

Transcript of
Proceedings
Final Decision
July 14, 2006

THE PUBLIC UTILITIES COMMISSION

RECEIVED

OF THE STATE OF SOUTH DAKOTA

JUL 17 2006

SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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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 THE BIG STONE II PROJECT

EL05-022

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Transcript of Proceedings
Final Decision
July 14, 2006

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COMMISSION STAFF

JOHN SMITH
KAREN CREMER
ROLAYNE WIEST
GREG RISLOV

ORIGINAL

APPEARANCES (appearing by telephone)

THOMAS J. WELK and CHRISTOPHER W. MADSEN,
BOYCE, GREENFIELD, PASHBY & WELK,
Attorneys at Law, P.O. Box 5015,
Sioux Falls, South Dakota 57117,
appearing on behalf of Big Stone II;

TODD J. GUERRERO,
LINDQUIST & VENNUM, Attorneys at Law,
80 South Eighth Street, 4200 IDS Center,
Minneapolis, Minnesota 55402,
appearing on behalf of Big Stone II;

ELIZABETH GOODPASTER,
Attorney at Law, Minnesota Center for
Environmental Advocacy, 26 East Exchange Street #206,
St. Paul, Minnesota 55101,
appearing on behalf of Minnesota Center for
Environmental Advocacy, Izaak Walton League of
America - Midwest Office, Minnesotans for an Energy
Efficient Economy and Union of Concerned Scientists.

FRIDAY, JULY 14, 2006

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CHAIRMAN SAHR: Good morning. I want to let folks know we turned the Internet live. This is Chairman Bob Sahr with the South Dakota Public Utilities Commission in Pierre. With me is Commissioner Dusty Johnson and we are just waiting for everyone to join us telephonically, so thank you if you are tuning in on the Internet. You are missing a lot of exciting action in Pierre, I will note, by joining us via Internet and I'm going to check and see, did someone join us telephonically? Todd Guerrero, are you still out is there?

MR. GUERRERO: I am, Mr. Chairman.

CHAIRMAN SAHR: Beth Goodpaster, are you still out there? Beth? Well, instead of adding people, at this point in time we are losing people. We will wait a few minutes now. We have two people that are scheduled to join us. Let's just hold here in Pierre and if you are listening on the Internet, we are here and we will take action as soon as the folks have joined us, thank you.

(Discussions held off the record.)

CHAIRMAN SAHR: We are hopeful that we solved our audio and phone problems here. And I'm just going to ask for a mike check, I'm going to ask for a quick mike check to -- Commissioner Hanson, could you let general counsel Smith know if you can hear on the phone line. Let's check the other side of it. Commissioner Hanson, I'd also like to make sure that we

1 can hear you so we are going to ask you to say something.

2 COMMISSIONER HANSON: Good morning, ladies and
3 gentlemen.

4 CHAIRMAN SAHR: Those of you with hearing aides in the
5 audience may want to turn them down. We are going to try
6 cranking up the volume. Gary, you are a little low, but as
7 loudly as you can probably talk, you are not on candid camera,
8 just do your best there. But we can get you good enough for
9 the motions at this point in time.

10 COMMISSIONER HANSON: Thank you.

11 CHAIRMAN SAHR: Good morning. It is approximately
12 11:47 a.m. on July 14th, 2006. This is the scheduled time for
13 the vote in EL05-022 in the matter of the application by Otter
14 Tail Power Company on behalf of Big Stone II co-owners for an
15 energy conversion facility permit for the construction of the
16 Big Stone II project. My name is Bob Sahr, I am the chairman
17 of the South Dakota Public Utilities Commission. I am here in
18 Pierre in Room 412, Commissioner Dusty Johnson is joining me
19 here as well. And Commissioner Gary Hanson is joining us
20 telephonically.

21 The plan for the commission is to do a series of
22 motions and I believe we have six motions, so what we are going
23 to do is to go through each of those six motions, vote
24 individually on them, and then at the end we will have some
25 comments from commissioners and then close the meeting.

