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May 21, 2008

Illona Jeffcoat-Sacco
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600 E. Boulevard Ave. Dept. 408
Bismarck, ND 58505-0480

Re: In the Matter of the Advance Determination of Prudence Application of Otter Tail Corporation, Case No. PU-06-481

In the Matter of the Advance Determination of Prudence Application of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. Case No. PU-06-482

Dear Ms. Jeffcoat-Sacco

Enclosed for filing please find the original and seven copies of the following documents:

1. Intervenors' Post-Hearing Brief
2. Service List

Sincerely yours,

Carrie La Seur
Founder

- BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF NORTH DAKOTA

Otter Tail Power Corporation, Advance Determination of Prudence Application,	)	Case No. PU-06-481
And	)	and
Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., Advance Determination of Prudence Application	)	Case No. PU-06-482

The undersigned hereby certifies that true copies of the Intervenors' Post-Hearing Brief were served via electronic mail to each of the parties on the attached service list on the 21st day of May, 2008. A copy was of said document was also placed in the United States mail on the 21st day of May, 2008.

By: Carrie La Seur

Carrie L. La Seur

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF NORTH DAKOTA

Otter Tail Power Corporation, d/b/a Otter Tail Power Company	)	**Case No. PU-06-481**
And	)	**and**
Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.	)	**Case No. PU-06-482**

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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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**

INTERVENORS' POST-HEARING BRIEF

May 21, 2008

Dakota Resource Council
Mark Trechock

PUBLIC VERSION
NO CONFIDENTIAL INFORMATION

TABLE OF CONTENTS

IV. APPLICANTS HAVE FAILED TO SHOW BY A PREPONDERANCE OF EVIDENCE THAT THEIR PROJECT IS MORE COST-EFFECTIVE THAN AN ALTERNATIVE THAT INCLUDES MAXIMIZED DEMAND SIDE MANAGEMENT, ENERGY EFFICIENCY, CONSERVATION, AND RENEWABLE ENERGY WITH A SMALL AMOUNT OF NATURAL GAS.

A. Applicants' modeling contains serious flaws and deficiencies that prevent a credible showing that Big Stone 2 is the least-cost alternative over the life of the project.

B. Applicants greatly underestimate the risks of further construction delays, construction cost increases, regulatory compliance costs, and coal supply disruptions and price increases.

1. Applicants' cost estimates are severely outdated and cannot be relied on to determine prudence at this time.

2. Applicants have failed to modify their cost estimates to account for the significant expense associated with more stringent mercury removal requirements that will apply to Big Stone 2.

3. Applicants' risk-mitigation strategy with regard to coal supply is not credible.

V. APPLICANTS HAVE UNREASONABLY AND IMPRUDENTLY IGNORED THE SUBSTANTIAL RISK THAT FUTURE CO_2 REGULATIONS WILL HARM THE ECONOMICS OF THE BIG STONE 2 PROJECT.

A. Unrebutted science establishes more firmly this year than last that global warming is a severe threat that is growing, not abating, in urgency.

B. Regulations imposing a financial cost on CO_2 emissions are very likely to be adopted within the next few years.

VI. GRANTING THE PRE-PRUDENCE DETERMINATION HAS NO NET BENEFIT FOR NORTH DAKOTA RATEPAYERS OR IN-STATE ECONOMIC DEVELOPMENT

A. Applicants have not shown that North Dakota ratepayers need the power generated by Big Stone 2.

B. The prudency of Big Stone 2 for North Dakota ratepayers cannot be evaluated sufficiently without North Dakota-specific integrated resource planning by Applicants.

VII. CONCLUSION

A. Applicants have failed to support the burden of proof necessary for a finding of prudence.

B. If the Commission rules in favor of this application in spite of the lack of credible supporting evidence, certain conditions should be part of the order for the protection of consumers and to hold Applicants accountable for representations made to the Commission.

I. INTRODUCTION

Many of Intervenors' previous arguments presented in Intervenors' post-hearing brief and reply brief after the 2007 hearing in this matter remain relevant, so in this brief we attempt to address only new developments in the Application or circumstances that are aggravated by ongoing delay and new obstacles encountered by the Big Stone 2 project.

