

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

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In the Matter of the Transmission Permit for the  
Big Stone South to Ellendale Project

EL13-028

**MONTANA-DAKOTA UTILITIES CO.  
AND OTTER TAIL POWER PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

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Montana-Dakota Utilities Co. and Otter Tail Power Company (collectively “the Applicants”), filed an Application for a facility permit for the Big Stone South to Ellendale 345-kV transmission line (“the Application”) in the above entitled docket. The Application came before the Public Utilities Commission of the State of South Dakota (the “Commission”) for a contested case hearing under SDCL Ch. 1-26 on June 10 and 11, 2014. Based on the evidence presented to the Commission, and the oral and written arguments of counsel, the Commission enters the following findings of fact and conclusions of law.

**FINDINGS OF FACT**

The Parties

1. Montana-Dakota Utilities Co. (“MDU”), a division of MDU Resources Group, Inc., a Delaware corporation, and Otter Tail Power Company (“OTP”), a Minnesota corporation, jointly filed the Application with the Commission. (Ex. 1).<sup>1</sup> The Applicants seek issuance of a transmission facility permit for the construction and operation of 160 to 170 miles of 345-kV transmission line from a new substation to be built near Ellendale, North Dakota to a substation

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<sup>1</sup> All citations to exhibits admitted during the June 10 and 11, 2014, evidentiary hearing are cited as “Ex.” with reference to the appropriate exhibit. Citations to the transcript for the June 10 and 11, 2014, evidentiary hearing are cited “HT” with reference to the appropriate page of the transcript.

near Big Stone, South Dakota (“the Project”).

2. MDU is headquartered in Bismarck, ND, and provides natural gas and/or electric service to parts of Montana, North Dakota, South Dakota, and Wyoming with a service area covering about 168,000 square miles and includes approximately 312,000 customers. (Ex. 16A, at p.4).

3. OTP is headquartered in Fergus Falls, MN, and provides electric service to parts of Minnesota, North Dakota, and South Dakota with a service area covering about 70,000 square miles and includes 129,400 customers in 422 communities. (Ex. 16A, at p.4).

4. MDU and OTP will jointly own the Project with a percentage ownership of approximately fifty percent each.

5. As described in section 8.0 of the Application, which is Exhibit 1, and as described in answer to Interrogatory No. 14 in Montana-Dakota Utilities and Otter Tail Power Company’s Answers to Gerald Pesall’s First Set of Discovery Requests to Applicants Dated January 28, 2014, which is Exhibit 4, the Applicants engaged in an extensive route selection process. In selecting the route, the Applicants considered the following factors: minimizing total length and construction costs; minimizing impacts to humans and human settlements, including (but not limited to) displacement, noise, aesthetics, cultural values, recreation, and public services; consideration of effects on public health and safety; offsetting existing right-of-way (“ROW”) (roadway or other utility ROW) or section lines to minimize impacts to land-based economies, including (but not limited to) agricultural fields and mining facilities; minimizing effects on archaeological, cultural properties, and historic resources; minimizing impacts to wetlands, surface waters, and rivers; minimizing impacts to rare or endangered species and unique natural resources; minimizing effects to airports and other intensive land

uses; constructing the transmission lines near existing roadway ROW or close to the half section lines to minimize impacts to agricultural fields; placing structures to minimize impacts to movement of farm equipment and agricultural production; avoiding a diagonal route across agricultural fields wherever possible; and preference for mono-pole structures rather than H-frame structures. Based on these routing criteria, the Applicants selected the route stated in the Application. (Exs. 1, 4).

6. In selecting the route, the Applicants engaged in extensive public outreach, including open houses and communications and meetings with federal, state, and local governmental and tribal agencies. (Ex. 1, at § 8.1).

7. The Project route changed from the proposed route in the Application to the route reflected on Exhibit 25 due to route changes requested by landowners and adopted by the Applicants. Each proposed route change goes through a standard review process by a committee comprised of the representatives of the Applicants, and consultants from the design engineer, environmental, right-of-way, and legal teams. (Ex. 3, at Data Request 2-25). The route change is evaluated using the same routing criteria used to select the original route. (HT pp.31-32). If practical to honor the request to move the route change, the Applicants attempted to do so. (Ex. 3, at Data Request 2-25). If the impacts are too great, or if the route change is not mutually agreed upon by adjacent landowners impacted by the proposed route, the requested relocation might not be granted. *Id.*

8. On November 6, 2013, the Commission granted Gerald Pesall's Application for a Party Status.

9. Pesall is a landowner owning real property located within one-half mile of the Project route in Day County, South Dakota. (HT p.279; Ex. 21C).

10. According to the final route map for the Project, the 345-kV transmission line will cross one parcel of Pesall's land. (Exs. 21A-C). The transmission line will be over one-half mile from Pesall's residence. (Ex. 21C). At this time, it is expected that two structures consisting of two monopoles with concrete foundations will be placed on Pesall's land. (Exs. 21A-B; HT p.290).

11. Pesall proposed changes to the route so that the Project would not cross his real property. (Ex. 16, at p.17; Ex. 8). The Applicants rejected the proposed change because Pesall's proposed route change resulted in greater landowner objection than the Project's proposed route. (Ex. 8).

12. Regarding the one parcel of Pesall's land crossed by the Project route, the land is open farm ground with no obstructions. (Exs. 21A-B). The Project's placement of the route on Pesall's property will not impede Pesall's farming practices because of the open spaces and Pesall's ability to farm around the two structures on his property.

13. On May 1, 2014, the Commission granted party status to the following persons: James R. McKane III, Clark T. Olson, Bradley R. Morehouse, Kevin Anderson and Schuring Farms, Inc.

14. Intervenors McKane, Olson, and Anderson did not appear at the evidentiary hearing, file any prefiled testimony or exhibits, or present any evidence. Intervenors McKane, Olson, and Anderson did not indicate whether they object to issuance of the facility permit.

15. Intervenor Morehouse participated in the evidentiary hearing. Morehouse is a landowner residing in Day County located within one-half mile of the transmission line route reflected on Ex. 25. (Ex. 22A).

16. The Project route requires the 345-kV transmission line to cross one parcel of

Morehouse's property. (Ex. 22A). Current Project alignment only requires an aerial overhang on Morehouse's property with no structures placed on his property. (Ex. 22A). The transmission line will be located approximately 1,200 feet from a feed lot owned by Morehouse. (HT p.352).

17. Schuring Farms, Inc., through Randy Schuring, participated in the evidentiary hearing. Randy Schuring is a landowner located in Day County who owns land located within one-half mile of the transmission line route reflected on Ex. 25. (Ex. 22A). The Project route requires the 345-kV transmission line to cross two parcels of Schuring's property. (Ex. 22A). Similar to Morehouse, the proposed route would only require aerial overhang on Schuring's property, and thus, no structures will be placed on his property. (Ex. 22A).

18. Schuring does not object to the issuance of the permit but objects to the location of the transmission line due to the proximity of the 345-kV transmission line in relation to Schuring's dairy. (HT 318). The transmission line will be more than one-quarter mile from Schuring's dairy. (Ex. 22C; HT p.319).

19. Pursuant to SDCL 49-41B-17(2), Brown County, Day County and Grant County are also parties to this proceeding. Brown County, Day County and Grant County have not made any filings, presented any evidence, or commented on the Project.

20. The PUC staff ("Staff") is also a party participant in this case.

21. The Staff reached an agreement regarding the Applicants in which the Staff recommends the issuance of the transmission facility permit. The agreement between the Applicants and the Staff is memorialized in a settlement stipulation, which was filed with the Commission on June 9, 2014, and is marked as Exhibit 301 ("Settlement Stipulation").

22. Following the evidentiary hearing, the Staff and the Applicants entered into an

Amended Settlement Stipulation, which was filed with the Commission on June 20, 2014, and which is marked as Exhibit 301A.

23. The Staff is recommending the Commission grant the Application and issue the transmission facility permit based on certain terms and conditions as described in the Amended Settlement Stipulation.

#### Description of the Project

24. The Project involves the construction and operation of 160 to 170 miles of 345-kV transmission line from a new substation to be built near Ellendale, ND to the substation near Big Stone, SD. (Ex. 16A, at p.9) As part of the Project, the Applicants intend to build a new substation near Ellendale, ND. (Ex. 16A, at p.9) The transmission line will run from that substation and enter South Dakota in northern Brown County. (*Id.*; Ex. 25). The transmission line will then route through Brown, Grant, and Day Counties before terminating at the Big Stone South substation near Big Stone, South Dakota. (Ex. 16A, at p.9; Ex. 25). Approximately 150 to 160 miles of the transmission line will be located in South Dakota. (Ex. 16A, at p.9).

