

## Jeffcoat-Sacco, Illona

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**From:** Derrick Braaten [derrick@svlawpartners.com]  
**Sent:** Tuesday, December 22, 2009 1:43 PM  
**To:** SupClerkofCourt@ndcourts.gov  
**Cc:** Jeffcoat-Sacco, Illona; 'Mark Bring'; 'Kuntz, Dan'; 'Jana Linderman'  
**Subject:** Joint Motion for Enlargement of Time in Case No. 20090360  
**Attachments:** Joint Motion for Enlargement of Time in Case No. 20090360.pdf

Penny L. Miller  
Clerk of the Supreme Court

Dear Ms. Miller:

Attached for filing in Case No. 20090360 is the parties' Joint Motion for Enlargement of Time with exhibit. Please call with any questions or if you have any problems with the attachment.

Thank you,

Derrick Braaten

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377 PU-06-482 Filed 12/22/2009 Pages: 7  
APPEAL: Joint Motion for Enlargement of Time with Stipulation  
Appellants: Dakota Resource Council, et al.  
Derrick L. Braaten, Sarah Vogel Law Firm

**368 PU-06-481** Filed: 12/22/2009 Pages: 7  
**APPEAL: Joint Motion for Enlargement of Time with Stipulation**

Appellants: Dakota Resource Council, et al.

Derrick L. Braaten, Sarah Vogel Law Firm

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**IN THE SUPREME COURT  
STATE OF NORTH DAKOTA**

**Supreme Court Case No.: 20090360  
Burleigh County District Court No.: 08-8-C-2434-1  
PSC Case Nos.: PU-06-481 and PU-06-482**

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**DAKOTA RESOURCE COUNCIL  
AND MARK TRECHOCK,**

**Appellants,**

**v.**

**PUBLIC SERVICE COMMISSION,  
OTTER TAIL CORPORATION,  
AND MONTANA DAKOTA UTILITIES CO.,**

**Appellees.**

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**JOINT MOTION FOR ENLARGEMENT OF TIME**

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**APPEAL FROM JUDGMENT ENTERED IN CIVIL NO. 08-8-C-2434-1 BY THE  
BURLEIGH COUNTY DISTRICT COURT ON SEPTEMBER 17, 2009 DENYING  
PRIOR APPEAL AND AFFIRMING COMMISSION**

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Dakota Resource Council, Mark Trechock, the ND Public Service Commission, Otter Tail Corporation and Montana Dakota Utilities, by and through their attorneys, and pursuant to N.D.R.App.P. 26(b) hereby jointly move the Court to enlarge the time prescribed by the rules for Appellants to file their brief on appeal, with subsequent briefing deadlines adjusted accordingly.

Appellants' brief is due on January 4, 2010, and Appellants have not previously asked for an enlargement of time. The parties are jointly requesting an extension of time for 175 days, which is June 28, 2010.

In November of 2006, Otter Tail Corporation ("Otter Tail") and Montana-Dakota Utilities Co. ("MDU") applied to the ND Public Service Commission ("PSC") for advance determinations of prudence pursuant to N.D.C.C. § 49-05-16. The determinations were requested for a coal-fired electric generating plant at Big Stone, South Dakota (Big Stone II). Dakota Resource Council ("DRC") and Mark Trechock ("Trechock") intervened, opposing the determination of prudence. The PSC issued its Findings of Fact, Conclusions of Law, and Order on August 27, 2008, which, *inter alia*, approved the requests from Otter Tail and MDU for advance determinations of prudence. The Findings of Fact, Conclusions of Law, and Order were appealed by DRC and Trechock to the Burleigh County District Court, and by Order dated August 19, 2009, Judge Sonna Anderson affirmed the PSC's Order and denied the Appeal. Appellants subsequently brought this appeal, by the Notice of Appeal filed November 25, 2009.