Applicants Montana-Dakota Utilities (MDU) and Otter Tail Power (OTP) now propose a 500 or 580 MW coal-fired power plant in South Dakota that, like the earlier proposal, will neither improve the reliability of electrical service for North Dakota ratepayers nor provide the state with economic benefits. Applicants have not even attempted to make a North Dakota-specific showing of benefits, instead arguing that increased generation on the regional grid must benefit North Dakota ratepayers, in spite of the fact that North Dakota already generates twice the electricity it consumes and could export far more wind power than is currently online.

The only parties to benefit from an advance determination of prudence in this docket would be OTP and MDU shareholders. Applicants' cost analyses are outdated. Construction costs are skyrocketing. Regulatory approvals in South Dakota and Minnesota are uncertain at best, and likely to be subject to long and costly appeals. To commit North Dakotans to footing the planning bill for this project, which may well never come to fruition, would harm North Dakota's economy unnecessarily at a time of national economic uncertainty. Further, approval of Big Stone 2 creates an unnecessary impediment to the successful export of North Dakota's world class wind resource. In

short, North Dakota ratepayers have nothing to gain and much to lose from this project. Whatever regional spin Applicants attempt to put on the project, the most important facts before this Commission are that this project never was good for North Dakota ratepayers and is only getting worse.

II. STATEMENT OF THE CASE

On November 14, 2006, Otter Tail Corporation, d/b/a Otter Tail Power Company (Otter Tail or OTP), filed an application for advance determination of prudence for Otter Tail's participation and ownership interest in the Big Stone 2 Generating Plant (Case No. PU-06-481).

On November 15, 2006, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. (Montana-Dakota or MDU), filed an application for advance determination of prudence for Montana-Dakota's participation and ownership interest in the Big Stone 2 Generating Plant (Case No. PU-06-482).

Otter Tail and Montana-Dakota ("Applicants") along with five other utilities are proposing to construct a 630 MW pulverized coal facility located adjacent to the existing Big Stone Plant in Big Stone City, South Dakota. Otter Tail and Montana-Dakota each will own 19.33 percent of Big Stone Unit II.

The companies are requesting that the Public Service Commission ("Commission") determine the construction of Big Stone Unit II generating station to be reasonable and prudent in order to provide the basis for future rate stability proposals the companies will present to the commission.

On December 29, 2006, the Commission issued A Notice of Filing and Notice of Intervention Deadline. In that order the Commission established an intervention deadline of February 15, 2007.

On January 10, 2007, the Commission issued its Notice of Hearing scheduling a public hearing to be held in the Commission Hearing Room at the State Capitol in Bismarck, North Dakota beginning April 17, 2007. The issues identified by the Commission include:

1. Whether the resource addition is reasonable and prudent.
2. Whether the applicants have need for additional generating resources.
3. What alternatives exist for meeting additional generation needs.

On January 24, 2007, the Commission issued a Notice of Public Input Session. Public input sessions were held on February 5, 2007 in Bismarck and on February 12, 2007 in Jamestown.

On February 15, 2007, Mark Trechock, a ratepayer, and the Dakota Resource Council ("DRC") or ("Intervenors") filed a Petition to Intervene. On February 23, 2007, the Commission issued its Order Granting Intervention.

On March 7, 2007, the Commission issued its Notice of Rescheduled Hearing scheduling the public hearing to begin May 29, 2007.

On April 10, 2007, prior to submission of Intervenors' expert testimony, Applicants brought a motion in limine seeking to bar Intervenors from bringing testimony regarding the cost of compliance with future environmental regulation of carbon dioxide (CO_2) emissions.

On April 24, 2007, Administrative Law Judge Wahl granted the motion in limine in part.

On May 15, 2007, the Commission issued a Notice of Rescheduled Hearings scheduling the public hearing in the proceedings to begin June 26, 2007. The public hearing was held as scheduled.

On May 31, 2007, Intervenors filed Confidential and Public Direct Testimony of David Schlissel.

On June 11, 2007, Applicants moved to strike all portions of the Direct Testimony of David Schlissel that refer to carbon regulation costs, and portions characterized by Applicants as "hearsay and speculation".

On June 22, 2007, ALJ Wahl granted in part and denied in part Applicants' Motion to Strike portions of the Direct Testimony of David Schlissel.

On September 17, 2007, Applicants requested a suspension of the procedural schedule and further proceedings to consider changes in the proposed project.

On September 21, 2007, project partners Great River Energy and Southern Minnesota Municipal Power Agency withdrew as owners from Big Stone 2.

