



Public Service Commission
State of North Dakota

COMMISSIONERS

Susan E. Wefald, President
Kevin Cramer
Tony Clark

Executive Director
Illona A. Jeffcoat-Sacco

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
web: www.nd.gov/psc
e-mail: ndpsc@nd.gov
TTY 800-366-6888 or 711
Fax 701-328-2410
Phone 701-328-2400

April 22, 2008

Illona A. Jeffcoat-Sacco
Executive Director
Public Service Commission
600 E Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480

RE: **Otter Tail Corporation**
Advance Determination of Prudence
Application
Case No. PU-06-481

Montana-Dakota Utilities Co.
Advance Determination of Prudence
Application
Case No. PU-06-482

Dear Ms. Jeffcoat-Sacco:

Enclosed for filing in the above referenced case are the original and seven copies of the **Staff Response to the Request of Otter Tail Corporation and Montana-Dakota Utilities Co. for Trade Secret Protection.**

Thank you.

Sincerely,

William W. Binek
Chief Counsel

WWB
Enclosures

c: Parties of Record

301 **PU-06-481** Filed: 4/22/2008 Pages: 5
Staff Response to Request of Otter Tail Corporation and Montana-Dakota Utilities Co. for Trade Secret Protection
Public Service Commission
Bill Binek

306 **PU-06-482** Filed: 4/22/2008 Pages: 5
Staff Response to Request of Otter Tail Power Corporation and Montana-Dakota Utilities Co. for Trade Secret Protection
Public Service Commission
Bill Binek

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Otter Tail Corporation
Advance Determination of Prudence
Application**

Case No. PU-06-481

**Montana-Dakota Utilities Co.
Advance Determination of Prudence
Application**

Case No. PU-06-482

**STAFF RESPONSE TO THE REQUEST OF OTTER TAIL CORPORATION AND
MONTANA-DAKOTA UTILITIES CO. FOR TRADE SECRET PROTECTION**

On April 9, 2008 Otter Tail Corporation ("OTP") and Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. ("MDU"), also referred to as ("Applicants") filed an application for trade secret protection to protect against public disclosure of trade secret information. Applicants state that the information sought to be protected is information provided to the Intervenor, Dakota Resource Council ("DRC") under a confidentiality agreement which DRC has informed the Applicants that it intends to include as exhibits to the testimony of their expert witness, David Schlissel. Applicants provide the general description of the nature of the information sought to be protected, as follows:

1. General Description of the Nature of the Information Sought to be Protected.

- November 17, 2007 Project Cost Information Memorandum, Bates label #OTP0010463-64;
- Project Cost Estimate, September 2007 (excerpts from confidential project power point presentation), Bates label #OTP0008037;
- Excerpts from confidential power point presentation, April 2007, Bates label #JC00013930-34;
- November 19, 2007 Generation Project Timeline Memorandum, Bates label #OTP0008060-62;
- August 18, 2006 Black & Veatch Conference Memorandum, Bates label #OTP0006946;

- September 22, 2006 Black & Veatch Conference Memorandum, Bates label #OTP0006997;
- August 18, 2006 Black & Veatch Conference Memorandum, Bates label#)TP0006949;
- Excerpts from an April, 2007 Black & Veatch power point presentation, Bates label #JC00013878;
- February 19, 2008 Black & Veatch Conference Memorandum, Bates label #OTP001082-84; and
- Excerpts from January 28, 2008 project power point presentation, Bates label #OTP0011047-8, OTP001173-8.

2. An Explanation of Why the Information Derives Independent Economic Value, Actual or Potential, From not Being Generally Known to Other Persons.

Applicants state that the disclosure of this highly sensitive information would be of independent economic value to competitors and would create a competitive disadvantage for Applicants, their vendors and engineers if publicly disclosed.

3. An Explanation of Why the Information is Not Readily Ascertainable by Proper Means by Other Persons.

Applicants stated that the information is not publicly available, and is not only treated as confidential business information, but is information which cannot be disclosed without violating terms of separate third-party confidentiality agreements between Applicants and their vendors and engineers.

4. A General Description of the Persons or Entities that would Obtain Economic Value from Disclosure or Use of the Information.

Applicants state that competitors would obtain economic value from the disclosure or use of the information.

5. A Specific Description of Known Competitors and Competitors' Goods and Services that are Pertinent to the Tariff or Rate Filing.

Applicants provided no specific description or identification of known competitors.

6. A Description of the Efforts Used to Maintain the Secrecy of Information.

See response to No. 3. In addition, the Applicants and other participants and their representatives of the Big Stone II project do not disclose this information except to their employees and representatives who have a need to know the information as part of their responsibilities to the project.

Staff has reviewed Applicants' request for trade secret protection of the information. N.D.C.C. § 47-25.1-01 defines the term "trade secret" as follows:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

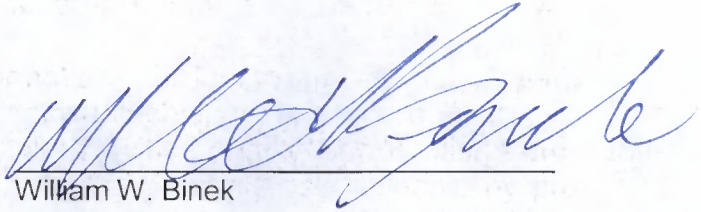
N.D. Admin. Code § 69-02-09-04 requires that the "commission staff examine the information and application and make a prima facie recommendation of whether the information is relevant and a trade secret under the definition of trade secret in North Dakota Century Code section 47-25.1-01."

The information is relevant to the application because the information relates to cost projections and other aspects pertaining to the construction of the Big Stone II power plant. Applicants state that the confidentiality agreement between DRC and the Applicants obligates the DRC to file an application with the Commission prior to filing or submitting any confidential information. Applicants state that they understand that DRC has no objection to protecting the information as trade secret. Because Applicants were uncertain whether DRC would make application for trade secret protection before filing the exhibits, the Applicants took responsibility for protecting the information.

Staff believes that the application satisfies the requirements of the law which allows the Commission to grant trade secret protection in this proceeding. The Commission's process provides a means for interested parties to review trade secret documents upon signing a nondisclosure agreement.

Staff recommends that the Commission grant the Applicants' request for trade secret protection.

Dated April 22, 2008.



William W. Binek
Chief Counsel