

STATE PUBLISHING CO. - PIERRE, SOUTH DAKOTA

EL01-027

EL01-027

DOCKET NO. _____

In the Matter of _____
IN THE MATTER OF THE FILING BY _____
OTTER TAIL CORPORATION _____
REGARDING ITS NOTIFICATION OF _____
INTENT TO APPLY FOR A PERMIT _____
FOR AN ENERGY CONVERSION _____
FACILITY _____

Public Utilities Commission of the State of South Dakota

DATE MEMORANDA

- 11/5 01 Filed and docketed;
- 11/9 01 Verbal Filing;
- 12/5 01 Order Disrupting Affected Area and Local Review Committee;
- 12/21 01 Notice of Appearance (David A. Herder and Brett Kaenecke);
- 1/3 02 Motion to Reconsider Order of 12/5/01;
- 1/3 02 Brief in support of Motion to Reconsider Order of 12/5/01;
- 1/31 02 Order Granting Motion to Reconsider Order of 12/5/02, and Order Disrupting affected Area and Local Review Committee;
- 7/30 03 Letter Request Docket be Closed;
- 8/28 03 Order Closing Docket;
- 8/28 03 Docket Closed.

11-11-10 10:00 AM

START

OF

RETAKE

Odessa City Council

Kathy Haas Mayor
Rt. 1, Box 22, Odessa, MN 56276

Ortonville City Council

Dave Dinnel Mayor
570 Park Avenue
Orontville, MN 56278

Big Stone County Commissioners

Jeanne Krueger Chairman
RR1
Beardsley, MN 56211-9801

Lac Qui Parle County Commissioners

Arvid Gollnick Chairman
RR3, Box 140
Madison, MN 56256-9470

Clinton-Graceville-Beardsley School Board

Kenny Hendricks Chairman **
Rural Route
Beardsley, MN 56211

**indicates term expiring end of year

Ortonville School Board

Scott Maas Chairman
Ortonville, MN 56278

016.26.39.4

END

OF

RETAKE

UN-CLASSIFIED

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56588-0496
218 739-8200
www.otpc.com (web site)

EL 01-027

RECEIVED

NOV 05 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

November 1, 2001



Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501

Dear Ms. Elofson:

SUBJECT: NOTIFICATION OF INTENT FILED PURSUANT TO SDCL 49-41B -5
PROPOSED BIG STONE II PROJECT

Otter Tail Corporation is filing this Notification of Intent (NOI) to submit an application for a Permit for an Energy Conversion Facility as required by the South Dakota Code of Law Chapter 41B-5 and the Administrative Rules of South Dakota Section 20:10:22:02. For purposes of this NOI, any required additions to the electrical transmissions system will be addressed under a separate filing.

The assumptions used in the preparation of this NOI represents the best judgment of Otter Tail Corporation, but are considered to be preliminary at this stage. The plant description, plant operation methods, quantities, and other items described herein will be modified as development progresses to the final stage of facility design.

FACILITY

Otter Tail Corporation proposes to construct an electric generating facility, Big Stone II, adjacent to the existing Big Stone Plant. The site is located principally in Section 12, Township 121 North, Range 47 West and Section 7, Township 121 North, Range 46 West, Grant County, South Dakota (See Exhibit A). Plans are to use the existing plant site for the major equipment. However, additional property is required for the Big Stone II project for possible expansion of the existing cooling reservoir, future ash disposal facilities, wetlands mitigation, and general facility buffer zones.

The proposed plant will burn Powder River Basin coal and be capable of producing approximately 600 MW. The boiler technology has not been selected at this time. The technologies under consideration are circulating fluidized bed, sub-critical pulverized coal, or supercritical pulverized coal. The pollution control technology selected will depend upon the boiler technology and a Best Available Control Technology review as required by the Prevention of Significant Deterioration Pre-construction Permit.

Ms. Debra Elofson
November 1, 2001
Page 2

The Big Stone II project is proposed as a "brown field" project. That is, it is slated for construction at the site of an existing facility, which considerably reduces the construction cost of a new plant. This approach enables Otter Tail Corporation to share existing infrastructure with the existing Big Stone Plant including the following:

- Cooling water intake structure, pumping system and delivery line
- Rail spur
- Coal unloading facilities
- Solid waste disposal facilities

PROJECT COSTS, SOCIAL AND ECONOMIC IMPACT

Otter Tail Corporation estimates the capital cost of the Big Stone II project at \$700 million. During the first 18 months of construction, labor levels would average around 300 people. In the following 18 months of construction, the workforce would average 700 people with the last year averaging 300 people.

After Big Stone II is in operation, it is estimated that 25 additional, permanent jobs will be created at the Big Stone facility. Big Stone II also anticipates needing periodic maintenance that will require the assistance of additional contract labor.

Transportation service needs will also increase for the region. Big Stone II will burn over 2 million tons of coal per year, use 14,000 tons of lime per year, and may use significant quantities of materials for general facility operation. The plant also plans to investigate selling its byproducts, thus creating additional transportation service needs.

The Big Stone facility has had a history of actively pursuing synergistic economic development opportunities for the region. The Northern Lights Ethanol Plant is currently under construction near the Big Stone Plant. Big Stone Plant will provide steam and support services to that facility. The Commission and local community can be assured that the Big Stone project will continue to evaluate additional economic development opportunities. Those opportunities will be enhanced by the addition of Big Stone II.

Last of all, Big Stone II will bolster our national energy supply and provide dependable, low-cost, environmentally responsible electric energy to the State of South Dakota and the region.

LIST OF NAMES AND ADDRESS OF ALL CHAIRMEN IN AFFECTED AREA

Please see Exhibit B.

0162.93.7

Ms. Debra Elofson
November 1, 2001
Page 3

TIMELINE

The construction of a coal-fired power generation plant entails a considerable amount of work, time and money in both the development stage and construction stage. Otter Tail Corporation plans to continue with project development by:

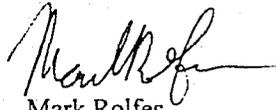
- Completing the conceptual design
- Negotiating fuel and rail contracts
- Negotiating letters of intent for power purchase agreements, and
- Securing all necessary pre-construction permits.

Exhibit C is a list of Big Stone II project permits.

All of the above tasks, including securing the Permit for Energy Conversion, must be completed prior to the commencement of financial closing on the project, which is scheduled to begin in June of 2003. Upon completion of financial closing, a notice to proceed will be given to the engineering firm to start detailed engineering. Construction is scheduled to start in the spring of 2004 with commercial operation targeted for the summer of 2007 (see Exhibit D for a graphical timeline).

This is an exciting time in the history of the Otter Tail Corporation and for the prospect of further economic development in South Dakota. We look forward to working with the Commission and its staff in bringing the Big Stone II project to a reality.

The project contact person for the NOI and the application for the Permit for an Energy Conversion Facility is Mr. Terry Graumann. In the event of questions regarding this Notification or the application, please contact him at (218) 739-8407 or email him at tgraumann@otpc.com.



Mark Rolfes
Director, Production Development

01662-933-8

EXHIBIT A SITE LOCATION

BIG STONE

TOWNSHIP: 121 N.

RANGE: 46 & 47 W.