On October 4, 2007, after completion of the briefing schedule for the June 2007 hearing but prior to issuance of an order by the Commission, Applicants requested that the Commission consider supplemental analysis of the project and wait to issue a new procedural schedule until after the Minnesota Public Utilities Commission had issued its new procedural schedule. The Commission agreed.

On March 10, 2008, Applicants filed Supplemental Direct Testimony of Ward Uggerud, Bryan Morlock, Andrea Stomberg, James Heidell, Mark Rolfes, Tim Rogelstad, Jeffrey Grieg, and Thomas Crowley, including testimony regarding analysis performed by Applicants of the future cost of carbon regulation.

On April 9, 2008, Intervenors filed Supplemental Direct Testimony of David Schlissel.

On April 15, 2008, Applicants moved to strike all portions of the Supplemental Direct Testimony of David Schlissel regarding the cost of complying with future carbon regulation.

On April 22, 2008, ALJ Wahl granted Applicants' motion to strike in part.

By mutual agreement of the parties, supplemental hearings in this matter were held April 28 – 30, 2008 in Bismarck.

On May 13, 2008, Intervenors moved for suspension of the procedural schedule in light of a ruling by Minnesota administrative law judges recommending rejection of the Minnesota Public Utilities Commission certificate of need application for Big Stone 2 transmission lines, which will likely end the project if accepted by the Minnesota commissioners.

III. STATEMENT OF LAW

A. The pre-prudence determination must be made in the context of the Commission's duty to protect ratepayers from utilities' monopolist position in the state electricity market.

Electric utilities are regulated in North Dakota, as in many states, because the industry is a natural monopoly.[1] The economist's concern is that, without regulation, the utility might fail to produce the optimal amount of electricity.[2] It is the role of the regulator to mediate between consumers' interests and the natural tendency of any monopoly to maximize its profits without regard for the impact on consumers. Regulators must also be pro-active because "a monopoly may be less ready to react to

[1] *See* Marla Mansfield, *Energy Policy: The Reel World, Cases and Materials on Resources, Energy and Environmental Law* (Carolina Academic Press 2001) (hereinafter Mansfield) at 51.
[2] *Id.* at 116

changes in technology or other exogenous changes." [3] In the case of Big Stone 2, the utilities' lack of preparation for changes in external circumstances is the problem. Because MDU and OTP are not in direct competition for customers and capital (because of differing regulatory structures) with other electric utilities around the country, they are somewhat insulated from the forces that are driving many U.S. utilities to reject coal-fired generation options and shift to less risky generation sources. This Commission exists to ensure that monopolist forces do not put North Dakota ratepayers at undue risk. The Big Stone 2 project would create exactly the kind of monopoly-induced risk that the Commission must guard against.

B. The so-called "environmental externalities" statute, NDCC § 43-02-23, bars consideration of numeric costs and quantified values of anticipated environmental regulation, but it does not bar rational risk analysis.

In the words of Administrative Law Judge Wahl in his June 22, 2007 Order on Motion to Strike, "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". Relying on a plain language interpretation of the statute, ALJ Wahl allowed into evidence testimony that did "not specifically state numerical costs or quantified values".[4] All of Intervenors' constitutional arguments against this statute notwithstanding, we emphasize that the language of the statute does not create a blanket prohibition against consideration of current risks posed by the perception of the financial markets that future environmental regulation will affect the profitability of a project.

[3] *Id.*
[4] June 22, 2007 Order on Motion to Strike at 2.

Indeed, Applicants considered carbon regulation cost analyses sufficiently relevant to submit evidence of Otter Tail Power's consideration of a $9/ton CO_2 cost.[5] In spite of Applicants' counsel's later offer to withdraw this evidence when it became inconvenient, the evidence remains in the record, although Intervenors' evidence on the same issue was stricken.[6] Minnesota's consideration of CO_2 costs and other environmental impacts will affect the overall cost and potentially the viability of this project. Evidence that the cost of capital and other economic risk factors will be elevated by the prospect of carbon regulation is properly before the Commission and must be considered.

IV. APPLICANTS HAVE FAILED TO SHOW BY A PREPONDERANCE OF EVIDENCE[7] THAT THEIR PROJECT IS MORE COST-EFFECTIVE THAN AN ALTERNATIVE THAT INCLUDES MAXIMIZED DEMAND SIDE MANAGEMENT, ENERGY EFFICIENCY, CONSERVATION, AND RENEWABLE ENERGY WITH A SMALL AMOUNT OF NATURAL GAS.

