

JUL 17 2006

THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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
Oral Arguments
July 11, 2006

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COMMISSION STAFF

JOHN SMITH
KAREN CREMER
GREG RISLOV

ORIGINAL

APPEARANCES (continued on next page)

THOMAS J. WELK,
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;

1 APPEARANCES (continued)

2 MICHAEL D. O'NEILL,

3 JOHNSON, PROVO, PETERSEN, LLP, Attorneys at Law,
4 332 Minnesota Street, First National Bank
5 Building, Suite West 975, St. Paul, Minneosta 55101,
6 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;

7 MARY JO STUEVE,

8 196 East 6th Street #401, Sioux Falls,
9 South Dakota 57104,
10 appearing pro se.

11 Reported by Carla A. Bachand, RMR, CRR

1 TUESDAY, JULY 11, 2006

2 CHAIRMAN SAHR: Let's move on to the oral arguments in
3 Docket EL05-022, and we have a court reporter here and she is
4 taking the record, so again, the usual admonishments about
5 speaking close to the mike if you are here in Pierre and if you
6 are on the phone line, make sure you speak loudly and clearly
7 so that she can hear, but I think everyone knows the routine
8 with that. I'm going to look to general counsel Smith and he's
9 multitasking here. Are we back in session or do we reopen the
10 docket? Do we continue on? Where are we at procedurally? And
11 I also will say I am going to turn it back over to you as the
12 appointed hearing examiner in this particular case. So I will
13 let you run the show from here out, thank you.

14 MR. SMITH: Thank you. Actually, the evidentiary
15 portion of the hearing concluded on the evening of the 29th of
16 June, and this matter has been noticed for several months via
17 the second and third scheduling and procedural orders, and the
18 subject matter for today is not the presentation of evidence
19 but argument by attorneys and pro se parties about what that
20 evidence means and how the commission should view the record
21 and in the end the ultimate point of all this is how then the
22 commission should decide the case.

23 I think what we should do maybe at the outset, what
24 I'd like to do is check and see who we have appearing, because
25 we can't see everybody, and so maybe beginning with applicants,

1 Mr. Welk, do you want to --

2 CHAIRMAN SAHR: Before we do that, I want to note
3 something. Commissioner Hanson is traveling on an important
4 trip in Europe and he has specifically stated, although he
5 cannot be here, he does intend to listen to the comments and I
6 just want to note that for the parties and not that
7 particularly -- maybe it doesn't change anything you say, but I
8 do want to note that he does, and he may even be listening now,
9 but I do want to note that he has obviously a great deal of
10 interest in this and will be reviewing the oral arguments as
11 well, and if it needs to be stated for the record, Commissioner
12 Johnson and I are here as well because we are shifting from the
13 commission meeting, and I'm sure the court reporter probably
14 noted that, but for the record, since we are doing an audio
15 archiving of this and an Internet broadcast, I will state that
16 Commissioner Johnson and myself, Commissioner Bob Sahr,
17 chairman of the commission, are here today in Pierre.

18 MR. SMITH: Thank you, and thank you for noting that.
19 To the best of my knowledge, based on a comment that was
20 communicated to me by Tina --

21 (Brief interruption.)

22 MR. SMITH: Welcome, Beth. Was that you? I guess
23 not.

24 MS. GOODPASTER: Yes, I'm here, do you hear me?

25 MR. SMITH: You are a little bit weak. We were just

1 getting going, believe it or not, and what we are going to do
2 first I think is have the parties that are here and present
3 make an appearance and so you have just joined and actually we
4 were kind of wondering where you were. But why don't we begin,
5 then, with the applicants, and Mr. Welk, would you like to make
6 your appearance on behalf of the applicants.

7 MR. WELK: Thank you, Mr. Smith and commissioners.
8 Tom Welk appearing on behalf of the applicants. With me here
9 today is Todd Guerrero, who is the lead counsel for the project
10 in Minnesota, with Bruce Gerhardson, associate general counsel
11 of Otter Tail. There may be some questions from the
12 commissioners that I would feel more comfortable lateraling to
13 a couple of those lawyers. Also some of the people here with
14 me today you saw at the hearing as witnesses. We have Mark
15 Rolfes, the project manager, we have Terry Graumann, who is in
16 charge of environmental permitting, Steve Schultz, who did not
17 testify, is the head of communications at the project, and then
18 Joanne Haase is a lawyer with my office who we happen to be in
19 town for the water permit tomorrow. And I think I have
20 introduced all of the people that are with me.

21 MR. SMITH: Thank you. Staff.

22 MS. CREMER: Thank you. Karen Cremer with staff.

23 MR. SMITH: Ms. Goodpaster.

24 MS. GOODPASTER: This is Beth Goodpaster appearing on
25 behalf of the joint intervenors and with me is Mike O'Neill.

1 MR. SMITH: Thank you. You are very, very quiet here,
2 Beth. I don't know what to -- I don't know what your situation
3 is on that end of the line, but we are having a tough time
4 hearing you.

5 MS. GOODPASTER: Okay, did you hear that Michael
6 O'Neill is appearing with me?

7 MR. SMITH: Yes, we did, and thank you, that's better.
8 We can hear you. I would just say speak close to the phone and
9 as loudly as you can. And Ms. Stueve, are you on the line?

10 MS. STUEVE: Yes, I am. This is Mary Jo Stueve.

11 MR. SMITH: You are appearing pro se?

12 MS. STUEVE: Pro se, thank you.

13 MR. SMITH: Mr. Welk, please begin.

14 MR. WELK: Thank you, Mr. Smith and commissioners. As
15 Mr. Smith indicated, your process as far as the evidentiary
16 portion of this matter has now been completed. The
17 commission's process has been a very open and inclusive process
18 regarding this docket. I do not need to remind you that you
19 have had input hearings in Milbank. You have allowed the
20 public to have comments before the contested case hearing,
21 comments after the contested case hearing. You have had a very
22 open process to allow intervention to any party who wanted to
23 participate. The parties who have chosen to participate in
24 this proceeding, as I indicated at the beginning remarks at the
25 hearing, our clients have produced over 47,000 pages and have

1 filed over 2,000 pages of testimony.

2 You have now concluded three and a half days of
3 hearing. You have provided every party who has intervened an
4 opportunity to cross-examine the witnesses. You have provided
5 the world an opportunity to listen to this proceeding on the
6 Internet. You have also provided after the evidentiary hearing
7 a process that the parties have filed briefs and proposed
8 findings and conclusions and now you have provided us one more
9 opportunity to talk to you before you render this decision in
10 this important matter.

