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July 9, 2006

VIA EMAIL – patty.vangerpen@state.sd.us

Attorneys at Law

Patty VanGerpen, Ex. Director
SD Public Utilities Commission
500 E Capitol
Pierre SD 57501

101 N. Phillips Ave., Suite 600

Sioux Falls, SD 57104

P.O. Box 5015

Sioux Falls, SD 57117-5015

Re: In the Matter of the Application by Otter Tail Power Company on Behalf of Big Stone II Co-Owners for an Energy Conversion Facility Permit for the Construction of Big Stone II Project (EL05-022)
Our File No. 11402.000

P: 605-336-2424

F: 605-334-0618

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Dear Ms. Van Gerpen:

Pursuant to the Second and Third Scheduling and Procedural Orders entered in this docket, the Applicant submits the attached Applicants' Proposed Findings of Fact and Conclusions of Law and Decision and the Commission's Findings of Fact and Conclusions of Law and Decision, which has only changed the title from the Applicants' submission. Finally, also enclosed is the Applicants' Post Hearing Brief. As ordered, service is being effectuated only by email to the E-service list and paper service will not be made.

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Applicant will make available a Word document for the Commission's convenience of the submitted findings of fact and conclusions of law if the Commission so desires.

Sincerely yours,

BOYCE, GREENFIELD, PASHBY & WELK, L.L.P.

Thomas J. Welk

TJW/vjj

Enclosure

cc (via email): E-Service List

**Also licensed in Kansas*

***Also licensed in Colorado*

+Also licensed in Minnesota

J.W. Boyce (1884-1915)

**THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

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

Docket No. EL 05-022

APPLICANT'S POST-HEARING BRIEF

Applicant, by and through the undersigned attorneys of record respectfully submits this post-hearing brief in support of the application for a permit to construct the Big Stone II energy conversion facility. Pursuant to the scheduling and procedural orders entered by the Commission, Applicant is also submitting with this brief its proposed findings of fact and conclusions of law and proposed order which are incorporated into this brief by this reference.

APPLICANT'S BURDEN OF PROOF

Applicant has the burden of proof to establish the following pursuant to SDCL 49-41B-22:

1. The proposed facility will comply with all applicable laws and rules;
2. The facility will not pose a threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area;
3. The facility will not substantially impair the health, safety or welfare of the inhabitants; and
4. The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

The applicable standard of proof is preponderance of the evidence. See *Irvine v. City of Sioux Falls*, 711 NW2d 607, 610, 2006 SD 20, ¶ 10. Applicant respectfully submits that it has met the burden of proof and the Commission should issue the permit to construct the Big Stone II energy conversion facility.

ARGUMENT AND ANALYSIS OF FACTS PROVEN AT HEARING

The Big Stone II facility will comply with all applicable laws and rules.

As set forth in the extensive pre-filed testimony and confirmed by Staff's expert, Dr. Denney, Applicant has set forth all information required by the South Dakota Energy Facility Permit Act, SDCL Ch. 49-41B and the administrative rules promulgated by the Commission.

Applicant has demonstrated that each of the Big Stone II Co-owners have an identifiable need for baseload energy to provide their customers with reliable and affordable electric energy by 2011 and beyond. It is undisputed that MAPP is forecasting a deficit of generation to occur in the 2011 time-frame.

Pursuant to law, the Co-owners examined various alternative sites and generation methods to produce the energy required to meet the needs of their customers. The analysis performed by the individual Co-owners and Burns & McDonnell confirmed that a super critical pulverized coal generation facility located at the existing Big Stone site is the best alternative to meet those needs. This project is a unique opportunity for the Co-owners to join together to achieve the substantial economies of scale.

Without offering any alternatives to meet the projected generation deficit, Joint Intervenors have suggested that some combination of demand side management (“DSM”) and wind generation backed up with combined cycle natural gas turbines could meet Co-owners’ needs. However, this suggestion fails to recognize that the Co-owners have already undertaken substantial DSM efforts and are already including substantial wind projects in their resource plans. The Joint Intervenors’ suggestion also fails to recognize that system operational limitations would not allow for wind to substitute for the Co-owners’ dispatchable baseload generation needs.