1 With that in mind, I will start out and I will
2 apologize, these are rather lengthy motions, I get the long
3 ones, so I will walk through these and do so in a way that our
4 court reporter can get an accurate record. I move that the
5 application by Otter Tail Power Company on behalf of the Big
6 Stone II co-owners for an energy conversion facility permit for
7 the construction of the Big Stone II project be approved
8 subject to the conditions approved by the commission today. I
9 further move that the action on this motion be held in abeyance
10 pending our action to finalize the conditions.

11 Here are the conditions, and again there are six that
12 we are going to read and we will vote on each of them
13 individually. One, the applicants shall comply with the
14 recommendations made by the local review committee in its
15 report dated December 14th, 2005, as modified by the commission
16 in these conditions, including but not limited to the
17 following. A, applicants shall prepare a contingency housing
18 plan for construction housing. B, applicants shall fund an
19 additional officer to the Grant County Sheriff's Office for
20 three years, implement a program of drug testing of potential
21 workers and advise law enforcement of peak employment months.
22 C, applicants shall purchase for the Big Stone City
23 Fire Department a high angle rescue kit and provide for the
24 training of several of the Big Stone City Fire Department
25 members in the use of the equipment. And D, applicants shall

1 provide a public liaison officer to facilitate the exchange of
2 information between the project owners, contractors and the
3 local communities and residents and to promptly resolve
4 problems that may develop for local communities and residents
5 as a result of the project. Applicants shall also implement a
6 Web site and conduct periodic meetings to update the public.
7 The public liaison officer shall be afforded immediate access
8 to the applicants' project manager and to the contractors' on-
9 site managers. And that would be the first condition that we
10 would move as a condition to the general motion of approval.

11 VICE-CHAIR JOHNSON: Mr. Chairman, I second.

12 COMMISSIONER HANSON: I concur.

13 CHAIRMAN SAHR: We have a second from Commissioner
14 Johnson and a concurrence from Commissioner Hanson. Condition
15 number two, the applicants shall comply with the following
16 conditions recommended by staff. A, the applicants shall
17 obtain and shall thereafter comply with all applicable federal,
18 state and local permits, including but not limited to the water
19 appropriations permit, PSD air quality construction permit,
20 solid waste permit, and Section 404 permit.

21 B, in the PSD air quality construction permit
22 proceeding and at the hearing in this case, applicants have
23 agreed to limit mercury emissions from the combined Big Stone
24 Unit I and Big Stone Unit II plants to no more than the
25 emissions from the Big Stone Unit I in 2004, which is 189

1 pounds per year, beginning three years after commercial
2 operation commences of Unit II. Applicants shall meet or
3 exceed this standard. And I believe when we say exceed, we
4 mean in terms of reduction.

5 C, the applicants shall submit semiannual progress
6 reports to the commission to summarize the status of the
7 construction, the status of the land acquisition, the status of
8 environmental control activities, the implementation of the
9 other measures required by these conditions, and the overall
10 percent of the -- excuse me, overall percent of physical
11 completion of the project and design changes of substantive
12 nature. Each report shall include a summary of consultations
13 with DENR, which is the South Dakota Department of Environment
14 and Natural Resources, and other agencies concerning the
15 issuance of permits. The reports shall list dates, names, and
16 the results of each contact and the company's progress
17 implementing prescribed environmental protection or control
18 standards. The first report shall be due for the period ending
19 December 31st, 2006. The report shall be filed within 31 days
20 after the end of each semiannual period and shall commence
21 until the project is fully operational.

22 And the final sub condition of this section, D, the
23 applicants shall comply with all mitigation measures
24 recommended as part of the final EIS record of decision.

25 VICE-CHAIR JOHNSON: I second the motion.

1 COMMISSIONER HANSON: Commissioner Hanson concurs.

2 CHAIRMAN SAHR: We have a motion by Sahr, a second by
3 Johnson and a concurrence by Hanson. I should note, and would
4 look to our staff, but if at all possible, we will also try to
5 have this motion available in paper format and if possible, if
6 we can post it to the Web, we will look at doing so as well for
7 those of you out there who are trying to take accurate notes.
8 Certainly our order will reflect the final decision as well.