11 Just a procedural matter, I know that on behalf of the
12 applicant, we did make another amended filing of the findings,
13 of our proposed findings and conclusions yesterday with some
14 cleanup that we have made as far as the filing and I would rest
15 on those being our final submissions to the commission at this
16 time for our proposed findings of fact and conclusions of law.

17 The parties have filed briefs of various portions and
18 all of us agree on certain things. One of those is what is the
19 burden of proof in this case and what are we required to
20 demonstrate. The burden of proof is on the applicant to
21 demonstrate compliance with the applicable statutes and
22 regulations to have you issue the requested energy conversion
23 permit. The burden of proof is that of a preponderance of the
24 evidence, which in the vernacular, as we explain to juries
25 every day, means essentially that you are more persuaded by one

1 presentation than another or as we have used it in -- I have
2 used it in several trials to explain if you were to take the
3 burden of proof and the scales of justice that you must believe
4 51 percent of one argument than another. We are not confined
5 here to a burden of proof which may be clear and convincing or
6 proof beyond a reasonable doubt.

7 The commission has received over 118 exhibits from the
8 applicants and over 50 exhibits from the joint intervenors and
9 staff. And the commission's decision will now be based upon
10 the evidence that's been presented. The commission is not
11 bound to consider any evidence based on conjecture or
12 speculation. And as all the parties have told you, there is
13 four essential things that we must prove in order for the
14 commission to grant this permit. The permit process must
15 demonstrate through evidence that the proposed facility, that
16 is Big Stone II, will, number one, comply with all applicable
17 laws and rules. Number two, that the proposed facility will
18 not pose a threat of serious injury to the environment, the
19 social and economic conditions of the inhabitants or expected
20 inhabitants of the siting area. The proposed facility will not
21 substantially impair the health, safety and welfare of the
22 inhabitants, and lastly, the proposed facility will not unduly
23 interfere with the orderly development of the region with due
24 consideration having been given to the views of the governing
25 bodies of the affected local units of government.

1 In regard to the first matter, that is, a general
2 compliance with applicable laws and statutory obligations,
3 administrative regulations, the necessary information that we
4 are required to file, the studies we are required to do, there
5 really hasn't been a challenge by anybody in that regard.
6 Indeed your own staff has checked our compliance and we have
7 done all the necessary filings, provided all the necessary
8 information, paid all the necessary fees, conducted all the
9 necessary studies.

10 The issue about a serious threat to the environment
11 appears to be what is being challenged by the joint intervenors
12 and Ms. Stueve. A few things that I want to remind the
13 commission that the evidence has shown in the proceedings and
14 in the submissions that have been made. Number one, this
15 project will reduce from the site sulphur dioxide emissions to
16 one-seventh of what they are being emitted today. There will
17 be no new net emissions of nitrous oxide. This project as
18 proposed will include a wet scrubber to be installed that will
19 reduce mercury emissions from the site. The wet scrubber will
20 accommodate new technologies for mercury emissions. The
21 applicant companies have made a commitment which we have
22 offered to be included as a condition to our air permit that
23 the total site emissions of mercury will be limited to 189
24 pounds per year within three years of commercial operation.
25 These would have been the baseline emissions of the Big Stone I

1 site in 2004.

2 We will provide through this project transmission
3 facilities that will be available for other resources,
4 including wind. We have accepted all the draft and final EIS
5 recommendations that will be made by Western Area Power through
6 its contractor and will be published. We believe that the CO2
7 emissions that you have heard so much about in this project are
8 not a serious threat to the environment. If the project is not
9 approved and you do not issue the permit, these vast
10 environmental benefits, not harms, but benefits will not be
11 achieved. We do not believe that there is any legitimate issue
12 based on the evidence that there is any serious threat to the
13 social and economic conditions of the inhabitants. You have
14 received numerous comments from local governments through your
15 processes, including the local review committee report, the
16 hearings that you have had, the written comments that you
17 received, who have all an overwhelming support of the project.

18 Moreover, we do not believe that there is any
19 substantial impairment of health, safety and welfare of the
20 inhabitants. You have heard from the local people, the local
21 governments, the local law enforcement, the housing, all
22 through the processes that are established by statutes and all
23 support the project. We also believe that the evidence
24 overwhelmingly demonstrates there will be no interference with
25 the orderly development of the region. All the local

1 governments have been contacted, reviewed the project and
2 support the project. We also -- there is no question about the
3 substantial economic benefits that we have provided to the
4 state and to the area.

5 What's attractive to this project is its current site
6 and you heard all of the evidence as to what the applicant
7 companies did in reviewing the various sites, but the big
8 benefit is that the area of Grant County, Milbank and Big Stone
9 have had a power plant that's operated in that area of this
10 state for over 30 years and you would think if there were any
11 issues, you would have heard about those and all you have heard
12 is the evidence of what a good neighbor Big Stone I has been
13 and how the local communities have been supportive and how that
14 has operated for 30 years.

15 You have also heard through this project, through this
16 process that there is a very real issue regarding both energy
17 capacity and needed energy by the companies. You have heard
18 from the actual people from the MAPP region that there will be
19 a capacity deficit in MAPP-US in 2011. It's also important,
20 and I've said this before and the commission is well aware of,
21 this is a proceeding that involves base load energy, not
22 intermediate and peaking. And there has not been a plant
23 that's been built for over 30 years in this area to provide
24 base load energy.

25 We know this project, if it proceeds as projected,

1 will take over four years to build. And I think it's important
2 to realize as you look back through the process that you have
3 participated in that the seven companies that are involved,
4 which are a mix of investor-owned utilities, cooperatives,
5 municipals, separately reached a conclusion that their base
6 load energy needs would be met by this project. These
7 companies are unique and I believe it was Commissioner Sahr
8 that said that you are not dealing with the Duke Energies in
9 this world, you are dealing with the rural companies that serve
10 our people in this area of the country.

11 And for some of these smaller companies that I
12 represent in this project, this is a very unique opportunity.
13 These projects don't come along. They have got an opportunity
14 to participate in a project that they would not otherwise have
15 been available to, and I think it's a tribute to the companies
16 for the synergy that is going to develop from this project
17 where you have investor-owned utilities, you have municipals,
18 you have cooperatives that are all working together but who all
19 reached the conclusion that this is a project that is
20 worthwhile for their customers for the next 30 to 40 years.

