

Minnesota Public Utilities Commission

Staff Briefing Papers

Meeting Date: **January 15, 2009**..... **Agenda Item # 1

Company: Otter Tail Power Company; Central Minnesota Municipal Power Agency; Heartland Consumers Power District; Montana-Dakota Utilities Co.; and Western Minnesota Municipal Power Agency/Missouri River Energy Services (collectively, the "Applicants")

Docket No. E-017; ET-6131, ET-6130, ET-6444; ET-6135/ET-10/CN-05-619
In the Matter of the Application of Otter Tail Power Company and Others for Certification of Transmission Facilities in Western Minnesota

Issue(s): Should the Commission grant Certificates of Need for the proposed transmission facilities? If so, should the Commission attach any conditions to the approval?

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Relevant Documents

*Minn. Stat. § 14.62; Minn. Stat. § 216B.243; Minn. Rules, Chapter 7849

*Staff Briefing Papers for the June 5, 2008 Agenda Meeting

*OES Exhibit 27 (from the second phase of the proceeding)–Surrebuttal Statement and Department Conclusion and Recommendations

*Applicants' February 6, 2008 Brief in Support of Certificate of Need (pages 41-44)

*Excelsior's September 5, 2007 Exceptions

*Final Exhibit List, dated November 14, 2008 (The individual exhibits from the third phase of the proceeding are not listed here but are on the exhibit list.)

***The list is continued on the next page.**

The attached materials are workpapers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless otherwise noted.

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Statement of the Issue

Should the Commission grant Certificates of Need for the proposed transmission facilities? If so, should the Commission attach any conditions to the approval?

Relevant Documents (Continued)

- *ALJ's Sixth Prehearing Order, dated November 10, 2008
- *Transcript, Volume 1, November 12, 2008
- *Transcript, Volume 2, November 13, 2008
- *Applicants' Post Hearing Brief, dated November 21, 2008
- *OES Second Supplemental Initial Brief, dated November 20, 2008
- *Joint Intervenors' Post-Hearing Brief, dated November 21, 2008
- *ALJs' Summary of Testimony Received in Response to Report of Boston Pacific Company, Inc., dated December 23, 2008

Background Information

On October 3, 2005, Otter Tail Power Company (OTP) and six other utilities (collectively, the "Applicants") filed a Certificate of Need Application for a proposed transmission project in western Minnesota. According to the Applicants, the proposed facilities are needed to provide transmission outlet capacity for a new coal-fired unit at the Big Stone Power Plant in South Dakota and to strengthen the regional power grid.

The proposed transmission facilities fall under the definition of "large energy facility" in Minn. Stat. § 216B.2421, subd. 2 (2). Therefore, in accordance with Minn. Stat. § 216B.243, subd. 2, the facility cannot be constructed or sited in Minnesota unless the Commission issues a Certificate of Need to the Applicants.

The Certificate of Need rules pertinent to this filing are Minn. Rules, parts 7849.0010 to 7849.0400. More specifically, the application requirements for large high voltage transmission facilities are given by parts 7849.0240 and 7849.0260 to 7849.0340.

The indicated percentage ownership and resulting nominal megawatt (MW) allocations from the planned Big Stone II generating unit were as follows: Central Minnesota Municipal Power Agency (CMMPA), 5.0%, 31.5 MW; Great River Energy (GRE), 19.33%, 121.8 MW; Heartland Consumers Power District (Heartland), 4.2%, 26.25 MW; Montana-Dakota Utilities (MDU), 19.33%, 121.8 MW; Otter Tail Power Company (OTP), 19.33%, 121.8 MW; Southern Minnesota Municipal Power Agency (SMMPA), 7.8%, 49.35 MW; and Western Minnesota Municipal Power Agency represented by Missouri River Energy Services (MRES), 25.0%, 157.5

MW.¹ The percentages for the proposed transmission project were the same as indicated above.

On November 4, 2005, the Applicants submitted comments as well as some information to supplement the application.

On November 29, 2005, the Commission issued its ORDER AGREEING TO COMBINING THE ENVIRONMENTAL REPORT AND THE ENVIRONMENTAL IMPACT STATEMENT DOCUMENTS.

On December 19, 2005, the Commission issued its ORDER ACCEPTING APPLICATION AS SUBSTANTIALLY COMPLETE AND REQUIRING ADDITIONAL INFORMATION, as well as the NOTICE AND ORDER FOR HEARING for the Certificate of Need process. On January 12, 2006, the Commission issued an ERRATUM NOTICE correcting two errors in the NOTICE AND ORDER FOR HEARING.

