

Bob Sahr, Chair  
Dustin Johnson, Vice-Chair  
Gary Hanson, Commissioner

## SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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August 16, 2006

TO: ALL INTERESTED PARTIES

FROM: KAREN E. CREMER  
STAFF ATTORNEY  
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

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 the Big Stone II Project  
Docket EL05-022

Dear Folks:

Enclosed each of you will find a copy of Staff's Answer to Petitions for  
Reconsideration in the above captioned matter.

This is intended as service upon you by mail.

Very truly yours,

Karen E. Cremer  
Staff Attorney

Enc.

**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 )	STAFF'S ANSWER TO PETITIONS FOR RECONSIDERATION  EL05-022
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An evidentiary hearing was held beginning on June 26, 2006, and concluded on June 29, 2006, in the above-captioned matter. The Commission issued its Final Decision and Order; Notice of Entry on July 21, 2006. On July 28, 2006, Intervenor Stueve filed a Notice and Application for Reconsideration. On August 3, 2006, Applicants filed its Answer to Petition for Rehearing. On August 14, 2006, Intervenor Stueve filed a Notice and Application for Reconsideration Second Application. Pursuant to ARSD 20:10:01:30.02, Staff makes this answer to Intervenor Stueve's motions for reconsideration. Staff respectfully submits that Intervenor's Stueve's petitions for reconsideration should be denied and further requests to order production of any additional information should also be denied.

Intervenor Stueve claims in the first petition that updated cost estimates are newly discovered evidence that justifies a rehearing. Staff would agree with the position of the Applicants that the updated cost estimates are not newly discovered evidence as the Commission heard and considered the possibility that the costs of the project would increase as is typical in any construction project, see Findings of Fact, 7.0 ESTIMATED COST, #28. Staff would point out that "cost" is not listed as a factor in the applicable statutes, see SDCL Chapter 49-41B. Staff further notes that the Commission specifically found that "SDCL Chapter 49-41B is not a certificate of convenience and necessity

proceeding, and the Findings of Fact that the Commission has made in this proceeding regarding Applicants' description of need for the baseload generation to be provided by Big Stone Unit II pursuant to ARSD 20:10:22:08 are not intended to be nor have the effect of prospective findings of prudence that may arise in any future rate proceeding involving such investments." Findings of Fact #201.

In the Application for Reconsideration—Second Application, Intervenor Stueve requests the Commission to again reconsider its Final Decision and Order; Notice of Entry of July 21, 2006. This request appears to be based on an allegation of newly discovered information regarding a carbon emissions trading market and a possible U.S. Supreme Court appeal involving greenhouse gas rules.

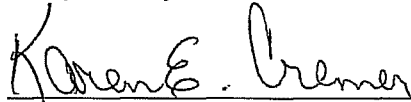
The South Dakota Supreme Court in Basin Electric Power Co-op v. Gosch, 240 N.W. 2d 96 (SD 1976) stated, "Applications for new trial based solely on the grounds of newly discovered evidence are frowned upon by the courts. In order to grant such a motion based solely on this ground, the applicant must demonstrate first that it is newly discovered evidence and secondly that it could not, by reasonable diligence, have been determined and produced at the trial and that it would be believed by the jury and would produce a different result." See also, Fullmer v. State Farm Ins. Co., 498 N.W.2d 357 (SD 1993). Here the alleged newly discovered information is a carbon emissions trading market and a possible U.S. Supreme Court appeal involving greenhouse gas rules. Neither of these matters occurred after the hearing held in June 2006; reasonable diligence by Ms. Stueve would have discovered these occurrences thus they could have been introduced as evidence at the June 2006 hearing; there is no showing that either of these matters are material to the case at hand; and, Intervenor

Stueve has not shown that even if such evidence were considered by the Commission that the permit would be not be granted.

In conclusion, Staff respectfully submits that Intervenor Stueve's petitions for reconsideration should be denied and further requests to order production of any additional information should also be denied.

Dated at Pierre, South Dakota, this 16<sup>th</sup> day of August, 2006

Respectfully submitted



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Karen E. Cremer

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

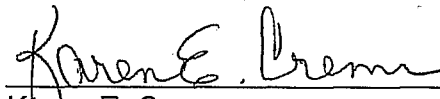
IN THE MATTER OF THE APPLICATION BY )	CERTIFICATE OF SERVICE
OTTER TAIL POWER COMPANY ON BEHALF )	
OF BIG STONE II CO-OWNERS FOR AN )	EL05-022
ENERGY CONVERSION FACILITY PERMIT )	
FOR THE CONSTRUCTION OF THE BIG )	
STONE II PROJECT )	

I hereby certify that true and correct copies of Staff's Answer to Petitions for Reconsideration were served via the method(s) indicated below, on the 16th day of August, 2006, addressed to:

(Name and Address)

See attached Exhibit A.

- First Class Mail
- Hand Delivery
- Facsimile
- Overnight Delivery
- E-Mail



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