21 And this is not a proceeding, as I told you in my
22 opening statement, that to say that other resource mix other
23 than coal-fired plants are not good resources to produce
24 electricity. There was much discussion about wind as an
25 alternative resource, and all of our applicant companies, as

1 you have seen, do involve themselves in wind projects. But one
2 of the things that's involved and which was not disputed by
3 anybody is that wind is not dispatchable and in the terms and
4 acronyms of that industry, that means available twenty-four
5 seven. We had the engineers that deal with this project day by
6 day, not consultants, but people who actually run power plants,
7 disperse energy and have to make these purchases every day tell
8 you that wind is a valuable resource, but it is not something
9 we can count on for base load, and of course everybody is
10 working to develop a renewable source, but we are talking about
11 something that's going to be here for 30 to 40 years that needs
12 to be constructed now.

13 I think, as I indicated to you, one thing that you
14 need to reflect on is what would happen if this project is not
15 built? Well, one thing that we contend the evidence
16 demonstrates, that if this project is not built, there will be
17 more expensive and a less reliable supply of electricity for
18 consumers. We believe the evidence showed you through the
19 evidence of some of our consultants that if the project is not
20 built, the people who are least able to afford electricity,
21 those with low income, elderly and on fixed incomes, will be
22 the ones that will be hurt the most because they will not have
23 a reliable supply that the companies can pass through them.
24 And I don't recall any dispute by any evidence by anyone as to
25 that assertion as to who would be hurt the most if this was not

1 built.

2 Also, if you do not approve this project, the
3 environmental benefits that I told you about earlier will not
4 be recognized. Big Stone I is there, but with the synergy of
5 Big Stone II, it provides environmental benefits that otherwise
6 would not be available. So in other words, these companies
7 have taken it upon themselves to increase the benefits to the
8 environment by operating this plant, and if you turn this down,
9 the plant at Big Stone I is going to continue and it's not
10 going to get the wet scrubber that's going to be helpful to all
11 the emissions that are going to be made there anyway.

12 What this project does do, as I indicated to you
13 earlier, is provide a stable base load electricity for more
14 than a million consumers. It also provides the construction
15 and operation of an environmentally responsible plant. It
16 provides an investment of over \$1.2 billion in this state for
17 operation and construction. And it provides, among other
18 things, a benefit we didn't talk about a lot, but it did come
19 up in the hearing, and it provides additional transmission
20 facilities for other resources, including wind. Mr. Uggerud is
21 the one that testified about that. And if you don't allow the
22 project to go forward, those additional transmission
23 facilities, which all of us recognize are so important to
24 renewable resources, will not be built, at least on this
25 project's line.

1 As I look through the files and reflect upon what you
2 have heard, with all the paper that you have seen, all the
3 witnesses, the objections I think come down to essentially
4 three areas. Number one, the CO2 regulation, number two, the
5 mercury emissions, and then sort of what I'd call a two and a
6 half issue and that is there is an alternative out there, but I
7 think the third argument or the two and a half argument of an
8 alternative source for base load is somewhat -- is done
9 somewhat tongue in cheek. There wasn't any presentation that
10 was made about this is a better base load resource than what's
11 being provided here. Mr. Schlissel indicated we are not making
12 that recommendation. There was a great deal of testimony
13 presented about the various alternatives, combinations,
14 different technologies, but the real answer is there isn't a
15 good alternative in the record before you.

16 So let me turn to what I believe are the two essential
17 issues that were raised by the joint intervenors and by Ms.
18 Stueve. One deals with the CO2 regulations. Now, first of
19 all, we start with the supposition that because of the
20 supercritical boiler that's going to be installed, this will
21 have 18 percent less carbon dioxide emissions than other
22 current coal-fired plants. So you are coming on line with a
23 new technology that's going to reduce these. And we heard a
24 lot has been put in about global warming and the CO2
25 regulation, externalities, trying to calculate what those

1 benefits are or costs may be of carbon dioxide regulation.

2 But the point of it is today, and this is unrebutted
3 in the record, there are no statutes or regulations in the
4 state of South Dakota. There are no federal laws that regulate
5 or control CO2 emissions. There was a lot of testimony about
6 trying to calculate the costs of carbon regulation, even though
7 it doesn't exist. As we presented this, and our position is
8 very simple, is that your regulations do not deal with any
9 calculation of externalities, of government regulation, and
10 especially regulations that don't even exist.

11 But contrary to what may be suggested by the
12 intervenors, that the companies have their head in the sand
13 about this issue, that is not what has happened in this case.
14 As you heard the evidence, the companies, through their
15 consultants, did do some calculations of carbon regulation,
16 even though it's not required, it's speculative, but we looked
17 at those costs and we believe that you can't tag a particular
18 number. You heard a lot of evidence about ranges and what
19 Minnesota's externality costs would be, California's, three or
20 four different states that had it.

21 The bottom line is there's a range out there and the
22 range that was looked at by this project in calculating its
23 cost is clearly reasonable. The evidence, we submit, that the
24 joint intervenors submitted to you, that the range of carbon
25 regulation is even above the state of California, it's at an

1 \$18 or \$19 range, which we find is just unreasonable. You
2 don't have to pick a particular number. We think as a matter
3 of law that carbon doesn't even have to be looked at, but we
4 didn't avoid the issue. We stepped up and said, calculate
5 what's based down there, the staff's own expert talked to you
6 about what was out in the literature, and again it's in the
7 literature, not what's enacted as a matter of law. And we
8 think that what we have calculated for carbon dioxide emissions
9 as far as cost is considered, the fact that we are going to be
10 having reduced emissions all makes this a very favorable
11 environmental project.

12 Now, in regard to mercury, one of the things that we
13 are not saying is that mercury is not an issue that we
14 shouldn't talk about or that we should ignore. We have made a
15 commitment in writing to this commission that we expect to be a
16 condition of the air permit about what emissions will be. One
17 thing that we did not commit to in the project and through the
18 testimony is to a particular technology. You have some very
19 bright and smart people that are looking at these issues and we
20 are going to have a wet scrubber that's going to help with
21 certain issues and we will be using that scrubber to help
22 reduce the mercury emissions through the process, but you have
23 heard some testimony about carbon injection and about those
24 technologies and I believe if you recall Mr. Rolfes, what he
25 said is we have a financial incentive to get the best

1 technology. We do not want to commit to this commission a
2 particular technology of what we are going to do to help with
3 this because we believe, at least the people that are the most
4 knowledgeable about that, that there may be a cheaper, better
5 technology and more effective technology once we get into the
6 design and commercial operation stage.