The following entities were official parties to the proceeding: the Applicants²; the Office of Energy Security of the Minnesota Department of Commerce (OES)³; the Minnesota Center for Environmental Advocacy, the Union of Concerned Scientists, the Izaak Walton League, Fresh Energy, and Wind on the Wires (the Joint Intervenors); Excelsior Energy Inc. (Excelsior); the Midwest Independent Transmission System Operator (MISO); FPL Energy, Inc.; the Minnesota Municipal Utilities Association (MMUA); and the South Dakota Governor's Office of Economic Development (GOED). Intervention was granted to Ron Gustafson and Linda Castagneri, but their intervention was limited to issues concerning the Mesaba Project proposed by Excelsior.

Several public hearings were held in or near the affected area and in St. Paul during the period October 9-16, 2006.

Evidentiary hearings were held at the Commission's offices during the period December 5-22, 2006.

Post-hearing briefs were submitted by the Applicants, the OES, MISO, Excelsior, GOED, the Joint Intervenors, and MMUA. Reply briefs were submitted by the Applicants, the OES, GOED, Excelsior, and the Joint Intervenors. Some of the parties filed Proposed Findings of Fact.

¹The numbers for MRES included amounts for Hutchinson Utilities Commission under a power supply contract.

²As noted below, two of the above-listed utilities have withdrawn from the project. In the rest of this briefing paper, "Applicants" refers collectively to the five utilities still participating in the project.

³In its filing of February 13, 2008, the Department noted that Governor Pawlenty, by an Executive Order, has created the Office of Energy Security within the Department. In the rest of this briefing paper, staff will use the acronym "OES" to denote the intervening part of the Department.

The FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION of Administrative Law Judges Steve M. Mihalchick and Barbara L. Neilson (the ALJs' Report or the Initial Report) was issued on August 16, 2007.

On August 31, 2007, the Applicants and the OES submitted a "Settlement Agreement."

Exceptions to the ALJs' Report were submitted by the Applicants, Excelsior, and the Joint Intervenors. In addition, the OES submitted a letter indicating that the ALJs did not err in any material way and that the Settlement Agreement is consistent with the ALJs' Report.

Replies to exceptions were submitted by the Applicants, Excelsior, and the Joint Intervenors.

On September 17, 2007, the Applicants submitted a letter describing "two significant developments affecting the Big Stone project." On September 28, 2007, the Applicants submitted a letter proposing further proceedings in this docket.

On October 19, 2007, the Commission issued its ORDER RECOMMENCING PROCEEDINGS IN THE OFFICE OF ADMINISTRATIVE HEARINGS. In that Order, the Commission noted Applicants' communicated sense of urgency and adopted a proposed schedule for completion of the docket. The Commission added that the ALJs could and should make adjustments to that schedule, as circumstances dictated.

On December 3, 2007, ALJs Mihalchick and Neilson issued their ORDER DEFINING ISSUES TO BE CONSIDERED AND RULING ON MOTION FOR PROTECTIVE ORDER.

A public hearing was held in Ortonville on January 10, 2008 before ALJ Mihalchick. Evidentiary hearings were held at Commission offices on January 23-25, 2008.

Post-hearing briefs regarding the issues for the recommenced proceeding were filed by the Applicants, the OES, the Joint Intervenors, and MISO. Proposed findings and reply briefs were filed by the Applicants, the Department, and the Joint Intervenors. Excelsior Energy Inc. (Excelsior) also filed a short reply brief.

On May 9, 2008, the ALJs filed their Supplemental Findings of Fact, Conclusions of Law, and Recommendation (Supplemental Report), dealing with the issues in the reconvened part of the proceeding.

Exceptions to the ALJs' Supplemental Report were filed separately on May 19, 2008 by the Applicants, the Joint Intervenors, MISO, GOED, and Excelsior. In addition, two of the Applicants, CMMPA and Heartland, each filed letters strongly objecting to the conclusions and recommendations in the Supplemental Report.

Timely replies to exceptions were filed by the Applicants and the Joint Intervenors.

On June 3, 2008, the Commission heard oral arguments from the parties. On June 5, 2008, the Commission held deliberations in this docket.