25. As designed, the transmission line will utilize steel monopoles approximately 120 to 155 feet above ground in height. (Ex. 1, § 23.1). The poles will be placed on a concrete foundation approximately 6 to 11 feet in diameter. (*Id.*). The structures, which consist of poles, foundations, and cross-arms, will be placed approximately every 700 to 1,200 feet, which results in the Project having five to six structures per mile of transmission line. (Ex. 19, at p.10). The minimum ground clearance of the transmission line is 30 feet. (*Id.*).

26. The total cost for the Project is estimated to be between \$293 and \$370 million in 2013 dollars. Of that amount, \$250 to \$320 million dollars are estimated to be spent on the South Dakota portion of the facility. (Ex. 1, at § 5.0).

27. The Applicants have proved the demand and need for the Project. The Project will be used by members of the public, including consumers located in South Dakota. The Project also will facilitate development of future wind generation projects located within eastern South Dakota. (HT p.139).

28. The Project was approved as part of a portfolio of transmission projects contained in the Midcontinent Independent System Operator (“MISO”) multi value project portfolio (“MVPs”). (Ex. 17, at pp.15-16). MISO is a not for profit, member based regional transmission organization. (Ex. 17, at p.5). MISO engaged in extensive studies that support the demand for the transmission facility and the many benefits derived from the Project, along with other MVPs. This analysis is contained at Exhibits B-1 through B-4 of the Application. (Ex. 1).

29. Construction of the Project will benefit the reliability of the electrical transmission grid throughout the MISO region, including within the state of South Dakota. (HT p.106). As indicated in the MISO studies, if the Project is not built, South Dakota will not realize the economic benefits associated with building the project, the existing transmission system in South Dakota will not be able to provide reliable service to customers in eastern South Dakota, and future wind projects may not be developed in South Dakota. (HT p.107).

30. The Project will create additional transmission capacity within the current transmission system, which will increase reliability of service in South Dakota and enable future wind generation projects in South Dakota. (HT pp.105-07, 114, 117-19).

31. One factor contributing to MISO’s approval of the Project is the added transmission capacity created by the MVPs, including the Project, as needed to enable future economic wind generation in the upper Midwest including South Dakota. (Ex. 17, pp.23-27; HT pp.105-06).

32. Wind generation projects in South Dakota could interconnect with the 345-kV transmission line created by the Project. (HT pp.137-38). Additionally, MISO approved this Project because wind projects are currently in the MISO queue requesting to interconnect with MISO's transmission grid, which includes this Project. (HT pp. 118-20).

33. The Project is scheduled to commence construction in 2016. (Ex. 1, at § 18.0). The Project is expected to be in service by 2019. (*Id.*).

34. The construction and operation of the Project will result in substantial benefits to South Dakota. The Project, when completed, will generate approximately \$1.75 to \$2.25 million in property taxes per year based on the current effective composite tax rate for South Dakota. (Ex. 2, at Data Request 1-5). On a county-by-county basis, the Project is estimated to create annual property tax revenue as follows: approximately \$715,000 to \$885,000 for Brown County; approximately \$535,000 to \$755,000 for Day County; and approximately \$490,000 to \$605,000 for Grant County. (*Id.*). Additionally, during the construction phase, it is expected that the Project will generate sales tax and contractor excise taxes in the amounts of \$5.5 to \$9 million. (*Id.*).

35. The construction will also contribute to local economic development. It is estimated that the monies spent by the construction crews on hotels, meals, fuel, and other expenses directly benefitting communities in South Dakota is approximately \$3.0 to \$7.0 million. (Ex. 4, at Response to Interrogatory 7).

36. The benefits and costs savings of the MVP Portfolio, of which this Project is a component, will generate 1.8 to 3.0 times the aggregate cost to construct those projects constituting the MVPs. (Ex. 3, at Data Request 2-4).

37. The Project is a backbone element of the MISO Regional Expansion Plan. (HT



p.137).

### Procedural Background

38. The Applicants filed the Application on August 23, 2013. (Ex. 1).

39. The Applicants amended the Application and filed the amendment with the Commission on January 27, 2014. (Ex. 1A).

40. The Commission filed a copy of the Application with the auditors of Brown, Day, and Grant Counties. Additionally, all documents filed with the Commission, including all responses to all data requests and prefiled testimony in this matter, has been served on Brown, Day, and Grant Counties.

41. On August 26, 2013, the Commission issued an order ("8-26-13 Order") pursuant to SDCL 49-41B-15 and 49-41B-16 which scheduled public input hearings on the Application for Thursday, October 17, 2013. The order scheduled a public input hearing for 12:00 p.m. on October 17, 2013, in Aberdeen, SD, and a public input hearing at 7:00 p.m., in Milbank, SD.

42. The Commission's 8-26-13 Order stated a deadline for applications for party status of October 22, 2013. The Commission's 8-26-13 Order stated forms for application for party status would be available at the October 17 public input hearings and also could be obtained from the Commission's web site or by contacting the Commission.

43. On September 13, 2013, the Commission served the August 26, 2013 Order and thereby provided notice to the Applicants of the public input hearing scheduled for October 17, 2013.

44. The Commission also served notice by mail of the public input hearings provided in the 8-26-13 Order upon the governing bodies of Brown, Grant and Day Counties and the following municipalities: Twin Brooks, Wesport, Groton, Andover, Butler and Big Stone City.

45. The Commission filed a copy of the Application with the auditors of Brown, Grant, and Day Counties.

46. The Commission published notice of the October 17, 2013, public input hearings by providing notice in the following newspapers of general application in Brown, Day and Grant Counties. Notice was published in: the Aberdeen American News on September 18 and October 9; the Webster Reporter and Farmer on September 16 and October 7; and the Grant County Review on September 18 and October 9.

47. As required by SDCL 49-41B-5.2, the Applicants provided notification, in writing, to the owners of record of all land that is located within one-half mile of the proposed route for the Project. The required notification was provided with a letter, which enclosed a map showing the proposed route for the Project and a copy of the 8-26-13 Order. The letter was sent to all the landowners via certified mail on September 6, 2013. The Affidavit of Mailing for the September 6, 2013, landowner letter is Exhibit 11.

48. The Applicants also published notification of the Project and the public input hearing in the newspapers of general publication in Brown, Day and Grant Counties. The Applicants published notification of the Project and the October 17, 2013, public input hearing in: the Aberdeen American News on September 12 and September 19, 2013; the Webster Reporter and Farmer on September 9, 2013 and September 16, 2013; and the Grant County Review on September 11 and September 18, 2013. Applicants filed affidavits of publication with the Commission on October 8, 2013.

49. The Commission held two public input hearings on October 17, 2013. The first public input hearing was held at 12:00 p.m. in Aberdeen, SD. The public input hearing lasted until approximately 4:00 p.m.

50. The second public input hearing was held at 7:00 p.m. in Milbank, SD. The Milbank public input hearing lasted for approximately two hours.

51. The PowerPoint presentation presented by the Applicants at the October 17, 2013, public input hearings is Exhibit 24.

52. Forms for application for party status were available at both public input hearings on October 17, 2013, in Aberdeen, SD, and Milbank, SD.

53. Transcripts were created of the October 17, 2013, public input hearings in Aberdeen, SD, and Milbank, SD. The transcripts have been filed with the Commission.

54. Following the October 17, 2013, public input hearings, the Applicants have worked reasonably to address landowner concerns regarding the route of the Project discussed in the Application and the hearing. As a result of those landowner concerns, the Applicants considered several formal route change requests. Several of the requests have been accepted by the Applicants. (Ex. 50; HT pp.31-32).

55. As a result of landowner concerns, five proposed route changes were considered by the Applicants that resulted in landowners being located within one-half mile of the proposed Project route who did not previously receive the landowner mailing sent by the Applicants on September 6, 2013. (Ex. 50; HT pp.31-32). As a result, the Commission entered an order dated March 17, 2014 ("3-17-14 Order") scheduling a third public input hearing for May 20, 2014, at 6:30 p.m. in Aberdeen, SD.