7 What we are telling you is we have got a financial
8 incentive because of the mercury rules to develop the best
9 technology that's out there. We know this is an issue, we know
10 we are going to be working on it, and the bottom line is we are
11 committing to what the emissions from the site are today. And
12 we are going to double the generation capacity and keep the
13 emissions for mercury at what it is today and I know what the
14 rules provide down the road, that we are going to have an
15 incentive to reduce these even more. But we want to reduce
16 those through improved technologies and we have a financial
17 incentive to do that.

18 In regard to the wind alternative that I talked about
19 earlier, I want to just briefly mention that, that we again are
20 not dismissing that as a resource, but it's not a good
21 alternative for what we are trying to get to provide base load
22 electricity to the consumers that are served by our companies.
23 The joint intervenors want you to try to solve global warming
24 through this project. You are not going to do that. The
25 emissions that we are going to be making regarding global

1 warming are insignificant when you look at the total numbers
2 that are there.

3 If you want to address that or legislators want to do
4 that, we have processes to do that. But we don't do that in
5 adversary proceedings. You don't have rules that address these
6 issues. You don't have computations of externalities in your
7 rules. But that didn't stop the project of looking at those
8 issues, addressing those issues, providing evidence to you to
9 consider that so we don't want you to be in a position as
10 policymakers that you ignored these issues. You didn't and we
11 didn't, contrary to what's being asserted, and we believe we
12 have a record that you are comfortable with on those issues and
13 that you can provide a decision to safeguard the environment.

14 It's one thing to take potshots at a project and say,
15 this is one thing you should do and that, but there really
16 isn't any alternative produced here, and these companies have
17 committed to an environmentally responsible project. Nobody
18 wants to build today a project that's not environmentally
19 responsible. We have made those commitments, we have made them
20 to you in writing and millions of dollars of commitments to
21 operate this plant in an environmentally responsible manner.
22 And it's time, commissioners, to proceed with the project. You
23 have got seven companies, you have got people that are looking
24 at this project. Now is the time to allow us to proceed.
25 There is millions and millions of dollars of capital that are

1 sitting here waiting to decide what's going to happen with this
2 project and I ask you to send the first message that we have
3 passed the hurdles and that we can proceed with the project.
4 Thank you.

5 MR. SMITH: Thank you, Mr. Welk. Ms. Goodpaster for
6 joint intervenors. Are you ready to go?

7 MS. GOODPASTER: Sure. Thank you.

8 MR. SMITH: I want to urge you to speak up. I
9 apologize, but if you could, we are going to have a tough time
10 hearing you, okay?

11 MS. GOODPASTER: Okay. Please interrupt me if I fade
12 out. I'm going to try this way with holding the receiver. Is
13 that a little bit better?

14 MR. SMITH: Right now we are able to hear you pretty
15 well.

16 MR. O'NEILL: Mike O'Neill.

17 MR. SMITH: Hi, Mike.

18 MR. O'NEILL: Sorry, I just had to join remotely.

19 MR. SMITH: So you guys can be heard better?

20 MR. O'NEILL: No, I had another commitment that got
21 moved back. I have got to continue to another commitment, but
22 I want to continue to hear via telephone.

23 MR. SMITH: Beth was going to begin her argument,
24 then. Beth, please proceed.

25 MS. GOODPASTER: Thank you. The record in this

1 proceeding shows that the proposed Big Stone plant will cause
2 serious harm to the environment, that applicants therefore have
3 not met their burden to show otherwise under the siting
4 statute. The environmental harm that we are talking about are
5 both mercury and carbon dioxide, and Mr. Welk mentioned both of
6 these as well, but his comments show me that the applicants
7 continue to not understand the differences between
8 environmental damage and regulatory costs. And when I'm
9 speaking to you right now, I am talking about environmental
10 damage and the burden of proof under the siting statute and
11 that mercury emitted from the project is going to, as admitted
12 by the applicants, increase above historical levels in the
13 first three years. They have committed to keeping things the
14 same after that three-year period, but we cannot ignore the
15 fact that it would increase substantially in the three-year
16 period while they test various things.

17 The carbon dioxide emissions will more than double and
18 that has -- we have put in ample evidence in the record from
19 the global scientific community as well as through our other
20 experts that carbon dioxide emissions and increasing those is a
21 serious environmental threat and is the opposite direction from
22 where we need to be going, that is to reduce carbon dioxide
23 emissions. We further remind the commission, as we have done
24 in our briefs, that the siting statutes do not qualify the
25 burden of proof, that there not be serious harm to the

1 environment caused by a project. At various points in this
2 proceeding it's been suggested to net those damages against the
3 economic benefits that the project might bring. There is no
4 basis in the language of the statute to determine that the
5 environmental damage posed by the plant is less serious because
6 it would bring economic activity to the region.

7 Further, the project will, and our witnesses have
8 testified this project will interfere with the orderly
9 development of the wind industry in the region. We had Mr.
10 Goldberg testify that because the increments of alleged need is
11 being soaked up, so to speak, by a large coal-fired plant, that
12 that's going to inhibit the amount of wind power development
13 that is developed in the region, where the potential for that
14 development would otherwise be vast.

15 The applicants have agreed in the record that there is
16 a material risk of federal CO2 regulations, and we have put in
17 substantial testimony that this would affect the economic
18 viability of the proposed coal plant and because such
19 regulations are likely, there is a material risk of economic
20 harm to applicants' customers. As we have stated in our brief,
21 this risk should not be borne by rate payers of the
22 investor-owned utilities, you have jurisdiction over their
23 rate-making requirements. But if anybody is going to bear the
24 risk of future CO2 regulations, it should be the project
25 owners, proposed investors.

1 I have received the lengthy list of proposed findings
2 and conclusions that the applicants proposed. We take issue
3 with numerous of those proposed findings and conclusions, but
4 since there is such a long list of them, it would take too long
5 for me to cover all of our disputes in this telephone argument.
6 But we do presume that the commission will be closely examining
7 each of the proposed findings to determine which are actually
8 supported by the record or accurately stated. I am not going
9 to go through each citation, but I presume that the commission
10 will do so.