9 The third motion, applicants shall conduct an
10 evaluation of alternative water supply options to provide water
11 to the plant in the event that withdrawals from Big Stone Lake
12 are curtailed for an extended period of time. Applicants shall
13 file a report with the commission detailing the findings of
14 such study on or before September 1st, 2007. Such study shall
15 include, one, identification of particular potential source
16 options, two, an assessment of the facilities which will be
17 required to effectuate water delivery to the plant from such
18 alternative sources, institutional and other impediments to
19 contingent development of one or more of these options and the
20 timing and logistics of implementing such options, three, a
21 preliminary cost analysis of alternative supply options, and
22 four, a comparison of financial effects of development of one
23 or more alternative supply options with the no-run, and that's
24 hyphenated, option.

25 VICE-CHAIR JOHNSON: I will second that motion.

1 COMMISSIONER HANSON: And I concur.

2 CHAIRMAN SAHR: That was Sahr motion, Johnson second,
3 Hanson concurrence. With that, I will turn the final three
4 conditions over to Vice-Chairman and Commissioner Johnson.

5 VICE-CHAIR JOHNSON: Thank you, Mr. Chairman. I do
6 have some motions I'd like to make. First by way of
7 introduction, Otter Tail Power and Montana-Dakota Utilities,
8 the rate jurisdictional utilities involved with Big Stone II,
9 both currently have demand-side management and renewable energy
10 programs in place and there have been some valid concerns
11 raised during this proceeding that at the present time those
12 efforts do not go far enough. It's important I think that the
13 addition of Big Stone II to their power mix not diminish the
14 DSM and renewable development efforts of both utilities, and as
15 a result I would move that beginning on July 1st, 2007, Otter
16 Tail Power and Montana-Dakota Utilities shall file annually a
17 detailed report of their ongoing demand-side management and
18 renewable programs and a forecast of their near and long-term
19 initiatives to optimize benefits related to demand-side
20 management and renewable energy programs.

21 CHAIRMAN SAHR: Commissioner Sahr seconds.

22 COMMISSIONER HANSON: Hanson concurs.

23 CHAIRMAN SAHR: Motion by Johnson, second by Sahr,
24 concurrence by Hanson.

25 VICE-CHAIR JOHNSON: Thank you. The applicants have

1 also committed to emitting no more mercury from Big Stone II
2 and Big Stone I than -- combined than the Big Stone I plant
3 emits today, but they have committed to meeting that threshold
4 only after having as long as three years after the plant opens
5 to fine tune the mercury control processes. Obviously it's
6 important that that process be completed and that mercury
7 emissions be reduced as soon as possible. And as a result, I
8 would move that on or before the date Big Stone Unit II starts
9 operation and every six months thereafter, the operating
10 partners shall provide the commission with an update on the
11 mercury control efforts being undertaken by the partners until
12 such time as the combined plants meet the agreed level of
13 mercury emissions set forth in condition 2B.

14 CHAIRMAN SAHR: Commissioner Sahr seconds.

15 COMMISSIONER HANSON: And Commissioner Hanson concurs.

16 CHAIRMAN SAHR: Motion by Johnson, second by Sahr,
17 concurrence by Hanson.

18 VICE-CHAIR JOHNSON: My final motion, Mr. Chairman,
19 the joint intervenors have raised concerns about the effects of
20 carbon dioxide on the environment, and because there does not
21 yet exist any federal or state regulation of CO2 emissions and
22 because we don't yet know what effects that regulation may have
23 on rate payers in the future, the applicants shall submit -- I
24 move that the applicants should submit an annual report to the
25 commission on carbon dioxide, with the first such report to be

1 filed on or before July 1st, 2008. That report should review
2 any federal or state action taken to regulate carbon dioxide,
3 how the operator plans to act to come into compliance with
4 those regulations, the expected cost of those compliance
5 efforts, and the estimated effect of such compliance on rate
6 payers. The report should also evaluate operational techniques
7 and commercially available equipment being used to control CO2
8 emissions at pulverized coal plants, the cost of those
9 techniques or equipment, and finally, whether or not the
10 operator has evaluated the prudence of implementing those
11 techniques or equipment.

