

TESTIMONY

Presented by: Brian P. Kalk, Commissioner
Public Service Commission

Before: Energy Development and Transmission Committee
Honorable Rich Wardner, Chairman

Date: March 17, 2009

Chairman Wardner and members of the Committee, thank you for the invitation to present testimony before you today. For the record, I am Public Service Commissioner Brian P. Kalk. I am pleased to provide you with a Public Service Commission update on energy development and transmission issues.

We continue to experience interest in the development of energy in our state from a variety of groups and at all levels of government. We are happy to present information on the potential impacts of energy development and the role of the Public Service Commission at any time.

Two specific examples would be two recent presentations. The first to the North Dakota Building and Trades Convention on the impacts to North Dakota on the pending federal legislation of "Cap and Trade."

The second was a presentation to the North Dakota Wildlife Society on the potential impacts of wind development in our state.

We have also visited with city and county commissioners as they consider developing their own policies on wind development.

The Public Service Commission continues to follow the development of federal energy legislation carefully and the impacts to North Dakota rate payers. I will be sharing some thoughts on federal policies at the end of my comments.

I would now like to update the committee on the status of the Big Stone II Generating Plant.

As you are aware, on November 14 and 15, 2006, Otter Tail Power Company and Montana-Dakota Utilities (MDU) Company filed applications under North Dakota Century Code Section 49-05-16 for advance determination of prudence for their participation and ownership, along with five other utilities, in the Big Stone II energy conversion facility and associated transmission for the purpose of providing electric service to customers.

The facility was proposed to be a 630 MW pulverized coal facility located adjacent to the existing Big Stone Plant in Big Stone City, South Dakota.

Great River Energy and Southern Minnesota Municipal Power Agency subsequently withdrew as participants in the Big Stone II Project. On October 4, 2007, Otter Tail and MDU together sought Commission authorization to supplement the record.

On March 10, 2008, Otter Tail and MDU together submitted Supplemental Direct Testimony in support of their application, based on an updated analysis for the cost of a 500 or 580 MW facility with a commercial operation date of mid-2013. A supplemental hearing was held in April, 2008.

On August 27, 2008, the Commission, by order, approved the request for advance determination of prudence for Otter Tail's and MDU's ownership in the proposed Big Stone II Generating Plant for a minimum of 121.8 MW up to a maximum of 133 MW and a proportionate ownership share of the associated transmission electric resource additions.

On August 19, 2009, the South Central Judicial District Court, on an appeal by the Dakota Resource Council and Mark Trechock, intervenors, affirmed the Order of the Commission. Intervenor have appealed this decision to the North Dakota Supreme Court where it is pending.

On September 11, 2009, Otter Tail Power Company withdrew from the Big Stone II Generating Plant Project under the project agreements, citing a combination of factors:

- 1) Significant changes to recent energy price forecasts expected to result in changes to the company's next resource plan and resource adequacy requirements;
- 2) Unprecedented financial market conditions and cost-recovery risks that made raising the large amount of necessary capital unreasonably costly;
- 3) The risk under the project agreements that the company could be required to either increase its share of the plant, or participate in a smaller and less economic project if additional participants did not join in the project;
- 4) Financing risks associated with lender concern over the growing uncertainty in the direction of federal climate-change legislation and the Environmental Protection Agency's (EPA) intent to regulate carbon dioxide and other greenhouse gases; and
- 5) Uncertainty due to protracted permit appellate processes.

The remaining project participants, including MDU, sought but were unable to obtain commitments from new project participants.

On November 2, 2009, MDU and the remaining project participants determined it was no longer feasible to continue the development of Big Stone II Project at a size and cost that would be economically efficient.

On December 2, 2009, MDU filed an application for a determination that MDU's participation in the Big Stone II Generating Station is no longer prudent.

On December 4, 2009, MDU filed an application for authority for deferred accounting for costs related to MDU efforts in securing needed new electric generation to meet the needs of its customers, primarily the Big Stone II Generating Station, until disposition of its next general electric rate case.

On December 14, 2009, Otter Tail Power Company filed an application for authority to use deferred accounting until its next rate case for costs incurred during its participation in the Big Stone II Project.

On January 19, 2010, Otter Tail Power Company filed an application for determination that continuation of the Big Stone Project is no longer prudent.

On March 10, 2010, the Commission issued Notice of Hearings on the above matters. Public Hearings on these cases are scheduled for May 5, 2010.

The issues to be considered are: whether Otter Tail's and MDU's continued participation in the Big Stone II Generating Station is no longer prudent; and whether authorization for deferred accounting of costs incurred by Otter Tail during participation in the Big Stone II Project is in the public interest; and whether authorization for deferred

accounting of costs related to MDU's efforts in securing new electric generation, including participation in the Big Stone II Project, is in the public interest.