11 We have, through the testimony of our witnesses, shown
12 our disagreement with the applicants and have also covered a
13 great deal of those issues in our proposed hearing briefs, so
14 we would refer the commission to those joint intervenor filings
15 as the commission prepares its own findings in this case. I
16 would, though, like to take the opportunity to highlight some
17 of the issues raised in applicants' proposed findings and
18 conclusions, although I won't be going through all of our
19 disputed issues.

20 In general, the proposed findings tend to overstate
21 the benefits of the proposed plant to minimize or understate
22 the harms and I would call your attention to the document that
23 was most recently submitted, and I don't know if the commission
24 has the proposed findings of fact available to them, if I refer
25 to specific numbered paragraphs.

1 MR. SMITH: Yeah, we do have it.

2 MS. GOODPASTER: I wanted to highlight a few of them.
3 Finding 89 states no serious long-term effects to the
4 environment or health has been identified. Obviously given our
5 brief and my statements preceding this, we strongly disagree
6 with that and that there has been -- that is only true if we
7 ignore the record on mercury emissions and CO2 emissions.

8 I would also add that June 30th following close of the
9 record, evidentiary hearing, in the related proceeding at the
10 Water Management Board, which hearings are scheduled to happen
11 tomorrow, the Minnesota Department of Natural Resources
12 submitted comments in that proceeding --

13 MR. WELK: I object. Those are comments outside the
14 record. This isn't a public forum. This is a legal proceeding
15 which you are confined to what's in the record and I object.

16 MS. GOODPASTER: I was going to mention there are
17 other proceedings outstanding which are dealing with the
18 environmental effects of this project and that therefore
19 finding 89 cannot stand as a complete conclusion of any of the
20 environmental effects of the project. Should I continue?

21 MR. SMITH: Yeah, please do. With what you said,
22 there was plenty of testimony during the hearing about the
23 existence of other outstanding regulatory proceedings and you
24 didn't go beyond that. Thank you.

25 MS. GOODPASTER: Thank you. Finding 88, I'd like to

1 call the commission's attention to that proposed finding, and
2 I'll turn to it myself here. That deals with the Western Area
3 Power Administration draft Environmental Impact Statement and I
4 think it's especially important to recognize in any proposed
5 finding having to do with that environmental review process to
6 be clear that it is only a draft at this point in time, that
7 comments from the public and other agencies are due July 24th,
8 2006, and so the problem that I'm seeing in this proposed
9 finding is that it appears to state that all potential
10 environmental effects have been identified and considered in
11 the Environmental Impact Statement, as if that were the final
12 Environmental Impact Statement, and it's not.

13 Findings 129 and 133. For the first time in the
14 record, and I don't know if this was brought up prior to the
15 close of hearings or not, that EPA relaxed the Clean Air
16 Mercury Rule new source performance standard in the month of
17 June, I don't know if that was known to applicants during the
18 hearings or not, but it's the first time I've seen it is in
19 their proposed findings here. And what it means for this
20 proceeding is that it's not that Big Stone II would be limited
21 to 210 pounds per year, as stated in applicants' testimony
22 during the first three years before they commit to making
23 reductions, but they would be allowed to emit 330 pounds per
24 year. And that means that their commitment to reduce the three
25 years where there is no commitment, there is a 50 percent

1 increase in the amount that we were assuming that would be
2 emitted from the plant. And so all of the cost figures that
3 staff's witnesses prepared were based on a 210-pound number
4 from Big Stone II combined with the 189 from Big Stone I. So
5 this is a material change from before. We had these same
6 concerns about environmental damages and the cost of those when
7 it was a 210, but I want to make sure that the record is clear
8 that this has changed and makes the concern go up rather than
9 down.

10 Finding 138, this also represents a wealth of comments
11 here, trying to cast the entire CO2 regulation issue with the
12 "speculative" adjective, and we have done a lot of work in this
13 proceeding through our testimony to show that it is not
14 speculative. We know that it's not something that is certain
15 that you can point to right now, but we do not think that it
16 qualifies as speculative analysis in any way. There are
17 findings that are proposed dealing with modeling and resource
18 plans that some of the applicants have done in various
19 proceedings in Minnesota or other states, such as MDU has done,
20 and I think that it's important if any such proposed findings
21 are relevant to the commission's decision, that it be
22 recognized, and it's only fair to find that none of those
23 resource plans has been actually considered by the Minnesota
24 Public Utilities Commission, they are all pending dockets. The
25 most recent legislative -- not legislative, regulatory comment

1 that has been made regarding those plans from the Minnesota
2 Department of Commerce has been extensive critique of those
3 plans, so to rely on those as findings with the implication
4 those have been reviewed and accepted would be unfair.

5 And with respect to MDU, they do not have to file a
6 resource plan with Minnesota, but we do have a clear record
7 that shows that any capacity analysis, expansion analysis that
8 they did do was in 2003, that they did none in 2005, and the
9 results for the 2003 analysis identified the need for peaking.

10 Finally, getting to conclusions of law, I would agree
11 with proposed conclusion one from the applicants. Number 12, I
12 do need to address that in their amended findings and that
13 concerns the federal EIS again and in their amended filings,
14 they have added a proposed conclusion that that federal EIS
15 complies with South Dakota law 34A-9-11 and therefore satisfies
16 the siting statute requirement. I want to make sure that the
17 record is clear that 34A-9-11 says you can use a federal EIS in
18 place of a South Dakota one if that federal EIS satisfies the
19 Chapter 34A requirements, but 34A requires more than a draft
20 EIS before agency action. And I looked at the definitions and
21 in the definition of an Environmental Impact Statement under
22 Chapter 34A is both a detailed statement setting forth all of
23 the alternatives and environmental impacts, but also the
24 comments on the draft EIS and the agency's response to those
25 comments and none of the latter two portions, the public

1 comments or a response to those comments, is in this record.
2 So that has to be clearly stated because I don't think there's
3 a record here to support a commission finding that the
4 requirement of 49-41B-21 have been met as proposed by the
5 applicants here.

6 Without restating our brief, and I would respectfully
7 call the commission's attention to what we have stated there, I
8 think it sets forth all of our arguments clearly under the
9 statutes, we would ask the commission to adopt our reasoning as
10 stated in our brief and deny the permit requested by
11 applicants. I'm prepared to answer any questions you may have.

12 MR. SMITH: Thank you, Ms. Goodpaster. I think maybe
13 what we will do is go through all of the arguments and when we
14 get to the end, if the commissioners have questions of anyone,
15 they can ask them at that time. Ms. Stueve, are you ready?

