

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 supplemental direct testimony of David A. Schlissel ("Schlissel") filed on behalf of Mark Trechock and the Dakota Resource Council (collectively "Intervenors") upon the grounds that it is prohibited by the Order Granting Motion In Limine issued for these matters dated April 24, 2007. The Applicants have filed with their motion a copy of Schlissel's direct testimony, marked "Exhibit A," indicating the parts of his testimony objected to as prohibited by the order. 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 supplemental direct testimony of David A. Schlissel, as prohibited by the Order Granting Motion In Limine issued for these matters, as indicated by 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. 11, ll. 15-17
- p. 40, ll. 20-21

- p. 54, ll. 1–8
- p. 55, l. 11 through p. 56, l.7
- p. 68, ll. 9–13; ll. 17–20
- p. 70, ll. 14–15
- p. 73, ll. 14–15
- p. 74, ll. 18–25, but deleting “if we included the Synapse CO₂ price forecasts or”; p. 75, Table 5, but deleting rows 3, 4, and 8; and ll. 4–9, but deleting “either (1) any CO₂ price of \$9/ton or higher or (2)” in ll. 5–6, and, obviously, “The” in l.9
- p. 76, ll. 14–15 and all of p. 77, but deleting columns 2, 3, and 6 of Table 6 and “does not include any CO₂ costs” in l.7

Intervenors have failed to show any legal basis and authority by which Applicants are estopped from objecting to their use of numerical costs and quantified values assigned to represent the alleged costs of complying with future environmental laws or regulations by Applicants use of such evidence. Notwithstanding that any such evidence is offered without objection and received, to the extent that it is proscribed by the provisions of N.D.C.C. § 49-02-23 the Commission may not use that evidence.

Dated at Bismarck, North Dakota, this 22nd day of April, 2008.

State of North Dakota
Public Service Commission

By: _____


Al. Wahl, Administrative Law Judge
Office of Administrative Hearings
1707 North 9th Street
Bismarck, North Dakota 58501
Telephone: (701) 328-3260

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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 April, 2008, to:

Todd J. Guerrero
Counsel for Otter Tail Corporation
Lindquist & Vennum, P.L.L.P.
tguerrero@lindquist.com

Mark Bring
Associate General Counsel
Otter Tail Corporation
mbring@ottertail.com

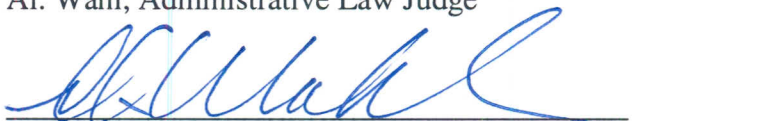
Daniel S. Kuntz
Associate General Counsel
Montana-Dakota Utilities Co.
dan.kuntz@mduresources.com

John W. Breen, Jr.
Counsel for Mark Trechock
and Dakota Resource Council
jwbreen2@bis.midco.net

Carrie La Seur
Plains Justice
Counsel for Mark Trechock
and Dakota Resource Council
claseur@plainsjustice.org

William W. Binek
North Dakota Public Service Commission
Counsel for Advocacy Staff
wbinek@nd.gov

OFFICE OF ADMINISTRATIVE HEARINGS
Al. Wahl, Administrative Law Judge


Al. Wahl