56. The Commission published notice of the May 20, 2014, public input hearing in the newspapers of general circulation in Brown, Day and Grant Counties. The notification of the public input hearing was published in the Aberdeen American News on April 21 and May 16, 2014; the Webster Reporter and Farmer on April 21 and May 12, 2014; and the Grant County

Review on April 23 and May 14, 2014.

57. On March 19, 2014, the Applicants sent a landowner notification to all landowners located within one-half mile of the five route changes that resulted in new landowners who had not previously received a landowner notice letter. This second landowner notice letter included a map showing the proposed route for the Project, including the route changes, and a copy of the 3-17-14 Order. The affidavit of mailing for the March 19, 2014, hearing is Exhibit 12.

58. A third public input hearing was held on May 20, 2014. The public input hearing lasted four and one-half hours. A transcript was prepared of that public input hearing. The transcript has been filed with the Commission.

59. The PowerPoint presentation presented by the Applicants at the May 20, 2014, public input hearing is Exhibit 50.

60. No person has objected to the notice provided by the Commission or the Applicants for the public input hearings held on October 17, 2013, and May 20, 2014.

Discovery, Prefiled Testimony, and Hearing on the Application

61. The Commission Staff served two sets of written discovery on the Applicants. The Applicants answered the Staff's First Set of Data Requests on October 21, 2013. The Applicants answered the Staff's Second Set of Data Requests on April 15, 2014. (Exs. 2, 3).

62. Intervenor Gerald Pesall served two sets of Interrogatories and Requests for Production of Documents on the Applicants. The Applicants responded to Gerald Pesall's First Set of Discovery Requests to Applicants on February 26, 2014. The Applicants responded to Gerald Pesall's Second Set of Discovery Requests to Applicants on April 7, 2014. (Exs. 4,5).

63. Applicants filed prefiled direct testimony of the following witnesses: Henry Ford;

Jason Weiers; Angela Piner; Danny Frederick; and Jon Leman. (Exs. 16A, 17, 18, 19, 20).

64. Pesall filed direct prefiled testimony of the following: Gerald Pesall; and Dr. Gregory L. Tylka, Ph.D. (Exs. 101, 102).

65. The Applicants filed rebuttal testimony of Henry Ford, and supplemental rebuttal testimony of Henry Ford. (Exs. 16B-C).

66. Pesall filed sur-rebuttal testimony of Dr. Tylka. (Ex. 104).

67. No other parties filed any prefiled testimony.

68. An evidentiary hearing was held on June 10 through 11, 2014, in Pierre, SD. The following witnesses testified at the evidentiary hearing: Henry Ford; Jason Weiers; Angela Piner; Danny Frederick; Jon Leman; Dr. Gregory Tylka; Gerald Pesall; Randy Schuring; Bradley Morehouse; and Brian Rounds. Additionally, the Commission accepted into evidence the following exhibits: Exs. 1-25, inclusive; 50-50A, 101-111, inclusive; and Ex. 301.

Requirements for Issuance of the Transmission Facility Permit

69. The Commission finds that the Applicants have satisfied their burden of proving all of the requirements imposed by SDCL 49-41B-22 for issuance of the permit by the preponderance of the evidence.

*SDCL 49-41B-22(1)*

70. The Commission finds that the Applicants have complied with the statutory requirements imposed by SDCL Ch. 49-41B and the regulatory requirements imposed by ARSD Ch. 20:10:22, for issuance of the transmission facility permit.

71. The Applicants have furnished all information required by the applicable statutes and Commission regulations.

72. The Applicants will further comply with all the conditions provided in the

Amended Settlement Stipulation. The Commission finds that such compliance with the Amended Settlement Stipulation conditions further satisfies the Applicants' obligation to prove the facility will comply with all applicable laws and rules.

*SDCL 49-41B-22(2)*

73. The Applicants have satisfied their burden of proving that the construction and operation of the Project will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the Project area.

74. As indicated in sections 9 through 19 of the Application, the Applicants have developed reasonable mitigation plans to mitigate any environmental concerns arising from the construction or operation of the Project. (Ex. 1) The Amended Settlement Stipulation also contains conditions, which when complied with by the Project, will mitigate environmental concerns. The Commission finds that the Project will not cause serious injury to the environment based on the mitigation measures addressed in the Application and the Applicants compliance with the conditions imposed by the Amended Settlement Stipulation.

75. The only contentions that have been made that the Project may harm the social or economic condition of the inhabitants and expected inhabitants of the siting area relate to the effect of the Project on agricultural practices in the area and the effect of Project construction on the roads in the area. Based on the mitigation efforts discussed in the Application, and the conditions imposed by the Amended Settlement Stipulation, the Commission finds the effect of the facility on agricultural practices, and the effects of construction on the roads will not cause serious injury to the social and economic condition of inhabitants and expected inhabitants in the siting area.

76. As stated in section 19.2 of the Application, the conditions in the Amended

Settlement Stipulation, and the testimony, the Applicants have adopted reasonable measures to minimize the effect of the Project on farming practices. The Applicants' efforts include the use of monopoles, placing structures in the field to allow farming around structures, creating spans between the structures of approximately 700 to 1,200 feet, and working with landowners to reasonably address the effect of the Project on farming practices. Applicants have attempted to address landowner concerns through routing changes. The Project will continue to consider landowner concerns during the construction phase and will respond to those concerns as provided for in the Amended Settlement Stipulation. The Commission finds that these efforts are sufficient to prevent the Project from posing a serious injury to the social and economic condition of the expected inhabitants in the Project area.

77. The construction and maintenance of the Project will not prevent any landowners from engaging in reasonable agricultural efforts, including the use of aerial spraying and center pivot irrigation units.

78. The Commission finds that construction and operation of the transmission line will not materially interfere with global position system ("GPS") assisted farming practices. (HT pp.191-92, 374-76). The Amended Settlement Stipulation sufficiently mitigates any minimal risk associated with interference with GPS assisted farming practices.

79. The Project, as designed, will not negatively impact livestock production. (Ex. 20, at pp.7-8).

80. Regarding the economic condition of the inhabitants near the siting area, the Commission finds the Project will not pose a serious injury to the existing infrastructure in the siting area. The primary infrastructure concern is the effect on roads in the siting area. The Applicants' use of best management practices ("BMPs") and their development of a plan to

monitor and mitigate any road damage, along with the statutory bond required by SDCL 49-41B-38 for remedying any road damage and the conditions in the Amended Settlement Stipulation, provide sufficient mitigation measures to address the effects of the construction of the Project on the existing roads.

*Gerald Pesall's Objection to the Project*

81. The Commission finds that Gerald Pesall's objection is not an objection to the issuance of the Permit but instead an objection to the placement of the transmission line on his property. Pesall admitted that if the Project would simply move the line off of his property, then he would "go away and disappear." (HT p.312).

82. Intervenor Pesall has identified the possible spread of soybean cyst nematode ("SCN") from the construction and maintenance of the Project as an environmental concern warranting denial of the requested transmission facility permit. (HT p.282). The Commission finds that the spread of SCN from construction does not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the Project area.

83. Pesall raised the concerns about the spread of SCN before he tested his property to determine whether he had SCN. (HT p.303). As of the time of the evidentiary hearing, Pesall had not received the results of the testing for SCN. (HT p.282). Thus, there is no evidence indicating whether or not Pesall has SCN on his property. If Pesall already has SCN, then there is no risk of spreading SCN to Pesall's property through construction.

84. There is no evidence indicating whether any of the landowners over whose land the transmission line will travel do not already have SCN. Pesall's expert, Dr. Tylka, testified that SCN is present in Brown, Grant, and Day Counties. (HT p.241). Dr. Tylka admitted that he



does not know which parcels in those counties are infected with SCN. (HT p.242). He also admitted that he does not know whether any of the landowners on the proposed line have SCN on their property. (HT p.243).

85. The construction of Project will not increase the spread of SCN compared to existing farming practices and other methods of spreading SCN. There was no evidence presented that construction of any transmission line project caused the spread of SCN. The evidence indicated that SCN can be spread by wind, water erosion, and animals such as birds. (HT pp.244-245, 270-71). SCN also can be spread through farm equipment in typical farming practices. (HT p.244). Once a field is infected with SCN, there is no way to determine how the field became infected. (HT p.256-67).