12 CHAIRMAN SAHR: Commissioner Sahr seconds.

13 COMMISSIONER HANSON: Hanson concurs.

14 CHAIRMAN SAHR: We have a motion by Johnson, a second
15 by Sahr, concurrence by Hanson. Now that we have approved the
16 conditions, we are going to come back to the pending motion,
17 which is the motion I initially made that the application by
18 Otter Tail Power Company on behalf of Big Stone II co-owners
19 for an energy conversion facility for the construction of the
20 Big Stone II project be approved subject to the conditions
21 approved by the commission today. So that is my motion, Bob
22 Sahr.

23 VICE-CHAIR JOHNSON: Johnson seconds.

24 COMMISSIONER HANSON: Hanson concurs.

25 CHAIRMAN SAHR: We have a motion by Sahr, a second by

1 Johnson and a concurrence by Hanson. The commissioners would
2 each like to make some brief remarks, and I would just note
3 that this is a historic day for South Dakota. The Big Stone II
4 power plant is a wise investment for our state's and region's
5 consumers. It has been more than 30 years since the last plant
6 was approved and constructed, and it really is a much needed
7 addition to the infrastructure. The interested utilities have
8 shown that they need new base load generation and the critical
9 fact is that it makes sense from the consumers' perspective,
10 and we have heard that without this type of addition, the
11 consumers of the affected utilities may be left with purchasing
12 energy on the open market and continued and perhaps increased
13 reliance on sources of energy that involve scarce resources
14 such as natural gas and resources that are subject to more
15 price fluctuations.

16 I also should note that this gives us some great gains
17 on the environmental front. The joint use of the new pollution
18 controls by Big Stone I and Big Stone II is a terrific
19 opportunity to not just make sure that the new plant has
20 state-of-the-art pollution controls, but also that the original
21 and existing plant has the opportunity to use those controls as
22 well and that the state, region and country sees the benefits
23 of those pollution controls.

24 Also on the environmental consideration and the
25 resource integration front, the transmission lines that are

1 being proposed from the new power plant are going to be
2 overbuilt so that there will be an incredible opportunity to
3 add wind energy and other renewable energy onto those lines and
4 considering that transmission is one of the major impediments
5 to the development of wind power and renewable energy in this
6 region of the country, I think this is an excellent opportunity
7 to partner a much needed base load resource with the
8 opportunity to add renewable energy.

9 Then I would just finally state that I give thanks to
10 everyone who participated in the process. We had a number of
11 opportunities for the public to give comments in Milbank and
12 here in Pierre. We had active participation by groups and
13 individuals who had strong beliefs in terms of what their
14 feelings were on the plant, and from the PUC's perspective, I
15 just want to thank our staff in particular for doing an
16 excellent job of representing the perspective of the State of
17 South Dakota and our consumers and all the PUC staffers who
18 worked on this, and certainly a case of this magnitude does not
19 get done without the good work and excellent work by staff, and
20 the commissioners certainly thank all the PUC employees for
21 their long hours and hard work, and if you could see the amount
22 of paperwork that comes in, you certainly would appreciate that
23 that really does affect just about everybody in the office, not
24 just the analysts and the attorneys, but the people who are
25 doing the hard work of keeping such an extensive record

1 straight. So our very heartfelt thanks go out to those folks.
2 With that, I will turn it over to Vice-Chairman and
3 Commissioner Dusty Johnson for comments.