The Big Stone II facility will not pose a threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area nor will it substantially impair the health, safety or welfare of the inhabitants.

Applicant has conducted substantial studies to determine the impact Big Stone II would have on the environment and the social and economic conditions of the inhabitants. Applicant’s consultants, as well as those retained by the Staff recognize that the Big Stone II project will have a substantial economic benefit during and after construction that will have a positive economic impact on the local area as well as the State of South Dakota. Adequate plans have been made to ameliorate any strains the project might place on local resources such as law enforcement. Applicant has agreed to implement the recommendations of the Local Review Committee as well as the recommendations that will be included in the final federal environmental impact statement.

The record demonstrates that there are substantial environmental benefits that will be achieved with the addition of Big Stone II. Through the use of a wet scrubber and sizing it so that it can be used jointly with Big Stone I, the addition of Big Stone II will result in a **reduction of sulfur dioxide (SO₂) emissions to approximately one-seventh of the current levels** from the site.

Additionally, the joint wet scrubber and fabric filter bag-house will allow the Co-owners to increase the capacity of the Big Stone site from 450 megawatts to approximately 1050 megawatts with **no increase in mercury emissions or emission of nitrous oxides (NO_x)**. Also, because of addition of a wet scrubber, mercury emissions may be able to be reduced even further from the site, depending upon the results of testing of operational control methods such as carbon injection. The new mercury rules create a financial incentive for plant operators to reduce emissions so that allowances can be traded. If Big Stone II with its wet scrubber is not added, potential reductions below current mercury emission levels are much less likely.

These benefits can only be achieved with the addition of Big Stone II.

There was extensive discussion of carbon dioxide and the potential for its future regulation during the hearing. However, carbon dioxide emissions are not regulated by the State of South Dakota or the federal government at this time. All legislative proposals to regulate carbon

dioxide emissions introduced in Congress have failed to gain the approval of even one house, and most of those mentioned by the Joint Interveners failed in committee. Whether any such regulation will be enacted and, if so in what form, leaves the issue far too speculative. Nevertheless, because of the advanced technology to be employed, Big Stone II will emit 18% less carbon dioxide than other coal-fired plants in the region and, overall, will contribute less than 0.020% of the anthropogenic carbon dioxide produced globally.

In sum, the evidence establishes that the Big Stone II project will not materially adversely affect the environment and will not substantially impair the health, safety and welfare of the inhabitants.

The Big Stone II facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

The evidence establishes that overall Big Stone II will have a positive effect on the orderly development of the region. Big Stone II will ensure a reliable supply of affordable power for the inhabitants of the region. Furthermore, the Co-owners decided to increase the capabilities of some of the transmission facilities to move power from Big Stone II from 230 kV to 345 kV. This increase can accommodate transmission of 1000 MW of energy beyond the capability of Big Stone II. This increased transmission capability could facilitate the development of future resources, including renewable resources such as wind power.

Units of local government are familiar with a project of this magnitude from their experience with the construction of Big Stone I in the early 1970's and the operation of that facility. With the benefit of that experience, units of local government have voiced their support for the Big Stone II project.

CONCLUSION

The Big Stone II project will allow seven respected and diverse suppliers of electricity in this region to provide reliable, reasonably priced electricity to their customers and to do so in an environmentally responsible manner. The Big Stone II project allows them to join together to achieve economies of scale that would not otherwise be available to them, and it also allows them to join with the Owners of Big Stone I to achieve beneficial environmental benefits that are unique to this project. Based on the preponderance of the evidence, Applicant respectfully requests that the Commission grant the requested energy conversion facility permit for the Big Stone II project.

Dated this 9th day of July, 2006



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CERTIFICATE OF SERVICE

I, Thomas J. Welk, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, L.L.P., attorneys for the Co-owners of Big Stone II Project and that on the 9th day of July, 2006, true and correct copies of the Applicants' Post-Hearing Brief were served via electronic mail on the following at their last known addresses:

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