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

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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

**DOCKETING STATEMENT
FOR APPEAL OF DECISION
OF HUGHES COUNTY
CIRCUIT COURT**

Circuit Ct. Civ. No. 06-399
PUC Docket No. EL05-022

TO: OTTER TAIL POWER COMPANY ON BEHALF OF BIG STONE II CO-OWNERS
AND ITS ATTORNEYS, CHRISTOPHER W. MADSEN AND THOMAS J. WELK,
BOYCE, GREENFIELD, PASHBY & WELK, LLP, P.O. BOX 5015, SIOUX FALLS,
SD 57104, THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION AND ITS
ATTORNEY JOHN SMITH, 500 EAST CAPITOL, PIERRE, SD 57501.

SECTION A: TRIAL COURT

1. The circuit court from which this appeal is taken is Hughes County Circuit Court.
2. The county in which the action is venued at the time of appeal is Hughes County.
3. The name of the trial judge who entered the decision appealed: The Honorable Lori Wilbur.

PARTIES AND ATTORNEYS

4. Identify each party presently of record and the name, address, and phone number of the attorney for each party.

Appellants:

Minnesota Center for Environmental Advocacy; Izaak Walton League of America—Midwest Office; Fresh Energy (f/k/a Minnesotans for an Energy-Efficient Economy); Union of Concerned Scientists

Represented by:

John Davidson
University of South Dakota School of Law
414 East Clark Street
Vermillion, SD 57069
(605)677-6341
(605)677-5417 (fax)

Elizabeth I. Goodpaster
Janette K. Brimmer
Minnesota Ctr. for Environmental Advocacy
26 E. Exchange Street, Suite 206
St. Paul, MN 55101
(651)223-5969
(651)223-5967 (fax)

Respondents:

Otter Tail Power Company on behalf of Big Stone II Co-Owners

Represented by:

Christopher W. Madsen

Thomas J. Welk

Boyce, Greenfield, Pashby & Welk, LLP

P. O. Box 5015

Sioux Falls, SD 57117

South Dakota Public Utilities Commission

Represented by:

John Smith

South Dakota Public Utilities Commission

500 East Capitol

Pierre, SD 57501

SECTION B: TIMELINESS OF APPEAL

1. The date the judgment or order appealed from was signed and filed by the trial court:
February 27, 2007.
2. The date notice of entry of the judgment or order was served on each party: February 27, 2007
3. State whether either of the following motions were made:
 - a. Motion for judgment n.o.v., SDCL 15-6-50(b): NO
 - b. Motion for new trial, SDCL 15-6-59: NO

NATURE AND DISPOSITION OF CLAIMS

4. State the nature of each party's separate claims, counterclaims, cross-claims and the trial court's disposition of each claim (e.g., court trial, jury verdict, summary judgment, default judgment, agency decision, affirmed/reversed, etc.):

Appellants appeal the circuit court's order affirming the agency decision of the South Dakota Public Utilities Commission to grant an Energy Conversion Facility Siting Permit to Otter Tail Power Company, on behalf of Big Stone II Co-owners, for the construction of the Big Stone II coal-burning power plant.

Appellants' claim below was that the Public Utilities Commission decision to grant the permit is not supported by substantial evidence and is arbitrary and capricious. Otter Tail Power Company, on behalf of the Big Stone II Co-owners, failed to carry its burden of proof under applicable South Dakota state statutes. Under SDCL 49-41B-22, an Applicant has the burden to establish that the proposed facility "will not pose a threat of

serious injury to the environment". The record before the Public Utilities Commission demonstrates through evidence unrefuted by the Big Stone II Co-owners, that the proposed Big Stone II facility poses a threat of serious injury to the environment due to its annual emissions of nearly 5 million tons of carbon dioxide, a greenhouse gas that causes global climate change, with attendant adverse health and environmental impacts.

5. Appeals of right may be taken only from final, appealable orders. See SDCL 15-26A-3 and 4.
 - a. Did the trial court enter a final judgment or order that resolves all of each party's individual claims, counterclaims, or cross-claims? YES
6. State each issue intended to be presented for review. (Parties will not be bound by these statements.)