CODE: BI

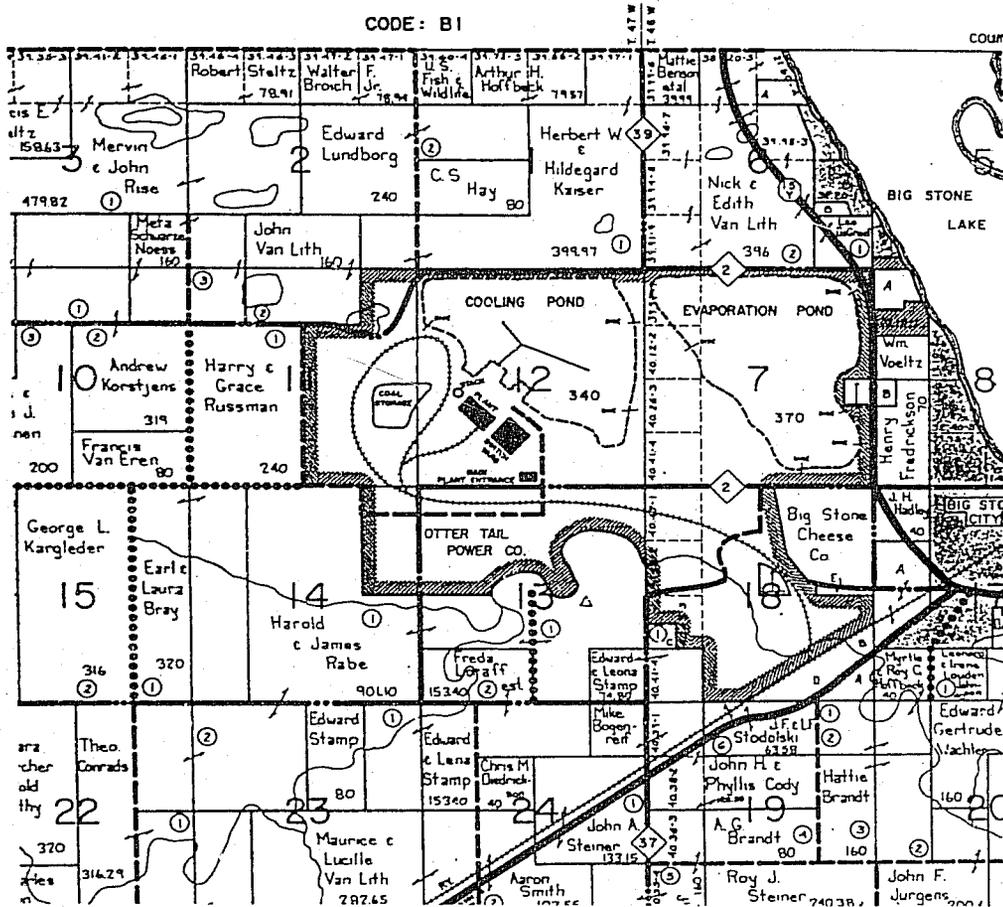


EXHIBIT B
LIST OF NAMES FOR AFFECTED AREA

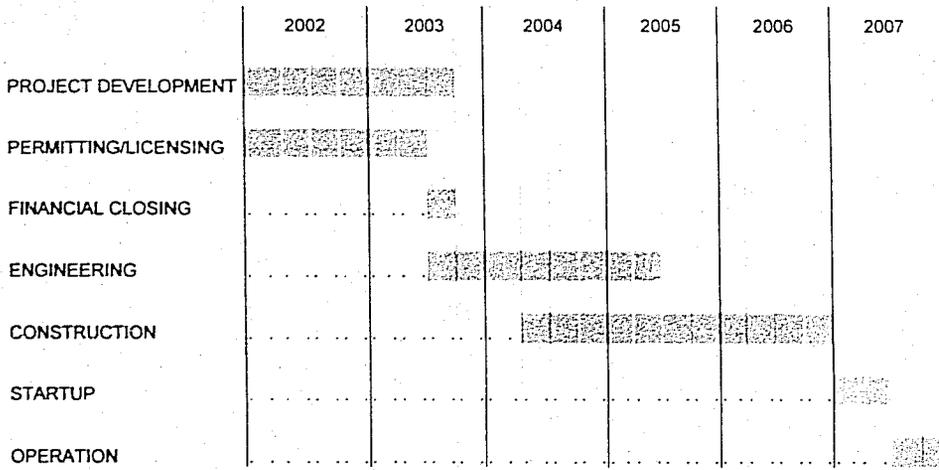
<i>Tribal Council Chairperson</i>		
Sisseton/Wahpeton Tribe	Andrew Grey	PO Box 509 Agency Village, SD 57262
<i>School Board Chairperson</i>		
Milbank	Craig Haugard	520 S. Grant St. Milbank, SD 57252
Wilmot	Leen Kruse	RR1, Box 54 Wilmot, SD 57279
Big Stone City	Ann Grabow	RR1, Box 86 Big Stone City, SD 57216
Summit	Terry Lien	RR1, Box 93 Summit, SD 57266
Reville	Randy Kruse	RR1 Box 11 Reville, SD 57259
<i>County Commission Chairperson</i>		
Grant Co.	Clayton Tucholke	16005 477 Ave. LaBolt, SD 57246
Roberts Co.	Glen Hull	211 3 rd Ave. W. Sisseton, SD 57262
<i>Mayors</i>		
Milbank	Dale Aesoph	209 S. Viola St. Milbank, SD 57252
Reville	Lowell Schultz	PO Box 86 Reville, SD 57252
Wilmot	Harlan Hanson	PO Box 75 Wilmot, SD 57259
Big Stone City	Jim McFarlane	657 Main St. Big Stone City, SD 57216
Stockholm	Melvin Dragt	414 E. Johnson Ave. Stockholm, SD 57264
Strandberg	Mike Rufer	PO Box 32 Strandberg, SD 57265
Summit	Lloyd Christofferson	PO Box 726 Summit, SD 57266
<i>Utility Representative</i>		
Big Stone II Project	Mark Rolfes	Otter Tail Power Company P.O. Box 218 Big Stone City, SD 57216

01629310

EXHIBIT C PERMITS

Permit/Approval	Agency
PSD Air Quality Permit	South Dakota Department of Environmental and Natural Resources (SD DENR), Air Quality Bureau
South Dakota Major Facility Siting Act	SD PUC
NPDES Discharge	None – zero discharge facility
Amendment to Water Appropriations Permit	SD DENR
Ash Disposal (amend existing permit)	SD DENR
Title IV – Acid Rain Permit	SD DENR
Part 70 – Operating Permit	SD DENR
FERC Notification	Federal Energy Regulatory
FAA Stack Permit	Federal Aviation Administration/ SD Aeronautics Commission
Wetlands	
401 Certification	SD DENR
404 Dredge & Fill	US Army Corps of Engineers (COE)
Zoning	Grant County
Erosion & Sedimentation Control	Grant County
Storm Water Discharge Permit for Construction (NPDES)	South Dakota Department of Environment and Natural Resources
Building and Highway Permits	Grant County/Townships
Construction Debris Disposal Permit	
Threatened and Endangered Species	US Department of Fish, Wildlife and Parks, SD GFP
Cultural and Historic Resources	SD State Historic Preservation Office

EXHIBIT D PROJECT TIMELINE



015N 603112

South Dakota Public Utilities Commission

WEEKLY FILINGS

For the Period of November 1, 2001 through November 7, 2001

If you need a complete copy of a filing faxed, overnight expressed, or mailed to you, please contact Delaine Kolbo within five business days of this filing. Phone: 605-773-3705 Fax: 605-773-3809

CONSUMER COMPLAINTS

CT01-049 In the Matter of the Complaint filed by Ida Lagge, Scotland, South Dakota, against MCI WorldCom Regarding Unauthorized Switching of Services.