4 VICE-CHAIR JOHNSON: First, Mr. Chairman, I would echo
5 your comments about really appreciating the input of all of the
6 various parties and citizens that have commented on this
7 proceeding as well as the incredible work that staff has done.
8 I have three points. The first is that this region does need
9 additional power and that's not a problem that we can ignore or
10 pretend doesn't exist. Certainly energy efficiency programs
11 and renewable energy must be a part of that solution, and they
12 will be, they absolutely will be. But those two things can't
13 by themselves satisfy all of our needs going forward. We do
14 need some base load generation and that is what Big Stone II
15 provides.

16 Secondly, much has been made of the environmental
17 concerns with this project, and what has not received as much
18 publicity are the environmental benefits. When this project is
19 completed, the sulphur dioxide emissions from Big Stone I and
20 Big Stone II combined will be one-seventh of the levels coming
21 out of Big Stone I today. There will also be less particulate
22 matter.

23 CONFERENCE OPERATOR: Your conference call will end in
24 ten minutes.

25 VICE-CHAIR JOHNSON: The NOX and mercury emissions at

1 the Big Stone I plant will be cut in half. And I just don't
2 think there are very many opportunities you get in this world
3 to build a new generation source while at the same time so
4 dramatically reducing the pollution from an older one. It's
5 also noteworthy that the Big Stone II plant will produce 18
6 percent less carbon dioxide than existing coal-fired power
7 plants. Clearly there are tremendous environmental benefits to
8 the permitting of this plant.

9 My third point is that there are also tremendous
10 benefits for renewable energy. If Big Stone II is built, it
11 will likely bring with it transmission lines with 1,000
12 megawatts of excess capacity. And that is excess capacity that
13 can be used to carry wind, and that would be more wind power
14 than currently exists in North Dakota, South Dakota, Nebraska,
15 and Minnesota combined. It may be in the long term that the
16 Big Stone II plant may be the best thing that has ever happened
17 to wind power development in South Dakota.

18 Mr. Chairman, one cannot deny that Big Stone II would
19 bring with it some down sides, and I think that is inevitable
20 any time you are looking at a billion dollar project. But I am
21 very proud of the conditions that this commission has placed on
22 our approval and I think that they will substantially improve
23 the project. Thank you.

24 CHAIRMAN SAHR: Thank you. Commissioner Hanson.

25 MR. SMITH: Gary, just a minute, we are going to try

1 to put you on a speaker phone. It's very tough to hear you on
2 this thing, but let me try it. If I cut you off, I'll have
3 to -- I'll have to -- we'll call you back. We'll try to.
4 We'll try it.

5 (Brief pause.)

6 CHAIRMAN SAHR: For those of you listening in on the
7 phone line Internet, we are trying to establish a speaker phone
8 connection here in Pierre, so please bear with us.

9 (Brief pause.)

10 COMMISSIONER HANSON: First of all, I would like to
11 thank everyone for their patience with this process over at
12 least the last half hour. I recognize that we are going to
13 lose the bridge with the Web in just a few minutes and my
14 remarks are not so important that I care that they go over the
15 Web or not. At that juncture if someone is so terribly
16 interested, I'm sure they can access the record and see what I
17 have said.

18 I do consider a number of things important to say from
19 the standpoint of first of all, echoing my fellow
20 commissioners' remarks and they have been quite succinctly and
21 quite properly said. I also need to state for the record that
22 I did access the archives audio of the final arguments on
23 Wednesday, July 12th, at 6:20 and listened to those and I
24 thought they were excellent final arguments.

25 The process, I guess, from one standpoint was a bit

1 tedious and I can see why. I understand the process far better
2 and why we have it and why government has the red tape and the
3 bureaucracy that it does have because it gives everyone an
4 excellent opportunity to make their presentations and from that
5 standpoint I --

6 (Brief interruption.)

7 COMMISSIONER HANSON: From that standpoint I have just
8 a few remarks. The first is that I really, truly appreciated
9 the civility and the patience that was shown by all of the
10 parties towards one another, in some cases to the point that
11 there was assistance from parties with other parties in
12 presenting evidence and introductions and when to inquire of
13 testimony and things of that nature. That type of civility and
14 consideration --

15 (Brief interruption.)

