1	STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
2	:SS COUNTY OF HUGHES) SIXTH JUDICIAL CIRCUIT
3	* * * * * * * * * * * * * * * * * * * *
4) IN THE MATTER OF OTTER)
5	TAIL POWER COMPANY ON) BEHALF OF BIG STONE II) File No. 06-399
6	CO-OWNERS FOR AN ENERGY) CONVERSION FACILITY)
7	PERMIT FOR THE) TRANSCRIPT OF ORAL CONSTRUCTION OF THE BIG) ARGUMENT
8	STONE II PROJECT)) PEGEWED
9) APR 0 3 2007
10	* * * * * * * * * * * * * * * * * * *
11	BEFORE: HONORABLE LORI S. WILBUR
12	
13	Pierre, South Dakota
14	February 26, 2007
15	commencing at 1:30 P.M.
16	
17	* * * * * * * * *
18	
19	APPEARANCES :
20	Ms. Janette K. Brimmer
21	Minnesota Center for Environmental Advocacy
	26 E. Exchange St., Suite 206 St. Paul, MN 55101
22	FOR THE APPELLANT AND ENVIRONMENTAL ORGANIZATIONS
23	AND:
24	
25	COPY
	Lori J. Grode - (605) 223-7737

 $(\dot{\psi})$

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				3
		1	1	PROCEEDINGS
	1 STATE OF SOUTH DAKOTA		2	THE COURT: All right. Good afternoon.
		SS	3	We're here on Hughes County Civil File 06-399, in
	3 * * * * * * * * * * * * * * *	* * * * * * * * * * * * * *	4	the matter of Otter Tail Power Company on behalf
$ \langle \rangle \rangle$	4 IN THE MATTER OF OTTER))	5	of Big Stone II, Co-Owners for an Energy
)) File No. 06-399	6	Conversion Facility Permit for the Construction
	CO-OWNERS FOR AN ENERGY 6 CONVERSION FACILITY PERMIT FOR THE))) TRANSCRIPT OF ORAL	7	of the Big Stone II Project.
	7 CONSTRUCTION OF THE BIG STONE II PROJECT) ARGUMENT	8	And if the parties want to enter their
	ß))	9	appearances, I'd appreciate that.
	9 * * * * * * * * * * * * * * *) * * * * * * * * * * * * * * * *	10	MS.BRIMMER: Thank you, Your Honor.
	10 11		11	Janette Brimmer on behalf of the Appellant and
		DRI S. WILBUR	12	environm ental organizations.
	Pierre, Sout		13	THE COURT: Thank you, With you?
	February 26,		14	MS.BRIMMER: John Davidson, local counsel
	commencing a	at 1:30 P.M.	15	for Ms. Brimmer.
	16	* * * * *	16	THE COURT: Professor.
	17		17	MR.SMITH: Tom Welk and Chris Madsen for
		RANCES:	18	the Applicant co-owners of Big Stone II. Also
	19	-	19	with me, Your Honor, today is Bruce Gerhardson,
		for Environmental Advocacy	20	who's the associate general counsel for Otter
	21 26 E. Exchange St. St. Paul, MN 55: 22 FOR THE APPELLAR	101	21	Tail, which is the managing owner, and Mark
	ENVIRONMENTAL OI		22	Rolfes back to my left, who is the project
	AND : 24		23	manager for Big Stone II.
	25		24	MR.SMITH: John Smith for the PUC.
	Joni B. Freds.	- {606} 223-7737	25	THE COURT: Good afternoon. Before we get Lori J. Grode (605) 223-7737
1				
	1 Mr. John H. Dav: 2 USD School of Li- 414 E. Clark St 3 Vermillion, SD S LOCAL COUNSEL FO	aw reet 57069	1 2 3 4 5	4 under way, as I sat down to read through these briefs, I realized that I needed to make a disclosure here today. I like to trap shoot, and I am a member of the local Izaak Walton League for the purposes of shooting trap. I can get a
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	5		7
1	MR. WELK: Yes, I am.	1	relative to carbon dioxide pollution and that
2	THE COURT: Mr. Smith, do you want another	2	is the piece of the record we are most concerned
3	15?	3	with here we do not take issue with those
$\int $	MR. SMITH: I suppose.	4	specific Findings of Fact. For example, how much
	THE COURT: I'll give you five minutes at	5	carbon dioxide pollution that Big Stone II would
6	the end. Ms. Brimmer, you may begin.	6	produce.
7	MS. BRIMMER: Do you prefer standing or	7	The issue really comes down to sort of the
8	seated, Your Honor?	8	ultimate finding, if you will, which is whether
9	THE COURT: Whatever you're comfortable	9	Big Stone II will pose a threat of serious injury
10	with.	10	to the environment.
11	MS. BRIMMER: I'll remain seated. Thank	11	And on that basis, the Court or, excuse
12	you, Your Honor.	12	me, the PUC found that because its share was a
13	Again, my name is Janette Brimmer. I	13	small, or a perceived small share, that that
14	represent the Appellant and environmental	14	was that meant it was not a threat of serious
15	organizations here today. And this is really a	15	injury to the environment. That specific finding
16	fairly simple case.	16	we do take issue with.
17	We have a discreet issue on appeal, as the	17	Also on the other side of the equation we've
18	Court is aware, and it really is a matter of	18	got the standard of review for mixed questions of
19	administrative law and proper legal	19	law or fact, conclusions based on the facts and
20	interpretation of statutory law. The statute at issue is South Dakota	20 21	statutory interpretation, all of which under South Dakota law are subject to de novo review by
