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August 28, 2007

## VIA FEDERAL EXPRESS & EMAIL

Illona 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:

Pursuant to North Dakota Administrative Code section 28-32-25, on August 21, 2007, the Commission advised the parties that it intended to take official notice of a July 19, 2007 letter of intent (under NDCC Ch. 49-22 and NDAC Ch. 69-09-03) filed with the Commission by Westmoreland Power, Inc., in which Westmoreland advised the Commission of its plan to develop a 500 MW power plant near Gascoyne, North Dakota.

Under NDCC section 28-32-25, the Commission "may avail itself of competent and relevant information or evidence in its possession ... in addition to evidence presented at the hearing." For the reasons stated below, Applicants believe it would inappropriate to take official notice of the Westmoreland letter of intent.

Official notice is akin to the concept of judicial notice.<sup>1</sup> Judicial notice is governed by the North Dakota Rules of Evidence, Rule 201. The explanatory note to Rule 201(b) provides that adjudicative facts can be judicially noticed if they are either (1) generally known or (2) capable of accurate and ready determination. *See Gronneberg v. Hoffart*, 466 N.W.2d 809, 810 (N.D.1991).

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<sup>1</sup> See, e.g., Official Notice, Minnesota Administrative Procedure, Beck 2<sup>nd</sup> Ed. §10.4.

It is unclear precisely what the Commission proposes to notice. The letter of intent provides only a very general statement regarding Westmoreland's intention to pursue development of a 500 MW power plant near Gascoyne. The letter does not stand for the proposition that Westmoreland will actually build the plant, nor that it will build the plant for the cost estimate set forth in the letter. More importantly, the letter does not stand for the proposition that the Westmoreland plant is a viable alternative to Big Stone Unit II.

The cost estimate in the letter of intent is not nearly as robust as the information the Applicants have assembled for Big Stone Unit II, and contains no supporting cost documentation. The letter of intent provides no transmission interconnection or delivery status, nor does it provide cost estimates for these issues. While the letter suggests that power from the Gascoyne plant will be sold to "customers in North Dakota and Minnesota," it provides no specific information about customers. Likewise, the letter provides no information about the ability to address the availability of Class I PSD increment or secure air permits.

In summary, taking official notice of the Westmoreland letter does not provide "competent and relevant information" to support any assertion that the proposed Gascoyne plant could serve as a reasonable or prudent alternative to the Big Stone Unit II or, more importantly, that Big Stone II is not a reasonable and prudent generation investment by the Applicants. Therefore, Applicants are opposed to official notice of the letter.

In the alternative, if the Westmoreland letter of intent is officially noticed, Applicants contend nothing in the letter of intent bears on the prudence of Applicants' proposed participation in Big Stone Unit II. The letter of intent does not contain information that is generally known or capable of accurate and ready determination and, consequently, the letter should be appropriately weighted by the Commission.

Thank you for your consideration.

Very truly yours,



Todd J. Guerrero, On Behalf of Applicants  
Montana-Dakota Utilities Co., and  
Otter Tail Corporation

TJG/kas

c: Attached Service List (via email and regular mail)

**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

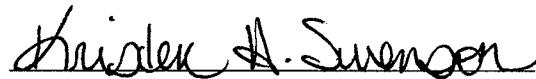
Case Nos. PU-06-481, PU 06-482

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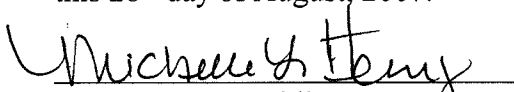
Kristen A. Swenson, of Minneapolis Minnesota, Hennepin County being sworn, says that on August 28, 2007, a copy of the following document:

1. August 28, 2007 Letter (original and seven copies); and
2. Affidavit of Service.

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

  
Kristen A. Swenson

Subscribed and sworn to before me  
this 28<sup>th</sup> day of August, 2007.

  
Notary Public



**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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Illona Jeffcoat-Sacco  
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State Capitol  
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