With regard to projects the PSC has been siting, I will provide the committee with an update of the PSC's recent activities. By any measure, we continue to be exceptionally busy, which is continued proof of the high degree of interest and investment in North Dakota's energy sector.

Since our last testimony on November 24, 2009, the PSC has:

- Received one new letter of intent, which indicates a developer, intends to submit an application at a future date. The letter of intent is for the construction of the Bridger Pipeline, an 85-mile, 10-inch crude oil pipeline together with three gathering pipeline interconnects and two truck receipt points, interconnecting with Bridger's existing little Missouri System at Fryburg Station and Belle Fourche Pipeline's existing system at Skunk Hill Station.
- Received one new application for project siting, for Otter Tail's 0.53-mile emergency reroute of the Hankinson-Ellendale 230 kV electric transmission line in Sargent County.
- Held one formal hearing on an energy development project. This was Allele Inc.'s construction of the 230 kV transmission line near Center, ND (Oliver and Morton Counties) along a corridor approximately 22 miles long that will interconnect the new substation at the Bison 1 Wind Project and the Square Butte Substation. All energy generated and delivered by the new transmission facility will be transmitted to Minnesota Power's system.

- Issued four new siting orders. One was for an 8-inch steel, 6-mile crude oil pipeline in Mountrail County; one was for the emergency reroute of the Hankinson–Ellendale transmission line; one was for the Allete, Inc. 22-mile, 230 kV electric transmission in Oliver and Morton Counties; and one was for the Williston to Tioga, 61-mile, 230 kV electric transmission line in Williams County.
- Continued to monitor and receive updates for twelve permitted construction projects. Two are for electric transmission projects; four are wind farms; six are pipeline projects.

While it continues to be busy at the PSC, we work hard to both process these cases in a timely manner, and give the attention to detail that is demanded by the public's interest.

I would like to update the committee on recent federal developments inside the Office of Surface Mining (OSM) and the EPA.

OSM's proposed budget for FY 2011 will significantly reduce the amount of federal funds for state regulatory program grants. Nationwide, the administration proposes to reduce these grants from \$71 million to \$60 million, or more than a 15% reduction.

Statements in the budget proposal clearly say that states will be expected to increase fees assessed to the mining companies to make up the shortfall in Federal funds.

The federal budget writers also assume states can automatically increase fees charged to the mining industry based on the following statement: During a conference

call with the states on March 3rd, the new OSM director clearly indicated that states should expect further reductions in federal funds for state regulatory programs in future years.

While OSM recognizes that many states will need legislative action to increase fees, OSM seems to think they will be able to help convince state legislatures to do so. As result of the proposed cuts to the regulatory grants, the PSC Reclamation Division may not fill the new environmental scientist position that was authorized and funded by the 2009 Legislature.

The EPA continues to advance their proposed regulation to regulate greenhouse gas (GHG) emissions under the Clean Air Act. In 2009, the Public Service Commission spent considerable time and resources defining the impact of CO2 regulations on North Dakota rate payers and concluded that, at \$20 a ton, it would be a 25-40% increase in consumer energy costs.

The Public Service Commission continues to express concerns to the EPA and our federal delegation regarding EPA regulation of GHG's. Any new requirement of private or public business, utility and/or industry to secure additional permits will certainly slow, if not stop altogether, new business development or expansion.

The PSC cannot imagine it is the intent of any agency or department of the government to slow down, impede or halt business growth during these trying economic times. We have recommended the EPA consider scientific facts regarding GHG on the health of our citizens and the affect on global warming. It appears the EPA could be forced into actions without full prudent consideration of the facts of GHG's at hand.

North Dakota maintains a delicate balance between environmental issues and

the needs of our citizens to sustain economic security. We will continue to urge EPA to work with Congress, business, industry and other affected groups before launching into regulations that will unfairly impact consumers in North Dakota.

Finally, the EPA recently proposed a "tailoring rule" to exempt sources under 50,000 tons per year, in spite of the fact the Clean Air Act sets the levels at 250 tons per year. This appears to me to be a direct attack on energy producing states such as North Dakota and will unfairly target our coal and oil industries. It is my belief that we are doing it right on energy development in North Dakota and the single biggest threat to North Dakota is the uncertainty being created at the federal government level in the area of energy development.

Without certainty at the federal level it will be difficult to make the investments in energy development that will allow us to meet our growing energy demands and keep consumer cost down.

Thank you again for the invitation to present testimony before you. I would be happy to answer any questions you may have.