21		21	this Court without the need for deference to the
22	Statutes 49-41B-22, which are the siting requirements for power plants in the State of	22	PUC.
23	South Dakota.	23	Briefly, we won't spend a lot of time on the
24	Appellants come before the Court simply	25	facts, Your Honor. This is obviously this is
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
	6		
	6	1	8
1	asking that South Dakota Public Utilities	1	a voluminous record, but we'd like to emphasize
1 2	asking that South Dakota Public Utilities Commission apply its own law and its own rules as	1	a voluminous record, but we'd like to emphasize some of the important facts that are uncontested
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2 3 4 5 6	asking that South Dakota Public Utilities Commission apply its own law and its own rules as they are written consistent with the evidence in this case and as intended by the South Dakota legislature. Under the statute at issue the Big Stone II	2 3 4 5 6	a voluminous record, but we'd like to emphasize some of the important facts that are uncontested in this case. The Court is probably aware that Appellants put on quite a bit of expert evidence, but the most important one for the purposes here today is
2 3 4 5 6 7	asking that South Dakota Public Utilities Commission apply its own law and its own rules as they are written consistent with the evidence in this case and as intended by the South Dakota legislature. Under the statute at issue the Big Stone II coal fire power plant permit should be denied.	2 3 4 5 6 7	a voluminous record, but we'd like to emphasize some of the important facts that are uncontested in this case. The Court is probably aware that Appellants put on quite a bit of expert evidence, but the most important one for the purposes here today is Doctor Ezra Hausman. Doctor Hausman is an
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	9		11
1	CO, is, of course, a primary cause of global	1	in his surrebuttal testimony, which is fairly
2	warming, which is the environmental injury with	2	short. Page six of that testimony, several
	which we are concerned. And power plants are a	3	lines, was really the testimony that they used to
3			• • •
4	primary source of that carbon dioxide pollution.	4	contest Doctor Ezra Hausman's testimony. And, in
	And that global warming with which we are	5	fact, this became almost the single cornerstone
6	concerned, which is a problem worldwide we	6	ultimately for the PUC's decision.
7	hear a lot about that, but also in South	7	And that's where Mr. Uggerud did fairly
8	Dakota Doctor Hausman did testify at length	8	simple division relative to the carbon dioxide
9	about what kind of regional impacts might be	9	pollution before Big Stone II compared it to the
10	expected, things like disruption of the	10	worldwide percentage and said it's just not that
11	agricultural economy, increases in severe	11	much. It's a fraction of a percent, hundreds of
12	droughts, things of that nature.	12	a fraction of a percent, and therefore we feel
13	We heard testimony from Doctor Denney, an	13	that this is just not something that we should be
	expert witness that was presented by the staff of	14	concerned about in the larger picture.
14	•	15	THE COURT: Doctor Hausman didn't disagree
15	PUC, that the carbon dioxide pollution from Big		
16	Stone II will cost society, including citizens of	16	with those calculations, though, did he?
17	South Dakota, a range of costs, but most of them	17	MS. BRIMMER: That's correct, Your Honor,
18	in the hundreds of millions of dollars annually.	18	Doctor Hausman did not disagree with those
19	And that's for externalities, meaning	19	calculations, but he did strongly disagree in his
20	environmental things that happen that cost	20	testimony about what to take from those
21	citizens money that are a result of the operation	21	calculations.
22	of the plant as opposed to regulatory costs,	22	THE COURT: Isn't that the dispute that the
23	something else that was referred to. Those are	23	commission resolved then in their granting of the
24	not at issue in this appeal so much. We are	24	permit?
25	talking about the externality costs.	25	MS. BRIMMER: The commission did resolve
1-0	Lori J. Grode (605) 223-7737	1	Lori J. Grode (605) 223-7737
H			· •
- (10	1	12
1	10 So there are two grounds upon which two	1	12 that dispute in the sense that they decided to
1	So there are two grounds upon which two	1	that dispute in the sense that they decided to
2	So there are two grounds upon which two basic grounds upon which Appellants ask this	2	that dispute in the sense that they decided to side with Mr. Uggerud. And it is our position
2 3	So there are two grounds upon which two basic grounds upon which Appellants ask this Court to reverse the PUC. We will address first	2 3	that dispute in the sense that they decided to side with Mr. Uggerud. And it is our position that that was a clearly erroneous decision given
2 3 4	So there are two grounds upon which two basic grounds upon which Appellants ask this Court to reverse the PUC. We will address first some of the factual grounds, the fact that we	2 3 4	that dispute in the sense that they decided to side with Mr. Uggerud. And it is our position that that was a clearly erroneous decision given the great weight of the evidence and Doctor
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1	clearly erroneous and that the Court will be left	1	the statute by saying will not pose a threat of
2	with the firm and definite conviction that a	2	serious injury, that any threat is a reading of
3	mistake has been made in that regard.	3	that as well. If it's a threat, a single threat,
1	Turning to the portion of the case that	4	on a single pollutant that could cause injury,
1	Appellants argue constitutes legal error, we	5	yes, I think that is indeed a reasonable reading
6	believe that the PUC has failed to apply their	6	of that statute.
7	own statute, the siting statute, and their own	7	The statute does not seem to indicate that
	rules as they are written; and that in doing so,	8	there has to be a broad-based or multiple
8	-		
9	and in discussing it within their briefs before	9	pollutant threat. It does indicate that it must
10	this Court, that the PUC applies qualifiers on	10	be serious, that it can't be just
11	their decision that don't exist in the plain	11	THE COURT: So that's a qualifier.
12	language of the statute and demonstrate that the	12	MS. BRIMMER: Yes. I agree that that is a
13	PUC has exceeded its authority in making its	13	qualifier. And I think that the parties would
14	decision in this case.	14	agree that global warming is a serious
15	Again, the plain language of the statute in	15	economic or, excuse me, environmental injury.
16	this case is that the power plant must not	16	So serious does qualify environmental injury
17	present a threat of serious injury to the	17	definitely as opposed to and I don't know what
18	environment. And that word "threat" obviously	18	might be considered not serious. Assault on the
19	indicates an intent of the legislature to be	19	roads as a result of being able to transport back
20	proactive, to be forward-looking, and to make	20	and forth to the plant may have some
21	sure that the PUC is examining power plants	21	environmental impact, but may not be considered
22	before they become a problem for the environment.	22	serious under the plain language of the statute.
23	And that's exactly what we are calling upon	23	The PUC does offer some qualifiers, if you
24	the PUC to do here. Not wait for some	24	will, or reasons for ruling as they did in
25	particularized threshold of environmental harm,	25	finding that Big Stone II will not present a
23	Lori J. Grode (605) 223-7737	23	Lori J. Grode (605) 223-7737
	Lon 9. Grode (000) 220-1101		Lon 0. Groue (000) 223-1131
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1	14 but instead to really examine the problem of	1	16 threat . We believe that none of them are really
1	but instead to really examine the problem of	1	threat. We believe that none of them are really
2	but instead to really examine the problem of carbon dioxide from Big Stone II and what that	2	threat. We believe that none of them are really found within the plain language of the statute,
2	but instead to really examine the problem of carbon dioxide from Big Stone II and what that could mean for the warming earth.	2 3	threat. We believe that none of them are really found within the plain language of the statute, and some of them would indicate that they are
2 3 4	but instead to really examine the problem of carbon dioxide from Big Stone II and what that could mean for the warming earth. We also note that the plain language of the	2 3 4	threat. We believe that none of them are really found within the plain language of the statute, and some of them would indicate that they are that the PUC exceeds its authority in this case.
