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Elec. filed 2/23/06
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**SOUTH DAKOTA
UTILITIES COMMISSION**
Email to patty.vangerpen@state.sd.us
and regular mail

Attorneys at Law

February 23, 2006

101 N. Phillips Ave., Suite 600

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

Sioux Falls, SD 57104

P.O. Box 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

Sioux Falls, SD 57117-5015

Dear Ms. Van Gerpen:

P: 605-336-2424

Please find enclosed for filing the Motion to Clarify Scheduling Order and Procedural Order in this matter. The original and four copies are being mailed to you today.

F: 605-334-0618

www.bgpw.com

Sincerely yours,

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

Russell R. Greenfield

Gary J. Pashby

Thomas J. Welk

Michael S. McKnight

Christopher W. Madsen

Gregg S. Greenfield

CWM/vjj

Roger A. Sudbeck

Enclosure

Lisa K. Marso

cc (via email): John Davidson

*Heather R. Springer**

Elizabeth Goodpaster

Darin W. Larson

Mary Jo Stueve

Michael F. Tobin

Karen Cremer

Christopher W. Madsen

Bruce Nilles

*Sherri L. Rotert***

Patrick Gallagher

Charles A. Larson

George Hayes

Joanne M. Haase+

Sanjay Narayan

Todd Guerrero/David Sasseville

Bruce Gerhardson

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Applicant's
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**Also licensed in Colorado

+Also licensed in Minnesota

J.W. Boyce (1884-1915)

6621

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED
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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

Docket No. EL 05-022

**MOTION TO CLARIFY SCHEDULING
AND PROCEDURAL ORDER**

Applicant Big Stone II Co-owners ("Applicant"), by and through their undersigned attorneys, respectfully move the Commission to clarify or amend the Scheduling and Procedural Order ("Scheduling Order") entered in this docket on January 18, 2006, as follows:

1. **Correction of hearing date.** According to the Scheduling Order, the final hearing in this matter is scheduled to occur from June 6 to June 9, 2006, in Pierre. This appears to be a typographical error. It was the understanding of counsel that the hearing was to begin on Monday, June 5 and the balance of the week was reserved for the hearing. In order to avoid any confusion or scheduling issues, the Scheduling Order should be amended to indicate that the hearing is to begin on Monday, June 5, 2006.

2. **Clarification of testimony to be filed.** The Scheduling Order directs that written testimony be filed with the Commission, as follows:

- March 15, 2006 Applicant's Direct Testimony
- April 28, 2006 Intervenors' and Staff's Direct Testimony
- May 19, 2006 All Parties' Rebuttal Testimony

In developing this schedule, it was the understanding of counsel for Applicant that by March 15, Applicant would file the direct testimony in support of the Application; that by April 28 Intervenors would file direct testimony contravening the testimony filed by Applicant and in opposition to the Application and the Staff would file direct testimony as to any issues Staff wishes to raise; and, that by May 19, Applicant would file testimony rebutting the Intervenors' testimony and addressing any issues raised in the Staff's direct testimony.

However, it has come to the attention of counsel for Applicant that the above schedule may lead Intervenors believe that they may adopt a strategy to withhold the filing of testimony which substantively addresses the Applicant's direct testimony until May 19. At a prehearing conference In the Matter of the Application of Otter Tail Power Company and Others for a Certification of Transmission Facilities in Western Minnesota and In the Matter of the Application to the Minnesota Public Utilities Commission for a Route Permit for the Big Stone Transmission Project in Western Minnesota PUC Docket Nos. CN-05-619 and TR-05-1275 ("Minnesota Proceedings"), it is apparent that an Intervenor in those matters who has also intervened in the docket presently before the South Dakota Public Utilities Commission believed

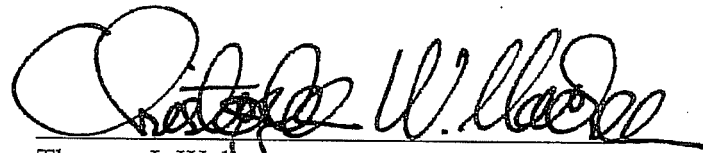
that a similar schedule would allow for the filing of some sort of direct testimony and for the filing of rebuttal testimony which addresses Applicant's direct testimony. The Minnesota Proceedings are concerned with transmission facilities linking the proposed Big Stone II plant to customers in Minnesota.

Applicant is concerned that the Scheduling Order, as drafted, will lead the Intervenor to believe that it is appropriate or acceptable to wait until rebuttal to file testimony that specifically addresses or challenges Applicant's direct testimony leaving Applicant with no opportunity to address contentions specific to the direct testimony. Therefore, Applicant specifically requests that the Commission amend the Scheduling Order to state that May 19, 2006 will be the deadline for Applicant to file testimony rebutting the Intervenor's direct testimony and any issues raised in direct testimony filed by the Staff.

3. **Numbering of exhibits.** Applicant also requests that the Commission amend the Scheduling Order to "reserve" exhibit numbers for particular parties so that as the parties begin to compile and file testimony, exhibits can be premarked. Specifically, Applicant suggests the following:

- Exhibit numbers 1 through 100 be reserved for the Commission;
- Exhibit numbers 101 through 200 be reserved for the Staff;
- Exhibit numbers 201 through 700 be reserved for Applicant;
- Exhibit numbers 701 through 1200 be reserved for the Intervenor MCEA, UCS, etc.;
- Exhibit numbers 1201 through 1700 be reserved for Intervenor Sierra Club; and
- Exhibit numbers 1701 through 2000 be reserved for Intervenor Mary Jo Stueve.

Dated this 23rd day of February, 2006



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Docket No. EL 05-022

CERTIFICATE OF SERVICE

I, Christopher W. Madsen, 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 23rd day of February, 2006, true and correct copies of the Motion to Clarify Scheduling Order and Procedural Order were served via email to the following addresses listed on the E-Service List:

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MN Center for Environmental Advocacy
26 E. Exchange Street #206
St. Paul, MN 55101

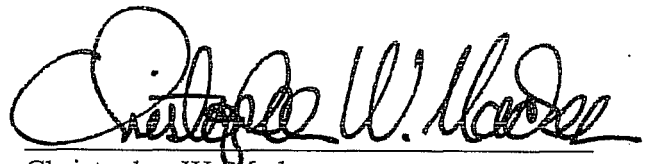
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Elect rec'd 2/23/06

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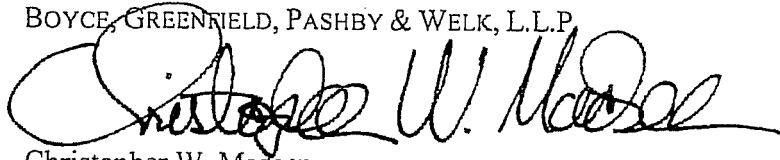
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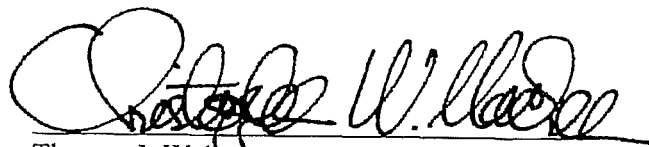
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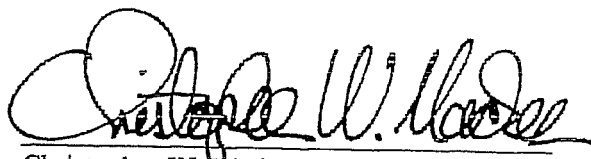
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