86. The Commission finds that Applicants will take reasonable and prudent steps during construction to minimize the spread of SCN. Following Pesall's identification of the SCN issue in his direct prefiled testimony, the Applicants created a mitigation plan to mitigate the spread of SCN. (Ex. 23). The Commission finds the Project's SCN mitigation plan, along with the conditions required by the Amended Settlement Stipulation, will reasonably minimize the spread of SCN, if any, during construction of the Project.

87. The Commission finds that the appropriateness of the mitigation plan is confirmed by the steps taken by Dr. Tylka to prevent the spread of SCN when performing research. When working in infected fields, Dr. Tylka's research teams do not steam wash or power wash their equipment. (HT p.259). Instead, they simply knock as much dirt off their boots and equipment as possible. (*Id.*). Similarly, when moving equipment from field to field, Pesall did not wash his equipment but instead just uses a hammer to knock the soil off the equipment. (HT p.295).

88. The Commission finds that maintenance of the transmission line will not increase the risk of spread of SCN. Dr. Tylka admitted that the risk of spreading SCN through maintenance activities is minimal, similar to vehicles driving through fields. (HT p.250).

89. The only mitigation plan provided regarding the spread of SCN was provided by Applicants. Intervenor Pesall did not present a mitigation plan.

90. Even if farmers have SCN in their fields, farmers can employ mitigation techniques to reduce the impact of SCN. These mitigation techniques include growing non-host crops such as corn, including non-host crops in a crop rotation and planting SCN resistant variety seed. (HT p.248).

91. The Commission finds that the risk of spread of SCN from construction or maintenance of the Project does not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area and does not warrant denial of the Permit.

92. Intervenor Pesall admitted that other than SCN, he was not concerned about the spread of other pests because those pests can be controlled with chemicals. (HT pp.295-96).

93. Intervenor Pesall also objects to the Project out of concern for the effect of the construction on the township roads. As indicated in Findings of Fact 80 above, the Applicants have adequately mitigated the risk of road damage.

94. Intervenor Pesall objects to the Project because he contends it will decrease his property values. (Ex. 101). Whether the Project will decrease property values or the amount, if any, of the reduction in property values is speculative. The Commission thus finds that reduced property values do not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area warranting denial of

the permit.

95. Intervenor Pesall objects to the Project based upon purported health concerns for persons in farm equipment below the transmission line. (Ex. 101). Based on the evidence received, the transmission line, which is designed to be consistent with industry safety standards, will not create health risks for persons below the transmission line. (HT pp.193-96).

96. Intervenor Pesall contends construction and operation of the Project will result in compaction negatively affecting his agricultural practices. (Ex. 101). The Commission finds the Applicants proposed reasonable efforts to address compaction arising from construction. The compaction of agricultural ground, as mitigated, will not pose a threat of serious injury to the environment or to the social and economic condition of inhabitants or expected inhabitants in the siting area.

97. Finally, Intervenor Pesall objects to the Project because he contends he and his neighbors do not need additional electricity. (HT pp.296-97). As stated in Findings of Fact 27 to 32, the Commission finds that there is a need and demand for the Project. The Project will serve current and future electricity needs of the public both in South Dakota and other states. There is a public need for the Project.

98. The Commission finds that none of Intervenor Pesall's objections warrant denial of the permit.

*Brad Morehouse Objection to Route of Project*

99. Intervenor Morehouse does not object to the Project but only objects to the location of the transmission line in proximity to his feedlot. (HT p.349).

100. The Project's route was going to be directly adjacent to Intervenor Morehouse's feedlot. (HT p.351). The Project has moved the transmission line so it is approximately 1,200

feet from Morehouse's feedlot. (HT p.352).

101. Based on the evidence, the transmission line will not adversely affect Morehouse's cattle in the feedlot.

102. The Commission finds the Project reasonably addressed Intervenor Morehouse's routing concerns about the effect of the Project on his cattle and feedlot by moving the transmission line to about 1,200 feet away from Morehouse's feedlot.

103. The Commission finds that Intervenor Morehouse's objection to the location of the transmission line in proximity to his feedlot does not warrant denial of the permit.

*Schuring Farms, LLC's Objection to Route of Project*

104. Intervenor Schuring Farms, LLC, does not object to the Project but objects to the location of the transmission line in proximity to his dairy operation. (HT p.318).

105. The transmission line is located more than one-quarter mile from the dairy barns of Intervenor Schuring Farms, LLC. (HT p.319). Intervenor Schuring Farms, LLC's dairy cows are confined to the dairy barns. (HT pp.320-21). As a result, the dairy cows are more than one-quarter mile from the transmission line. At this distance, the transmission line will not negatively affect the dairy cows or the production of Schuring Farms, LLC's dairy.

106. Intervenor Schuring Farms, LLC, objects to the location of the transmission line due to his claim it will devalue his dairy. (HT pp.315-17). The devaluation, if any, of the Schuring Farms, LLC's dairy is speculative.

107. The Commission finds that Intervenor Schuring Farms, LLC's objection to the location of the transmission line in proximity to its dairy does not warrant denial of the permit.

*SDCL 49-41B-22(3)*

108. The Applicants have satisfied their burden of proving that the transmission

facility will not substantially impair the health, safety, or welfare of the inhabitants near the facility.

109. Section 23.4 of the Application, and the conditions in the Amended Settlement Stipulation, adequately address any safety concerns arising from the construction or operation of the transmission line. The design of the Project minimizes these safety and health issues arising from the construction and operation of the Project.

110. The construction or operation of the transmission facility will not substantially impair the safety or welfare of the inhabitants.

111. Intervenor Pesall contends the height of farm equipment poses a safety threat under the transmission line. (Ex. 101). Because of the design criteria of the Project, which is designed to industry safety standards, the clearance is sufficient that the Project does not pose a safety concern to persons in farm equipment. (HT pp.193-94, 197, 208-10).

*SDCL 49-41B-22(4)*

112. The Applicants have satisfied their burden of proving the transmission facility will not unduly interfere with the orderly development of the region with due consideration having been given to the views of governing bodies of affected local units of government. There is no evidence that the Project will affect the orderly development of the region. The only concerns expressed by any local government units were those expressed by three townships: Farmington Township; Highland Township; and Valley Township. The only concerns expressed by these townships relating to development of the region concerned the effect of the Project on farming practices. The Commission finds the Project, as designed, does not have a significant negative impact on farming as discussed above. Thus, the Project will not prevent the orderly development of the region.

113. Because the Applicants have satisfied their burden of proving each of the elements in SDCL 49-41B-22, the Commission finds that the issuance of the transmission facility permit is appropriate and the Application should be granted. The transmission facility permit is issued conditioned upon the Applicants compliance with the conditions contained in the Amended Settlement Stipulation.

114. If any of the foregoing findings of fact are better construed as conclusions of law, they shall be construed as such.

### **CONCLUSIONS OF LAW**

1. The Commission has jurisdiction over the Application pursuant to SDCL 49-1-9, 49-1-10 and 49-41B-4.

2. The Commission lacks legal authority over private landowner transactions or the terms and conditions of any easement granted by landowners for the Project.

3. Following the filing of the Application with the Commission, certain notice requirements provided by SDCL Ch. 49-41B were required by law. Specifically, the Applicants were required to provide the notice required by SDCL 49-41B-5.2. Additionally, the Commission was required to schedule a public hearing under 49-41B-15 and provide the notice required by SDCL 49-41B-15. These notice requirements have been satisfied.

4. The Applicants satisfied their obligations to provide notice to landowners required by 49-41B-5.2. Specifically, 49-41B-5.2 required the Applicants to provide notice, in writing, to the owner of record of any land that is located within one-half mile of the proposed site where the facility is to be constructed. The notice is required to be mailed by certified mail. The landowner notice letter also must advise the landowners of the time, place and location of the public hearing and provide a description, nature and location of the facility requested by the

Application. The Applicants complied with the landowner notice requirement when they sent the landowner letter via certified mail on September 6, 2013, containing a copy of the 8-26-13 Order and a map of the Project's proposed route.

5. After the proposed route for the Project changed such that there were new landowners located within one-half mile of the proposed route of the Project, the Applicants sent via certified mail an additional landowner notice letter consistent with the requirements of SDCL 49-41B-5.2 on March 19, 2014, which was sent to the landowners located within one-half mile of those route changes. The March 19, 2014 landowner letter enclosed a revised route map and a copy of the 3-17-14 Order.