On August 7, 2008, the Commission issued its ORDER REFERRING CASE TO OFFICE OF ADMINISTRATIVE HEARINGS FOR ADDITIONAL EVIDENTIARY PROCEEDINGS. (See the section below entitled *The Commission's June 5 Motion and Subsequent Actions.*)

On October 21, 2008, Boston Pacific Company, Inc. (Boston Pacific), in accordance with its contract with the Commission, issued its Report entitled *Responding to Commission Inquiries on Emissions Costs, Construction Costs and Fuel Costs* (ALJ Exhibit 2).

On November 10, 2008, ALJ Mihalchick issued the Sixth Prehearing Order, striking the prefiled testimony of Eric Laverty in its entirety and striking portions of the prefiled testimony of Ward Uggerud.⁴

Evidentiary hearings in this phase were held before ALJ Mihalchick at the Commission's Large Hearing Room on November 12-13.

Post-hearing briefs were submitted by the Applicants, the OES, and the Joint Intervenor.

On December 23, 2008, ALJs Mihalchick and Neilson submitted the ALJs' report for the third phase of the proceeding, entitled Summary of Testimony Received in Response to Report of Boston Pacific Company, Inc.

On December 24, 2008, the Commission issued its Notice of Deadline for Filing Exceptions and Notice of Oral Argument.

As of the date and time of submission of this briefing paper, staff had access to only the January 6, 2009 exceptions of the Joint Intervenor. Staff was expecting a filing from the Applicants.

Additional procedural history is given in the three reports from the ALJs.

Brief Description of the Proposed Transmission Project

The Project as proposed included the following components:

- a new 230-kilovolt (kV) line from the Big Stone Power Plant to Ortonville, of which 2 miles would be in Minnesota;
- a rebuild of an existing 115-kV line to 230 kV from Ortonville to Morris, approximately 16 miles long;
- a new line designed and capable of operating at 345 kV from the Big Stone Power Plant south to the Canby area, approximately 51 miles long, the majority of which likely would be constructed in South Dakota; and
- the conversion of an existing 115-kV line from Canby to Granite Falls to a line designed

⁴The ALJ indicated that the statements contained in the stricken parts are considered as an offer of proof.

for and capable of operating at 345 kV, approximately 39 miles long.⁵

The Applicants identified a line from Ortonville to Willmar as a possible system alternative to the second line segment listed above.

Also, the Applicants indicated that the Granite Falls line would be operated at 230 kV until the line could be joined with a planned 345 kV line planned for connecting the Buffalo Ridge area to the Twin Cities area.

The Commission's June 5 Motion and Subsequent Actions

After extensive discussion among the commissioners, Commissioner O'Brien moved to postpone a final decision on the need for the Big Stone II transmission facilities. He indicated that the Commission should obtain independent expert advice on several issues—the cost of construction, the cost of carbon, the cost of natural gas, and possibly other areas that may come up in discussions with staff. Commissioner O'Brien added that he also wanted to discuss with staff the appropriate process for obtaining that advice.

The August 7 Order provided additional clarification of the Commission's intent.

On August 4, 2008, the Commission issued a request for proposals with the intent of hiring an expert independent of the official parties to address the three issue areas specifically identified in the August 7 Order.

Proposals were due by September 5, 2008. Two proposals were received. The Commission met on September 11, 2008 to select an expert. The Commission selected Boston Pacific.

On October 21, 2008, Boston Pacific issued its report.

Recommendations of the Parties

None of the parties appear to have modified significantly their recommendations from the second phase of the hearings. However, arguments supporting those positions have changed somewhat due to events and perceived cost and other changes since the record closed in the second phase of the proceeding. The Applicants, the OES, and the Joint Intervenors filed post-hearing briefs following the November 12-13 hearings. Staff will summarize those filings only very briefly. The intricacies of this case point to the need for careful review of all the facts and all of the arguments, and the commissioners have access to the complete documents, including the parties' briefs, the ALJs' summary of evidence from this third phase, and the record materials upon which those filings are based.

⁵Routing considerations and proceedings in South Dakota may have altered some of the line lengths indicated above.

The Applicants

The Applicants continued to request that the Commission certify the proposed transmission lines. They stated that the Big Stone II (project) is a reasonable choice to meet the proven demand for more energy and to ensure a reliable and diverse energy mix. They also indicated that the proposed transmission lines would safely and reliably interconnect the Big Stone II generating unit with the regional grid and expand the ability of the grid to handle more renewable energy for the region.