Applicants complain that Intervenors have not proposed "specifics on a real alternative" to Big Stone 2, when in fact Intervenors' entire case is premised on the superior long-term viability of a suite of alternatives.[8] Applicants appear to forget that they bear the burden of proof, attempting to deflect critique of the evidence they have put forward in support of the Application by attempting to shift the burden of proof to the Intervenors. Applicants would have Intervenors respond to a long series of planning questions, rather than coming up with the answers themselves: "Where would the wind facilities be built? At what location would the natural gas facilities be built, and what gas

[5] Uggerud Rebuttal at 13-16.
[6] Transcript at 908.
[7] This issue is briefed in Intervenors' 2007 Post-Hearing Brief. *See* N.D.C.C. § 28-32-46, indicating that a "preponderance of evidence" standard of review should be applied in administrative proceedings. *See also Hanson v. Industrial Commission*, 466 N.W.2d 587, 590 (N.D. 1991) (holding that the standard of review for administrative proceedings is proof by a preponderance of the evidence).
[8] *See* Uggerud Rebuttal at 9; Transcript at 937-938.

transportation facilities would be necessary?" [9] Applicants further lament that Intervenors have not resolved the whole issue of transmission constraints for them.[10]

The burden on Intervenors, as described by Applicants, is onerous. Applicants appear to believe that the only way Intervenors could gain standing to challenge Applicants' resource planning is to open a separate electric utility and offer a competing resource plan. Of course, this is precisely the point of public regulation of monopolies. No true competition, and therefore no genuine competing resource plan, exists. Applicants' testimony shows that they lack the basic understanding that it is *their* burden -- not Intervenors' -- to answer all these questions before receiving a prudency order from the Commission. Applicants must show that they have fairly examined the costs of their proposal versus alternatives, and show that their proposed project is more cost-effective and in the public interest. They have failed to do so.

A. Applicants' modeling contains serious flaws and deficiencies that prevent a credible showing that Big Stone 2 is the least-cost alternative over the life of the project.

In spite of the opportunity afforded by filing supplemental direct and rebuttal testimony, Applicants have not responded to Intervenors' core critique of their modeling. Big Stone 2 has still never been held up to an objective comparison to a suite of viable alternatives. Applicants persist in comparing Big Stone 2 to 500 MW of natural gas-fired generation, as if this is the only option.

In addition to failing to respond materially to Intervenors' critique, Applicants have withheld evidence directly relevant to the overall greenhouse gas impact of Big Stone 2. In her direct testimony and in response to cross examination, MDU witness

[9] Uggerud Rebuttal at 9.
[10] *Id.*

Andrea Stomberg testified that specific CO_2 emission intensity reductions that could be assigned to Big Stone 2, and that Big Stone 2 would displace dirtier generation from the system.[11] Ms. Stomberg's testimony is that MDU conducts "a ProSYM model which looks at the dispatch of our plants based on fuel cost and variable cost and dispatches them effectively." [12] When questioned about the modeling that supports her claims, Ms. Stomberg admitted that MDU had not disclosed these modeling runs in response to data requests by Intervenors that sought all modeling data relevant to this docket. In response to Intervenors' request for the date of this modeling, Applicants responded that "[t]he runs were not directly used to support the BSII decision and not considered relevant in response to the DRC's information requests in this case and therefore were not submitted." [13] On February 29, 2008, Intervenors requested any modeling of the Big Stone 2 Project or alternatives prepared by or for MDU or OTP since January 1, 2007.[14]

Ms. Stomberg has therefore admitted that Applicants conducted modeling runs to support their pre-filed testimony in this matter but chose not to disclose that modeling data in response to relevant, legal discovery requests by Intervenors. This is a clear violation of the rules of discovery.[15] Applicants' tardy offer to disclose the modeling runs is of no use to Intervenors, who have no opportunity to offer additional rebuttal testimony after the hearing.

[11] Stomberg Supplemental Direct Testimony at 9; Transcript at 1298.
[12] Transcript at 1298.
[13] MDU Late-Filed Exhibit 222.
[14] Intervenors Data Requests 16, 17.
[15] *See* N.D.R.Civ.P. 26.

B. Applicants greatly underestimate the risks of further construction delays, construction cost increases, regulatory compliance costs, and coal supply disruptions and price increases.