Complainant states that she continuously receives calls from MCI asking her to change her long distance service to MCI. Each time Complainant states that she told the caller that she did not want to change providers. To Complainant's knowledge, she did not change her long distance provider to MCI. Complainant became aware that her long distance had been changed when she attempted to make a long distance call and she had no long distance service on her line. Complainant requests that the Commission review the tape of her conversation with the MCI representative and put sanctions on MCI. Complainant also requests that all charges be removed and that she be awarded \$1,500.00 from MCI for the undue harassment, mental anguish and the many sleepless nights they have caused her.

Staff Analyst: Mary Healy
Staff Attorney: Karen Cremer
Date Docketed: 11/06/01
Intervention Deadline: N/A

CT01-050 In the Matter of the Complaint filed by Margaret Underwood, Pierre, South Dakota, against Talk America, Inc. Regarding Failure to Cancel Telecommunications Services.

Complainant states that she is receiving unauthorized billings by Talk America, Inc. Complainant further states that the company told her that they would remove the monthly charge and refund her money, but on the next bill she was charged again and not given a refund. Complainant states she wants the account closed and a complete refund of all charges.

Staff Analyst: Charlene Lund
Staff Attorney: Kelly Frazier
Date Docketed: 11/07/01
Intervention Deadline: N/A

ELECTRIC

EL01-026 In the Matter of the Filing by Otter Tail Power Company for Approval of an Electric Service Agreement for the Supply of Bulk Interruptible Power between Otter Tail Power Company and Valley Queen Cheese Factory, Inc.

On November 2, 2001, the Commission received a filing from Otter Tail Power Company in accordance with South Dakota Codified Law 49-34A. The Agreement is entered into pursuant to Otter Tail's Bulk Interruptible Service Tariff, as on file with the Commission.

Staff Analyst: Dave Jacobson
Staff Attorney: Kelly Frazier
Date Docketed: 11/02/01
Intervention Deadline: 11/23/01

EL01-027 In the Matter of the Filing by Otter Tail Corporation Regarding its Notification of Intent to Apply for a Permit for an Energy Conversion Facility.

The Commission has received a notification of intent to submit an application for a Permit for an Energy Conversion Facility from Otter Tail Power Company. The Notice of Intent describes the proposed facility, the projected costs, the social and economic impact from the proposed project, a list of the chairpersons in the affected area, and the timeline of the project.

Staff Analyst: Michele Farris
Staff Attorney: Karen Cremer
Date Docketed: 11/05/01
Intervention Deadline: 11/30/01

EL01-028 In the Matter of the Filing by Otter Tail Power Company for Approval of its Updated Customer Information Brochure.

Application by Otter Tail Power Company requesting approval of revisions to its customer information sign and customer information brochure. The proposed revisions include a new customer information telephone number and web site address, relocation of certain information, changes to the section explaining to customers how to read their bill, and certain grammatical changes.

Staff Analyst: Heather Forney
Staff Attorney: Kelly Frazier
Date Docketed: 11/06/01
Intervention deadline: 11/23/01

TELECOMMUNICATIONS

TC00-191 In the Matter of the Filing by Qwest Corporation for Approval of its Statement of Generally Available Terms and Conditions.

On November 22, 2000, Qwest Corporation filed its original Statement of Generally Available Terms and Conditions (SGAT) with the Commission pursuant to Section 252(f) of the Telecommunications Act of 1996 (the Act). At its December 12, 2000, meeting, the Commission granted intervention to AT&T Communications of the Midwest, Inc., McLeodUSA Telecommunications Services, Inc. and Midcontinent Communications. The Commission on January 17, 2001, voted to not approve or disapprove Qwest's SGAT at that time but to allow it to go into effect pursuant to 47 U.S.C. Section 252(f). On November 5, 2001, Qwest filed an updated SGAT which "is generally intended to be consistent with the Seven State Process Facilitator's recommendations, with the exception of those recommendations that Qwest has challenged in individual state commissions....The current filing also incorporates language related to the same checklist items that the parties have agreed to, or that was required, in other states." Qwest requests that the Commission consider this SGAT "as the baseline document for any further proceedings in this docket. Qwest respectfully requests that the Commission allow this version of the SGAT to go into effect within 60 days, pursuant to Section 252(f)(3)(B) of the Act."

Commission Contact: Deb Elofson
Date Filed: 11/05/01
Intervention Deadline: 11/21/01

TC01-167 In the Matter of American Telecommunications Enterprise, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-168 In the Matter of Cash Back Rebates LD.com f/w/a Common Concerns, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-169 In the Matter of CRG International, Inc. d/b/a Network One's Failure to Submit a

Report and Pay the Gross Receipts Tax.

- TC01-170 In the Matter of Enhanced Communications Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-171 In the Matter of erbla Network, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-172 In the Matter of Internet Telephone Company's Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-173 In the Matter of JATO Operating Two Corp.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-174 In the Matter of LDC Telecommunications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-175 In the Matter of NewPath Holdings, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-176 In the Matter of Ozark Telecom, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-177 In the Matter of PAM Oil, Inc. d/b/a PAM Communications' Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-178 In the Matter of PNV, Inc. f/k/a PNV.net, Inc. f/k/a Park 'N View, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-179 In the Matter of ServiSense.com, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-180 In the Matter of SouthNet Telecomm Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-181 In the Matter of Special Accounts Billing Group, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-182 In the Matter of Telera Communications, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-183 In the Matter of Telicor Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-184 In the Matter of Telscape USA, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-185 In the Matter of Teltrust Communications Services, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-186 In the Matter of TotalAxxess.com, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.
- TC01-187 In the Matter of Vee Em, Inc. f/k/a Speer Virtual Media, Ltd.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

TC01-188 In the Matter of Xtracom, Inc.'s Failure to Submit a Report and Pay the Gross Receipts Tax.

The above companies shall appear on 12/12/01, at 3:00 p.m. in the Cactus Conference Room, State Capitol Building, Pierre, SD, to show cause why action should not be taken against the company for failure to comply with SDCL Chapter 49-1A.

Deputy Executive Director: Sue Cichos
Staff Attorney: Karen Cremer
Date Docketed: 11/07/01
Hearing Date: 12/12/01

TC01-189 In the Matter of the Filing for Approval of a Reciprocal Transport and Termination Agreement between Brookings Municipal Utilities d.b.a Swiftel Communications and McLeodUSA Telecom Development, Inc. and Dakota Community Telephone, Inc.

On November 7, 2001, a filing for approval of a reciprocal transport and termination agreement between Swiftel Communications (Swiftel) and McLeodUSA Telecom Development, Inc. (McLeod) and Dakota Community Telephone, Inc. (Dakota Telephone) was received by the Commission. According to the parties the Agreement is a negotiated agreement whereby the parties extend arrangements to one another allowing for the transport and termination of wireline and wireless to wireline traffic over each other's network and between each other's subscribers. McLeod and Dakota Telephone agree to offer these services to Swiftel as a CMRS. The parties also wish to establish an arrangement that compensates McLeod and Dakota Telephone for transiting traffic that originates on Swiftel's network and terminates on a third carrier's network. Any party wishing to comment on the Agreement may do so by filing written comments with the Commission and the parties to the Agreement no later than November 27, 2001. Parties to the Agreement may file written responses to the comments no later than twenty days after the service of the initial comments.