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1	that siting order and the work of the local	1	environment injury. It doesn't designate
2	review committee shows that the PUC itself and	2	particular pollutants.
3	the folks doing the work on the committee were	3	We would submit, in fact, the legislature
4	examining only the social and economic aspects.	4	was fairly forward-thinking in that recognizing
	There was no review and no discussion in those	5	that regulation doesn't keep up with science very
6	documents of the environmental provisions in this	6	well; that we often understand things about
7	statute.	7	environmental consequences or environmental
8	Instead, they reviewed things like road	8	injury even before we take action and regulate a
9	infrastructure and housing and school district	9	particular pollutant as is the case here.
10	needs, things of that nature. So clearly the PUC	10	Also, it's not really relevant to this
11	itself wasn't really thinking of the siting area	11	proceeding. This is not a permit proceeding
12	as a limit on its review at the time of the	12	where the parties are arguing how much of a
13	environmental consequences.	13	particular pollutant should or can come out of
14	But also by using this circumscribed siting	14	the stacks, or come out of somewhere in the
15	area, it appears to be internally inconsistent	15	plant, and what should those permit limits be.
16	then within the PUC findings. The PUC findings,	16	That's going to occur. It's going to occur in a
17	when they are talking about air quality issues,	17	different forum. This is a much broader forum
18	whether it's carbon dioxide or mercury is another	18	under the statute where we examine the
19	example, drew a pretty large circle. They	19	environmental consequences generally.
20	recognized that these are issues of much larger	20	And we submit that to the extent that the
21	magnitude. That these are quality impacts can	21	PUC is saying that they considered whether other
22	travel for a distance and so to do the proper	22	states regulate CO, as a pollutant, that in regard
23	examination of potential environmental injury, it	23	then the PUC is saying that they were considering
24	had to expand beyond that 20-mile radius.	24	things outside the four corners of the statute
25	And finally that's borne out also by the PUC	25	and that that would exceed the PUC's authority.
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
(18		20
1	staff evidence from Doctor Denney. Doctor	1	Similar arguments with respect to another
2	staff evidence from Doctor Denney. Doctor Denny's testimony is fairly clear in indicating	2	Similar arguments with respect to another concern that the PUC voiced, that to deny the
2 3	staff evidence from Doctor Denney. Doctor Denny's testimony is fairly clear in indicating that particularly when looking at air quality	2 3	Similar arguments with respect to another concern that the PUC voiced, that to deny the siting permit to the Big Stone II power plant
2 3 4	staff evidence from Doctor Denney. Doctor Denny's testimony is fairly clear in indicating that particularly when looking at air quality issues, it is appropriate and proper to extend	2 3 4	Similar arguments with respect to another concern that the PUC voiced, that to deny the siting permit to the Big Stone II power plant would amount to a complete ban. And we would
2 3 4 5	staff evidence from Doctor Denney. Doctor Denny's testimony is fairly clear in indicating that particularly when looking at air quality issues, it is appropriate and proper to extend the review beyond the immediate vicinity of the	2 3 4 5	Similar arguments with respect to another concern that the PUC voiced, that to deny the siting permit to the Big Stone II power plant would amount to a complete ban. And we would we are assuming that they are referring to a
2 3 4 5 6	staff evidence from Doctor Denney. Doctor Denny's testimony is fairly clear in indicating that particularly when looking at air quality issues, it is appropriate and proper to extend the review beyond the immediate vicinity of the plant and that really anything else and	2 3 4 5 6	Similar arguments with respect to another concern that the PUC voiced, that to deny the siting permit to the Big Stone II power plant would amount to a complete ban. And we would we are assuming that they are referring to a complete ban on old-fashioned pulverized coal
2 3 4 5 6 7	staff evidence from Doctor Denney. Doctor Denny's testimony is fairly clear in indicating that particularly when looking at air quality issues, it is appropriate and proper to extend the review beyond the immediate vicinity of the plant and that really anything else and subscribing it very tightly would render full	2 3 4 5 6 7	Similar arguments with respect to another concern that the PUC voiced, that to deny the siting permit to the Big Stone II power plant would amount to a complete ban. And we would we are assuming that they are referring to a complete ban on old-fashioned pulverized coal plants. In other words, a ban on a particular
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	21		23
1	threat; that it did not reach a particular	1	So, in conclusion, Appellants argue simply
2	magnitude that it felt they should deny	2	for application and interpretation of South
3	permitting under the statute. They then went in	3	Dakota's law consistent with its plain language
4	their findings and said there are also economic	4	and really the great weight of the evidence in
(penefits to the area.	5	this case.
6	It is correct, as PUC states in their brief,	6	Let me be clear, Appellants do not wish for
7	that the PUC findings don't draw a direct	7	South Dakota to solve a significant problem like
8	connection. In other words, there is no finding	8	global warming. That is not South Dakota's role.
9	that says we're willing to accept environmental	9	We don't want to them to take one for the team.
10	consequences in exchange for economic benefit.	10	But South Dakota does have its own responsibility
11	They do not say it that clearly.	11	for application of its own rules and law into its
12	However, we believe that it appears that	12	own power plants and what contribution those
13	that may have been going on nonetheless. And I	13	power plants may make to this serious problem, as
14	think some good evidence of that is again Doctor	14	all states do.
15	Denney's testimony, the testimony submitted by	15	And so we ask the Court to apply the plain
16	the PUC staff.	16	language of the statute, to review the great
17	And I marked just a few pages. There's	17	weight of the evidence, and to reverse the PUC's
18	maybe a half dozen, maybe ten pages in Doctor Denney's testimony, starting on page 34, where	18	decision on this point. Thank you.
19	, , , , , , , , ,	19	THE COURT: All right. Thank you. Mr. Welk.