In withdrawing from the Big Stone 2 partnership, Great River Energy issued the following statement:

> The cost of Big Stone II has increased due to inflation and project delays. Although the costs of alternative resources have also increased, Great River Energy now anticipates the energy markets through the Midwest Independent System Operator (MISO), will provide access to additional lower-cost alternatives than initially assumed.[16]

Rather than taking into account the swiftly changing economic conditions inside and outside the electrical generation construction sector, Applicants made only minimal adjustments to their original cost estimates.[17] Most of the comparative cost estimates on which Mr. Rolfes relies come from 2007 or even 2006.[18] The credibility of the 2008 version of the Application is, as a result, far less than that of the 2007 version.

The May 20, 2008 decision by Westmoreland Coal Company to withdraw its proposal for the Gascoyne 500 MW coal plant further emphasizes the risky economics of this form of investment at this time.

1. Applicants' cost estimates are severely outdated and cannot be relied on to determine prudence at this time.

Mr. Schlissel's summary statement to the Commission expresses the flaws in Applicants' cost estimate and recommends conditions that the Commission might order

[16] Great River Energy September 17, 2007 press release (see Intervenors' Exhibit I10 at 6).
[17] Intervenors Exhibit I10 at 11.
[18] *Id.* at 31.

for the protection of ratepayers, in light of Applicants' unwillingness to update their cost estimates prior to a prudency order:

> It would have been prudent for OTP and MDU to prepare a new construction cost estimate and schedule for the Big Stone II Project at some point since work on the project was suspended in September 2006. The existing cost estimate will soon be two years old. However, the companies made a conscious decision not to prepare a new estimate until after they have received the regulatory approvals from this Commission and the Minnesota PUC. Instead, even without presenting a current construction cost estimate for the Project, both companies want a blank check from this Commission that will put all of the risks of higher plant construction, and operating costs, on ratepayers. Rather than grant such a blank check, I believe this Commission should follow the recent example of another Commission and reject a proposed project because the existing cost estimate is too old and out-of-date. Or, at a minimum, the Commission should cap the amount of the cost of building Big Stone II that OTP and MDU can recover in rates as prudent investments.[19]

Applicants have made clear their intent to pass on cost increases to ratepayers.

2. Applicants have failed to modify their cost and time estimates to account for the significant expense associated with more stringent mercury removal requirements that will apply to Big Stone 2.

Applicants have failed to adjust their cost and timeline estimates to account for a recent judicial ruling making maximum control of mercury emissions from Big Stone 2 a pre-construction permitting requirement under the federal Clean Air Act. *State of New Jersey et al. v. EPA*, 2008 WL 341338 (D.C. Cir.).[20] The decision invalidates the federal program and rule on which Applicants hoped to rely to delay compliance with mercury emissions reduction. Applicants' presumed timing for resolution of PSD air permit appeals, and presumed capital and operating costs to comply with mercury-related regulatory requirements, are likely invalidated by this ruling.

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[19] Schlissel Summary Statement, Intervenors' Exhibit 110a, at 1-2.
[20] Also available on the U.S. courts' Pacer web site at:
<http://pacer.cadc.uscourts.gov/docs/common/opinions/200802/05-1097a.pdf>.

Applicants' stated mercury reduction goal is not contained as a term in the proposed South Dakota PSD air permit for Big Stone 2 that was published since the close of the hearing in this matter. Nor does the air permit contain a Maximum Achievable Control Technology (MACT) hazardous air pollutant emission limit under the federal Clean Air Act, on the basis that EPA rules promulgated in 2005 exempted electric generating units from otherwise applicable mercury MACT standards.[21] The U.S. Court of Appeals for the D.C. Circuit ruled on February 8, 2008, however, that EPA's 2005 rules exempting electric generating units from MACT standards are unlawful.

At a minimum, as a result of this court decision, the South Dakota air permitting process will once again be delayed in order to conform to federal Clean Air Act requirements for mercury control. Although the permit was issued April 15, 2008, on May 15, 2008, the Sierra Club and Clean Water Action filed a petition for judicial review. Given the extensive opposition to this proposal and ongoing changes in the Clean Air Act regulatory structure, Applicants' timeline and cost estimates are not credible.

