multi-owner business complications. One purported complication described in Applicants' Response relates to contractual difficulties regarding each owner's share. However, as Mr. Guerrero proclaimed in his opening statement in Minnesota, this project is self-healing and allows the utilities to pick up the slack if an Applicant pulls out.¹ Therefore, it is feasible for one of the other utilities involved in this project to pick up the additional 30-48 MW that might be subject to conditional approval in Commissioner Wefald's hypotheticals.

Applicants also state that each utility's multi-state planning process would be a barrier to increased DSM and renewable energy investment in North Dakota. However, multi-state planning processes must reflect different state standards and contemplate a reasonably equitable distribution of risks and benefits to consumers in participating states. Minnesota's specific requirements for DSM and renewable energy, for example, have not prevented Applicants from

¹ Cited in the hearing in this matter at Tr. 6/26/07 at 31.

performing successful multi-state planning. The Minnesota requirements have also resulted in 67 MW of avoided demand for Minnesota ratepayers, a tremendous benefit.

Applicants further lament that compliance with a conditional approval would gratuitously require the development of a new resource plan in order to address transmission issues. However, the record shows that the Applicants artificially constrained their earlier models from accepting cost-effective amounts of DSM and renewables.² In light of the documented deficiencies in the existing resource plans, it is hardly credible to argue that reworking Applicants' resource plans is undesirable. Applicants' reliance on the reasonable person standard to justify their resource plans is misplaced. It is one thing to invoke the reasonable person standard to justify building a generation facility in South Dakota as opposed to North Dakota because it is in the overall best interest of the partners. It is quite another to suggest that this standard renders substantial North Dakota DSM programs and renewable energy investment imprudent or non-viable, particularly when Applicants decline to offer up the requested cost analyses.

Customer Participation Claims Lack Any Evidentiary Support

Applicants cite customer participation as an intervening factor that weighs against integrating additional DSM in North Dakota. Applicants claim that it is more difficult to acquire customer participation in rural areas, which comprise a significant portion of their North Dakota service area. However, even if Applicants' Minnesota service area is less rural than North Dakota (an unproven contention), it does not follow that DSM programs cannot be successfully implemented in North Dakota. This convenient assertion comes without any evidentiary support. In fact it isn't necessarily harder to get rural customers, who know the value of a dollar, to

² See Intervenors' Post-Hearing Brief at 4-9.

conserve energy and use energy more efficiently.³ But it is true that both DSM and conservation work better when there is regulatory support, and Intervenor urge the Commission to explore such measures in the future.⁴

While arguing that rural customers are perversely unwilling to save money on energy, Applicants declare that 30% of OTP's customers are presently involved in DSM programs and that other utilities across the nation seek to achieve a similar degree of participation.⁵ In light of OTP's apparent skill in obtaining customer DSM participation well above national averages in other jurisdictions, it appears that OTP is unwilling rather than unable to increase customer participation in North Dakota DSM programs. A more plausible explanation is that Applicants do very little DSM in North Dakota because they don't receive cost recovery for it, which disadvantages Applicants' shareholders. This situation could be remedied, to the benefit of North Dakota ratepayers.

Finally, Intervenor wish to comment on the following claim by Applicants:

It would ... be a departure from any known regulatory theory if the prudence determination by a state regulatory commission regarding an investment in needed utility infrastructure were conditioned on incremental investment in the commission's home state.⁶

Commissioners are well aware that they neither live nor regulate in a vacuum, and that some actions taken on one side of a state border have obvious impacts on the other side. For North Dakota to approve investment in a new, out-of-state power plant without insisting that the investing utilities upgrade North Dakota's DSM measures would be something like ordering North Dakota ratepayers to leave their windows open all winter and run extension cords across

³ Intervenor request that the Commission take administrative notice of the testimony of Minnesota Department of Commerce witness Chris Davis on this topic in the Minnesota hearing on the Big Stone II transmission application, Tr. Vol. 13 pp. 209-211.

⁴ Intervenor request that the Commission take administrative notice of testimony to this effect in the Minnesota hearing on the Big Stone II transmission application, Tr. Vol. 9 pp. 93-94.

⁵ Applicants' Response at 3.

⁶ *Id.* at 4.

the border into South Dakota to run space heaters off electricity produced there. The first thing to do is close the windows, not buy an extension cord. Applicants would have the Commission conclude that North Dakota has no right to shut the windows.

Conclusion

Applicants have not made a concerted effort to establish DSM and conservation programs in North Dakota even though 43% of their load growth is in this state. Moreover, much of Applicants' response to the Commissioner's very specific request for information about expanding DSM and renewable energy in North Dakota was unresponsive and argumentative. Once again, Applicants have failed to show by a preponderance of evidence that their Application is in the best interests of North Dakota ratepayers. Intervenors urge the Commission to deny the Application.

to

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Commission

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to

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to

Ilona Jeffcoat-Sacco Executive Secretary

North Dakota Public Service Commission\

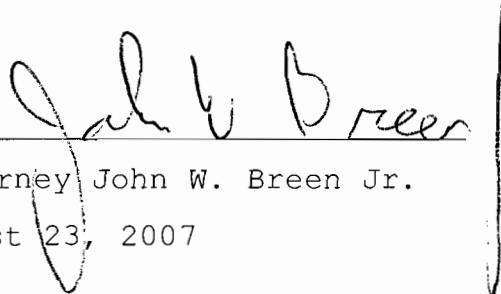
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Which is the last know address of the parties.

The above motion was filed by electronic mail on August
23, 2007.

A handwritten signature in cursive script that reads "John W. Breen Jr.". The signature is written over a horizontal line. To the right of the signature is a long, vertical, slightly wavy line that extends from the top of the signature down to the date below.

Attorney John W. Breen Jr.

August 23, 2007