Staff Attorney: Kelly Frazier
Date Docketed: 11/07/01
Initial Comments Due: 11/27/01

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15. 29. 2010

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

IN THE MATTER OF THE FILING BY OTTER)	ORDER DESIGNATING
TAIL CORPORATION REGARDING ITS)	AFFECTED AREA AND
NOTIFICATION OF INTENT TO APPLY FOR A)	LOCAL REVIEW
PERMIT FOR AN ENERGY CONVERSION)	COMMITTEE
FACILITY)	EL01-027

On November 5, 2001, the Public Utilities Commission (Commission) received a notification of intent to submit an application for a permit for an energy conversion facility from Otter Tail Corporation (OTC). OTC proposes to construct an electric generating facility, Big Stone II, adjacent to the existing Big Stone Plant. The site is located principally in Section 12, Township 121 North, Range 47 West and Section 7, Township 121 North, Range 46 West, Grant County, South Dakota. Plans are to use the existing plant site for the major equipment. However, additional property is required for the Big Stone II project for possible expansion of the existing cooling reservoir, future ash disposal facilities, wetlands mitigation, and general facility buffer zones. The proposed plant will burn Powder River Basin coal and be capable of producing approximately 600 MW. The boiler technology has not been selected at this time. The technologies under consideration are circulating fluidized bed, sub-critical pulverized coal, or supercritical pulverized coal. The pollution control technology selected will depend upon the boiler technology and a Best Available Control Technology review as required by the Prevention of Significant Deterioration Pre-construction Permit. The Big Stone II project is proposed as a "brown field" project. That is, it is slated for construction at the site of an existing facility, which considerably reduces the construction cost of a new plant. This approach enables OTC to share existing infrastructure with the existing Big Stone Plant including the following:

- Cooling water intake structure, pumping system and delivery line
- Rail spur
- Coal unloading facilities
- Solid waste disposal facilities

OTC estimates the capital cost of the Big Stone II project at \$700,000,000.

Under SDCL 49-41B-6, the Commission is required to designate the affected area relative to this filing and also to designate a local review committee within thirty days after the filing of the notification of intent. According to SDCL 49-41B-2(8), the term "siting area" is defined as "that area within ten miles in any direction of a proposed energy conversion facility or which is determined by the commission to be affected by a proposed energy conversion facility." In ARSD 20:10:22.01(1), "affected area" is defined as "that area which may be affected environmentally, socially, aesthetically, or economically by the location of a facility at a proposed site."

Under SDCL 49-41B-6, the Commission shall also designate the local review committee which shall be composed of the following:

- (1) The chairman of the tribal council of each affected reservation;
- (2) The president of the board of education of each affected school district;
- (3) The chairman of the county commissioners of each affected county;

- (4) The mayor of each affected municipality; and
- (5) A representative of the applicant utility designated by the utilities.

At its November 27, 2001, Commission meeting, the Commission discussed the designation of the affected area and the local review committee. The Commission has jurisdiction over this matter pursuant to SDCL 49-41B, specifically SDCL 49-41B-6 and ARSD 20:10:22:01 and 20:10:22:02. After its discussion, the Commission determined that the affected area shall consist of a 10 mile radius of the site of the proposed energy conversion facility. In accordance with SDCL 49-41B-6, the Commission designated the local review committee which shall be comprised of the following individuals:

Mr. Clayton Tucholke, Chair, Grant County Board of Commissioners

Mr. Glen Hull, Chair, Roberts County Board of Commissioners

Mr. Dale Aeosph, Mayor, City of Milbank

Mr. Jim McFarlane, Mayor, City of Big Stone City

Mr. Craig Haugard, President, Milbank School District Board

Ms. Ann Grabow, President, Big Stone City School District Board

Mr. Mark Rolfes, Otter Tail Power Company

Ms. Kathy Haas, Mayor, Odessa City Council

Mr. Dave Dinnel, Mayor, Ortonville City Council

Ms. Jeanne Krueger, Chairman, Big Stone County Commissioners

Mr. Arvid Gollnick, Chairman, Lac Qui Parle County Commissioners

Mr. Roger Barnhart, Chairman, Big Stone City School Board

Mr. Kenny Hendricks, Chairman, Clinton-Graceville-Beardsley School Board*

Ms. Donna Moberg, Clinton-Graceville-Beardsley School Board**

Mr. Scott Maas, Chairman, Ortonville School Board

*Indicates term expiring end of year

**Indicates coming on the Board in January

It is therefore

ORDERED, that the affected area for the purposes of this filing shall consist of a 10 mile radius of the site of the proposed energy conversion facility; and it is

FURTHER ORDERED, that the local review committee shall be comprised of the above referenced individuals.

Dated at Pierre, South Dakota, this 5th day of December, 2001.

CERTIFICATE OF SERVICE

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: Alaine Kalbo

Date: 12/6/01

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP

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PIERRE, SOUTH DAKOTA 57501-0160

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BOBBI J. BENSON
BRETT KOENECKE

December 20, 2001

OF COUNSEL
WARREN W. MAY

GLENN W. MARTENS 1881-1983
KARL GOLDSMITH 1885-1966

TELEPHONE
605 224 8803

TELECOPIER
605 224 8289

E-MAIL
dag@magt.com

Debra Elofson
Executive Director
Public Utilities Commission
State Capitol
500 East Capitol
Pierre, South Dakota 57501

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DEC 21 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: IN THE MATTER OF THE FILING BY OTTER TAIL CORPORATION
REGARDING ITS NOTIFICATION OF INTENT TO APPLY FOR A PERMIT
FOR AN ENERGY CONVERSION FACILITY
Docket: EL01-027
Our file: 3819

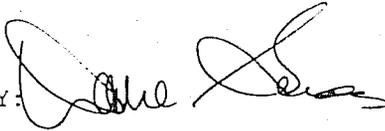
Dear Debra:

Enclosed are original and ten copies of a Notice of Appearance
on behalf of Brett Koenecke and me. Please file the enclosure.

With a copy of this letter, I am forwarding copies of the Notice
of Appearance to the service list.

Yours truly,

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAG:mw

Enclosures

cc/enc: Service List
Bruce Gerhardson
Steven Watts

016239319

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DEC 21 2001

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

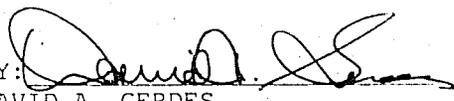
IN THE MATTER OF THE FILING BY) ELO1-027
OTTER TAIL CORPORATION REGARDING)
ITS NOTIFICATION OF INTENT TO) NOTICE OF APPEARANCE
APPLY FOR A PERMIT FOR AN ENERGY)
CONVERSION FACILITY)

TO THE PUBLIC UTILITIES COMMISSION, AND TO WHOM IT MAY CONCERN:

YOU WILL PLEASE TAKE NOTICE that the undersigned appear as local counsel for Otter Tail Corporation in the captioned matter, and copies of all communications, pleadings and filings in said docket should be served upon the undersigned.

