

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

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 )	SECOND SCHEDULING AND PROCEDURAL ORDER  EL05-022
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On October 28, 2005, Otter Tail Otter Tail Power Company on behalf of the Project Co-Owners (Otter Tail or Applicant) filed a Motion for Prehearing Conference. On December 2, 2005, a telephonic pre-hearing conference was held among counsel for the parties and the Commission's Counsel. On January 18, 2006, the Commission issued its Scheduling and Procedural Order. On February 23, 2006, Otter Tail filed a Motion to Clarify Scheduling and Procedural Order. On March 1, 2006, a second pre-hearing conference was held telephonically among counsel and Commission Counsel. On March 22, 2006, Otter Tail filed a letter suggesting changes to certain scheduling and procedural stipulations reached by the parties at the pre-hearing conference. Subsequently, each of the parties provided notice to Commission counsel via email of their agreement to the changes recommended by Otter Tail. In this order, the Commission cancels the original procedural schedule, establishes the following procedural schedule and makes the following additional procedural rulings, which are substantially in agreement with the stipulations of the parties at the pre-hearing conference as modified by the proposals in Otter Tail's March 22, 2006 letter. This order also includes certain other procedural directives related to preparations for and conduct of the hearing. Commission Counsel circulated a draft of this order to all parties by email on March 28, 2006, and the modifications suggested by the parties have been substantially incorporated herein. Other than the procedural schedule itself, all other procedural rulings in the original Scheduling and Procedural Order shall remain in effect.

**Procedural Schedule (all dates 2006)**

March 15	Applicants' Direct Testimony (completed)	<div style="border: 2px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> <p style="margin: 0;"><i>Applicant's</i></p> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <p style="margin: 0;">EXHIBIT NO. <u>79</u></p> <hr style="border: 0; border-top: 1px solid black; margin: 2px 0;"/> <p style="margin: 0;">C. BACHAND</p> </div>
May 19	Intervenors' and Staff's Direct Testimony	
June 9	All Parties' Rebuttal	
June 6	Discovery Motions Hearing (if needed) Rm. 412, Capitol Bldg, Pierre, SD 10:00 a.m. (telephonic participation permitted)	
June 13	Pre-Hearing Motions Hearing (if needed), location to be determined (possibly Sioux Falls), the later of 10:30 a.m. or immediately following Commission meeting (telephonic participation permitted)	

June 19	All Parties' Surrebuttal
June 21	Pre-Hearing Conference, PUC Cactus Conference Room, 1 <sup>st</sup> Floor, Capitol Bldg, Pierre, SD 10:00 a.m. (telephonic participation permitted)
June 26-30	Hearing, Rm. 412, Capitol Bldg, Pierre, SD 9:30 a.m. first day, 8:30 a.m. subsequent days
July 9	All Parties' Briefs and Proposed Findings of Fact, Conclusions of Law and Order
July 11	Oral Argument, Rm. 412, Capitol Bldg, Pierre, SD, the later of 10:30 a.m. or immediately following the Commission meeting (telephonic participation permitted)
July 14	Commission Action, Rm. 412, Capitol Bldg, Pierre, SD 10:30 a.m. (telephonic participation permitted)
July 21	Findings of Fact, Conclusions of Law and Final Decision and Order issued

The parties shall file and serve any documents referenced in the above schedule on or before the date for such filing. Except as the Commission may otherwise order, the parties may, but are not obligated to, present oral argument or submit post-hearing briefs and/or proposed findings and conclusions. Since July 9 is a Sunday and paper service by mail cannot be accomplished by the oral argument time, the parties shall serve any briefs or proposed findings of fact and conclusions of law electronically to the E-Service List on or before July 9, 2006, and shall not be required to make paper service of such filings to the Legal Service List. Oral argument and appearances at motion hearings may be by telephone.

In accordance with the suggestion of Otter Tail in its March 22, 2006 letter, this order permits all parties, including Applicants, to pre-file both rebuttal and surrebuttal testimony. Objections to admissibility and any other objections involving all pre-filed testimony may be made by a party prior to the hearing by appropriate motion or at the June 26 hearing by objection.

If the parties have pre-hearing motions regarding matters that arise after June 13, the Commission will attempt to schedule a hearing to rule on them prior to the June 26 hearing. If such a motion hearing cannot be scheduled, such motions will be heard at the beginning of the hearing on June 26.

## **Exhibits**

Counsel and pro se parties shall arrive at the hearing room by 8:30 a.m. on June 26, to mark exhibits, to address any other issues the parties may have with the Commission's court reporter and to organize their materials.

The Commission customarily defers to the exhibit marking preference of the attorneys in the case and will do so in this case. The customary marking convention in cases before the Commission consists of a combination of the party's name, or an abbreviation or acronym thereof, followed by a number. Sub-exhibits are marked by letters following the primary exhibit number with sub-exhibits to sub-exhibits designated by a number following the sub-exhibit letter (Examples: OTP12A; Staff 5; SC 15-D-1 or Sierra 15D1; Stueve 1; MC 20A-1). Although counsel may employ any marking convention they wish that assigns a discrete identifier to each exhibit, the Commission's experience is that the customary method works well to enable the Commissioners and counsel to associate exhibits with the introducing party and provide an identifying context for them.

## **Previously Filed Documents**

Although pleadings, pre-filed testimony and other documents that have been filed with the Commission are contained in the official docket file in this case, the Commission does not consider the contents of any such documents as evidence in the case. The Commission does take judicial notice of the fact that such documents were filed and are contained in the docket file, and the parties are hereby given notice of such judicial notice in accordance with SDCL 1-26-19(3). All documents contained in the Commission's docket file for EL05-022 are set forth on the Commission's web page for this case. Discovery requests and responses are treated by the Commission as inter-party communications and are not filed in the docket file. A party who believes a filed document is not included on the Commission's web page for this case shall immediately notify the Commission of such fact. Parties wishing to have documents contained in the Commission's official docket file introduced into evidence shall mark such documents and, except to the extent admission of such documents is either stipulated by all parties or may be admitted by judicial notice, shall offer such documents into evidence in accordance with normal evidentiary procedures.

## **Stipulation to Admission**

In order to expedite and simplify the flow of evidence, the Commission encourages the parties to discuss whether there are exhibits to which they can stipulate to admission without foundation. Except as the parties shall otherwise expressly stipulate, stipulating to admission will not restrict the scope of cross-examination by a party with respect to the subject matter of the exhibit or the credibility or accuracy of the inputs thereto.

It is therefore

ORDERED, that the above procedural schedule and procedural rulings shall be adopted for purposes of this case and shall be complied with by the parties.

Dated at Pierre, South Dakota, this 31<sup>st</sup> day of March, 2006.

<b>CERTIFICATE OF SERVICE</b>	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u><i>Rebecca Kolbo</i></u>
Date:	<u>3/31/06</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

*Robert K. Sahr*  
ROBERT K. SAHR, Chairman

*Dustin M. Johnson*  
DUSTIN M. JOHNSON, Commissioner *dk*

*Gary Hanson*  
GARY HANSON, Commissioner