20 21	Doctor Denney says the proper context for the environmental effects which are negative external	20 21	MR. WELK: Thank you, Your Honor. As
22	effects of Big Stone II to society and the	22	Appellants' counsel indicated, the issue is
23	environment is to compare them to positive	23	posited relatively simply in this case of whether
24	socioeconomic effects of Big Stone II.	24	the commission's decision to grant Big Stone II a
25	There follows a couple of questions where	25	siting permit should be reversed.
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
17			0.1
1	22		24
1	the PUC staff elicit testimony with questions	1	The single ground in which all of the
2	the PUC staff elicit testimony with questions saying please compare the negative environmental	2	The single ground in which all of the arguments is based, that is that they contend
2 3	the PUC staff elicit testimony with questions saying please compare the negative environmental effects to the positive economic effects. And,	2 3	The single ground in which all of the arguments is based, that is that they contend that the CO_2 emission, the carbon dioxide
2 3 4	the PUC staff elicit testimony with questions saying please compare the negative environmental effects to the positive economic effects. And, in fact, on pages 38 and 39 of Doctor Denney's	2 3 4	The single ground in which all of the arguments is based, that is that they contend that the CO_2 emission, the carbon dioxide emissions from the plant, prevent the Appellants
2 3 4 5	the PUC staff elicit testimony with questions saying please compare the negative environmental effects to the positive economic effects. And, in fact, on pages 38 and 39 of Doctor Denney's testimony there are tables where Doctor Denney,	2 3 4 5	The single ground in which all of the arguments is based, that is that they contend that the CO_2 emission, the carbon dioxide emissions from the plant, prevent the Appellants from meeting its burden of proof under 49-41B-22.
2 3 4 5 6	the PUC staff elicit testimony with questions saying please compare the negative environmental effects to the positive economic effects. And, in fact, on pages 38 and 39 of Doctor Denney's testimony there are tables where Doctor Denney, in response to those questions, does just that,	2 3 4 5 6	The single ground in which all of the arguments is based, that is that they contend that the CO_2 emission, the carbon dioxide emissions from the plant, prevent the Appellants from meeting its burden of proof under 49-41B-22. That is simply what their argument is, is that we
2 3 4 5 6 7	the PUC staff elicit testimony with questions saying please compare the negative environmental effects to the positive economic effects. And, in fact, on pages 38 and 39 of Doctor Denney's testimony there are tables where Doctor Denney, in response to those questions, does just that, provides a comparison of negative environmental	2 3 4 5 6 7	The single ground in which all of the arguments is based, that is that they contend that the CO_2 emission, the carbon dioxide emissions from the plant, prevent the Appellants from meeting its burden of proof under 49-41B-22. That is simply what their argument is, is that we have failed in the proof to meet that burden of
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2 3 4 5 6 7 8 9	the PUC staff elicit testimony with questions saying please compare the negative environmental effects to the positive economic effects. And, in fact, on pages 38 and 39 of Doctor Denney's testimony there are tables where Doctor Denney, in response to those questions, does just that, provides a comparison of negative environmental and positive local economic impacts from Big Stone II.	2 3 4 5 6 7 8 9	The single ground in which all of the arguments is based, that is that they contend that the CO_2 emission, the carbon dioxide emissions from the plant, prevent the Appellants from meeting its burden of proof under 49-41B-22. That is simply what their argument is, is that we have failed in the proof to meet that burden of proof. But as we sit here today, the burden has
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	controls and whether they should be imputed to	1	Court hasn't had a chance to look at that so,
2	the project. And they found that the imputation	2	briefly because I think this case is helpful
1	of such costs was speculative because South	3	to the Court in discerning what the scope of
A	Dakota and Congress had not yet enacted laws or	4	review is in this case.
	regulations requiring such imputation. That's in	5	This involved a case where I was
6	finding of fact 137.	6	representing a trust company in Sioux Falls that
7	However, in finding 139, the commission	7	was opposing the establishment by Dorsey $\&$
8	considered costs from a variety of sources and	8	Whitney, a law firm in Minneapolis, as to a trust
9	found that the intervenors proffered costs not to	9	company in South Dakota. And we challenged the
10	be reasonable. And if reasonable planning	10	application because we believed that the standard
11	numbers were considered, that such numbers would	11	of review was not appropriate, that it should
12	not affect the cost-effectiveness of the project	12	have been de novo.
13	compared to the alternative.	13	And the Court and in this instance I
14	So even though the commission didn't have to	14	believe was Justice Miller, if I was correct
15	look at those, they did, and they did take a look	15	Justice Miller, Former Chief Justice, went into
16	carefully at those potential costs even though	16	some detail. And it's if you look on pages
17	the regulations may not have required a specific	17	four and five on the scope of review, I think he
18	consideration.	18	clearly delineated how we approached this
19	In addition, Your Honor, if you look at	19	somewhat quagmire as a step back.
20	condition six that was put on the permit	20	And read Dorsey & Whitney, Your Honor. What we have are certain standards of a statute to be
21	applications, the commission is requiring the Applicants to continue to report to the	21 22	made to be satisfied similarly as in Dorsey &
22	commission on the status of CO, regulations, the	22	Whitney. And the Court is faced with is this a
23 24	technologies that are available, and the cost	23	mixed request and how do we look at this.
25	controls. They have already they have	25	And what Justice Miller said is that if it's
25	Lori J. Grode (605) 223-7737	25	Lori J. Grode (605) 223-7737
t.	30	-	32
1	considered all of the arguments that have been	1	something where essentially the question is
1	considered all of the arguments that have been made by the intervenors and, Your Honor, I submit	1	something where essentially the question is factual in nature, it's a clearly erroneous
2	made by the intervenors and, Your Honor, I submit	2	factual in nature, it's a clearly erroneous
2 3	made by the intervenors and, Your Honor, I submit respectfully that this is the quintessential case that the intervenors are asking this Court to substitute its judgment for the commission.	2 3 4	factual in nature, it's a clearly erroneous statute or standard of review. If it's something
2 3	made by the intervenors and, Your Honor, I submit respectfully that this is the quintessential case that the intervenors are asking this Court to substitute its judgment for the commission. I do want to talk about the scope of review.	2 3 4	factual in nature, it's a clearly erroneous statute or standard of review. If it's something that goes to the statutory requirements, that is
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	33		35
1	essentially set forth the global warming issue	1	Doctor Hausman. And so their argument
2	that's in America and the world that exists.	2	essentially was on a de novo review of written
3	As I started when I made my opening	3	testimony. The commission didn't look at any
1	statement, this proceeding is not a proceeding on	4	credibility. That's what was submitted.
	global warming. The federal government can't	5	And then you had they had two experts
6	solve it; the states can't solve it. The world	6	that actually testified as a team regarding what
7	hasn't solved it yet, and that's not this	7	I'd call the economic regulation of CO_2 . And we
8	isn't the forum to determine that policy issue.	8	had a person who came in that testified about the
9	The commission looked at the issue and the	9	economic regulation of CO_2 .
10	context of what exists today and that is there is	10	And essentially it became, Your Honor, a
11	no regulation for these emissions. They looked	11	battle of telling us what is out there.