Dated this 20th day of December, 2001.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 
DAVID A. GERDES
BRETT KOENECKE
Attorneys for Otter Tail Corporation
503 South Pierre Street
P.O. Box 160
Pierre, South Dakota 57501-0160
Telephone: (605)224-8803
Telefax: (605)224-6289

CERTIFICATE OF SERVICE

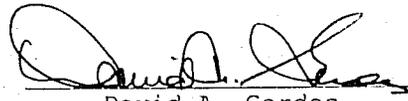
David A. Gerdes of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 20th day of December, 2001, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

02610

Karen Cremer
Staff Counsel
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

Michelle Ferris
Staff Analyst
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

Mark Rolfes
Otter Tail Power Co.,
P.O. Box 496
Fergus Falls, Minnesota 56538-0496



David A. Gerdes

LAW OFFICES
MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET
P.O. BOX 160
PIERRE, SOUTH DAKOTA 57501-0160

THOMAS C. ADAM
DAVID A. GERDES
CHARLES M. THOMPSON
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TIMOTHY M. ENGEL
MICHAEL F. SHAW
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OF COUNSEL
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EARL GOLDBLITH (BA, 1988)

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January 3, 2002

e mail
koenecke@magt.com

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JAN 03 2002

Ms. Debra Elofson
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

RE: IN THE MATTER OF THE FILING BY OTTER TAIL CORPORATION REGARDING
ITS NOTIFICATION OF INTENT TO APPLY FOR A PERMIT FOR AN ENERGY
CONVERSION FACILITY
Our file: 3819

Dear Ms. Elofson:

Enclosed for filing please find an original and ten copies each of Otter Tail Corporation's Motion to Reconsider Order of December 5, 2001, and Brief in Support of Motion to Reconsider Order of December 5, 2001.

By copy of this letter service is made upon Karen Cremer, Staff Counsel, South Dakota Public Utilities Commission, 500 E Capitol Avenue, Pierre, SD 57501; Michelle Ferris, Staff Analyst, South Dakota Public Utilities Commission, 500 E Capitol Avenue, Pierre, SD 57501; and Mark Rolfes, Otter Tail Power Company, PO Box 496, Fergus Falls, MN 56538-0496.

Very truly yours.

MAY, ADAM, GERDES & THOMPSON LLP



BRETT M. KOENECKE

BMK:njh

Enclosures

cc: Bruce Gerhardson

RECEIVED

JAN 03 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY) ELO1-027
OTTER TAIL CORPORATION REGARDING)
ITS NOTIFICATION OF INTENT TO) MOTION TO RECONSIDER
APPLY FOR A PERMIT FOR AN ENERGY) ORDER OF DECEMBER 5, 2001
CONVERSION FACILITY)

COMES NOW Otter Tail Corporation pursuant to ASRD 20:10:01:29 by its undersigned counsel of record, and moves the Public Utilities Commission ("Commission") to reconsider its Order Designating Affected Area and Local Review Committee dated December 5, 2001, and upon reconsideration to modify the composition of the Local Review Committee, upon the following grounds and for the following reasons:

1. The Committee includes Minnesota residents and members of Minnesota governmental entities. The designation of residents of another state to represent the interests of persons or political subdivisions in another state is beyond the jurisdiction of the Commission and of the State of South Dakota. Furthermore, such a designation violates the sovereignty of the State of South Dakota.

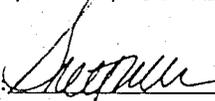
2. As designated in the Order, Minnesota representatives outnumber South Dakota representatives. It clearly violates the sovereignty of the State of South Dakota to permit nonresidents to potentially control a siting and a development under SDCL Ch. 49-41B.

3. Historically, the State of Minnesota has not granted comparable representation to citizens of the State of South Dakota.

This motion is based upon the accompanying memorandum of authorities and all the records and files in this docket.

Dated this 3rd day of January, 2002.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES

BRETT KOENECKE

Attorneys for Otter Tail Corporation

503 South Pierre Street

P.O. Box 160

Pierre, South Dakota 57501-0160

Telephone: (605)224-8803

Telefax: (605)224-6289

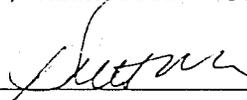
CERTIFICATE OF SERVICE

Brett M. Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 3rd day of January, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Karen Cremer
Staff Counsel
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

Michelle Ferris
Staff Analyst
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, South Dakota 57501

Mark Rolfes
Otter Tail Power Co.,
P.O. Box 496
Fergus Falls, Minnesota 56538-0496


Brett M. Koenecke

AN: CIO: N01-0

RECEIVED

JAN 03 2002

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

IN THE MATTER OF THE FILING BY)	EL01-027
OTTER TAIL CORPORATION REGARDING)	
ITS NOTIFICATION OF INTENT TO)	BRIEF IN SUPPORT OF
APPLY FOR A PERMIT FOR AN ENERGY)	MOTION TO RECONSIDER
CONVERSION FACILITY)	ORDER OF DECEMBER 5, 2001

The Public Utilities Commission of the State of South Dakota has considered a filing by Otter Tail Corporation regarding its intent to apply for a permit for an energy conversion facility pursuant to SDCL 49-41B. In concert with that chapter, the Public Utilities Commission is required to designate the area affected by the proposed energy conversion facility.

The Commission met November 27, 2001, and discussed the designation of the affected area and the local review committee. The Commission determined that the affected area shall consist of all land area within a 10 mile radius of the proposed site for the facility including parts of Minnesota. The Commission also designated the local review committee, consisting of approximately 15 individuals including a number of Minnesotans, including the Mayors of the cities of Odessa and Ortonville, the chairpersons of the Board of County Commissioners for Big Stone and Lac Qui Parle Counties and the chairpersons of the Clinton-Graceville-Beardsley and Ortonville School Boards.

Otter Tail Corporation has made a Motion asking the Public Utilities Commission to reconsider its Order designating affected area and local review committee, EL01-027, and files this brief in support of said Motion.

I. THE PUBLIC UTILITIES COMMISSION LACKS JURISDICTION TO NAME NON-RESIDENTS OF SOUTH DAKOTA TO A COMMITTEE UNDER ITS AUSPICES.

The South Dakota Public Utilities Commission is a creature of the Legislature of the State of South Dakota. SDCL 49-1. The Public Utilities Commissioners who are elected shall constitute a commission to be known and designated as the Public Utilities Commission of the

01629325

State of South Dakota. SDCL 49-1-8. It is a Class II Misdemeanor for the Public Utilities Commission to delegate any of the powers conferred upon it, or, the performance of the duties imposed upon it by law, to any other person except in cases where express authority has been given by statute. SDCL 49-1-17.

In the instant case the Public Utilities Commission has named a local review committee pursuant to Chapters 49-41B-6 and 49-41B-7. However, the Commission has seen fit to extend the radius of the affected area into Minnesota, a territory in which it lacks jurisdiction. In fact, it could be seen that a majority of the local review committee is comprised of residents of the State of Minnesota. See Order Designating Affected Area and Local Review Committee, EL01-027.

Otter Tail argues that this is an impermissible delegation of authority. Except to the extent that they are subject to the prohibitions of the Constitution, or that their action conflicts with the powers delegated to the national government or with congressional legislation enacted in the exercise of those powers, the governments of the states are sovereign within their territorial limits and have exclusive jurisdiction over persons and property located within those limits. However, no state can, by its laws, directly affect, bind, or operate upon property or persons beyond its territorial jurisdiction. 72 AmJur 2nd § 4, see also, State v. Prosser 98 NW2d 329, (SD 1959). Thus, the jurisdiction of a state does not ordinarily extend beyond its boundaries, although it may sometimes do so in the case of concurrent jurisdiction over a boundary river. Id.