The Office of Energy Security

The OES indicated that the Boston Pacific report complies with the Commission's August 7 Order and that the OES position described in the second stage of the proceeding assigns risks consistent with the recommendation of Boston Pacific.

The Joint Intervenors

The Joint Intervenors indicated that the risks associated with the Big Stone II project are enormous. They stated that Minnesota's Certificate of Need law requires Applicants to demonstrate that a proposed large energy facility is the least cost and environmentally preferred alternative, particularly with respect to renewable energy and energy efficiency options. The Joint Intervenors concluded that the Applicants failed to meet their burden of proof and that the Certificates of Need should therefore be denied.

The ALJs' Summary of Third-Phase Evidence

The ALJs' December 23, 2008 summary of evidence is extremely thorough. Staff will not try to summarize the summary. Staff notes that the paragraphs are not intended to be findings reflecting the ALJs' weighing of the third-phase evidence. Clearly, parts of the summary are contradictory, and it is up to the Commission to use its judgment in weighing all of the evidence in the record, including the two previous reports from the ALJs.

Commission Staff Comments

Staff is unaware of any major changes that it would make to the comments expressed in the briefing papers for the June 5, 2008 Commission meeting. Staff adds the following comments.

First, staff believes that expanding the record to receive the testimony disallowed by the ALJ in this third phase would be more problematic than its evidentiary value would warrant. This is true both of the Laverty testimony and the Uggerud testimony with respect to the alleged "states" problem for the CMMPA modeling.

Second, staff notes that the OES did not offer additional testimony in the third phase. Staff believes the Commission should keep that in mind when reviewing the brief filed by the OES, as

the brief makes representations about the current position of the OES that may be supported to some extent by the testimony of the Commission's consultants and the other parties but is not supported by additional testimony from the OES.

Third, staff restates what it tried to point out earlier regarding the types of proof that should be deemed acceptable in a need proceeding. Traditionally, the decision-makers have relied heavily on the supply/demand tables required of an applicant under Minn. Rules, part 7849.0280. If a need for resources was shown, the emphasis was on the evaluation of alternatives (e.g., base-load capacity, intermediate capacity, peaking capacity, or demand-side resources) available to meet that demonstrated need. The need criteria in Minn. Rules, part 7849.0120 clearly are structured this way. While staff acknowledges that "criteria" added to the statute since the rules were adopted may require additional analysis not directly suggested by the rules, the statutes do not specify what that analysis should be. In particular, the statutes do not specify the need for capacity expansion modeling. Staff believes that the type of modeling, and in fact the very use of modeling, is an evidentiary matter and not a matter of statutory dictate. While the OES, the Joint Intervenors, and to some extent the Boston Pacific witnesses have argued that such capacity expansion modeling is necessary and/or appropriate, the Applicants have provided testimony from several witnesses that the Burns & McDonnell analysis is equally or more appropriate for the determinations required in this docket.

Fourth, staff cautions the Commission about over-reliance on the results of economic models. Modeling results are only as good as the input assumptions. Furthermore, models tend to obscure potential impediments to adding or operating resource options. Such impediments could include difficulty in finding locations for and certifying the assumed resources, operational problems related to those resources or their location within the interconnected grid, and the inability of the selected resources to reduce or satisfy customer demands during all months, days and hours in a given year. Staff is concerned that the emphasis on modeling in this case gives short shrift to day-to-day and long-term reliability considerations.

Fifth, staff has considerable concern about the Boston Pacific witnesses' implication that more scenario analysis is necessary. While more scenario development may have been desirable, staff believes the Commission should only very reluctantly extend this docket. Such delay in implementation will almost certainly add costs while only marginally improving the record. While staff agrees that consistent results from various scenarios would provide comfort regarding the robustness of an alternative, staff believes the modeling done to date casts doubt on the notion that additional scenarios varying project carbon dioxide costs, construction costs, and fuel costs would produce such robustness. Ultimately, the Commission will have to decide which assumptions in those three key cost areas are the most reasonable and the extent to which those assumptions are intertwined. For example, the effect of federal carbon regulation on natural gas prices has received considerable attention in this docket, and the parties' viewpoints differ greatly on the relationship between those two key factors.⁶

⁶An additional scenario assuming Boston Pacific's low natural gas number with medium to high carbon dioxide costs almost surely would show a conservation/renewables/gas combination to be more cost-effective than a conservation/renewables/coal combination.