6. SDCL 49-41B-5.2 also requires the Applicants to publish notice in the official newspaper of each county which the Project is located for two consecutive weeks. The Applicants complied with the publication notice requirement of SDCL 49-41B-5.2 when they had notice of the October 17, 2013 public hearings published in the following papers: Aberdeen American News on September 12 and 19, 2013; the Webster Reporter and Farmer on September 9 and 16, 2013; and the Grant County Review on September 11 and 18, 2013.

7. Following the filing of the Application, SDCL 49-41B-15 required the Commission to schedule a public hearing. The Commission scheduled the public hearing through the 8-26-13 Order, which set two public hearings on October 17, 2013. The Commission thus complied with SDCL 49-41B-15(1).

8. The Commission also is required to notify the Applicants of the hearing and serve notice of the Application hearing upon the governing bodies of the counties and municipalities totally or partially within the area of the proposed facility. SDCL 49-41B-14(2)-(3). Again, the Commission complied with these requirements by serving the 8-26-13 Order on Brown County,

Day County, Grant County, City of Frederick, City of Twin Brooks, City of Westport, City of Groton, City of Andover, City of Butler and Big Stone City.

9. The Commission also served the Application on the county auditors for Brown County, Grant County and Day County, for filing as required by SDCL 49-41B-15(5).

10. Finally, SDCL 49-41B-15 requires the Commission to publish notice of the time, place and purpose of the public hearing in one newspaper of general circulation and in counties totally or partially within the area of the Project. The Commission complied with those requirements when it published notice of the October 17, 2013 public input hearing in the Aberdeen American News, Webster Reporter and Farmer and the Grant County Review.

11. Following the route changes that resulted in new landowners being placed within the Project, the Commission again held an additional public input hearing on May 20, 2014. This additional public input hearing satisfied the notice requirements of SDCL 49-41B-15.

12. The Applicants and the Commission have satisfied all the notice requirements required by SDCL 49-41B-15 and 49-41B-5.2, and no one has objected to the notice provided.

13. The Commission held an evidentiary hearing pursuant to SDCL Ch. 1-26 on the Application on June 10 and 11, 2014. Due process rights were afforded to all the parties at the evidentiary hearing consistent with SDCL Ch. 1-26.

14. Intervenor Pesall objects to the admission of the MISO studies which are attached as Exhibit 4 and Appendices B1 to B4 of the Application, which is marked as Exhibit 1. The Commission concludes this evidence is admissible and can be considered pursuant to SDCL 1-26-19, which provides for, among other things, the admissibility of evidence that may not be otherwise admissible under the South Dakota's rules of evidence:

When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except



where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

SDCL 1-26-19(1). The Commission concludes that the MISO materials meet this requirement because the information is reasonably relied upon by utilities in South Dakota in making their planning decisions. (HT p.106). Additionally, the MISO studies are all official documents filed with the Federal Energy Regulatory Commission (“FERC”) pursuant to a FERC order and decisional documents. (HT p.109).

15. Following the evidentiary hearing, based upon the evidence presented, and based upon the Amended Settlement Stipulation, the Commission concludes that the Applicants have satisfied their burden of proving the elements required by SDCL 49-41B-22 for issuance of the transmission facility permit as requested in the Application. The Commission thus concludes that the Application should be granted for the reasons stated in these findings of fact.

16. The Commission concludes that Gerald Pesall’s stated reasons for denying the Application do not warrant the denial of the Application. Instead, based on the preponderance of the evidence, the Commission concludes that all of the requirements of SDCL 49-41B-22 are satisfied.

17. The Commission concludes that the objections by Intervenors Morehouse and Schuring Farms, Inc. all relate to the routing of the Project. The Commission does not have the authority to “route a transmission facility.” SDCL 49-41B-36. As a result, the evidence regarding objections to the proposed route provided by the Intervenors does not warrant denying the Application.

18. The Intervenors have not presented evidence sufficient to deny the permit under the applicable statutes and Commission regulations.

19. The Commission grants the transmission facility permit requested in the

Application, as amended. The transmission facility permit will be granted, however, the Applicants must comply with the conditions imposed by the Amended Settlement Stipulation. By complying with the conditions in the Amended Settlement Stipulation, the Commission concludes that the necessary requirements of SDCL 49-41B-22 are all satisfied.

20. If any of the foregoing conclusions of law are better construed as findings of fact, they shall be deemed as such.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY ORDER OF THE COMMISSION:

\_\_\_\_\_  
Gary Hanson, Chairman

\_\_\_\_\_  
Chris Nelson, Commissioner

\_\_\_\_\_  
Kristie Fiegen,, Commissioner

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

---

In the Matter of the Transmission Permit for the  
Big Stone South to Ellendale Project

EL13-028

**PROPOSED ORDER GRANTING  
PERMIT TO CONSTRUCT FACILITIES**

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Montana-Dakota Utilities Co. and Otter Tail Power Company (collectively “the Applicants”), filed an Application for a facility permit for the Big Stone South to Ellendale 345-kV transmission line (“the Application”) in the above entitled docket. The Application came before the Public Utilities Commission of the State of South Dakota (the “Commission”) for a contested case hearing under SDCL Ch. 1-26 on June 10 and 11, 2014. Based upon the evidence presented to the Commission, and the oral and written arguments of counsel, the Commission entered findings of fact and conclusions of law dated \_\_\_\_\_, which are hereby incorporated by reference as if fully restated in this order. Based on the foregoing, it is hereby

ORDERED that Applicants are granted a permit to construct the Big Stone South to Ellendale 345-kV transmission line in Brown, Day and Grant Counties subject to the terms and conditions set forth in the Amended Settlement Stipulation filed with the Commission on June 20, 2014.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

BY ORDER OF THE COMMISSION

\_\_\_\_\_  
Gary Hanson, Chairman

\_\_\_\_\_  
Chris Nelson, Commissioner

\_\_\_\_\_  
Kristie Fiegen, Commissioner

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

---

In the Matter of the Transmission Permit for the  
Big Stone South to Ellendale Project

EL13-028

**MONTANA-DAKOTA UTILITIES CO.  
AND OTTER TAIL'S MOTION FOR  
LEAVE TO SUBMIT DOCUMENTARY  
EVIDENCE**

---

Pursuant to ARSD 20:10:01:24.03, Montana-Dakota Utilities Co. and Otter Tail Power Company (collectively "the Applicants") request leave for an order from the Public Utilities Commission of the State of South Dakota ("the Commission") authorizing Applicants to file three additional exhibits, which are marked as Exhibits 26, 26A, and 301A and are attached to this motion.

1. Exhibits 26 and 26A.

Exhibits 26 and 26A relate to Intervenor Morehouse's request for a route change. At the evidentiary hearing, Intervenor Morehouse discussed a requested route change. (HT pp.344-48). The requested change was unclear in part because the map used by Mr. Morehouse, Exhibit 207, did not show a portion of the requested route change. (HT pp.347-48). Commissioner Fiegen inquired with the Applicants at the evidentiary hearing about what the Applicants' intentions were regarding responding to Mr. Morehouse's route change request. (HT 398-401). Following the evidentiary hearing, the Applicants met with Intervenor Morehouse, confirmed his route change request, and evaluated that request. Exhibit 26A reflects the route change request. Exhibit 26 is the Applicants' decision on the route change request. Applicants request leave to

supplement the administrative record with Exhibits 26 and 26A to clarify Mr. Morehouse's route change request and the Applicants' response to the request.

2. Exhibit 301A.

Before the evidentiary hearing, Applicants and the Commission Staff negotiated a Settlement Stipulation. (Exhibit 301). At the evidentiary hearing, the Applicants and Staff agreed to amend the Settlement Stipulation and to mark the Amended Settlement Stipulation Exhibit 301A. (HT p.225). The Amended Settlement Stipulation was filed with the Commission on June 20, 2014. The Amended Settlement Stipulation was not, however, marked as Exhibit 301A. For clarity sake, Applicants request leave to supplement the administrative record with Exhibit 301A.

Based on the foregoing, Applicants respectfully request an order from the Commission authorizing the submission of Exhibits 26, 26A, and 301A pursuant to ARSD 20:10:01:24.03.

