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January 19, 2010



Direct: 218-998-7108

Mr. Darrell Nitschke  
Executive Secretary  
Director of Administration  
North Dakota Public Service Commission  
600 East Boulevard, Dept. 408  
Bismarck, ND 58505-0408

*Via E-Filing to [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
and UPS Overnight Mail*

**RE: In the Matter of the Application of Otter Tail Power Company, a Minnesota Corporation, for a Determination of Prudence to Discontinue Participation in the Big Stone II Generating Plant**

Dear Executive Secretary Nitschke:

Enclosed in the above-referenced matter are an original and seven (7) copies of the Application and Affidavit of Tom Brause.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce Gerhardson", written over a horizontal line.

Bruce Gerhardson  
Associate General Counsel  
BG:nlo  
Enclosures

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

In the Matter of the Application of )  
Otter Tail Power Company, a Minnesota )  
Corporation, for a Determination of )  
Prudence to Discontinue Participation )  
in the Big Stone II Generating Plant )

Case No. \_\_\_\_\_

**APPLICATION**

Pursuant to North Dakota Century Code § 49-05-16(5) and North Dakota Administrative Code § 69-02-02-04, Otter Tail Power Company (“Otter Tail” or “the Company” or “Applicant”), a Minnesota Corporation, submits this Application for a Determination of Prudence to Discontinue Participation in the Big Stone II Generating Plant.

**A. COMMUNICATIONS AND SERVICE**

Otter Tail requests that the following persons be placed on the Commission’s official service list for all communications in this case:

Bruce Gerhardson  
Associate General Counsel  
Otter Tail Power Company  
215 South Cascade Street  
Fergus Falls, MN 56537  
Tel. 218-998-7108

Bernadeen Brutlag  
Manager, Regulatory Services  
Otter Tail Power Company  
215 South Cascade Street  
Fergus Falls, MN 56537  
Tel. 218-739-8289

**B. STATUTORY PROVISIONS**

The statutory provision under which Commission authorization or permission is sought is as follows:

49-05-16. **Advance determination of prudence.** A public utility proposing to construct ... an energy conversion facility ... for the purpose of ensuring reliable electric service to its customers may file an application with the commission for an advance determination of prudence regarding the proposal.

...

5. If at any time following an initial commission order, the commission, following a subsequent hearing, determines that continuation of a project is no longer prudent ... the public utility may recover in its rates, and in a timely manner consistent with the public utility's financial obligations, the amounts the public utility already has expensed, incurred, or obligated on a project, including interest expense and a return on equity invested in the project up to the time the new order is entered even though the project may never be fully operational or used by the public utility to serve its customers.

**C. APPLICATION FOR A DETERMINATION TO DISCONTINUE PARTICIPATION IN THE BIG STONE II GENERATING PLANT**

Otter Tail respectfully submits this Application for a Determination of Prudence to Discontinue Participation in the Big Stone II Generating Plant. Otter Tail respectfully requests that the Commission, after formal or informal hearing, issue an order finding that Otter Tail's continuation of the Big Stone II Generating Plant project is no longer prudent. In support thereof, the Company states as follows:

1. That Applicant's full name and post office address is:

Otter Tail Power Company  
215 South Cascade Street  
Fergus Falls, MN 56537

2. Applicant is a Minnesota corporation duly authorized to do business in the State of North Dakota as a foreign corporation, and is doing business in the State of North Dakota as a public utility subject to the jurisdiction of and regulation by the Commission under North Dakota Century Code Title 49, as amended.

3. Applicant's Certificate of Incorporation and Amendments thereto have been previously filed with the Commission. Such Certificate and Amendments are hereby incorporated by reference, as though fully set forth herein.

4. This Application is being made pursuant to the provisions of § 49-05-16(5) of the North Dakota Century Code and § 69-02-02-04 of the North Dakota Administrative Code.

5. On November 14, 2006, Otter Tail filed an application under North Dakota Century Code § 49-05-16 for advance determination of prudence of Otter Tail's participation and ownership interest in the Big Stone II Generating Plant, Case No. PU-06-481.

6. On November 15, 2006, Montana-Dakota Utilities Co. (Montana-Dakota) filed an application under North Dakota Century Code § 49-05-16 for advance determination of prudence of Montana-Dakota's participation and ownership interest in the Big Stone II Generating Plant, Case No. PU-06-482.

7. On September 17, 2007, Otter Tail and Montana-Dakota together wrote the Commission advising that two of the original seven Big Stone II Generating Plant co-owners, Great River Energy and Southern Minnesota Municipal Power Agency, had withdrawn from the project.

8. On October 4, 2007, Otter Tail and Montana-Dakota together sought Commission authorization to supplement the record.

9. On March 10, 2008, Otter Tail and Montana-Dakota together submitted Supplemental Direct Testimony in support of their application, based on an updated analysis for the cost of a 500 or 580 MW facility with a commercial operation date of mid-2013.

10. On August 27, 2008, the Commission by order in Case No. PU-06-481 approved Otter Tail's request for advance determination of prudence for ownership in the proposed Big Stone II Generating Plant for a minimum of 121.8 MW up to a maximum of 130 MW and a proportionate ownership share of the associated transmission electric resource additions. (In Case No. 06-482, the Commission granted Montana Dakota's Application).

11. On August 19, 2009, the Honorable Sonna M. Anderson, Judge of the South Central Judicial District, affirmed the Commission's August 27, 2008 order.