16 MS. STUEVE: Yes.

17 MR. SMITH: I'm going to bring up another matter here,
18 Ms. Stueve. You filed on Saturday a petition, which I am going
19 to characterize as a motion, okay?

20 MS. STUEVE: Okay.

21 MR. SMITH: Because that's what it is, and Mr. Welk, I
22 didn't bring this up till now because I felt when it was her
23 turn, it would be the time -- she's the proponent of this and
24 so not to get things out of order, we will let you, in the
25 process of making your argument, I wish you would also address

1 your motion to dismiss or petition to dismiss. Is that okay?

2 MS. STUEVE: I have to pull it up here a minute. I
3 wasn't prepared to address that at the moment.

4 MR. SMITH: If the parties want to address it at all.
5 The bottom line is this is really it today, and so if it's
6 going to be addressed by anyone verbally, it's going to have to
7 be done now. Okay?

8 MS. STUEVE: Just getting it pulled up.

9 MR. SMITH: Do you need a minute or so?

10 MS. STUEVE: Yes, okay, I do have it in front of me.

11 MR. SMITH: Why don't you proceed in any order you
12 want with your argument, if you wish, and would you also make
13 whatever argument you have on behalf of your motion and then we
14 will give the other parties a chance to address that as well.

15 MS. STUEVE: Okay. In particular, my decision to put
16 in for a petition for a dismissal stems from my reading of
17 South Dakota Codified Law and the Administrative Rules of South
18 Dakota, noting in particular that if this project would be
19 denied, applicants could then in turn return and reapply
20 without the commission requiring an Environmental Impact
21 Statement. And in looking through the preponderance of the
22 evidence from the hearing last week and reviewing that, I saw a
23 disparity in the arguments put forth by the applicants as far
24 as utilizing the cost benefit determinations a broader area as
25 far as need. It included both those who would be indirectly

1 served via an interconnection as well as directly served versus
2 in looking at the cost, it did not include those costs
3 associated with customers being indirectly served as well as
4 directly served.

5 And my contention is in putting this petition forth
6 for dismissal is that the conclusions are questionable. I
7 further took it one step along in looking at a decision, Otter
8 Tail Power vs. United States, 410 US 366 and 381, a ruling that
9 does address, that one did address whether a utility could act
10 solely to retain customers or to maintain monopoly in an
11 anticompetitive manner and the decision was such that it could
12 not. This morning the commissioners referenced EAct, Energy
13 Policy Act 2005. I also referenced that, Title 12 electricity,
14 Section 1233 and Section 1235, which clearly shows that
15 investor-owned utilities would have a preferential status, if
16 you will, under those sections over alternative energy
17 providers or new ones coming on that would not have had native
18 load service generation previous to EAct 2005. And thus my
19 petition for dismissal.

20 MR. SMITH: Thank you, and then do you want to proceed
21 with your oral argument or is that all of it?

22 MS. STUEVE: That is the petition for dismissal. I
23 would also like the record to show I support the oral argument
24 put forth by joint intervenors.

25 MR. SMITH: Thank you, and did you have any other

1 argument that you wanted to make at all?

2 MS. STUEVE: I would like to emphasize and ask
3 specifically for a finding from the commission, and I do not
4 know if you have my brief there, but it's number one.

5 MR. SMITH: We do have it here.

6 MS. STUEVE: On the final page, and again, it goes
7 back because the record shows during the hearing that 49-41B-24
8 requires a decision within 12 months, as you mentioned during
9 the hearing, Mr. Smith. At the same time, 49-41B-21 requires
10 prior to the issuance of a permit that the Public Utilities
11 Commission shall comply with the provisions of Chapter 34A-9
12 relating to an Environmental Impact Statement. And I would
13 like to emphasize that Chapter 34A-9 shows a clear distinction
14 between a draft Environmental Impact Statement and an
15 Environmental Impact Statement. The draft EIS, in other words,
16 is not equal to the EIS, Environmental Impact Statement, an
17 Environmental Impact Statement, under 34A-9-9 and 34A-9-10.
18 Both of these require an Environmental Impact Statement for
19 filing and finding. They do not mention a draft Environmental
20 Impact Statement. It specifically requires an Environmental
21 Impact Statement.

22 MR. SMITH: Thank you.

23 MS. STUEVE: Two other points I would like to make in
24 reference to opening statement by applicant counsel, Mr. Welk,
25 shortly. Two points were made that Big Stone I would not get

1 their wet scrubber without Big Stone II. In my opinion, if the
2 owners truly were committed to being a good neighbor and had an
3 environmental concern, Big Stone I could get a wet scrubber.
4 And the other point is Otter Tail Power as a native load
5 service provider has an obligation to provide transmission
6 capability, so to say that Big Stone II is necessary to be
7 permitted in order to provide this quote, unquote, needed
8 transmission possibly for wind is actually false. And Otter
9 Tail co-owners for Big Stone II do not have the authority to
10 dictate whether or not wind or alternatives will get
11 transmission capability if Big Stone II is permitted. Thank
12 you.

13 MR. SMITH: Thank you. Staff.

14 MS. CREMER: Thank you. This is Karen Cremer of
15 staff. As stated in our brief, staff has recommended that the
16 commission find that the applicant has met its burden of proof
17 and therefore the applicant should be granted an energy
18 conversion permit pursuant to SDCL 41B-22 and ARSD 20:10:22,
19 and that the permit should be conditioned with the following.
20 What they will get will be a conditional permit, until such
21 time as they have all their other permits in hand, and the
22 applicants should submit a plan setting forth its actions to
23 implement the recommendations of the local review committee and
24 those recommendations include a housing contingency plan, the
25 financing of an additional officer to the Grant County

1 Sheriff's Office, drug and alcohol screening of Big Stone II
2 employees, the provision of fire protection equipment and
3 training for the local fire department, and the appointment of
4 a public relations representative to facilitate the exchange of
5 information between the project owners and the local
6 communities.

7 Staff also supports the recommendations contained in
8 the draft Environmental Impact Statement concerning plant
9 construction and operation, including the following. And
10 again, and possibly I'm not getting it, but the permit is
11 conditional and once the EIS becomes final, then we will know
12 what -- we will know what those final recommendations are in
13 the EIS and the applicant has committed to following those
14 recommendations. So it's not as though we are jumping the gun
15 here, we are required statutorily to get a decision out by July
16 21. It's out of our hands that the EIS will not be done until
17 December, but we have taken care of that, I believe, by
18 conditioning or recommending that the permit be conditioned
19 until such time as that EIS is final. So I think that takes
20 care of all concerns regarding that EIS.