3. Applicants' risk-mitigation strategy with regard to coal supply is not credible.

Applicants' proposal to mitigate risks associated with future coal supply cost increases can be summarized as a Hail Mary hope that the Surface Transportation Board will do a 180 degree turn and begin to side with Applicants, in defiance of history and

[21] Prevention of Significant Deterioration Permit Otter Tail Power Company – Big Stone II, South Dakota Department of Environment and Natural Resources ("7.0 Maximum Achievable Control Technology Standards On March 29, 2005, EPA issued a final rule in the federal register that removes coal and oil-fired electric utility steam generating units from the requirements of Section 112 of the federal Clean Air Act. Therefore, a Case-by-Case MACT review is not required."), available online at http://www.state.sd.us/DENR/BigStone/BigStoneIIPSDpermitproposed20080415.pdf.

precedent. Applicants' expert witness on fuel supply costs, Mr. Crowley, acknowledges that he incorrectly forecast fuel surcharges,[22] yet urges the Commission to rely on a number of his "expert" forecasts, including the following:

1. The Surface Transport Board will suddenly begin to provide increased protection for captive shippers;[23]
2. Burlington Northern Santa Fe (BNSF) will not attempt to force further rate increases on Otter Tail Power;[24]
3. Domestic coal consumption will continue to grow, in spite of the growing export market and the high probability of carbon regulation.[25]
4. Increased profits from increased coal consumption will offset the cost of BNSF's infrastructure expansion to the extent that there will not be upward pressure on rates.[26]

To find that fuel supply cost increases do not constitute an unreasonable risk associated with this project, the Commission must rely on every one of these assertions by Mr. Crowley. Not one comes accompanied by a shred of evidence in the record.

V. APPLICANTS HAVE UNREASONABLY AND IMPRUDENTLY IGNORED THE SUBSTANTIAL RISK THAT FUTURE CO2 REGULATIONS WILL HARM THE ECONOMICS OF THE BIG STONE 2 PROJECT.

Applicants dismiss the extensive expert witness testimony and modeling data produced by Intervenors before this Commission as "political correctness", demonstrating the

[22] Transcript at 1144.
[23] Transcript at 1143.
[24] Transcript at 1150.
[25] Transcript at 1141.
[26] Transcript at 1140.

depth of their denial of current political and economic reality.[27] Suing other states over their good faith efforts to address escalating environmental and economic challenges is another example of denial that will ultimately damage North Dakota ratepayers and render the state's economy less competitive against states and provinces that have already addressed the problem of reducing greenhouse gas emissions. Likewise, Applicants' blind insistence on increasing reliance on the most familiar form of generation rather than finding ways to insulate ratepayers from significant risks on the horizon is simply foolish.

A. Unrebutted science establishes more firmly this year than last that global warming is a severe threat that is growing, not abating, in urgency.

Intervenors briefed the status of global warming science in our 2007 post-hearing brief in this matter. Since that time, warnings from leading climate scientists have only become more urgent. At no point in this case have Applicants attempted to deny the severity of the climate crisis. At most they have claimed that the United States lacks the political will to respond at a level adequate to address the plainly demonstrated threat.

B. The record shows that further CO_2 restrictions are likely to render Big Stone 2 less cost-effective than the portfolio alternative endorsed by Intervenors.

Advocacy staff expert witness Terry Deason testified as to the effect on regulatory review of inadequate consideration of the potential for carbon regulation during the life of the proposed generation source. In Mr. Deason's words:

> [T]he failure to consider the potential of carbon regulation would work to the disadvantage of any alternative, because it would not be -- there would not be full information available to the decisionmaker involved. If there is inadequate evaluation of potential costs, carbon or otherwise, there's less satisfaction on the investor's point of view that the project that's being selected is the most cost effective and is the project that is most likely to -- the project that is less likely to be subject to material cost disallowances at the time that the project is included in rate base.

[27] Transcript at 990.

Therefore any failure to give full consideration to potential carbon costs can in fact create a disadvantage for Big Stone 2 at the financing stage, as investors evaluate the potential for rate recovery. Creating clarity on this important issue at the prudency stage has advantages for everyone involved.

This recommendation is supported by the Carbon Principles published by Citi, JP Morgan Chase and Morgan Stanley on February 4, 2008.[28] The Carbon Principles document the commitment of some of the nation's leading financial institutions to reducing greenhouse gas emissions through their investment strategy. Specifically the adopters commit to:

- Encourage clients to pursue cost-effective energy efficiency, renewable energy and other low carbon alternatives to conventional generation, taking into consideration the potential value of avoided CO_2 emissions.
- Ascertain and evaluate the financial and operational risk to fossil fuel generation financings posed by the prospect of domestic CO_2 emissions controls through the application of the Enhanced Diligence Process. Use the results of this diligence as a contribution to the determination whether a transaction is eligible for financing and under what terms.
- Educate clients, regulators, and other industry participants regarding the additional diligence required for fossil fuel generation financings, and encourage regulatory and legislative changes consistent with the Principles.[29]

The Carbon Principles and Commitments demonstrate the extent to which full consideration of greenhouse gas impacts and carbon costs has become part of standard due diligence for key U.S. energy sector investors. Neither the Applicants nor this Commission (and certainly not ratepayers) can afford to ignore this reality.