12	at how to control it. They looked at everything	12	Everybody agreed there's no regulation. You
13	that exists. And they said, yes, we are	13	know, they submitted that some of these costs
14	concerned, we want you to report about it, we	14	need to be considered. The staff had its own
15	want to know about cost controls, but they did	15	expert that came in with these costs that should
16	not determine it to be a serious threat to the	16	be considered, whether they're externalities or
17	environment so as to deny the permit.	17	regulatory costs.
18	I believe that I can say safely, Your Honor, that the commission looked much broader than what	18	The bottom line is their argument is that
19		19	these are damages that should be considered.
20 21	the Appellants are suggesting the Court ought to look at as to this project; and they arrived,	20 21	And, essentially, everybody said this is something that is so speculative, we cannot at
22	after an extensive review, that the commission	21	least the witnesses in which they relied on, the
23	should issue the permit on certain terms and	23	commission. And that's what we're dealing with.
24	conditions.	24	Is there evidence to support what they said?
25	And I'm going to return back to where I	25	The answer is yes. We brought in a witness,
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
- (34		36
1	started from, Your Honor, and that is under the	1	Mr. Hewson, I believe was his name, Hewson, who
2	1-26-36 review this Court is obligated to give	2	was the primary one who went through all of the
1 -			· · · · · · · · · · · · · · · · · · ·
3	great weight to the findings and inferences	3	regulation, state, federal status, the whole nine
4	great weight to the findings and inferences drawn. And we believe, Your Honor, when the		regulation, state, federal status, the whole nine yards, as to what's going on. What are these
4 5	great weight to the findings and inferences drawn. And we believe, Your Honor, when the Court looks at this extensive and voluminous	3 4 5	regulation, state, federal status, the whole nine yards, as to what's going on. What are these various costs? They had people about various
4 5 6	great weight to the findings and inferences drawn. And we believe, Your Honor, when the Court looks at this extensive and voluminous record, that it will affirm. And we would ask	3 4 5 6	regulation, state, federal status, the whole nine yards, as to what's going on. What are these various costs? They had people about various costs.
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	37		39	
1	suggests.	1	literally, in his own words, it's caused by	
2	I ask in 200 findings, tell me where they	2	millions of CO, emission sources, millions. And	
3	balance that. There wasn't any balance. They	3	tens of thousands of significant sources of the	
۵	had to agree. They had to by statute address	4	same general magnitude as Big Stone II.	
1	certain statutory obligations, which they did.	5	You know, I think what it boils down to	
6	And the one point that she brought up about the	6	really this whole case boils down to then is with	
7	local review committee that has a specific	7	the words this facility will not pose. Was it an	
		8	abuse of the commission's discretion, if you	•
8	purpose, that's 49-41B-7 on what the local review			
9	has to address, and those aren't those are	9	will, to both read the statute as it reads and to	
10	housing supplies, educational facilities and	10	apply it that way?	
11	manpower, waste supply and distribution, waste	11	If you take a look at the ruling on proposed	
12	water treatment and collection, solid waste	12	findings, what we did find is that there is	
13	disposal and collection, and law enforcement.	13	insufficient evidence in the record to conclude	
14	That's what oh, and there's transportation,	14	to find that Big Stone II itself will pose a	
15	fire protection, health, recreation, government	15	serious threat or a threat of serious injury to	
16	and energy.	16	the environment via global warming.	
17	Those are what the local review committee	17	Now, does that mean the commission isn't	
18	was supposed to do. They're required by statute	18	concerned necessarily about global warming and	
19	to go look at those. They weren't charged with	19	didn't consider Doctor Hausman's evidence about	
20	the environmental piece. That was the job of the	20	that? The answer is no. The problem is it gets	
21	PUC. And as Mr. Smith has also indicated in his	21	down to one of how do you address a problem like	
22	brief, the PUC is not a many environmental	22	that?	
23	protection agency. It can't adopt standards that	23	And I think as Ms. Brimmer has acknowledged,	
24	other environmental agencies have not adopted.	24	we can't solve the global warming issue here. We	
25	So the PUC, I believe, discharged their	25	can't solve it at the PUC. The global warming	
20	Lori J. Grode (605) 223-7737	-0	Lori J. Grode (605) 223-7737	
	20// 9. 0/000 == (000) 220 // 0/			
1	38		40	-
1	responsibility seriously under a voluminous	1	issue is absolutely the epitome of a macro	
1				
1 2				
2	record, Your Honor, and I think it should be	2	environmental and macro economic issue. It	
3	record, Your Honor, and I think it should be affirmed.	2 3	environmental and macro economic issue. It really is. It's a global issue. Millions of	
3 4	record, Your Honor, and I think it should be affirmed. THE COURT: Thank you. Mr. Smith.	2	environmental and macro economic issue. It really is. It's a global issue. Millions of sources contribute to it. And there's still	
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1	41		43
1	oxygen from it and exhales CO ₂ . Those two billion	1	efficient than the older plants like you see up
2	people are a major contributor to the global	2	in North Dakota and those other old plants. It's
3	warming problem.	3	the state of the art. We can't do any better
4	And I think the real issue is here when we	4	than that and use coal at all at this point in
	ook at the statute the way it reads in terms of	5	time.
		-	
6	will this facility pose a serious or a threat	6	There's an unproven technology called IGCC
7	of serious harm, the commission just didn't find	7	that may hold some potential for that, but it's
8	any evidence in the record to show that. We	8	not at the commercial roll-out phase yet. And,
9	didn't.	9	in fact, the U.S. Department of Energy reasonably
10	And that goes, I think, to my next point and	10	denied the application of Basin Electric for a
11	it's addressing her point about the ban. And,	11	pilot IGCC plant here because they felt the
12	again, we certainly didn't say in our brief that	12	testing that had been done using sub-bituminous
13	there should be a ban on coal plants. I didn't	13	coals, which is the kind we have around here,
14	say that. What I said, I quoted this passage	14	they didn't feel it was worth the risk. And so I
15	from their initial brief, that doesn't mean limit	15	think that's really at the heart of this issue.
