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September 5, 2007

Executive Secretary  
North Dakota Public Service Commission  
State Capitol Building  
Bismarck, ND 58505-0480

Re Advanced Determination of Prudence  
PU 06-482, PU 06- 481  
Big Stone II

Dear Ms. Jeffcoat-Sacco,

I am in receipt of Attorney Guerrero's letter dated  
September 5, 2007.

This is a contested proceeding between the parties, taken  
into a record under oath.

Please note the email filing of Mr. Guerrero's letter dated  
August 31, 2007 with exhibits A and B states on the  
Lindquist and Vennum letterhead:

**"Attached please find for filing a letter dated August 31,  
2007 with exhibits A and B and an affidavit of service in  
the above referenced matter"**

**Nicole Garvey  
Lindquist and Vennum**

The letters and documents have already been filed. It is a  
fiction to pretend the PSC has not filed, received or  
reviewed this information.

The sole purpose of said filing is to influence or  
favorably prejudice the NDPSC just prior to a decision in  
this matter, and to deny Intervener an opportunity to cross  
examine, contest and present additional evidence.

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It is the prerogative of the NDPSC to determine, after hearing, what is relevant. This finding can not be exercised by Mr. Guerrero in a letter, and can not be exercised by the PSC without a hearing and a record. Mr. Guerrero suggests in his letter, "perhaps those questions,... , should not be made during any time the Commission is deliberating or otherwise considering the above consolidated cases."

Any interpretation of statute which allows a party in a contested proceeding to present said documents and letter testimony or phone conversation testimony in a private nonpublic manner without a record and presence of all counsel in such a contested proceeding is clearly in violation of fundamental principles of law, and, among other things, a violation of due process under the North Dakota and United States Constitution.

These arguments are incorporated into my pending Motion for Order under NDCC 28-32-25, filed September 4, 2007.

Very truly yours,

John W. Breen Jr.

For Mark Trechock and Dakota Resource Council

Attached Mr. Guerrero's letter dated September 5, 2007  
Attached is a an affidavit of service of this letter  
of service by electronic

# LINDQUIST & VENNUM P.L.L.P.

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ATTORNEYS AT LAW

[www.lindquist.com](http://www.lindquist.com)

TODD J. GUERRERO  
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[tguerrero@lindquist.com](mailto:tguerrero@lindquist.com)

September 5, 2007

## VIA EMAIL & FEDERAL EXPRESS

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:

Applicants Otter Tail Corporation and Montana-Dakota Utilities Company write in response to Dakota Resource Council's September 4, 2007 motion seeking the opportunity to cross-examine witnesses with respect to the Applicants' August 31, 2007 informational filing regarding the Settlement Agreement with the Minnesota Department of Commerce in the Minnesota transmission certificate of need and route permit dockets.

The DRC's Motion should be denied.

First, the Applicants reiterate that they are not asking that the Settlement Agreement should be made part of the record in this case. Instead, our August 31 letter was simply meant to apprise the Commission of the existence of the Settlement Agreement, and that the Commission get notice of the Agreement directly from the Applicants versus hearing about it from a third-party source. Because the Commission's *ex parte* rules are currently in place in the above matter, Applicants simply chose to file a letter explanation and provide copies to all parties. Because the Settlement Agreement is not relevant to the Commission's decision in these cases, Applicants most likely would have otherwise provided the Commission notice simply by advising the Commission's Executive Director or making an informal presentation to the Commissioners.

**Illona Jeffcoat-Sacco**  
**September 5, 2007**  
**Page 2**

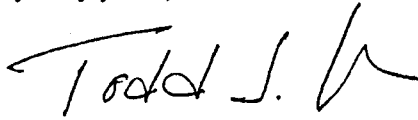
Contrary to DRC's motion, Applicants did not provide the Commission with a copy of the Settlement Agreement "in support of" Applicants' request for an advance determination of prudence. As Applicants stated in the August 31, 2007 letter, the Settlement Agreement was filed merely for informational purposes.

The Applicants remain prepared to answer any questions concerning the Settlement Agreement the Commission may have. To avoid any confusion, however, perhaps those questions, if any, should not be made during any time the Commission is deliberating or otherwise considering the above consolidated cases.

Because the Applicants have not requested that the Settlement Agreement be taken into the record in the above consolidated cases, and because the Settlement Agreement provides no relevant or probative evidentiary value in these cases, DRC's motion should be denied.

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)



to

Daniel Kuntz Assistant General Counsel MDU Resources  
Group Inc.

PO Box 5650 Bismarck, ND 58506-5650

[Dan.Kuntz@mduresources.com](mailto:Dan.Kuntz@mduresources.com)

to

Attorney William Binek of the North Dakota Public Service  
Commission

State Office Building Bismarck, ND 58505-0480

[wbinnek@nd.gov](mailto:wbinnek@nd.gov)

to

Attorney Todd Guerrero

Lindquist and Vennum

4200 IDS Center

80 S. 8th St

Minneapolis, MN

[tguerrero@Lindquist.com](mailto:tguerrero@Lindquist.com)

to

Attorney Carrie La Seur

Plains Justice

PO Box 153

319 3<sup>rd</sup> St

Mount Veron, Iowa 52314

[claseur@plainsjustice.org](mailto:claseur@plainsjustice.org)

to

Attorney Illana Jeffcoat-Sacco Executive Secretary

Office of the North Dakota Public Service Commission

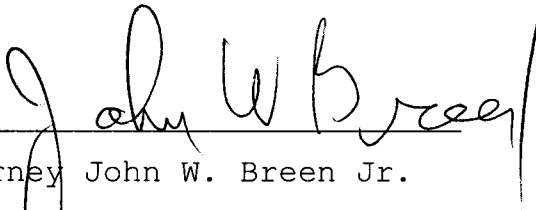
State Office Building, Bismarck ND 58505-0480

[ilj@nd.gov](mailto:ilj@nd.gov)

to Lori D Anderson  
Office of the North Dakota Public Service Commission  
State Office Building Bismarck, ND 58505-0480  
ldanderson@d.gov

which is the last know address of the parties.

The above letter to Attorney Illona Jeffcoat-Sacco  
Executive Secretary of the North Dakota PSC, dated  
September 5, 2007 was filed by electronic mail on  
September 5, 2007 to the above parties at the above  
electronic mail addresses.



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Attorney John W. Breen Jr.  
September 5, 2007