In the instant case, the Commission seeks to add to a committee, persons over which it has no jurisdiction, by virtue of the fact that they are, as individuals, public officers in various jurisdictions in which the South Dakota Public Utilities Commission has no authority to act. The Commission, because it has no authority in the State of Minnesota, appears to have no legal authority to put residents of that state on this committee.

0-1-92-53-26

The Commission has created, as delegated by the Legislature, public offices for committee members. SDCL 49-41B-6,7. There appears to be no guidance in the South Dakota Code or cases respecting whether non-residents can hold such public offices. However, the Supreme Court of the State of Wisconsin has held that "it is a fundamental principle of our government that a person not an elector of the state is ineligible to hold a public office therein, although our constitution and statutes do not expressly so ordain." State v. Dammann 277 N.W. 278 (Wis. 1938), citing State v. Trumpf 50 Wis. 103, 108, 5 N.W. 876, 878, 6 N.W. 512; State ex rel Opp v. Smith 14 Wis. 497; State ex rel Schuet v. Murray, 28 Wis. 96, 9 Am Rep 489. Dammann revolved around the Wisconsin Development Authority, which was incorporated under the general incorporation laws of Wisconsin for the purpose of promoting and encouraging municipal and cooperative acquisition and operation of all forms of public utilities, and engaging in the utility business as a holding or as an operating company.

In addition, the United States Supreme Court has held that "it is unconstitutional for a state to project its legislation into other states." Brown-Forman v. New York Liquor Authority 476 US 573, 90 L.Ed.2d 552, 106 S.Ct. 2080 (1986), quoting Baldwin v. G.A.F. Seelig, Inc. 294 US 511, 521; 55 S.Ct. 497, 499; 79 L.Ed. 1032, 1037 (1935). see also Casanova Beverage Company, Inc., v. Commission of Public Safety, 486 N.W.2d 448. (Minn. App. 1992). By virtue of naming portions of the State of Minnesota as the affected area, the Commission may be placed in the position of having to act on a committee request to take some mitigation or other action in Minnesota, which the Commission clearly lacks power to do.

II. IT IS A VIOLATION OF THE SOVEREIGNTY OF THE STATE OF SOUTH DAKOTA TO APPOINT NON-RESIDENTS TO CONTROL A LOCAL REVIEW COMMITTEE APPOINTED UNDER SDCL 49-41B.

In addition to the arguments above, it is noted that the makeup of the local review committee potentially contains a majority of persons who are residents of the State of Minnesota.

As argued above, the Otter Tail asserts that it is a violation of state sovereignty to include any non-residents on the local review committee. But it bears discussion that the committee makeup may contain a majority of non-residents.

While it would be hoped that the Committee could operate and make its recommendations and hold hearings by forming consensus, the potential exists for a power shift to persons who are not under the jurisdiction or authority of the South Dakota Public Utilities Commission, from whence these persons gained power. The Commission could be forced to consider recommendations weighted in favor of the Minnesota territory outside its jurisdiction and upon which it cannot lawfully act. Further, the Commission could be forced to review, revise or reject recommendations which did not meet the clear need of those persons who are subject its protection, namely residents of the State of South Dakota.

While the law requires that no persons other than South Dakotans be appointed to the local review committee, the practical considerations also point toward reconsideration and rejection of the current plan.

III. THE STATE OF MINNESOTA HAS NOT AND WOULD NOT GRANT SIMILAR CONSIDERATION TO SOUTH DAKOTANS SIMILAR PROJECTS.

The State of Minnesota appears to have a siting law different from that found in this state. The general law gives most responsibility to the officials who comprise the Minnesota Environmental Quality Board.

The Minnesota Environmental Quality Board may appoint one or more advisory task forces to assist it in carrying out its duties. Task forces appointed to evaluate sites or routes considered for designation shall be comprised of as many persons as may be designated by the Board, but at least one representative from each of the following: regional development commissions, counties and municipal corporations and one town board member from each

county in which a site or route is proposed to be located. No officer, agent, or employee of the utility shall serve on an advisory task force. Minn. Statutes 2001, 116C.59.

Thus, no similar consideration would be given to the residents of the State of South Dakota if, for example, Big Stone II were to be built in Ortonville. The Minnesota Siting law respects only the territory in the Minnesota county in which the facility is proposed.

The State of Minnesota does accept other public participation. The statute provides that the Board shall adopt broad spectrum citizen participation as a principle of operation. The form of public participation shall not be limited to public hearing and advisory task forces and shall be consistent with the Board's rules and guidelines as provided for in Section 116C.66. Minn. Statutes 2001, 116C.59(2).

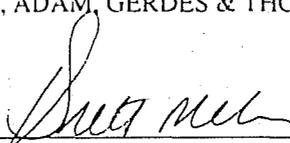
The Commission should compare the Minnesota model to its Order. To construct non-residents as public officers where the state of their residence does not provide for reciprocal arrangements is improper and wrong.

IV. CONCLUSION.

For the reasons and upon the authority cited above, the Commission should reconsider its previous Order and enter a new order designating the affected area as a territory in South Dakota within a 10 mile radius of the proposed site and appointing a review committee from within that area.

Dated this 3rd day of January, 2002

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

DAVID A. GERDES
BRETT M. KOENECKE
Attorneys for Otter Tail Corporation
503 S. Pierre Street
PO Box 160

Pierre, South Dakota 57501-0160
(605) 224-8803
(605) 224-6289 (FAX)

CERTIFICATE OF SERVICE

3 Brett M. Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the day of JANUARY, 2002, he mailed by United States mail, first class postage thereon prepaid, a true and correct copy of the foregoing in the above-captioned action to the following at their last known addresses, to-wit:

Karen Cremer
Staff Counsel
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501

Michelle Ferris
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Avenue
Pierre, SD 57501

Mark Rolfes
Otter Tail Power Company
PO Box 496
Fergus Falls, MN 56538-0496


Brett M. Koenecke

- 2001 NOV 27 10 50 AM
- (2) The president of the board of education of each affected school district;
 - (3) The chairman of the county commissioners of each affected county;
 - (4) The mayor of each affected municipality; and
 - (5) A representative of the applicant utility designated by the utilities

At its November 27, 2001, Commission meeting, the Commission discussed the designation of the affected area and the local review committee. The Commission has jurisdiction over this matter pursuant to SDCL 49-41B, specifically SDCL 49-41B-6 and ARSD 20:10:22.01 and 20:10:22.02. After its discussion, the Commission determined that the affected area shall consist of a 10 mile radius of the site of the proposed energy conversion facility. In accordance with SDCL 49-41B-6, the Commission designated the local review committee which was comprised of the following individuals: Mr. Clayton Tucholke, Chair, Grant County Board of Commissioners; Mr. Glen Hull, Chair, Roberts County Board of Commissioners; Mr. Dale Aeosph, Mayor, City of Milbank; Mr. Jim McFarlane, Mayor, City of Big Stone City; Mr. Craig Haugard, President, Milbank School District Board; Ms. Ann Grabow, President, Big Stone City School District Board; Mr. Mark Rolfes, Otter Tail Power Company; Ms. Kathy Haas, Mayor, Odessa City Council; Mr. Dave Dinnel, Mayor, Ortonville City Council; Ms. Jeanne Krueger, Chairman, Big Stone County Commissioners; Mr. Arvid Gollnick, Chairman, Lac Qui Parle County Commissioners; Mr. Roger Barnhart, Chairman, Big Stone City School Board; Mr. Kenny Hendricks, Chairman, Clinton-Graceville-Beardsley School Board; Ms. Donna Moberg, Clinton-Graceville-Beardsley School Board; and Mr. Scott Maas, Chairman, Ortonville School Board.