16	further buildup of all sources except ones of a	16	Right now we have a gas plant permit
17	certain size or limit and further buildup from	17	proceeding going on for Groton II. We just
18	all sources except those in South Dakota.	18	permitted Groton I back in March. Those are each
19	The uncontested evidence in this case is	19	a hundred megawatt gas plants. Now, if we step
20	that the scientific consensus is to stop	20	in here and we say we have to ban Big Stone II,
21	increasing and start decreasing all CO,.	21	we have to deny a permit for Big Stone II because
22	And as Doctor Hausman testified in the	22	it emits CO ₂ , how are we going to can we then
23	just even the generation context, gas, natural	23	turn around and permit the Groton I plant, the
24	gas, CO, emitter, coal CO, emitter, oil CO,	24	Groton II plant?
25	emitter. And so if we were to and I would	25	We just approved two years ago, three years
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
7	42		44
1.5			
1	submit the suggestion is really made by	1	ago, we approved Angus Anson, too, even a larger
1		1 2	
	submit the suggestion is really made by	1 2 3	ago, we approved Angus Anson, too, even a larger gas plant. Now, admittedly, they don't emit
2	submit the suggestion is really made by Appellants that we should single out coal plants as the bogey man, if you want to call it that.		ago, we approved Angus Anson, too, even a larger gas plant. Now, admittedly, they don't emit quite as much. They don't emit quite as much CO ₂
2	submit the suggestion is really made by Appellants that we should single out coal plants	3	ago, we approved Angus Anson, too, even a larger gas plant. Now, admittedly, they don't emit quite as much. They don't emit quite as much CO ₂ per unit of electric output as the coal plant,
2 3 4	submit the suggestion is really made by Appellants that we should single out coal plants as the bogey man, if you want to call it that. And based on what? Do they emit more CO ₂ per unit of generation output than gas? Yes, they do by	3 4	ago, we approved Angus Anson, too, even a larger gas plant. Now, admittedly, they don't emit quite as much. They don't emit quite as much CO_2 per unit of electric output as the coal plant, but they still emit a heck of a lot of CO_2 .
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	45		47
4	another.	4	
1			They've been the strongest supporters of all the
2	And I think that's the dilemma we were faced	2	active energy in South Dakota that I know of.
3	with and why we focused on the precise language	3	And the issue isn't that. It's just what is
A	in statute, which is this facility. And the	4	a reasonable, a reasoned and permissible exercise
1(bottom line, I think, for us is a very diffuse	5	of the commission's jurisdiction within the legal
6	one other comment, too, and that's the use of the	6	context we find ourselves in? And that's what we
		-	
7	word pollutant in connection with CO_2 .	7	did here, and we did a good job of it, and I
8	CO ₂ isn't a pollutant in the typical sense	8	think you should affirm the decision.
9	like SO2, you know, sulfur dioxides, nitrogen	9	THE COURT: Thank you, Mr. Smith. Wrap-up?
10	oxides, nitrous oxides, carbon monoxide,	10	MS. BRIMMER: Thank you, Your Honor,
11	particulate matter, mercury, and so on and on.	11	gentlemen, very briefly: I think this was made
12	It's not like that. Those are all toxic. Those	12	clear, but just in case Mr. Hausman, I think,
1		1	
13	are toxic chemicals. They're foreign chemicals	13	didn't show up for the hearing. Well, in fact,
14	really to the environment by and large. Not	14	he wasn't called by any of the parties. All the
15	totally SO, and NO, because of volcanos I know can	15	direct testimony was submitted in writing, as
16	emit that so on and so on. But they're foreign	16	requested by the PUC. And it was clear that no
17	in the context of our living environment.	17	one wanted to cross-examine him, so there was no
18	-	18	need for him to appear. So I just want that to
	Not so with CO_2 . CO_2 is a gas we produce		
19	right in our own bodies. You do it. We do it	19	be clear that there was not some delinquency on
20	with metabolism. And CO ₂ is essential for life.	20	his part.
21	It is. Life can't exist on earth without CO ₂ .	21	A couple of things on standard of review.
22	That's what plants use to produce nutrients. So	22	Questions I think we've clearly stated. The
23	CO, regulation requires even it requires and	23	standard of review in both of our briefs, I think
24	all things, all living things produce it. Just	24	we've clearly stated it here. I actually don't
25	about everything we do produces some level of CO ₂ .	25	here the parties are disagreeing about what the
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
(46		48
1	The regulatory challenge posed by CO, is of an	1	standard of review is. I think different pieces
2	order that is unprecedented on the planet.	2	of the case call for different standards, and I
3	And it just isn't reasonable. And I would		or the case can for anterene standards, that
			think that we've made that clear
4		3	think that we've made that clear.
	submit to you that it would be an abuse. It	4	I would like to note on the question of fact
5	would be an unwarranted exercise of discretion by	4	I would like to note on the question of fact failure of the PUC to make a finding on a fact or
6		4	I would like to note on the question of fact
	would be an unwarranted exercise of discretion by	4 5	I would like to note on the question of fact failure of the PUC to make a finding on a fact or
6	would be an unwarranted exercise of discretion by the commission to go down that road in this particular case.	4 5 6	I would like to note on the question of fact failure of the PUC to make a finding on a fact or possibly just choosing not to look at a piece of evidence does not necessarily insulate that
6 7 8	would be an unwarranted exercise of discretion by the commission to go down that road in this particular case. Does that mean Big Stone II's carbon	4 5 6 7 8	I would like to note on the question of fact failure of the PUC to make a finding on a fact or possibly just choosing not to look at a piece of evidence does not necessarily insulate that evidence from this Court's review. And I want
6 7 8 9	would be an unwarranted exercise of discretion by the commission to go down that road in this particular case. Does that mean Big Stone II's carbon emissions will not be regulated? I think the	4 5 6 7 8 9	I would like to note on the question of fact failure of the PUC to make a finding on a fact or possibly just choosing not to look at a piece of evidence does not necessarily insulate that evidence from this Court's review. And I want that to be made clear. The Court may be applying
6 7 8 9 10	would be an unwarranted exercise of discretion by the commission to go down that road in this particular case. Does that mean Big Stone II's carbon emissions will not be regulated? I think the answer to that is clearly no. They probably will	4 5 6 7 8 9 10	I would like to note on the question of fact failure of the PUC to make a finding on a fact or possibly just choosing not to look at a piece of evidence does not necessarily insulate that evidence from this Court's review. And I want that to be made clear. The Court may be applying a clearly erroneous standard, but in doing so and
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1	that is not something that is to be balanced	1	often environmental harms in air quality is so
2	against the threat of serious environmental	2	this is so true for air quality, whether it's
3	injury.	3	mercury or sulfur dioxide or carbon dioxide.