Sixth, staff continues to be concerned about attaching conditions without precedent in the history of the Certificate of Need Program, inconsistent with the determination that the Commission's need decision is supposed to represent, and potentially an additional hurdle to the Applicants' ability to arrange reasonable financing. It is staff's belief that for more than 33 years the need decision has stood for the best conclusion the decision-maker could reach about which proffered alternative offered the best solution for meeting the demonstrated need. As such, there was not to be a subsequent decision that second-guessed that decision based on hindsight.⁷ In a subsequent rate case proceeding, for example, the analysis of cost would only go to the prudence of how an applicant actually carried out the decision and implemented the selected alternative. Staff respects the ability of the OES to push an alternative view, but staff continues to believe its view is both correct and reasonable in this case.

Seventh, staff especially questions the wisdom of adding conditions that are almost certain to doom the selected alternative.⁸ If the Commission as a body concludes the Applicants have not selected the proper resource alternative(s), it should directly say so. Staff believes the existing record amply demonstrates a need for resources beyond renewable resources and energy efficiency improvements. If the Commission concludes the Applicants should go another direction for additional generation needs, staff believes there should be no further delay in telling them so.

Eight, states notes the irony of subjecting Heartland and CMMPA to extensive resource planning modeling at best implied by the statutes and rules. Heartland's initial share (26.25 MW) and CMMPA's initial share (31.5 MW) are both less than the statutory threshold for jurisdiction over a proposed power plant. (See Minn. Stat. § 216B.2421, subd. 2 (1).) This means that each of those utilities could have proposed a coal-fired power plant in Minnesota not subject to the Commission's Certificate of Need jurisdiction. Of course, there are strong reasons why they did not do so.

Ninth, staff believes that the Commission should be mindful of what would be given up in a decision to deny a Certificate of Need. The Applicants have committed to improving the pollution control equipment on the Big Stone I unit such that most emissions from the two units after construction is completed would be less than comparable emissions currently from the one unit. In addition, while the main function of the proposed lines obviously would be to allow for

However, staff questions the likelihood and value of such a scenario, given the evidence in this record.

⁷A condition regarding a rate-case review of the comparative costs of generation options might be more appropriate if one of the two more restrictive views of the Commission's jurisdiction in this proceeding were adopted. (See the staff discussion in the briefing papers for the June 5, 2008 meeting.) Then, perhaps, only the costs related to the proposed transmission facilities would be eliminated from an expansive prudence review during the next rate case.

⁸In particular, the Commission should consider how fair it would be to the other Applicants to weigh an approval down with rate-case conditions applicable only to Otter Tail.

additional production of electricity at the Big Stone site, the proposed lines would also allow for at least a modest increase in the outlet capability from the prime wind generation areas.

Tenth, regardless of how the Commission rules on the need for the proposed transmission facilities, staff urges the Commission to reject the ALJs' previous implication that the withdrawal of GRE and SMMPA somehow justifies a new evaluation of the appropriate transmission facilities to integrate the proposed Big Stone II unit into the existing grid. Staff is aware of no credible evidence in the record that the implication has any merit.

Staff reminds the Commission that this docket, first and foremost, is for approval of transmission lines. The Commission does not have direct authority over the construction of a generating plant in another state.

Staff does not have a recommendation for resolution of this docket. Nevertheless, staff notes its belief that some of the alternatives below, as stated or modified, are inappropriate or otherwise inferior to others in the list below.

In particular, staff believes the ALJs' recommendation in their May 9, 2008 phase-two report is inadequately explained, possibly rests on certain assumptions not justified by the record, gives inadequate consideration to the other statutory and rule criteria and the entirety of the evidentiary record, and/or might set a precedent for interpretation of the statutes that would cause reliability problems in the future. With respect to the May 9 report, staff has the following specific reactions:

- 1) If the ALJs were implying that availability of cost-effective energy efficiency and/or renewable resources to meet only part of additional needs is enough to trigger denial, staff strongly disagrees with that point of view. The modeling done and the existing record make it clear that additional generation, almost certainly fossil-fueled, would be necessary to supplement energy efficiency and renewable resources.
- 2) If the ALJs were implying that the failure of one of more of the Applicants to run model scenarios of energy efficiency exceeding statutory minimums forces a conclusion that the Applicants did not meet their burden of proof, staff suggests that the Commission consider whether that point of view is reasonable, given the Applicants' testimony that even meeting the new and higher statutory requirements could be difficult.
- 3) If the ALJs were adopting the OES's point of view that the Commission should impute Minnesota's conservation goals into the forecasts for the non-Minnesota portions of the service areas, staff continues to believe that viewpoint is high-handed and may raise other concerns as to appropriateness.
- 4) Finally, the ALJs' report indicates that their conclusion regarding MDU's compliance with Minn. Stat. § 216B.243, subds. 3 and 3a is based at least partially on their findings with respect to MDU's forecasts. (See Findings 25-26.) Staff notes that those forecasting findings rest precariously on the OES testimony regarding the alleged specification error, from which the OES itself states one cannot determine a direction of forecast error. Staff continues to believe that disregarding growth rates consistent with past trends is both dangerous and inappropriate.

As stated previously, staff disagrees with the positions of witnesses and/or parties who suggest additional scenarios are statutorily required or otherwise in the public interest. Also as

previously stated, staff urges caution in adding conditions to approval of the proposed transmission project; it is staff's belief that conditions should be added only if they are truly beneficial to the public and would still make it possible for the Applicants' to carry out the Commission's Order.

Decision Alternatives

Commission staff has redrafted and expanded the list of decision options in hopes of clarifying and expanding the list of options available to the Commission.

The Disallowed Testimony

1. Accept the offer of proof regarding the proposed Lavery testimony and accept the testimony into the record.
2. Accept the offer of proof regarding the Uggerud testimony responding to the alleged "states" problem in CMMPA's earlier modeling and accept the testimony into the record.
3. Both 1. And 2. above.
4. Accept ALJ Mihalchick's disallowance of both the Lavery testimony and the indicated Uggerud testimony.

Adequacy of the Environmental Impact Statement

1. Conclude that the Environmental Impact Statement prepared by the OES is adequate for Certificate of Need purposes, meeting the requirements of applicable statutes and rules.
2. Conclude that the Environmental Impact Statement prepared by the OES is not adequate for Certificate of Need purposes.
3. Make some other decision deemed more appropriate.

Approval or Disapproval of the Proposed Transmission Project**Option 1:**

- Accept the conclusions and recommendation of the ALJs in their May 9, 2008 Supplemental Report, after full consideration of the Boston Pacific report and the additional testimony offered by the parties in response to it;
- conclude that the Applicants' have not met their burden of proof under applicable statutes and rules, including specifically the requirements in Minn. Stat. §§ 216B.243, subds. 3 and 3a; and
- deny the requested Certificates of Need for the proposed transmission facilities.

Option 2:

- Reject the conclusions and recommendation provided by the ALJs in their May 9, 2008 Supplemental Report, at least to the extent that the Report fails to consider the logistical uncertainties of replacing one large generation facility with a host of unknown smaller facilities spread over a broad geographical area, dismisses entirely any load growth for MDU, appears to assume Minnesota's levels of energy efficiency for the Applicants' service areas outside Minnesota, fails to accept the Applicants' concerns about their ability to reach even the statutory levels of energy efficiency in deciding whether each of the Applicants needed to model levels of energy efficiency beyond the statutory goals for the portions of service areas within Minnesota, ignores the need shown by virtually all of the modeling for fossil-fueled resources beyond cost-effective and achievable levels of energy efficiency and renewable resources, and suggests that another transmission project would be more appropriate for the remaining Applicants;
- nevertheless find that the proposed Big Stone II project would impose direct costs and environmental costs on Minnesota ratepayers and citizens that would be unacceptably large and beyond those imposed by other options for meeting energy and peak demand growth beyond reasonable levels of demand-side management and conclude that the Applicants have not met their burden of proof; and
- deny the requested Certificates of Need for the proposed transmission facilities.