On January 3, 2002, the Commission received a Motion to Reconsider Order of December 5, 2001, from OTC. At its January 24, 2002, meeting, the Commission considered the motion. The Commission has jurisdiction over this matter pursuant to SDCL 49-34A-42 through 49-34A-44, inclusive. After listening to arguments from the parties, the Commission unanimously voted to grant the Motion to Reconsider Order of December 5, 2001. The Commission then unanimously voted to designate a local review committee that falls within the ten mile radius of the proposed energy conversion facility that lies within the borders of South Dakota; to send notice of the proposed route and the procedure for intervening to the Minnesota entities listed in the December 5, 2001, order; and to extend an open invitation to the Minnesota entities to attend the public hearings in this matter. It is therefore

ORDERED, that the affected area for the purposes of this filing shall consist of a ten mile radius of the site of the proposed energy conversion facility that lies within the borders of South Dakota; and it is

FURTHER ORDERED, that the local review committee shall be comprised of the following individuals:

Mr. Clayton Tucholke, Chair, Grant County Board of Commissioners;
Mr. Glen Hull, Chair, Roberts County Board of Commissioners;
Mr. Dale Aeosph, Mayor, City of Milbank;
Mr. Jim McFarlane, Mayor, City of Big Stone City;
Mr. Craig Haugard, President, Milbank School District Board;
Ms. Ann Grabow, President, Big Stone City School District Board;
Mr. Mark Rolfes, Otter Tail Power Company. It is

FURTHER ORDERED, that notice of the proposed route and the procedure for intervening be sent to the Minnesota entities listed in the December 5, 2001, order; and to extend an open invitation to the above referenced Minnesota entities to attend the public hearings in this matter.

Dated at Pierre, South Dakota, this 31st day of January, 2002.

CERTIFICATE OF SERVICE

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: Melissa Kalbs

Date: 2/1/02

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

44-610-2610

- (4) The mayor of each affected municipality; and
- (5) A representative of the applicant utility designated by the utilities.

At its November 27, 2001, Commission meeting, the Commission discussed the designation of the affected area and the local review committee. The Commission has jurisdiction over this matter pursuant to SDCL 49-41B, specifically SDCL 49-41B-6 and ARSD 20:10:22:01 and 20:10:22:02. After its discussion, the Commission determined that the affected area shall consist of a 10 mile radius of the site of the proposed energy conversion facility. In accordance with SDCL 49-41B-6, the Commission designated the local review committee which shall be comprised of the following individuals:

- Mr. Clayton Tucholke, Chair, Grant County Board of Commissioners
- Mr. Glen Hull, Chair, Roberts County Board of Commissioners
- Mr. Dale Aeosph, Mayor, City of Milbank
- Mr. Jim McFarlane, Mayor, City of Big Stone City
- Mr. Craig Haugard, President, Milbank School District Board
- Ms. Ann Grabow, President, Big Stone City School District Board
- Mr. Mark Rolfes, Otter Tail Power Company
- Ms. Kathy Haas, Mayor, Odessa City Council
- Mr. Dave Dinnel, Mayor, Ortonville City Council
- Ms. Jeanne Krueger, Chairman, Big Stone County Commissioners
- Mr. Arvid Gollnick, Chairman, Lac Qui Parle County Commissioners
- Mr. Roger Barnhart, Chairman, Big Stone City School Board
- Mr. Kenny Hendricks, Chairman, Clinton-Graceville-Beardsley School Board*
- Ms. Donna Moberg, Clinton-Graceville-Beardsley School Board**
- Mr. Scott Maas, Chairman, Ortonville School Board

*Indicates term expiring end of year

**Indicates coming on the Board in January



South Dakota

Public Utilities Commission

State Capitol, Pierre, South Dakota 57501-5070

Telephone (605) 773-3201

Fax (605) 773-3809

Consumer Complaints Hotline 1-800-332-1782

Transportation/Warehouse Division (605) 773-5280

February 6, 1991

Mr. Earl Helgeson, Chair
Lincoln County Board of Commissioners
100 East 5th
Canton, SD 57013

RE: IN THE MATTER OF THE APPLICATION OF NORTHERN STATES POWER COMPANY FOR AN ENERGY FACILITY PERMIT AT THE PATHFINDER POWER PLANT SITE NEAR SIOUX FALLS, SOUTH DAKOTA
PUC DOCKET NO. EL91-001

Dear Mr. Helgeson:

This letter is to inform you of Northern States Power Company's (NSP) filing with the Public Utilities Commission (Commission) of its Notice of Intent to apply for a permit to construct an energy conversion facility. The facility will be located ~~at the site of the Pathfinder power plant near Sioux Falls, South Dakota. A natural gas pipeline will also be established which may be routed through Lincoln County.~~ I have enclosed a copy of the Commission's initial Order and NSP's Notice of Intent in this case which further describe this filing.

*add
to the
assessing
Big St
Plant
in
Hurtle
SD*

Under South Dakota law, within thirty days after the filing of the Notice of Intent to apply for a permit for the construction of such a facility (which was filed January 8, 1991), the Commission is required to designate individuals who are to comprise a local review committee. This committee will be required, among other things, to participate in the assessment of the social and economic effect of the proposed facility. Those persons required by law to be a member of the local review committee include:

- (1) The chairman of the tribal council of each affected reservation;
- (2) The president of the board of education of each affected school district;
- (3) The chairman of the county commissioners of each affected county;
- (4) The mayor of each affected municipality; and
- (5) A representative of the applicant utility designated by the utilities.

Jim Burg
Chairman
Laska Schoenfelder
Vice-Chairman
Ken Stofferahn
Commissioner

Marshall Damgaard
Executive Director

Edward R. Anderson
Delia Andre
Harlan Best
Martin C. Bettmann
Sue Cichos
Richard D. Coit
Doug Eidahl
Marlene Fischbach
Lisa Forest
Richard Gallup
Lewis Hammond
Dave Jacobson
Shirleen Kennedy
Bob Knadle
Jolene Nelson
Nancy J. Nelson
Dominica Oaks
Gregory A. Rislov
Mary Sieck
Geoff Simon
Steven M. Wegman



Therefore, as the Chairman of the Lincoln County Board of Commissioners, you have been designated as one of the local review committee members.

Since the committee members are probably unfamiliar with this project and how the committee is involved, Commission Staff would like to schedule a meeting some time later in February to discuss this matter with the committee members. At this meeting Commission Staff would discuss the laws which address what role the committee plays in this case. Commission Staff suggests a meeting be scheduled for one evening during the last week in February in Sioux Falls. Next week someone on Commission Staff will contact you and the other committee members to arrange a date to accommodate everyone on the committee.

Although Commission Staff will explain at the February meeting what responsibilities the committee will have in this case, I will briefly summarize the committee's functions in this letter. I have also enclosed a copy of the laws which set forth the committee's duties. As the laws indicate, the local review committee's functions include assessing the potential social and economic effects of the proposed energy conversion facility, assessing the surrounding area's ability to absorb those effects and arriving at mitigation measures. At this time NSP has only filed its Notice which indicates that it will file its application for a permit. NSP anticipates actually filing its application on July 8, 1991. Within seven months after the application is filed with the Commission, the committee is required to file a final report with the Commission pertaining to its recommendations on the assessment of the effect of the facility. Under South Dakota laws 49-41B-8 and 49-41B-9 (see enclosed), the committee may employ Staff persons as determined by the Commission. The expense of such Committee Staff will be paid by the initial filing fee which NSP will be required to file with the Commission at the time the application is filed. Expense payments and other authorized payments to committee members are to be financed by the unit of government which the members represent.