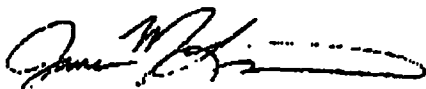
In September of 2009, Otter Tail announced its intent to withdraw from Big Stone II. Later, in November of 2009, MDU announced that Big Stone II would not go forward. Although Otter Tail and MDU have announced that Big Stone II will not go forward, the determination of prudence for the project is still valid and active. For this reason, Appellants have continued with their intent to prosecute this appeal. Otter Tail, MDU, DRC and Trechock have, however, recently negotiated a stipulation related to the appeal, and to the prudency determinations. (See Stipulation, Exhibit A, attached). If the applications referenced in the Stipulation are granted by the PSC, Appellants have agreed to voluntarily dismiss this appeal. These applications, if granted, would resolve the concerns of Appellants, because they request a new determination from the PSC stating that the participation by the applicants in the Big Stone II project is no longer prudent pursuant to N.D.C.C. § 49-05-16.

As such, all of the parties involved are making this Joint Motion for Enlargement of Time in order to conserve judicial resources and to avoid further litigation if possible. It is impossible to

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know exactly how long the proceedings will last in front of the PSC, but the parties hereto believe that if the requested enlargement of time is granted, and if the PSC grants the applications referenced in the Stipulation, that this appeal would be dismissed voluntarily prior to the end of the enlarged time period. Consequently, all parties hereto respectfully request an enlargement of time for the above reasons.

**PLAINS JUSTICE**



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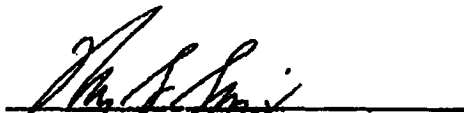
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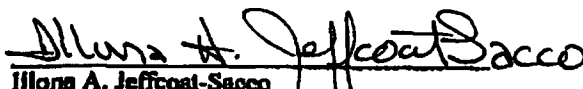
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**STIPULATION**

**WHEREAS, Dakota Resource Council and Mark Trechock have appealed the judgment in South Central Judicial District for Burleigh County Civil No. 08-8-C-2434-1 affirming the Order of the North Dakota Public Service Commission ("NDPSC") in NDPSC Case Nos. PU-06-481 and PU-06-482; and**

**WHEREAS, Montana-Dakota Utilities Co. ("Montana-Dakota"), has filed an application in NDPSC Case No. PU-09-\_\_\_\_\_ for a determination by the NDPSC that Montana-Dakota's continued participation in the Big Stone II Generating Station is no longer prudent and Otter Tail Power Company ("Otter Tail") intends to file a similar application within thirty (30) days of the date of the Stipulation; and**

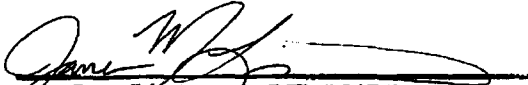
**WHEREAS, Dakota Resource Council and Mark Trechock intend to dismiss their appeal from Civil No. 08-8-C-2434-1 if the NDPSC grants the applications of Montana-Dakota and Otter Tail for a determination that their participation in the Big Stone II Generating Station is no longer prudent;**

**NOW THEREFORE; the undersigned hereby stipulate that if Otter Tail files an application within thirty (30) days of the date of this Stipulation, or such longer period as the undersigned mutually agree, for a determination that its participation in the Big Stone II Generating Station is no longer prudent and if the NDPSC grants the applications of Montana-Dakota and Otter Tail for determinations that their participation in the Big Stone II Generating Station is no longer prudent, then in that event Dakota Resource Council and Mark Trechock will move to dismiss their appeal of Civil No. 08-8-C-2434-1 within 10 days of the issuance of the last order of the NDPSC granting the above referenced applications.**

**Dated effective as of December 21, 2009.**

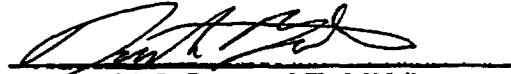


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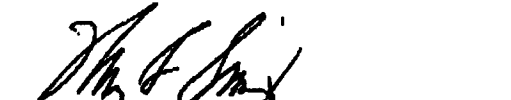
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