12. On September 11, 2009, Otter Tail withdrew from the Big Stone II Generating Plant project under the project agreements. A combination of factors had decreased Otter Tail's need for the project and increased risks associated with the project, including: a) significant changes to recent energy price forecasts expected to result in changes to the Company's next resource plan and resource adequacy requirements; b) unprecedented financial market conditions and cost-recovery risks that made raising the large amount of necessary capital unreasonably costly; c) the risk under the project agreements that the Company could be required to either increase its share of the plant, or participate in a smaller and less economic project if additional participants did not join in the project;<sup>1</sup> d) financing risk associated with lender concern over the growing uncertainty in the direction of federal climate-change legislation and the Environmental Protection Agency's intent to regulate carbon dioxide and other greenhouse gases;<sup>2</sup> and e) uncertainty due to protracted permit appellate processes.

13. On November 2, 2009, the remaining Big Stone II co-owners announced the wind-down of the Big Stone II Generating Plant project.

14. This application is supported by the affidavit of Tom Brause, Otter Tail Power Company's Vice President Administration.

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<sup>1</sup> Otter Tail's share of Big Stone II costs was estimated at about \$400 million. However, without the addition of other project participants, Otter Tail's expected share of costs in a similarly sized project would have increased to approximately \$500 million or more. For purposes of illustrating the magnitude of the investment, Otter Tail's total rate base as of the end of 2008 was approximately \$575 million.

<sup>2</sup> Subsequent to Otter Tail's withdrawal, the U.S. Environmental Protection Agency on December 7, 2009 issued an endangerment finding that paves the way for potential regulation of greenhouse gases under the existing Clean Air Act. Most immediately, the endangerment finding (and an additional finding that traces causation to new motor vehicles) is expected to contribute to the finalization of standards for light-duty vehicles - - but the endangerment finding is also widely expected to presage regulation of other greenhouse gas emission sources, including power plants.

WHEREFORE, Applicant respectfully requests that the Commission, after formal or informal hearing:

1. Issue an order finding that Otter Tail's continuation of the Big Stone II Generating Station project is no longer prudent, and further finding, subject to a proper showing in the Company's next rate case, that the Company may recover in its rates, and in a timely manner consistent with the Company's financial obligations, the amounts the Company already has expensed, incurred, or obligated on the Big Stone II Generating Station project, including interest expense and a return on equity invested in the project up to the time the Commission's order is entered.

2. Grant such other relief as the Commission shall deem appropriate.

Dated: 1/19/10

OTTER TAIL POWER COMPANY

By: \_\_\_\_\_

  
Bruce Gerhardson  
Associate General Counsel  
Otter Tail Power Company  
215 South Cascade Street, PO Box 496  
Fergus Falls, MN 56538-0496

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**AFFIDAVIT OF TOM BRAUSE**

1. I am employed by Otter Tail Power Company as Vice President Administration, and I make this affidavit on the basis of my own personal knowledge and belief as to the matters contained herein.
2. Otter Tail has provided retail electric service in North Dakota since 1909.
3. Otter Tail is a Minnesota corporation duly authorized to do business in the State of North Dakota as a foreign corporation, and is doing business in the State of North Dakota as a public utility subject to the jurisdiction of and regulation by the Commission under North Dakota Century Code Title 49, as amended.
4. Until September 11, 2009, Otter Tail planned and participated as lead developer in the Big Stone II Generating Plant, as a means of meeting a reasonably anticipated electric baseload need identified in Otter Tail's resource planning processes.
5. The project agreements between the five owners of the Big Stone II Generating Plant on September 11, 2009 required a vote under which each participating company was required to signify its willingness to continue the project.
6. Absent contrary agreement by all five companies, a vote in favor of continuing the project bound each company to participate at no lower than the level of megawatts at which each was then participating, which in Otter Tail's case was 26.54% of a 500 or 580 megawatt plant.
7. By September 11, 2009, Otter Tail had significant reservations about the prudence of irrevocably committing to 26.54% of a 500 to 580 MW coal-fired project for a variety of reasons, including: a) significant changes to recent energy price forecasts expected to result in changes to the Company's next resource plan and resource adequacy requirements; b) unprecedented financial market conditions and cost-recovery risks that made raising the large amount of necessary capital unreasonably costly; c) the risk under the project agreements that the Company could be required to either increase its level of participation in the plant, or participate in a smaller and less economic project if additional participants did not join in the project; d) financing risk

associated with lender concern over the growing uncertainty in the direction of federal climate-change legislation and the Environmental Protection Agency's intent to regulate carbon dioxide and other greenhouse gases; e) uncertainty surrounding adequate and timely cost recovery; and f) uncertainty due to protracted permit appellate processes.


8. Otter Tail's projected share of Big Stone II costs at a 26.54% level of participation was estimated at about \$400 million, but would have increased to approximately \$500 million without the addition of new project participants whose entry was expected to add at least some additional level of regulatory scrutiny.
9. Otter Tail's total rate base as of the end of 2008 was approximately \$575 million, which reflects the magnitude of the proposed Big Stone II investment.
10. Otter Tail's concerns about the U.S. Environmental Protection Agency's intent to regulate carbon dioxide and other greenhouse gases were borne out when, on December 7, 2009, the EPA issued an endangerment finding that paves the way for potential regulation of greenhouse gases under the existing Clean Air Act (regardless whether the U.S. Congress passes and the President signs legislation regulating greenhouse gases).
11. Because of the risks to shareholders and ratepayers attendant upon Otter Tail's continued participation in the project on and after September 11, 2009 and the significantly increased level of expenditures required thereafter, Otter Tail was unable to irrevocably commit to the Big Stone II project and its decision to discontinue participation was prudent.

  
\_\_\_\_\_  
Tom Brause

Subscribed and sworn to before me this 19 day of January, 2010.

(NOTARIAL SEAL)



  
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Notary Public