Was the Public Utilities' Commission's grant of a siting permit to the Big Stone II Co-owners and the circuit court's order affirming the PUC's decision clearly erroneous based upon the entirety of the record?

Was the Public Utilities' Commission's grant of a siting permit to the Big Stone II Co-owners and the circuit court's order affirming the PUC's decision in excess of the PUC's jurisdiction and authority when the record demonstrates that the PUC may have considered factors that are not part of the siting statute requirements?

Dated: March 26, 2007

Respectfully submitted,



John Davidson
University of South Dakota School of Law
414 East Clark Street
Vermillion, South Dakota 57069
(605)677-6341
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and

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STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

IN CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT

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

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CIV 06-399

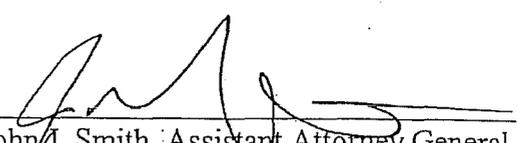
**NOTICE OF ENTRY OF
JUDGMENT**

**TO: MINNESOTA CENTER FOR ENVIRONMENTAL ADVOCACY, FRESH ENERGY,
IZAAK WALTON LEAGUE OF AMERICA – MIDWEST OFFICE, THE UNION OF
CONCERNED SCIENTISTS AND OTTER TAIL POWER COMPANY ON BEHALF
THE BIG STONE II CO-OWNERS**

PLEASE TAKE NOTICE that a Judgment of Affirmance, a copy of which is attached hereto,
was entered and filed by the Court on the 27th day of February, 2007, in the office of the Clerk of
Courts of Hughes County, South Dakota.

Dated this 27th day of February, 2007.

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION


John J. Smith, Assistant Attorney General
500 East Capitol Avenue
Pierre, SD 57501
Ph. (605) 773-3201
Fax (605) 773-3809

STATE OF SOUTH DAKOTA
COUNTY OF HUGHES

IN CIRCUIT COURT
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COMPANY ON BEHALF OF BIG STONE II CO-
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CIV 06-399

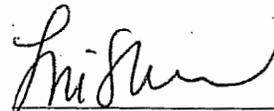
**JUDGMENT OF
AFFIRMANCE**

This action came on for oral argument before the Court on February 26, 2007 at 1:30 p.m., the Honorable Lori S. Wilbur, Circuit Court Judge, presiding. The Court having considered the record in the case transmitted by the agency and the briefs submitted and oral arguments made by counsel for each of the parties and the Court having found therein good and sufficient cause to render a judgment affirming the final agency decision that is the subject of this appeal, it is

ORDERED ADJUDGED AND DECREED that the Final Decision and Order, including Findings of Fact, Conclusions of Law and Rulings on Proposed Findings of Fact, in Docket EL05-022, issued by the South Dakota Public Utilities Commission and dated July 21, 2006, is hereby affirmed in accordance with the decision of the Court entered on the record following oral argument on February 26, 2007.

Dated at Pierre, South Dakota, this 27 day of February, 2007.

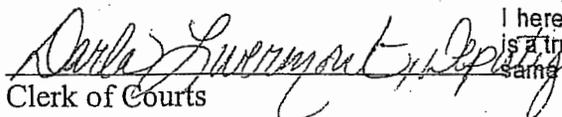
BY THE COURT:



Circuit Court Judge

STATE OF SOUTH DAKOTA
Sixth Judicial Circuit Court

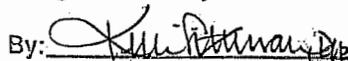
ATTEST:


Clerk of Courts

I hereby certify that the foregoing instrument is a true and correct copy of the original as the same appears on file in my office on this date:

FEB 27 2007

Judy Feddersen
Hughes County Clerk of Courts

By: 

STATE OF SOUTH DAKOTA
CIRCUIT COURT, HUGHES CO.

FILED

FEB 27 2007

 Clerk
By: _____ Deputy