21 Part of the EIS recommendations that we have at this
22 point include vegetation and that there be implementation of an
23 integrated weed control plan prior to construction. There was
24 a recommendation concerning transportation and that was that
25 there be coordination with county authorities to mitigate

1 severe road damage, to organize bus transportation or car
2 pooling to reduce congestion, and that the delivery of heavy --
3 the delivery of heavy equipment be in such a manner as to
4 reduce traffic congestion and unsafe driving conditions. As to
5 public safety, they recommend establishment of a work safety
6 program, that after hours access to construction areas, that
7 that be secured, and notification to the public about high risk
8 operations, and as for noise, they recommend working with local
9 residents to develop noise mitigation measures in case of noise
10 complaints.

11 Staff has further recommended that the applicant
12 submit semiannual progress reports to the commission that
13 summarize the status of the construction, the status of land
14 acquisition, the status of environmental control activities,
15 and the overall percent of physical completion of the project.
16 Each report shall include a summary of the issuance of the
17 required permits. The report shall list the dates and names of
18 each contact contributing to the preparation of the report and
19 the company's progress in implementing prescribed environmental
20 protection activities or control standards, as well as any
21 substantial changes to the project design.

22 Now, applicant, and I didn't check your amended ones,
23 but in your original findings of fact and conclusions of law,
24 you talked quarterly reports, we had said semiannual. It
25 doesn't matter to us, either is fine, whatever the commission

1 thinks they would like to see, if you approve the permit. It's
2 kind of just a compliance filing, a progress report. And it
3 doesn't matter to us whether that be quarterly or semiannual.
4 I would reiterate that applicant has agreed to all of staff's
5 recommendations and/or conditions. Finally, staff believes
6 that the Applicants' amended findings of fact and conclusions
7 of law may be adopted in whole by this commission.

8 MR. SMITH: Thank you. Did you want to respond at all
9 to Ms. Stueve's motion to dismiss?

10 MS. CREMER: Not at this time, thank you.

11 MR. SMITH: Mr. Welk, are you ready to go or do you
12 want a short break?

13 MR. WELK: No, I'm ready to go. We have been here all
14 morning with the commission, I know that everyone is anxious to
15 go and I don't want to be the one to be in that roadblock. In
16 regard to Ms. Stueve's petition, first of all, it's untimely.
17 This commission, through four, now five procedural orders, set
18 up times for filings of motions, gave months and weeks of
19 advance notice. There are procedures in the South Dakota
20 Administrative Procedures Act where you can file certain
21 motions. This is untimely. And it should be rejected on that
22 grounds alone.

23 Secondly, I can't frankly follow the merits of what
24 she's saying, and I wish -- I don't mean to be disparaging, but
25 I think the first one that she's trying to set is some sort of

1 standard which I can't follow what she's saying we did or did
2 not do. I would rely on the evidence that we have submitted
3 that's consistent with the regulations. And I for the life of
4 me cannot follow the quotation to Otter Tail. I do antitrust
5 law and have for many, many years. It's frankly just a
6 disconnect to me what she's citing Otter Tail Power for
7 relative to this proceeding.

8 This commission is delegated by law to provide certain
9 protections to utilities, some people would call them
10 monopolies, and you have that authority, and this commission is
11 charged with that under the antitrust laws to regulate
12 utilities, even if people think it's a monopoly, and that's
13 what you are doing. So I'm sorry, I just can't follow her
14 argument. I don't believe they make any sense on the merits
15 and it ought to be dismissed.

16 I am going to try to address a couple of the questions
17 that they have in the other arguments. Mr. Guerrero, I have
18 asked him to comment on the mercury issue. I want to deal with
19 a couple of the other issues. First of all, there was a point
20 that was made by -- regarding Mr. Goldberg's testimony and I
21 recall he's the one that had the hypothetical wind farm. I
22 really couldn't follow what his point was other than there
23 might be more jobs in the hypothetical wind farm, and he
24 distanced himself from any other issues regarding the
25 hypothetical wind farm.

1 I asked him questions, if you remember, about whether
2 he considered increases to rates. He wasn't saying that the
3 wind farm was an alternative resource, so other than coming in
4 and saying there's more jobs with a wind farm and here is a
5 model and I forgot to look at real estate taxes for Big Stone
6 for the past ten years, I believe his testimony was of no
7 moment regarding the fundamental issue about whether there is a
8 good resource alternative to the coal-fired plant.

9 CHAIRMAN SAHR: He did know the county seat of Grant
10 County, though.

11 MR. WELK: Yes, he did know. Yeah, he knew where the
12 plant was, I'm not sure he knew where Milbank was. I'll give
13 him that much. But anyway, that I don't believe was anything
14 related other than to economic benefits of a hypothetical wind
15 farm and wasn't even located there.

16 The issues regarding the resource plans, Mr. Guerrero
17 is very familiar with those in Minnesota, if he wants to go to
18 that point. One thing that I think the public should
19 understand in the process here, we as the parties submit
20 proposed findings on what we believe the evidence is. You
21 don't have -- just because somebody said something, you don't
22 have to believe it. You don't have to believe what we said,
23 what anybody said. You are the final arbitrators of the facts
24 in this case and you will determine the credibility of the
25 evidence. If you don't believe our findings are consistent

1 with the evidence, you can write your own. You are not
2 required to accept ours. You are not required to accept any
3 party's. As the final decision maker here, you write your own
4 findings and so we believe that the findings we have submitted
5 do -- are substantiated by the evidence.

6 I would support Ms. Cremer's point about the
7 Environmental Impact Statement and I don't want this point
8 confused. If you look at the policy issue about why there is a
9 requirement in an energy conversion siting permit to have an
10 EIS, it's either essentially to have the state do one or have a
11 federal process, and that's why it's a condition of the permit.
12 We put the draft application in, but in the South Dakota law,
13 it says in 34A-9-11, in order to avoid duplication of effort,
14 to promote consistent administration of federal and state
15 environmental policies, the Environmental Impact Statement
16 required by this chapter need not be prepared with respect to
17 actions for which a detailed statement is required to be
18 prepared pursuant to the requirements of the National
19 Environmental Policy Act of 1969 as amended to January 1, 1993,
20 if the statement complies with the requirements of this
21 chapter.