4	The statute does not set forth that kind of	4	THE COURT: Isn't that analysis that you
	balancing test. Those things are considered.	5	refer to limited to in this comparing with
6	They are required to be considered by the PUC.	6	facilities in the siting area, isn't there a part
7	But they are considered separate and apart and	7	of that rule that would somewhat limit that
8	not balanced against the environmental issues.	8	analysis?
9	Again, whether or not this pollutant is	9	MS. BRIMMER: It compares both within and
10	regulated does not matter here. It is not	10	without. That rule does not limit it. If you
11	relevant. It is not a condition of the statute.	11	will see there are two separate pieces of that
12	In fact, all air pollutants were unregulated just	12	rule, two separate sentences. In the siting area
13	a little more than 30 years ago. It didn't mean	13	is attached only to the sentence about some
14	that they weren't causing significant	14	materials that are supposed to be provided by the
15	environmental harm. It didn't mean that they	15	co-owners. And it says please provide a list of
16	weren't pollutants. So whether or not CO, is	16	industries in the siting area.
17	regulated at this point in time is not relevant	17	But prior to that it says you should provide
18	to the Court's consideration.	18	a review, an assessment of what might be the
19	I'm afraid that co-owners the Big Stone	19	cumulative synergistic effects generally of the
20	co-owners continue to confuse externality regs	20	plant on the environment. Obviously, it would be
21	and regulatory costs. There was a lot of	21	difficult for the plant to provide a list of
22	discussion and argument about costs and a lot of	22	industries in California that may, in fact, be
23	discussion about the dispute between some	23	contributing to an issue or even in industries
24	witnesses for the environmental organizations and	24	out of a neighboring state. So it's our position
25	witnesses on the other side. Will the federal	25	that when you read that, it only limits that part
	Lori J. Grode (605) 223-7737	20	Lori J. Grode (605) 223-7737
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(50		52
1	50 government regulate? Will it not?	1	of the rule.
1		1	of the rule.
	government regulate? Will it not?		of the rule. All of these pollutants can have an impact.
2	government regulate? Will it not? Those are not the costs at issue in this appeal. Those that was all testimony about whether the federal government would step in.	2	of the rule. All of these pollutants can have an impact. Yes, carbon dioxide does pose some interesting
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1	advances are largely policy arguments for	1	to listen to the oral arguments that have been
2	ignoring the clear language of the statute.	2	made here today. And I will give you my decision
3	That's the role of the legislature. And it would	3	here.
	be appropriate for the legislature to step in, if	4	Big Stone II is a project that's a proposed
(the legislature thought that was appropriate, and	5	600 megawatt coal-fired power plant to be built
6	write a balancing test or write a reasonableness	6	adjacent to the Big Stone plant on the eastern
7	test into the statute more along the lines of	7	border of South Dakota. In this project will
8	what the PUC appears to have done here.	8	also include the construction of transmission
9	But right now under the language of the	9	lines extending from the plant through South
10	statute, the PUC has exceeded those legislative	10	Dakota and into Minnesota.
11	boundaries, and that's not really appropriate in	11	The decision to build the plant was based on
12	this case.	12	Otter Tail Power's and their other co-owners'
13	And, finally, let me just be clear, we are	13	analysis of the demand for reliable, economical
14	not arguing the Big Stone II fails the siting	14	electrical energy. The individual assessments of
15	requirements because it emits carbon dioxide. We	15	the co-owners indicated that this project is the
16	agree there is a serious, seriousness test, a	16	best resource, among other alternatives, to
17	seriousness modifier. There may be other plants	17	supply the base load energy needs of their
18	that emit carbon dioxide, but those are not	18	customers.
19	before the Court right now. This one is, and we	19	Their decision to build Big Stone II was on
20	believe that it does pose a threat of serious	20	a site adjacent to Big Stone I was based on a
21	injury, and we would ask the Court to reverse on	21	variety of factors such as rail facilities, solid
22	that grounds. Thank you.	22	waste disposal, water supply systems and electric
23	THE COURT: All right. Thank you. Does	23	transmission corridors needed for and that were
24	anyone have anything further?	24	already in existence at the location of Big Stone
25	MR. WELK: I don't think I don't have	25	I. The location allows both plants to share
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
a service			
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1. J. J.	54	1	
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2	anything further. MR. SMITH: No.	2	facilities and technology. Furthermore, area residents are already accustomed to the presence
2 3	anything further. MR. SMITH: No. THE COURT: I think I'm going to be able to	2 3	facilities and technology. Furthermore, area residents are already accustomed to the presence of the Big Stone I plant.
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	57		59
1	appealed any of those conditions.	1	Appellees argue that this is an insubstantial
2	So the only appeal in this case is the one	2	amount of carbon dioxide production; and,
3	brought by Appellant environmental organizations.	3	consequently, the facility does not pose a threat
1	The issues the Court is considering here	4	of serious injury to the environment.
(coday that the Appellants have raised are whether	5	Clearly, Doctor Hausman's testimony
6	Otter Tail Power met its burden under SDCL	6	indicates that he believes in global warming. He
7	49-41B-22(2) of proving that Big Stone II will	7	believes that human beings are causing it, and
8	not pose a threat of serious injury to the	8	that more coal-fired power plants are a major
9	environment; and, secondly, whether the PUC	9	problem.
10	engaged in an improper balancing of environmental	10	In his surrebuttal testimony he agreed with
11	harm versus economic benefit in its decision to	11	Otter Tail's witness regarding that witness's
12	grant that application for Big Stone II.	12	calculation of Big Stone II's future carbon
13	SDCL 1-26-36 sets forth the standard of	13	dioxide emissions. However, there was
14	review to be applied in an administrative appeal.	14	disagreement between the intervenors and Otter
15	Findings of Fact are reviewed for clear error.	15	Tail as to the effect of those calculations and
16	Conclusions of Law are reviewed de novo. Mixed	16	the effect of the emissions and whether the
17	questions of fact and law are reviewed de novo.	17	facility truly posed a serious threat of injury
18	The South Dakota Supreme Court, in addition,	18	to the environment. PUC resolved that
19	has stated that the statutes applicable in this	19	disagreement in its decision in this case when it
20	case demonstrate a legislative intent for the PUC	20	determined that the facility will not pose a
21	to have broad inherent authority in matters	21	threat of serious injury to the environment.