[28] Intervenors' Exhibit I15.
[29] *Id.* at 2.

VI. GRANTING THE PRE-PRUDENCE DETERMINATION HAS NO NET BENEFIT FOR NORTH DAKOTA RATEPAYERS OR IN-STATE ECONOMIC DEVELOPMENT

A. Applicants have not shown that North Dakota ratepayers need the power generated by Big Stone 2.

Evidence offered by Applicants shows only that additional capacity is needed during peak summer hours. Applicants have not shown whether that additional capacity should be peaking, intermediate, or baseload capacity.[30] Applicants also have not demonstrated that their projections take into account anticipated system changes related to Minnesota's evolving energy policy, which will require significant new investment in renewables and energy efficiency prior to Big Stone 2's anticipated Commercial Operation Date.[31] Finally, Applicants have made no attempt to show that their paltry attempts at energy efficiency in North Dakota to date represent anything like the maximum cost-effective level of efficiency that could be realized in the state market.

B. The prudency of Big Stone 2 for North Dakota ratepayers cannot be evaluated sufficiently without North Dakota-specific integrated resource planning by Applicants.

The facts offered in support of this Application for a prudence determination on a South Dakota electrical generation station burning Wyoming coal, primarily for the benefit of Minnesota consumers, provide insufficient cost-benefit analysis for North Dakota ratepayers. Applicants are unable to give state-specific information about some of the most basic contentions in the Application, such as the claim that increased natural gas generation would create an unacceptable level of exposure to price volatility.[32] In fact, a number of the regional generalizations made by Applicants do not hold true for

[30] Schlissel Direct Testimony at 5.
[31] *Id.*
[32] Transcript at 884-890; 988-990;

North Dakota, a winter-peaking state with below-average reliance on natural gas for home heating and hardly any natural gas-fired electrical generation capacity.[33] Intervenors acknowledge the regional nature of the power grid and the advantages that North Dakota may realize in some instances because of the interstate flow of electricity, but the mere fact of a regional power grid does not prove that every resource addition outside North Dakota's borders constitutes a legitimate, cost-effective investment for North Dakota ratepayers. Applicants have brought no evidence to support this flimsy premise.

VII. CONCLUSION

A. Granting a prudency finding prior to final regulatory approval in Minnesota exposes North Dakota ratepayers to an unnecessary risk.

The proposed Big Stone 2 electrical generation facility neither improves the reliability of electrical service for North Dakota ratepayers nor provides the state with economic benefits. The only parties to benefit from an advance determination of prudence in this docket would be Otter Tail Power and Montana-Dakota Utilities shareholders. Applicants' cost analyses are outdated and regulatory approvals in both South Dakota and Minnesota are uncertain at best. To commit North Dakotans to footing the planning bill for this project, which may well never come to fruition, would harm North Dakota's economy unnecessarily at a time of national economic uncertainty. The proper timing for a prudency finding by this Commission has not yet arrived.

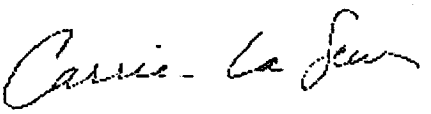
[33] Intervenors' Exhibit I18.

B. If the Commission rules in favor of this application in spite of the lack of credible supporting evidence, certain conditions should be part of the order for the protection of consumers and to hold Applicants accountable for representations made to the Commission.

Should the Commission grant a finding of prudency, Intervenors urge the Commission to accept the analysis of both David Schlissel and Terry Deason and include a condition that future carbon costs will be excluded from the rate base. Such a condition will eliminate uncertainty for ratepayers, investors, and the Applicants. It is also consistent with the Legislature's apparent desire to insulate North Dakota ratepayers for as long as possible from the looming regulatory consequences of their increasing (and near-total) dependence on coal-fired electricity.

Dated: May 21, 2008

Respectfully submitted,



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