22 That's what has been done in this process. The state
23 doesn't need to duplicate that process and the state recognized
24 in the statute I just read that if there is a federal process
25 that's under way and it is a recognized process, this body can

1 take judicial notice of the laws of the NEPA and how it's done
2 and it complies with that and that's what the state legislature
3 said, you don't have to do it if the feds are going to do it
4 and that process is under way. And as Ms. Cremer appropriately
5 pointed out, you have got the draft environmental statement
6 that took months and months, and yes, are there things left?
7 There is some comments, but we have committed to whatever the
8 federal process says we must do.

9 So there's nothing for you to do other than to say
10 that you will commit us to those processes and we have done
11 that. So that provision of the law has been satisfied and we
12 think at this point we have complied with everything that we
13 are supposed to do, we have committed to be environmentally
14 responsible, and I'll ask Mr. Guerrero to comment on those two
15 issues, one about the mercury, the 330 pounds she referenced in
16 finding of fact 129, and any issues relating to the resource
17 plans.

18 MR. GUERRERO: Thank you, Mr. Welk. Mr. Todd
19 Guerrero, that's G-U-E-R-R-E-R-O, on behalf of the applicants.
20 Thank you, Mr. Chairman and members of the commission, staff.
21 Very briefly, I will comment on mercury. Before I do that, I
22 also wanted to correct one other thing that was noted by Ms.
23 Stueve with respect to the access to the transmission. You
24 will soon hear in the related transmission proceeding that Ms.
25 Stueve was absolutely right, that the utilities don't control

1 what kind of kilowatts get on the grid, whether those are green
2 or other colors of kilowatts, but we will show you, and Ms.
3 Goodpaster is familiar with this, that when you do the
4 transmission studies, you have to take into account what's
5 already in the MISO cue, and studies will show and the evidence
6 will show that up to 2,000 megawatts of wind were in the cue
7 before Big Stone Unit II was in the cue, and under the federal
8 rules, it's first on, first served. So our studies when we
9 were building the transmission related to this proceeding, and
10 I don't want to get off track, show that there's a considerable
11 amount of wind ahead of any power and energy coming out of Big
12 Stone Unit II.

13 I also wanted to correct in the findings you will see
14 that it actually says that the transmission related, talking
15 about the benefits of this project, refer to 100 additional
16 megawatts. It's actually 1,000 additional megawatts.

17 With respect to mercury, I think it's been discussed,
18 but let me just comment briefly. In the record to date there's
19 been no evidence to suggest that mercury emissions from the Big
20 Stone Unit II power plant are going to harm South Dakota or
21 regional citizens. There is absolutely no evidence in the
22 record that would suggest that.

23 With respect to reducing mercury, the applicants have
24 made a voluntary decision to cap mercury emissions at 2004 or
25 2004 levels. We will be subject to the Clean Air Mercury

1 Rules. Regardless of whether or not Big Stone Unit II is
2 built, those rules will be in place and this project, like all
3 other projects throughout the country that are applicable to
4 and subject to the Clean Air Mercury Rules, will have to comply
5 with those rules. Our pro forma analysis, when we put the
6 economics of this project together that have been presented in
7 this case, contemplate us purchasing allowances under the Clean
8 Air Mercury Rules despite, and I believe the evidence in the
9 Phase One Report and in the Burns & McDonnell alternative
10 generations report used a \$35,000 per pound allowance.

11 Despite putting in those economics, Big Stone Unit II
12 remains to be the least cost unit of all the alternatives that
13 we have looked at. So we will be in compliance with Clean Air
14 Mercury Rules and despite whatever additional cost it's going
15 to take us to get there, this is the least cost plant of all
16 the alternatives looked at. And I would be happy to answer any
17 questions with respect to resource planning, the need for this
18 project, any other questions that you may have. But I know it
19 has been a long morning for you all. Thank you.

20 MR. SMITH: Thank you. Mr. Welk, does that conclude?

21 MR. WELK: Yes.

22 MR. SMITH: Ms. Goodpaster, did you have any response
23 that you wanted to make to Ms. Stueve's motion?

24 MS. GOODPASTER: No, I don't.

25 MR. SMITH: Thank you, I think that concludes the oral

1 argument. Is there anything else to come before the commission
2 on this matter this morning, or this afternoon, excuse me? It
3 was morning when we started.

4 MS. STUEVE: This is Mary Jo. I would just like to
5 correct counsel, Mr. Welk, that my petition is not untimely.
6 20:10:01:02:04 does say that a petition for dismissal may be
7 filed before the record of decision is made. So it would not
8 be considered untimely because the final order has not been
9 made.

10 MR. SMITH: So noted.

11 MR. WELK: I have one procedural matter. In regard to
12 the findings that have been submitted by the parties, does the
13 commission want us to file formal objections to those or are
14 they all deemed objected to by all the other parties?

15 MR. SMITH: Is that me that's doing that? We don't
16 have a heck of a lot of time here. I'm going -- I think I'm
17 going to make a ruling, and the commission can overrule it,
18 that we will deem each party to have objected to the full set
19 of findings and conclusions offered by the other party. I just
20 see that as the only -- we are not going to have enough time to
21 go through too much more of this. Does anyone have an
22 objection to that?

23 MS. STUEVE: No objections from Stueve.

24 MR. SMITH: I realize on the record, Beth, you stated
25 that you did agree with some of the conclusions of law, for

1 example, but I think what we are saying is for purposes of
2 preserving your record on appeal, no one need file objections
3 and then have one more document for us to have to look at. We
4 are going to consider everyone as having sufficiently objected
5 to be able to raise issues regarding proposed findings on
6 appeal. And in the end those proposed findings, they really
7 become moot fairly quickly because once we issue the real
8 findings, that's what they are. And we will do that on the
9 basis of our own assessment of the record.

10 CHAIRMAN SAHR: Do we need a motion on that? Does
11 that clear it up? Would you rather have us make a motion?

12 MR. WELK: I think, Chairman Sahr, that probably would
13 be good for everybody.

14 CHAIRMAN SAHR: I think it's probably the cleanest
15 way. I would move that the parties are deemed to have objected
16 to the opposing parties' proposed findings of fact and
17 conclusions of law.

18 VICE-CHAIR JOHNSON: Second.

19 MR. SMITH: Thank you. That concludes the hearing.

20 (Whereupon, the proceedings were concluded at 1:37
21 p.m.)
22
23
24
25

C E R T I F I C A T E

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.