Dated 18<sup>th</sup> day of July, 2014



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Attorneys for Montana-Dakota Utilities Co.  
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July 15, 2014

Randal Schuring  
Schuring Farms Inc.  
507 South 2<sup>nd</sup> St.  
Andover, SD 57422

Bradley R. & Diann M. Morehouse  
14026 416<sup>th</sup> Avenue  
Andover, SD 57422

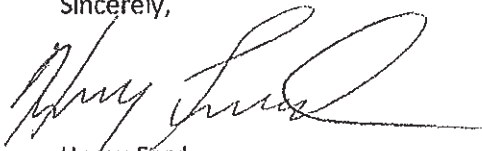
**RE: Big Stone South to Ellendale 345kV Transmission Line Project  
Route Change Request Denial**

Dear Randal, Bradley, and Diann:

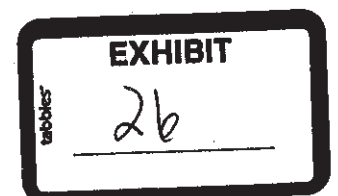
Following the SDPUC hearing in Pierre, you met with our ROW team and discussed several potential route shifts. A summary of the proposed route shifts, which you initialed, is attached to this letter. The Project considered your request, met with you to listen to your concerns, and contacted landowners on the proposed alignments. At this time, the ROW Committee declines your proposed route shifts because new and previously contacted landowners oppose the suggested alternatives, and the proposed route shifts impact occupied structures, pass near two state parks, and cross several grassland and wetland easements when compared to the existing route.

Please note this does not preclude further discussion of other route options provided the route options meet the Project's routing criteria.

Sincerely,



Henry Ford



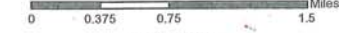
008125



# Andover Area



## 345 kV Transmission Project

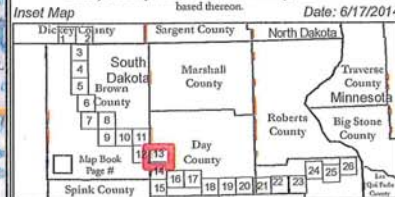


### LEGEND

- USFWS Easement
- USFWS Limited NWR
- Grassland
- Wetland
- Geopolitical**
- Townships
- Counties
- Sections**
- Railroads
- Abandoned Railroad
- Utilities**
- Electric
- Oil/Gas
- BSSE Parcels**
- BSSE Parcels
- Parcels
- Buildings / Homes**
- Occupancy Not Verified
- Dwelling - Unknown
- Dwelling - Vacant
- Dwelling - Occupied

### PRELIMINARY DRAFT LOCATIONS

This map was produced by the KLJ GIS Division utilizing ESRI's ArcMap 10.2 on Windows 7 Professional workstation. KLJ, Inc. has compiled this map according to conventional cartographic standards, using what is thought to be the most reliable information available. KLJ does not guarantee freedom from errors or inaccuracies and disclaims any legal responsibility or liability for interpretations made from the map, or decisions based thereon.



We the undersigned landowners agree that the colored route options (1-4) as indicated in the legend are those that we have requested reviewed as potential routing options.

Landowner: *But not limited to:*  
 Randy Zimmmerman Date: 6/17/14  
 Coralie Wilson Date: 6/17/14  
 Randall Schuring Date: 6/17/14  
 David L. & Patricia J. Olson Date: 6/17/14

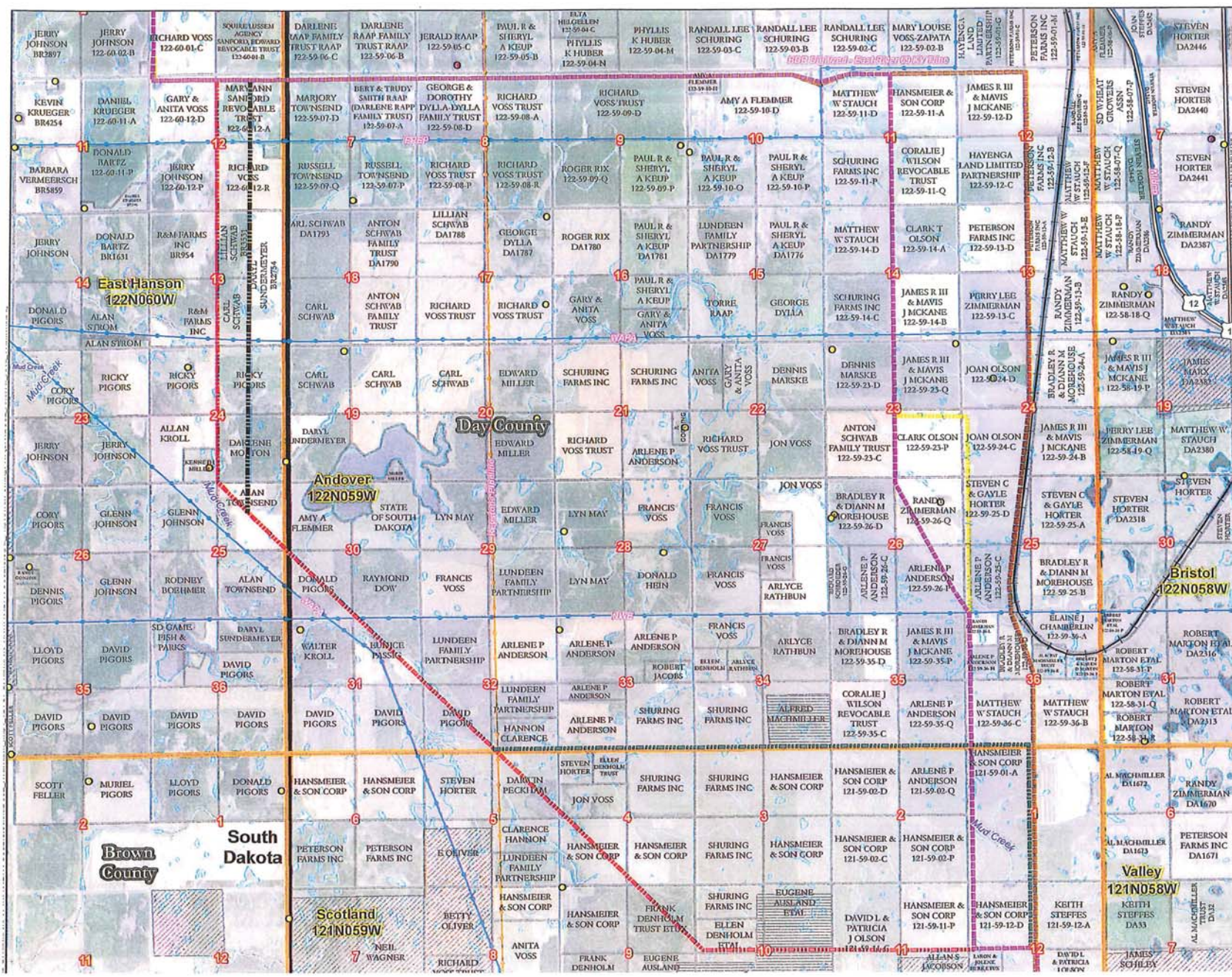


EXHIBIT 26A

008126



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

---

**IN THE MATTER OF THE APPLICATION  
OF MONTANA-DAKOTA UTILITIES CO.  
AND OTTER TAIL POWER COMPANY  
FOR A PERMIT TO CONSTRUCT THE  
BIG STONE SOUTH TO ELLENDALE 345  
KV TRANSMISSION LINE**

**AMENDED  
SETTLEMENT STIPULATION**

**EL13-028**

---

It is hereby stipulated and agreed by and among Montana-Dakota Utilities Co. and Otter Tail Power Company (jointly "Applicant"), and the South Dakota Public Utilities Commission Staff ("Staff") (jointly "Party" or "Parties"), that the following Settlement Stipulation ("Stipulation") may be adopted by the South Dakota Public Utilities Commission ("Commission") in the above-captioned matter. In support of its Application to the Public Utilities Commission of the State of South Dakota for a Facility Permit ("Facility Permit"), Applicant does hereby offer this Stipulation, the Application filed August 23, 2013, as amended, and all responses submitted by the Applicant to the Staff's data requests, all responses to Gerald Pesall's discovery requests, and the testimony and exhibits filed on April 25, 2014, May 9, 2014 and May 23, 2014, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions without any material condition or modification.