As I mentioned earlier, this letter is merely a brief overview of the responsibilities of the local review committee and the financing of committee expenses. At the February meeting, Commission Staff will explain in more detail the committee's duties and the anticipated schedule in this case. Currently, there is nothing the individual members need to do prior to the first meeting. However, if you do have any questions please do not hesitate to give Martin Bettmann, Staff Engineer, or me a call. Also, someone on Commission Staff will be contacting you and the other committee members next week to schedule the first meeting of the local review committee.

Thank you for your cooperation in this matter. I look forward to meeting you and the other committee members.

Respectfully,

NANCY J. NELSON
Staff Attorney

cc: Angus Anson
Martin Bettmann
Greg Rislov

§ 49-41B-7. Assessment by local review committee - Factors included.

The local review committee shall meet to assess the extent of the potential social and economic effect to be generated by the proposed facility, to assess the affected area's capacity to absorb those effects at various stages of construction, and formulate mitigation measures. The assessment of the local review committee shall include but not be limited to consideration of the temporary and permanent alternatives in the following areas:

- (1) Housing supplies;
- (2) Educational facilities and manpower;
- (3) Waste supply and distribution;
- (4) Waste water treatment and collection;
- (5) Solid waste disposal and collection;
- (6) Law enforcement;
- (7) Transportation;
- (8) Fire protection;
- (9) Health;
- (10) Recreation;
- (11) Government;
- (12) Energy.

Source: SL 1977, ch 390, § 12.

§ 49-41B-8. Employment of personnel by committee - Expenses - Information furnished by commission.

The local review committee may employ such persons as determined by the Public Utilities Commission which may be required to carry out the provisions of § 49-41B-7 and the expenses of said staff shall be paid from the initial filing fee. The commission shall furnish copies of the application to the members of the local review committee and all other information which the commission determines that the committee should receive.

Source: SL 1977, ch 390, § 14.

§ 49-41B-9. Financing of committee expenses.

Expense payments and other authorized payments to members of the local review committee for their service on the committee shall be financed by the unit of government or utility which they represent.

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Source: SL 1977, ch 390, § 11.

§ 49-41B-10. Final report of committee.

Within seven months after the application is filed the local review committee shall file a final report with the public utilities commission which includes the recommendations of the committee as to mitigation measures and minority reports.

Source: SL 1977, ch 390, § 13.

ELO1-0-27

215 South Cascade Street
PO Box 996
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpeco.com (web site)

RECEIVED

FEB 04 2002

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

February 1, 2002

OTTER TAIL
Power Company

Ms. Debra Elofson
Executive Director
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501

Dear Ms. Elofson:

Subject: Update on Big Stone II Project

Recently, Otter Tail Power Company was notified that our project partner was withdrawing from the Big Stone II study. With that decision, it was necessary for Otter Tail Power Company to review our approach to the project. We are refocusing our effort to secure customers for the output from the plant and to find other equity partners. We have not cancelled the project, just changed emphasis.

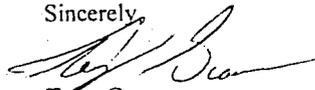
Unfortunately, we have had to put many of our permit and regulatory activities on hold with the exception of some selected areas. The following permitting/regulatory activities are continuing:

1. Barr Engineering will continue with their evaluation of the water supply from Big Stone Lake with a targeted completion of March 15, 2002.
2. Interpoll Laboratories will continue with the collection of the one-year of background ambient air quality data.
3. We will continue with limited in-house evaluation of plant design technologies.

We have discontinued preparation of the application for a Permit for an Energy Conversion Facility and are not planning to submit an application in mid to late summer as originally contemplated. It is our understanding that while the Commission has designated the affected area and the local review committee, the Commission may wish to delay activating the local review committee until our plans become more clearly defined. We will notify the Commission once the decision is made to resume the permitting process.

I appreciate the attention that you and your staff have given to the project thus far and look forward to the prospect of renewing our permitting activity at a later date.

Sincerely,



Terry Graumann
Manager, Environmental Services

215 South Cascade Street
PO Box 496
Fergus Falls, Minnesota 56538-0496
218 739-8200
www.otpco.com (web site)

ELO1-027

RECEIVED

JUL 30 2003

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION



July 28, 2003

Ms. Pam Bonrud, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501

Dear Ms. Bonrud:

Subject: Notification of Intent filed Pursuant to SDCL 49-41B-5
Proposed Big Stone II Project

On November 1, 2001, Otter Tail Corporation filed a Notification of Intent (NOI) to submit an application for a permit for an energy conversion facility as required by South Dakota Code of Law Chapter 41B-5 and the Administrative Rules of South Dakota Section 20:10:22:02.

Following the submission, the Public Utilities Commission acted on this NOI and established a local public review committee. Since that time, the project to build another generating unit at the existing Big Stone Plant site in northeast South Dakota has encountered some obstacles. Because of changing economic conditions, we are no longer certain of the future time frame of the project. Otter Tail Corporation still believes the Big Stone Plant site is an ideal site for a generation expansion and we continue to pursue the project; however, the time frame going forward is undetermined at this time.

Because of the undetermined time frame for any potential project at this site, we feel it is prudent to close the docket that was opened in response to our November 1, 2001 letter.

We appreciate the help and assistance of the Public Utilities Commission in our endeavor to add generating resources in northeast South Dakota. We will keep the Commission advised as prospects for this project develop.

In the event of any questions regarding this letter, please feel free to contact Mr. Terry Graumann by phone at 218-739-8407, or email at tgraumann@otpco.com; or me at 605-862-6360, or mrolfes@otpco.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Rolfes".

Mark Rolfes
Manager, New Business Development

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE FILING BY OTTER) ORDER CLOSING DOCKET
TAIL CORPORATION REGARDING ITS)
NOTIFICATION OF INTENT TO APPLY FOR A) EL01-027
PERMIT FOR AN ENERGY CONVERSION)
FACILITY)

On November 5, 2001, the Public Utilities Commission (Commission) received a notification of intent to submit an application for a permit for an energy conversion facility from Otter Tail Corporation (OTC).

On November 8, 2001, the Commission electronically transmitted notice of the filing and the intervention deadline of November 30, 2001, to interested individuals and entities. No petitions to intervene or comments were filed.

On July 30, 2003, the Commission received a letter from OTC requesting that this docket be closed.

The Commission has jurisdiction over this matter pursuant to SDCL 49-41B, specifically SDCL 49-41B-6 and ARSD 20:10:22:01 and 20:10:22:02.

At a regularly scheduled August 19, 2003, meeting, the Commission considered this matter. The Commission voted unanimously to close the docket. It is therefore

ORDERED, that the docket shall be closed.

Dated at Pierre, South Dakota, this 28th day of August, 2003.

CERTIFICATE OF SERVICE	
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>Mildred Kolbe</u>
Date:	<u>8/29/03</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Robert K. Sahr
ROBERT K. SAHR, Chairman

Gary Hanson
GARY HANSON, Commissioner

James A. Burg
JAMES A. BURG, Commissioner