

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

**Montana-Dakota Utilities Co.  
Advance Determination of Prudence –  
Big Stone Air Quality Control System Project  
Application**

**Case No. PU-11-163**

**Otter Tail Power Company  
Advance Determination of Prudence -  
Big Stone Air Quality Control System Project  
Application**

**Case No. PU-11-165**

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

On May 20, 2011 Montana-Dakota Utilities Co. (MDU) and Otter Tail Power Company (OTP) (jointly hereafter referred to as Applicants) filed an application for a trade secret protective order under North Dakota Administrative Code section 69-02-09-01 for protecting against public disclosure trade secret information as defined by North Dakota Century Code section 47-25.1-01(4). Applicants provided the following to support its application:

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

- Attachment No. 4 – SO<sub>2</sub>, NO<sub>x</sub>, and Mercury Reduction Study
- Attachment No. 5 – Big Stone Plant AQCS Project Cost Estimate
- Attachment No. 6 – Big Stone AQCS Project Operating and Maintenance Cost Calculations.
- Attachment No. 8 – Natural Gas Conversion Conceptual Study
- Attachment No. 9 – Otter Tail Power Company BSP Pro Forma Results Letter Report North Dakota.

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Staff response to request of MDU and OTP for trade secret protection with certificate of service  
Public Service Commission Staff  
Mark Gruman, Legal Counsel

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**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 vendors and competitors would have an opportunity to obtain economic value from disclosure or use of this information, to the detriment of the Big Stone Co-Owners and specifically the customers served by Montana-Dakota. Additionally, the Applicants indicate that, if made publicly available, vendors could use the information to their advantage in competing for project procurement opportunities, while competitors could use the information to leverage their rate positions in the marketplace to Montana-Dakota's detriment.

**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. In addition the Applicants indicate that this information cannot be selectively disclosed without violating the public reporting requirements of the Securities and Exchange Commission.

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

Applicants indicate that vendors and competitors would obtain economic value from the disclosure or use of the information.

**5. A Specific Description of Known Competitors and Competitor's 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.**

Please see Staff's response under paragraph 3 above.

Staff has reviewed Applicants' request for trade secret protection of the information. N.D.C.C. § 47-25.1-01(4) 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 North Dakota Administrative Code section 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 because the information relates to cost projections and studies pertaining to the construction of the Big Stone Generating Station Air Quality Control System Project. Applicants indicate that the information was prepared pursuant to agreements that require its continued confidentiality. Additionally, according to the Applicants, the selective dissemination of these materials is precluded by the Securities and Exchange Commission. The information, therefore, is not readily ascertainable by proper means by other persons.

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.

For reasons set forth above, staff recommends that the Commission grant the Applicants' request for trade secret protection.

Dated this 26<sup>th</sup> day of July, 2011.

  
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Mark Gruman  
Legal Counsel  
North Dakota Public Service Commission

**CERTIFICATE OF SERVICE**

<b>Montana-Dakota Utilities Co.</b>	)	
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<b>Application</b>	)	

I hereby certify that a true and correct copy of the foregoing **STAFF RESPONSE TO THE REQUEST OF MONTANA-DAKOTA UTILITIES CO. AND OTTER TAIL POWER COMPANY FOR TRADE SECRET PROTECTION** was, on 26 July 2011, electronically provided to the following:

Dan Kuntz  
Associate General Counsel  
MDU Resources Group, Inc.  
P.O. Box 5650  
1200 West Century Avenue  
Bismarck, ND 58506-5650  
[dan.kuntz@mduresources.com](mailto:dan.kuntz@mduresources.com)

Mark Bring  
Otter Tail Corporation  
P.O. Box 9156  
Fargo, ND  
58106-9156  
[mbring@ottertail.com](mailto:mbring@ottertail.com)

Dated this 26<sup>th</sup> day of July 2011

  
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Mark Gruman  
Legal Counsel  
ND Public Service Commission  
600 E. Boulevard Avenue, Dept 408  
Bismarck, ND 58505