16 COMMISSIONER HANSON: I would like to thank the
17 members of the public who chose to give public testimony. I
18 recognize that that can be a challenging task. I think from my
19 standpoint, certainly the other commissioners, we appreciated
20 that very, very much. The staff did an excellent professional
21 job and I recognize that they were thanked by the other
22 commissioners and I wish to thank them as well.

23 There were a couple of things that stood out from the
24 applicants' standpoint. I would like to say thank you to them.
25 I am encouraged by the applicants' commitment to pursue

1 opportunities to keep the emissions as reasonable and as -- to
2 a limit -- to limit them as much as possible during and even
3 after the construction period. Frankly, I believe that the
4 potential environmental challenges are probably the only true
5 drawback from the standpoint of building a facility of this
6 nature, and when you look at the standpoint that we have a need
7 for base load, that's quite evident, and then it's just a
8 matter of how do we completely as best we can at least make
9 certain that we have as little degradation to the environment
10 and to health and safety, economic challenges for communities,
11 and in fact it's quite obvious that there will not be an
12 adverse impact to the economic development. Economic
13 development, in fact the safety and opportunities in those
14 areas -- excuse me, the economic development in those areas
15 will be enhanced, and from the changes, the reasonable steps
16 that the commissioners, Commissioner Sahr and Johnson on the
17 amendments that were introduced, help to assure the quality of
18 life and the safety for the citizens.

19 And really from the CO2 standpoint, from a carbon
20 dioxide standpoint, I recognize environmentally there's a great
21 deal of concern. The three commissioners share those concerns.
22 The challenge of course is that there are no regulations from
23 the standpoint, no federal and state law on carbon dioxide at
24 this point that we should be -- that we can be providing any
25 sort of penalty for. So it's just not within our

1 responsibility or our opportunity to assign cost to this
2 project from that standpoint. However, I think that the
3 amendment that Commissioner Johnson proposed will give us the
4 opportunity to provide that we do have as safe, environmentally
5 safe base load plant in South Dakota that we can possibly
6 assure ourselves for at this point. And there can be -- there
7 can be no -- nothing said about how tremendously important the
8 additional transmission lines are for opportunities for
9 renewable energy in South Dakota.

10 So there are a tremendous number of benefits from this
11 plant and I am very, very pleased with the work from the other
12 commissioners and the staff and the presentations from all of
13 the intervenors, as well as the applicants, and I will conclude
14 my remarks with that and turn it back to you, Mr. Chairman.

15 CHAIRMAN SAHR: Thank you very much, Commissioner
16 Hanson. We appreciate the extra effort and your patience and
17 perseverance. Thank you very much for joining us and we know
18 it certainly was probably challenging. So thank you. With
19 that, that concludes the PUC hearing and again, we will attempt
20 to make this available electronically for folks on our Web
21 site, the motions, and certainly if someone wants to contact
22 the office directly for hard copies, we can make arrangements
23 to fax or otherwise scan and e-mail those out to people so that
24 they have them, and our number for those of you who have been
25 listening on the Internet who may not have it is 605-773-3201.

1 Thank you very much.

2 (Whereupon, the proceedings were concluded at 12:20
3 p.m.)

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STATE OF SOUTH DAKOTA)
) ss.
COUNTY OF HUGHES)

I, Carla A. Bachand, RMR, CRR, Freelance Court Reporter for the State of South Dakota, residing in Pierre, South Dakota, do hereby certify:

That I was duly authorized to and did report the testimony and evidence in the above-entitled cause;

I further certify that the foregoing pages of this transcript represents a true and accurate transcription of my stenotype notes.

IN WITNESS WHEREOF, I have hereunto set my hand on this the 16th day of July 2006.

Carla A. Bachand

Carla A. Bachand, RMR, CRR
Freelance Court Reporter
Notary Public, State of South Dakota
Residing in Pierre, South Dakota.

My commission expires: June 10, 2012.