22	involving utilities in this state.	22	And I think everybody in this room agrees
23	The Appellants' case appears to challenge	23	that the fact is the jury is still out with
24	the PUC's factual determination that based on the	24	respect to global warming. And that this Court's
25	evidence presented, the construction of Big Stone	25	view that the answer on global warming must come
	Lori J. Grode (605) 223-7737		Lori J. Grode (605) 223-7737
	58		60
1	58 II would not pose a threat of serious injury to	1	60 from state and federal legislatures, from
1	II would not pose a threat of serious injury to	1	from state and federal legislatures, from
2	II would not pose a threat of serious injury to the environment. To this Court, that would	2	from state and federal legislatures, from policy-making bodies, not from regulatory
2 3	II would not pose a threat of serious injury to the environment. To this Court, that would indicate a clearly erroneous review.	2 3	from state and federal legislatures, from policy-making bodies, not from regulatory agencies like the PUC or this Court.
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1	revision of the statute is for the legislature	1	This Court's conclusion is that this case
2	and not the PUC or this Court.	2	should be affirmed. The PUC's Findings of Fact
3	It's this Court's view that the PUC properly	3	are not clearly erroneous. The PUC's ruling that
Jam.	exercised its discretion to determine and rule	4	Otter Tail Power met its burden of proving that
1	based on its interpretation of the quality of the	5	Big Stone II would not pose a threat of serious
6	threat, that being that the facility did not pose	6	economic harm is clearly supported in the record
7	a threat of serious injury.	7	and is not clearly erroneous.
8	The Appellant also argued that PUC should	8	Therefore, this Court affirms the final
9	have denied the permit because the Applicants	9	decision and Order of the PUC in this matter.
10	didn't adequately address the cumulative carbon	10	Counsel for PUC, do you want to draft an
11	effects and their irreversibility in their	11	order for the Court's signature, Order of
12	application as provided by ARSD 20:10:22:13 or in	12	Affirmance?
13	their evidence. This argument really fails to	13	MR. SMITH: I will, Your Honor. I actually
14	recognize the findings that PUC did make,	14	have one here. I don't know Your Honor, the
15	specifically findings 133 to 136 and 139.	15	one thing I didn't do in here is this is just
16	In addition, to this Court this rule appears	16	the form we always use. I didn't note your
17	to be limited both by its last sentence which	17	verbal reasoning, verbal decision. I don't know
18	contains language limiting the effect of the	18	whether you feel that's a problem.
19	required analysis to cumulative or synergistic	19	THE COURT: I think that should probably
20	effects of the proposed facility with other	20	
20	facilities in this siting area.	20	indicate that I've given an oral decision. That
22	Plus, there is a more specific rule at a	22	should be reflected in the Judgment of Affirmance so it's clear that there isn't a written decision
23	different location in that same set of rules	22	and when the Supreme Court is looking at it.
24	which requires the Applicant provide evidence of	23	MR. SMITH: I'll do that.
25	compliance with all air quality standards and	25	THE COURT: Anything further?
	Lori J. Grode (605) 223-7737	25	Lori J. Grode (605) 223-7737
1.000			Lon J. Crode (003) 223-7737
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1. 2	62		64
1	62 regulations of federal or state agencies. So	1	64 MS. BRIMMER: No. Your Honor
1	regulations of federal or state agencies. So	1	MS. BRIMMER: No, Your Honor.
1	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more	2	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
2 3	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality.	2 3	MS. BRIMMER: No, Your Honor.
2	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last	2 3 4	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
2 3 4 5	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last point: That the PUC was duty-bound to accept	2 3 4 5	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
2 3 4 5 6	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last point: That the PUC was duty-bound to accept Appellants' global warming expert because	2 3 4 5 6	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
2 3 4 5 6 7	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last point: That the PUC was duty-bound to accept Appellants' global warming expert because appellees didn't cross-examine him when he	2 3 4 5 6 7	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
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2 3 4 5 6 7 8 9	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last point: That the PUC was duty-bound to accept Appellants' global warming expert because appellees didn't cross-examine him when he testified. However, the PUC, as a finder of fact, was	2 3 4 5 6 7 8 9	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
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2 3 4 5 6 7 8 9 10 11 12 13	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last point: That the PUC was duty-bound to accept Appellants' global warming expert because appellees didn't cross-examine him when he testified. However, the PUC, as a finder of fact, was free to reasonably accept or reject all or parts or none of an expert's opinion. The PUC acted entirely within the scope of their authority in rejecting Doctor Hausman's testimony even though it wasn't cross-examined.	2 3 4 5 6 7 8 9 10 11 12 13	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
2 3 4 5 6 7 8 9 10 11 12 13 14	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last point: That the PUC was duty-bound to accept Appellants' global warming expert because appellees didn't cross-examine him when he testified. However, the PUC, as a finder of fact, was free to reasonably accept or reject all or parts or none of an expert's opinion. The PUC acted entirely within the scope of their authority in rejecting Doctor Hausman's testimony even though	2 3 4 5 6 7 8 9 10 11 12 13 14	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	regulations of federal or state agencies. So that subsequent rule, which is Rule 21, is more specific in its application to air quality. In its brief Appellants argue one last point: That the PUC was duty-bound to accept Appellants' global warming expert because appellees didn't cross-examine him when he testified. However, the PUC, as a finder of fact, was free to reasonably accept or reject all or parts or none of an expert's opinion. The PUC acted entirely within the scope of their authority in rejecting Doctor Hausman's testimony even though it wasn't cross-examined. On the issue of improper balancing, the argument has been made. Evidence of benefits was, in fact, presented at the hearing, but there	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	MS. BRIMMER: No, Your Honor. THE COURT: Thank you.
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1	STATE OF SOUTH DAKOTA) IN CIRCUIT COURT :SS
2	COUNTY OF STANLEY) SIXTH JUDICIAL CIRCUIT
3	I, Lori J. Grode, Registered Merit Reporter and
4	Registered Professional Reporter and Notary Public in and for the State of South Dakota:
5	DO HEREBY CERTIFY that the above hearing pages 1
6	through 64, inclusive, was recorded stenographically by me and reduced to typewriting.
7	I FURTHER CERTIFY that the foregoing transcript of
8	the said hearing is a true and correct transcript of the stenographic notes at the time and place specified
9	hereinbefore.
10	I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties,
11	nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this
12	action.
13	IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Ft. Pierre, South Dakota, this 2nd day
14	of April 2007.
15	LOTI J. Grode, RMR/RPR
16	Notary Public My Commission Expires 08-01-07
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	Jeri J. Frad (606) 223-7737

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