



Minnesota Center for Environmental Advocacy

The legal and scientific voice protecting and defending Minnesota's environment

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Executive Director

September 28, 2006

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Patty Van Gerpen
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**Re: In the Matter of Otter Tail Power Company on Behalf of Big Stone II
Co-owners for an Energy Conversion Facility Permit for the
Construction of the Big Stone II Project
Civ. No. _____ PUC Docket No. EL05-022**

Dear Addressees:

Enclosed and served upon you, please find Statement of Issues on Appeal and Affidavit of Service by Mail.

If you have any questions, please do not hesitate to call me.

Sincerely,

Janette K. Brimmer
Legal Director

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OCT 02 2006
SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



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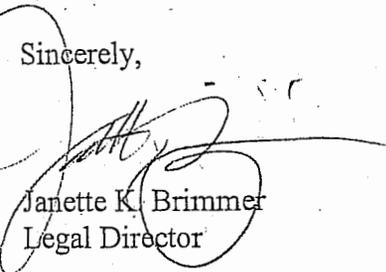
Re: **In the Matter of Otter Tail Power Company on Behalf of Big Stone II
Co-owners for an Energy Conversion Facility Permit for the
Construction of the Big Stone II Project**
Civ. No. _____ PUC Docket No. EL05-022

Dear Clerk:

Enclosed for filing in the above-referenced matter, please find Statement of Issues
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If you have any questions, please do not hesitate to call me.

Sincerely,


Janette K. Brimmer
Legal Director

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

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STATE OF SOUTH DAKOTA
HUGHES COUNTYSOUTH DAKOTA PUBLIC
UTILITIES COMMISSIONCIRCUIT COURT
JUDICIAL DISTRICT

In the Matter of Otter Tail Power
Company on behalf of Big Stone II
Co-owners for an Energy Conversion
Facility Permit for the Construction
Of the Big Stone II Project

STATEMENT OF
ISSUES ON APPEAL

Civ. No. _____

PUC Docket No. EL05-022

Decision date: 8/24/06.

1. Court or agency of origination.

This matter arose before the South Dakota Public Utilities Commission.

2. Jurisdictional statement.

This is an appeal from an administrative agency contested case hearing. This appeal is authorized by SDCL 49-41B-30 and pursuant to SD 1-26-31. The date of final agency decision is August 24, 2006.

3. Type of litigation and any statute at issue.

The type of litigation is review of an administrative decision of the South Dakota Public Utilities Commission ("PUC") approving siting and permitting of the Big Stone II Energy Conversion Facility ("Big Stone II"). The statute at issue is SDCL 49-41B-22.

4. Brief description of claim, defenses, issues litigated and result below.

This case concerns the siting and building of the Big Stone II facility in South Dakota. Big Stone II is proposed by Otter Tail Power Company on behalf of the co-owners of Big Stone II. It is a coal-burning electric utility.

Appellants Minnesota Center for Environmental Advocacy ("MCEA"), Fresh Energy f/k/a Minnesotans for an Energy Efficient Economy, the Izaak Walton League of America-Midwest Office ("IWLA") and the Union of Concerned Scientists ("UCS") challenged the approval of the Big Stone II project based upon a number of factors, including that the project will pose a threat of serious injury to the environment and therefore cannot be approved according to the factors required to be shown by the Big Stone II co-owners under SDCL 49-41B-22. In particular, appellants presented extensive evidence regarding carbon dioxide pollution from the Big Stone II project, which evidence was unrefuted in the administrative record. The Big Stone II co-owners did not dispute the levels of carbon dioxide pollution that would be emitted by the facility and did not dispute that this pollutant negatively impacts the environment. The Big Stone II co-owners simply argued that their carbon dioxide pollution was only a part of the global amount of carbon dioxide and therefore should be disregarded.

The PUC approved the Big Stone II project finding that it would not pose a serious threat to the environment.

5. Issues to be raised on appeal.

Appellants appeal the PUC decision relative to carbon dioxide pollution because the PUC's decision that Big Stone II will not pose a serious threat to the environment fails to follow the requirements of the law of SDCL 49-41B-22, is inconsistent with the record and not supported by substantial evidence, and is arbitrary and capricious. The PUC's decision is in error when it weighed and considered factors in its findings and conclusions regarding carbon dioxide that are not part of the relevant statute and not properly considered relative to threats to the environment. The PUC erred in ignoring the evidence, including from its own staff, regarding the significant negative environmental effects of carbon dioxide pollution and climate change in South Dakota and the upper Midwest.

6. Contents of the record and need for transcript.

The matter before the circuit court is a review on the administrative record before the PUC, which administrative record already includes a transcript of the contested case hearing.

7. Oral argument is requested.

8. Names, addresses, zip codes and telephone numbers of attorneys for appellants, respondents and parties requiring service.

Appellants:

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Respondents South Dakota Public Utilities Commission:
Karen Cremer

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Respondent Otter Tail Power Company on
Behalf of Big Stone II Co-Owners:

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Christopher W. Madsen
Joanne M. Haase
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Other Parties Requiring Service
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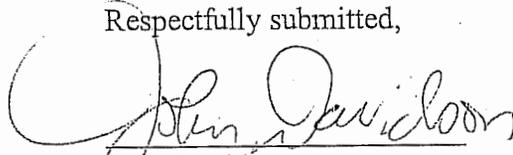
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Dated: September 28, 2006

Respectfully submitted,


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this 28th day of September, 2006


Notary Public

