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# MEMORANDUM

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**DATE:** April 22, 2008  
**TO:** Illona Jeffcoat-Sacco, Executive Director  
Public Service Commission  
**FROM:** Al Wahl  
**RE:** 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

OAH File No. 20070100

Enclosed for filing is the Order Upon Motion To Strike issued April 22, 2008,  
in the above-referenced matters.

**RECEIVED**

APR 23 2008

**PUBLIC SERVICE COMMISSION**

**308 PU-06-482** Filed: 4/23/2008 Pages: 4  
Order Upon Motion to Strike

ALJ  
Office of Administrative Hearings

**303 PU-06-481** Filed: 4/23/2008 Pages: 4  
Order Upon Motion to Strike

ALJ  
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**STATE OF NORTH DAKOTA**

**PUBLIC SERVICE COMMISSION**

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Otter Tail Corporation  
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of MDU Resources Group, Inc.  
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**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

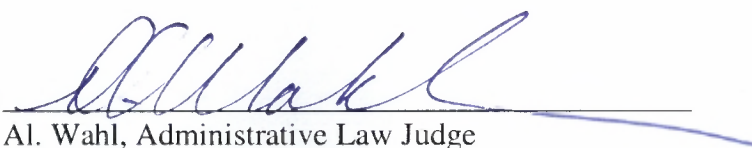
- p. 54, ll. 1–8
- p. 55, l. 11 through p. 56, l.7
- p. 68, ll. 9–13; ll. 17–20
- p. 70, ll. 14–15
- p. 73, ll. 14–15
- p. 74, ll. 18–25, but deleting “if we included the Synapse CO<sub>2</sub> price forecasts or”; p. 75, Table 5, but deleting rows 3, 4, and 8; and ll. 4–9, but deleting “either (1) any CO<sub>2</sub> 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 CO<sub>2</sub> 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

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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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:

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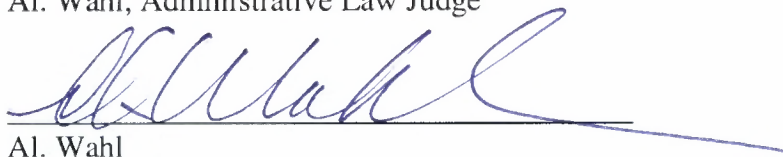
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OFFICE OF ADMINISTRATIVE HEARINGS  
Al. Wahl, Administrative Law Judge

  
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