Option 3:

- Reject the conclusions and recommendation provided by the ALJs in their May 9, 2008 Supplemental Report, at least to the extent that the Report fails to consider the logistical uncertainties of replacing one large generation facility with a host of unknown smaller facilities spread over a broad geographical area, dismisses entirely any load growth for MDU, appears to assume Minnesota's levels of energy efficiency for the Applicants' service areas outside Minnesota, fails to accept the Applicants' concerns about their ability to reach even the statutory levels of energy efficiency in deciding whether each of the Applicants needed to model levels of energy efficiency beyond the statutory goals for the portions of service areas within Minnesota, seems to ignore the clear need shown by virtually all the modeling for fossil-fueled resources beyond cost-effective and achievable levels of energy efficiency and renewable resources, and suggests that another transmission project would be more appropriate for the remaining Applicants;
- conclude that the Applicants collectively have shown a need for dispatchable base-load

resources, that the public interest is best served by the utilities adding a base-load unit in addition to demand-side and renewable resources, that the proposed transmission project is clearly needed to deliver power and energy to the Applicants' customers if the Big Stone II generating plant is constructed, and that no transmission alternative has been shown to be superior to the proposed transmission project;

- grant the requested Certificates of Need without conditions; and
- indicate that the decision reached based on the entire record makes it unnecessary to address any generic concern that Minnesota's laws affecting the Certificate of Need process should be interpreted differently depending on whether a proposed transmission project in Minnesota would provide outlet capacity for a power plant inside of Minnesota or would provide outlet capacity for a power plant in another state (because Minnesota has no direct Certificate of Need jurisdiction over a plant proposed outside its borders).

Option 4:

- Reject the conclusions and recommendation provided by the ALJs in their May 9, 2008 Supplemental Report, at least to the extent that the Report fails to consider the logistical uncertainties of replacing one large generation facility with a host of unknown smaller facilities spread over a broad geographical area, dismisses entirely any load growth for MDU, appears to assume Minnesota's levels of energy efficiency for the Applicants' service areas outside Minnesota, fails to accept the Applicants' concerns about their ability to reach even the statutory levels of energy efficiency in deciding whether each of the Applicants needed to model levels of energy efficiency beyond the statutory goals for the portions of service areas within Minnesota, seems to ignore the need shown by virtually all of the modeling for fossil-fueled resources beyond cost-effective and achievable levels of energy efficiency and renewable resources, and suggests that another transmission project would be more appropriate for the remaining Applicants;
- conclude that the Applicants collectively have shown a need for dispatchable base-load resources, that the public interest is best served by the utilities adding a base-load unit in addition to demand-side and renewable resources, that the proposed transmission project is clearly needed to deliver power and energy to the Applicants' customers if the Big Stone II generating plant is constructed, and that no transmission alternative has been shown to be superior to the proposed transmission project; and
- grant the requested Certificates of Need without conditions.

Option 5:

- Reject the conclusions and recommendation provided by the ALJs in their May 9, 2008 Supplemental Report, at least to the extent that the Report fails to consider the logistical uncertainties of replacing one large generation facility with a host of unknown smaller facilities spread over a broad geographical area, dismisses entirely any load growth for MDU, appears to assume Minnesota's levels of energy efficiency for the Applicants' service areas outside Minnesota, fails to consider the Applicants' concerns about their ability to reach even the statutory levels of energy efficiency in deciding whether each of the Applicants needed to model levels of energy efficiency beyond the statutory goals for the portions of service areas within Minnesota, seems to ignore the need shown by virtually all of the modeling for fossil-fueled resources beyond cost-effective and achievable levels of energy efficiency and renewable resources, and suggests that another

- transmission project would be more appropriate for the remaining Applicants;
- conclude that the Applicants collectively have shown a need for dispatchable base-load resources, that the public interest is best served by the utilities adding a base-load unit in addition to demand-side and renewable resources, that the proposed transmission project is clearly needed to deliver power and energy to the Applicants' customers if the Big Stone II generating plant is constructed, and that no transmission alternative has been shown to be superior to the proposed transmission project;
- grant the requested Certificates of Need, conditioned by the terms of the August 31, 2007 Settlement Agreement (adjusted as might be necessary for the passage of time) as described and accepted by the Applicants in their brief of February 6, 2008;
- require that Otter Tail submit in its next resource plan filing its plans for the Hoot Lake facility, including a discussion of the timing of likely retirement, advantages and disadvantages of having a generation facility at that location in the interconnected system, and the potential, if any, for conversion to gas-fired facility; and
- require Otter Tail in its next general rate case filing to provide detail on the efforts taken by the Applicants to control the costs of implementing the Big Stone II Project

Option 6:

- Reject the overall recommendation of the ALJs in their May 9, 2008 Supplemental Report;
- accept the OES conclusion that at least 315 MW of base-load need was shown by the Applicants (but that part of Otter Tail's need appears to relate to plans to shut down the Hoot Lake facility);
- find that the evidence provided in the third-phase of the proceeding, including the Boston Pacific report and the Burns & McDonnell analysis, provides reasonable assurance that energy and power from the Big Stone II unit would be more cost-effective than renewable energy beyond the statutory levels of renewable energy (backed up as necessary by additional amounts of gas-fired generation), at least at the mid-levels of construction costs and carbon dioxide costs provided by Boston Pacific;
- conclude that the 345-kV transmission project is needed based on regional and state transmission information entered into the record and also accept the OES conclusion that lower voltage lines would not suffice to deliver the levels of needed base-load power;
- conclude that the Big Stone II project presents risks that require additional measures to protect Otter Tail's ratepayers from costs that go beyond the costs assumed by the Company in its modeling; and
- grant the requested Certificates of Need, but with the condition that Otter Tail provide a compliance filing within 90 days after the date of the Commission's final order in this docket, showing the steps the Company will need to take to successfully shut down the Hoot Lake generators (including a projected date for completing the shutdown) and also include the following conditions/remedies offered by the OES as the best way of addressing its concerns in this docket:
 - 1) that Otter Tail include in the compliance filing significant detail on the level(s) of carbon costs specifically included in the Company's models;
 - 2) that the Applicants commit before the Commission to each utility's share of C-BED projects as outlined in Provision 7.2 of the Settlement Agreement;
 - 3) that the Applicants commit before the Commission to meet the renewable energy goals

indicated by the Renewable Energy Standard (i.e., commit not to use the off-ramps indicated by the statute);

4) that the Applicants commit before the Commission to achieving 1.5% conservation as outlined in the revised Minnesota CIP law, and also commit not to use any exclusion provision in the statute;

5) that the Applicants commit before the Commission to all provisions regarding water use at the Big Stone II unit as outlined in Provision 6.0 of the Settlement Agreement;

6) that the Applicants commit before the Commission to all provisions regarding mitigating mercury emissions as outlined in Provision 5.0 of the Settlement Agreement;

7) that the Applicants commit before the Commission to the Hoot Lake condition identified earlier in this option;

8) that the Applicants commit before the Commission to fulfilling any other provisions included in the Settlement Agreement;

9) that Otter Tail commit before the Commission to limit charges applied to their ratepayers to one of the two following capital cost levels (either the capital costs included in the Company's expansion planning modeling or those capital costs plus a 10% band to allow for normal construction cost fluctuations);

10) or, as an alternative to 9) if the Company does not agree to the limit in 9), that the Commission clearly state in its order that the order provides no guarantee of cost recovery and that the entire issue of "just and reasonable costs" and recovery thereof will be addressed in the Company's first rate case after the Big Stone II project becomes "used and useful," during which the Company will bear the burden of showing that the costs proposed for rate recovery are justified; and

11) that the Commission also require in the order, in the event that the Applicants subsequently choose not to move forward with their specific Big Stone II construction project, that Otter Tail must file, as soon as practicable after the Applicants' no-go decision is made, an alternative plan to acquire the level of base-load resources required for their Minnesota customers (in approximately the same needed time frame).⁹

Option 7:

- Conclude that additional scenario development and evidentiary proceedings are necessary.¹⁰

Option 8:

- Make some other decision deemed more appropriate.

Staff Note: Clearly, there are other variations of decisions that the Commission might reach (e.g.,

⁹Staff assumes that OES does not presume this filing would take the place of the new Commission-approved date for Otter Tail's next resource plan filing (i.e., five months after the "real" final order in this proceeding). If OES believes the resource plan filing could serve as meeting the requirement suggested in 11), OES might want to make that known at oral argument.

¹⁰If this option is taken, staff believes the motion and forthcoming order should provide some specificity on the required additional record development.

including some of the OES conditions beyond the provisions of the Settlement Agreement). Options 3, 4 and 5 are in effect similar to Option 6, except that the Commission would be determining that some of the OES conditions are either unnecessary or otherwise inappropriate, based on its own review of the evidence in the record.

Additional Condition Regarding the Mesaba Project

1. Include in the decision the two findings proposed by Excelsior Energy Inc. on pages 7-8 of its September 5, 2007 exceptions, which would have the effect of requiring the Applicants to enter in power purchase agreements for capacity and energy from the Mesaba Project.
2. Decline to include any condition regarding the Mesaba Project.
3. Make some other decision deemed more appropriate.