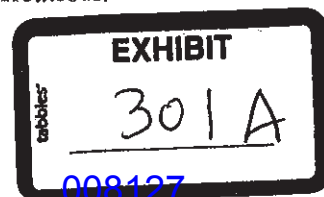
**I. INTRODUCTION**

Applicant proposes to own and construct the Big Stone South to Ellendale 345 kV electric transmission facilities ("Project"). The Project includes new 345 kV electric transmission facilities of approximately 160 to 170 miles in length, which will connect the new Ellendale 345 kV Substation with the Big Stone South Substation. Approximately 150 to 160 miles of transmission facilities will be located in South Dakota. The Project also involves the building of a new 345 kV substation ("Ellendale 345 kV Substation") and substation tie line near Ellendale, North Dakota.

**II. PURPOSE**

This Stipulation has been prepared and executed by the Parties for the sole purpose of stating the Parties' agreement regarding the issuance of a Facility Permit in Docket No. EL13-028. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of the Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.



2. This Stipulation includes all terms and conditions of settlement and is submitted with the condition that, in the event the Commission imposes any material changes or conditions to this Stipulation, which are unacceptable to any Party, this Stipulation may, at the option of any Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.
3. This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null and void. This Stipulation is intended to relate only to the specific matter referred to herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein. No Party or a representative thereof shall directly or indirectly refer to this Stipulation as precedent in any other current or future proceeding before the Commission.
4. The Parties to this proceeding stipulate that all pre-filed exhibits and pre-filed testimony submitted by the Applicant will be made a part of the record in this proceeding.
5. The terms and conditions contained in this Stipulation shall inure to the benefit of and be binding upon the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, attorneys, and assigns of the Parties. In addition, the terms and conditions of this Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors, and retained professionals.
6. This Stipulation constitutes the entire agreement between the Parties and shall be deemed to supersede any other understandings or agreements, whether written, oral, expressed or implied, relating to the Application. This Stipulation may not be amended, modified, or supplemented, and waivers or consents to departures from the terms and conditions of this Stipulation may not be given without the written consent thereto executed by all Parties.
7. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.
8. This Stipulation may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
9. The Parties recognize that the Commission has granted intervention to Gerald Pesall, James R. McKane, III, Clark T. Olson, Shuring Farms, Inc., Bradley R. Morehouse, and Kevin Anderson (collectively "Intervenors"). The Intervenors are not parties to this Stipulation.
10. The Parties agree that subject to the four elements of proof under SDCL § 49-41B-22,

the Commission has the authority to grant, deny, or grant upon reasonable terms, conditions or modifications a permit for the construction, operation, and maintenance of the Project. The Parties further agree that the Applicant has met its burden of proof pursuant to SDCL § 49-41B-22 and is entitled to a permit to construct the Project as provided in SDCL § 49- 41B-24, subject to the following:

### III. TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION

1.

Applicant will obtain all applicable and necessary governmental permits, which reasonably may be required by any governmental authority with jurisdiction, prior to engaging in the particular activity covered by that permit.

2.

Applicant shall construct, operate, and maintain the Project in a manner consistent with: (1) descriptions in the Application, (2) Application supplements, (3) responses to data requests, (4) the Terms and Conditions of the Permit to Construct Facilities, and (5) any applicable industry standards.

3.

Applicant agrees that the Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners, other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit.

4.

Applicant shall provide each landowner on whose property the Project is to be constructed or located with the following information:

- a) A copy of the Commission's Order Granting Permit to Construct Facilities;
- b) Detailed safety information describing:
  - 1) Reasonable safety precautions for activities on or near the Project,
  - 2) Known activities or uses that are prohibited near the Project, and
  - 3) Other known potential dangers or limitations near the Project;
- c) Construction/maintenance damage compensation policies and procedures;
- d) Commission's address, website, and phone number; and
- e) Contact person for Applicant, including name, e-mail address, and phone number.

Once the foregoing information has been provided to the landowner, Applicant shall have no

responsibility or duty to update such information except for changes to items b), c), and e) in this paragraph 4.

5.

In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL § 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors, and agents of the Applicant involved in this Project be made aware of the terms and conditions of this Permit.

6.

Except as otherwise provided in the conditions of this Stipulation, the Applicant shall comply with all mitigation measures set forth in the Application, in Applicant's responses to Staff data requests, Applicant's responses to Intervenor's discovery, and in Applicant's prefiled testimony and exhibits. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.

7.

Applicant will negotiate road use agreements with applicable government authorities with jurisdiction, if required during construction. Applicant will follow the terms of all road use agreements. Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being windblown, and the removal from the road surface of any soils or mud deposits from the road surface when necessary.

8.

Applicant shall comply with the following conditions regarding road protection:

- a) Applicant shall acquire all applicable and necessary permits authorizing the crossing of federal, state, county, and township roads.
- b) Applicant shall coordinate road closures with federal, state and local governments and emergency responders.
- c) Applicant shall implement a regular program of road maintenance and repair throughout the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public.
- d) After construction, Applicant shall repair and restore deteriorated roads to the conditions defined in the road use agreement, if applicable, resulting from Applicant's construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads caused by Applicant, such that the roads are returned to their preconstruction condition.
- e) Privately owned areas used as temporary roads during construction will be restored to their preconstruction condition, except as otherwise requested or agreed to by the landowner.

- f) Should Applicant need to widen any existing roadways during construction of the Project, Applicant shall return the roadways back to original width after completion of the Project, unless otherwise agreed upon.

9.

Applicant will coordinate with pipeline owners to ensure that the Project does not cause harm to existing pipeline facilities. Applicant will work with pipeline owners to implement any necessary and reasonable mitigation measures.

10.

Applicant will provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent edition of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.

11.

Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species or native grasslands in the siting area that Applicant becomes aware of and that was not previously reported to the Commission.

12.

Applicant agrees to avoid direct impacts to archaeological and architectural site features that are listed on or that are eligible for listing on the National Register of Historic Places (NRHP), and those that are not evaluated for listing on the NRHP. When NRHP-eligible or listed sites cannot be avoided, Applicant will notify the State Historic Preservation Office (SHPO) and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or develop treatment measures.

13.

If, during construction, Applicant discovers what may be a cultural resource, human skeletal remains, or associated funerary objects, Applicant or its agent shall immediately cease work at the location and notify the landowner(s), the SHPO, and other authorities as appropriate (per SDCL § 34-27-25 and SDCL § 34-27-28 in the case of human burials). If it is determined, in coordination with SHPO, that a significant resource is present, Applicant shall develop a plan that is acceptable to the landowner and SHPO that minimizes the adverse impact or threat to the resource.

14.

Applicant shall follow a) all conditions required by any agency permits and b) all final agency recommendations agreed to by Applicants through consultation with those applicable agencies in Exhibit 1, Appendix C. Applicant shall reasonably update the Commission if any of the final agency recommendations agreed to by the Applicant as provided for in this paragraph (14) change from Exhibit 1, Appendix C.

15.

Applicant shall confer with the applicable agencies in the implementation of measures for the protection of avian species consistent with "Suggested Practices for Avian Protection on



Power Lines: The State of the Art in 2006” and “Reducing Avian Collisions with Power Lines: State of the Art in 2012” prepared by the Avian Power Line Interaction Committee.

16.

Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) to the Commission prior to submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation as required by the NPDES permit. All contractors will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.

17.

Applicant shall develop and implement a mitigation plan to minimize the spread of soybean cyst nematode, consistent with Exhibit 23, in consultation with a crop pest control expert.

18.

Applicant will repair and restore areas materially impacted by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction or equivalent quality topsoil to its original elevation, contour, and compaction and reestablishment of original vegetation as close thereto as reasonably practical.

19.

Applicant's obligation with respect to restoration and maintenance of the right-of-way (ROW) shall continue throughout the life of the Project for disturbances caused by the actions of the Applicant. Where the soil is disturbed during construction or maintenance of the line, Applicant shall restore vegetation as appropriate in and along the ROW. For a period of thirty-six (36) months from the energization of the Project, if noxious weeds sprout in restored areas, Applicant will remove/eliminate them. Landowner permission shall be obtained before the initial application of herbicides.

20.

When necessitated by Applicant's actions, Applicant shall restore and clean-up the ROW continuously throughout the duration of the Project's construction as the timing of construction activities result in the need to do so.

21.

Applicant shall stage construction materials in a manner that minimizes adverse impact to landowners as agreed upon between Applicant and the landowners. All excess construction materials and debris shall be removed upon completion of the Project. In addition, any temporary guard poles shall be removed, unless agreed upon otherwise.

22.

Applicant shall, in a manner consistent with its easement agreement with a landowner, repair or replace all private property existing at the time of construction, which is removed or

damaged during all phases of construction, including, but not limited to the following: fences, gates, utility, water supply systems, irrigation, or drainage systems. Applicant shall compensate the landowners for damages or losses to property existing at the time of construction or maintenance that cannot be fully remedied by repair or replacement, including actual crop and livestock losses.

23.

If it becomes necessary to materially deviate from the described centerline to accommodate engineering and applicable safety and construction requirements based upon conditions encountered during construction, all landowners affected by the material deviation and the Commission must be notified in writing at least five working days before the material deviation is expected to occur. Unless otherwise notified by the Commission, the material deviation is deemed approved. For purposes of this paragraph, the term "material deviations" shall mean any action or activity outside the reasonable parameters of the Permit.

24.

Applicant shall locate all structures, to the extent feasible and prudent, to minimize adverse impacts and interferences with agricultural operations, shelterbelts, and other land uses or activities existing prior to the date of this Stipulation, unless agreed otherwise by the affected landowner. Applicant shall take appropriate precautions to protect livestock and crops during construction.

25.

The terms and conditions of the Permit shall be made a uniform condition of construction, subject only to an affirmative written request for an exemption addressed to the Commission. A request for an exemption shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis which evaluation shall be completed within sixty (60) days unless exigent circumstances require action sooner.

26.

If the presence or operation of the Project causes unreasonable interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project. This mitigation requirement shall not apply to any dwellings or other structures built after completion of the Project.

27.

Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways. Before commencing construction, Applicant shall furnish an indemnity bond in the amount of \$300,000 to comply with the requirements of SDCL § 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, such townships, counties, or other governmental entities whose property is crossed by the transmission facilities or used by associated construction equipment. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied



following completion of the construction and remediation period. Applicant shall give notice of the existence and amount of the bond to all governmental entities whose property is crossed or used by the Project.

28.

Applicant will provide Global Positioning System (GPS) coordinates of proposed structure locations to affected landowners at any time during the life of the Project. Coordinates will be provided in writing to landowners within 30 days of a request.

29.

Not less than 30 days prior to commencement of construction work in the field, Applicant will provide to Staff the most current pre-construction design, layout and plans. Applicant also will provide such additional pre-construction information as Staff requests.

30.

Within 90 days of the Project's completion, Applicant shall submit a report to the Commission that provides the following information: 1) as-built location of structures and route, including drawings; 2) status of remedial activities for alleged road damage, alleged landowner property damage, alleged crop damage, alleged environmental damage, or any other alleged damage that resulted from construction activities; and 3) a summary of known landowner complaints and Applicant's responses.

31.

Prior to construction, Applicant will notify public safety agencies providing a schedule and location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public Safety, Sheriffs of Brown, Grant, and Day Counties, and Brown, Grant, and Day County Offices of Emergency Management.

32.

Applicant shall provide all landowners information regarding the potential induction of current/voltage on fences and metal objects and mitigation methods that can be applied to eliminate the induction. Applicant will respond to landowners concerns regarding induced current/voltage on fences or other structures within 100 feet of the edge of the right-of-way of the Project and will furnish, install, and test at Applicant's expense recognized mitigation materials.

33.

If the presence or operation of the Project causes unreasonable interference with any unlicensed agricultural navigation communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project. For purposes of this Stipulation, line of sight obstructions shall not be considered unreasonable interference.

SETTLEMENT STIPULATION—DOCKET EL 13-028

Dated: 6/18/2014

Montana-Dakota Utilities Co.

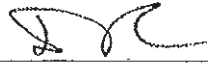
By:  \_\_\_\_\_

Its: Vice President - Electric Supply

SETTLEMENT STIPULATION—DOCKET EL 13-028

Dated: JUNE 18, 2014

Otter Tail Power Company

By: 

Its: President

SETTLEMENT STIPULATION—DOCKET EL 13-028

Dated: 06/18/2014

Karen E. Cremer

Karen E. Cremer  
Staff Attorney  
South Dakota Public Utilities Commission

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

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In the Matter of the Transmission Permit for the  
Big Stone South to Ellendale Project

EL13-028

**MONTANA-DAKOTA UTILITIES CO.  
AND OTTER TAIL INITIAL  
POST-HEARING BRIEF**

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Montana-Dakota Utilities Co. and Otter Tail Power Company (collectively “the Applicants”) filed an Application for a facility permit for the Big Stone South to Ellendale 345-kV transmission line (“the Application”). Consistent with the Public Utilities Commission of South Dakota’s (“the Commission) order dated June 5, 2014, Applicants submit this post-hearing brief.

In order to obtain the facility permit, Applicants must prove each of the elements required by SDCL 49-41B-22, which states:

The applicant has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

Applicants must prove each of these elements by the preponderance of the evidence. *See Irine v. City of Sioux Falls*, 2006 SD 20, ¶ 10, 711 N.W.2d 610-11 (“Generally, the burden of proof for administrative hearings is preponderance of the evidence.”).

The Applicants have satisfied each of these elements for the reasons stated in Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law.<sup>1</sup> As a result, the Commission should award the facility permit with the conditions required by the Amended Settlement Stipulation, which is Exhibit 301A. The Commission agrees to the issuance of the permit provided Applicants comply with the conditions required by the Amended Settlement Stipulation, and it jointly requests issuance of the permit. *See Joint Motion for Approval of Settlement Stipulation* filed June 9, 2014.

Three intervenors—Gerald Pesall, Brad Morehouse, and Schuring Farms, LLC—presented evidence at the evidentiary hearing. None of the intervenors’ objections warrant denial of the permit or imposition of additional conditions. Indeed, rather than being an objection to the issuance of the permit, all of the intervenors’ objections are really based upon objections to the route location. Although Pesall purported to object to the Project, his testimony reveals his true objection is to the routing of the Project:

Q: . . . You’ve been asked if you object to project as a whole or just to the part on your land.

Do you object to the project as a whole in spite of the fact that it crosses your land?

**A. Well, it wouldn’t affect me as much if they kept it off my land.**

Q. Would you think it was good idea if they kept it off your land?

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<sup>1</sup> In the interest of brevity, rather than rearguing why each of the elements is satisfied in this brief, Applicants incorporate by reference Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law filed contemporaneously with this brief.

**A. It would be a great idea if they kept it off my land. I would go away and disappear.**

(HT p.312 (emphasis added)). Similarly, both Morehouse and Randy Schuring, on behalf of the Schuring Farms, LLC, admitted they do not object to the Project but instead only object to the proposed route. (HT pp.318, 349). Objections to the location of the route are not a legally cognizable basis for denying the permit because the Commission lacks the legal authority to determine the route. SDCL 49-41B-36 (“Nothing in this chapter is a delegation to the commission of the authority to route a transmission facility, or to designate or mandate location of an energy conversion facility, AC/DC conversion facility, or wind energy facility.”). Furthermore, even assuming for argument that the intervenors’ objections to the Project are more than objections to the proposed route, none of evidence warrants denial of the application for the reasons stated in Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law.

**CONCLUSION**

Based on the evidence presented at the evidentiary hearing, and based upon the conditions imposed by the Amended Settlement Stipulation, Applicants respectfully request that the Commission grant the application and issue the facility permit based upon the terms and conditions required in the Amended Settlement Stipulation.

Dated 18<sup>th</sup> day of July, 2014



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

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In the Matter of the Transmission Permit for the  
Big Stone South to Ellendale Project

EL13-028

**CERTIFICATE OF SERVICE**

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I, Jason R. Sutton, do hereby certify that I am a member of the law firm of Boyce, Greenfield, Pashby & Welk, LLP, attorneys for Montana-Dakota Utilities Co. and Otter Tail Power Company and that on the 18<sup>th</sup> day of July 2014, a true and correct copy of the (1) Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law; (2) Proposed Order Granting Permit to Construct Facilities; (3) Montana-Dakota Utilities Co. and Otter Tail's Motion for Leave to Submit Documentary Evidence; (4) Montana-Dakota Utilities Co. and Otter Tail Initial Post-Hearing Brief and this Certificate of Service were served via email to the following addresses listed:

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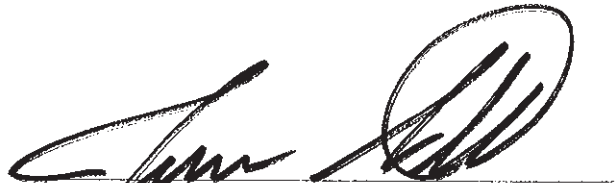
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