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 TO SOUTH ELLENDALE 345KV TRANMISSION LINE	GERALD PESALL'S POST-HEARING INITIAL BRIEF EL13-028

The following brief is submitted on behalf of Gerald Pesall pursuant to the Commission's Prehearing Conference Order. Gerald Pesall takes the position that the permit requested by the Applicants should be denied at this time.

I. CASE STATUS AND JURISDICTION

Applicants commenced this proceeding by filing their Application on August 23, 2013, pursuant to S.D.C.L. Chapters 1-26 and 49-41B. Through that application, Applicants requested a permit to construct a 345kV transmission line from a substation near Ellendale, North Dakota, through Brown, Day, and Grant counties in South Dakota, to end at a substation near Bigstone City, South Dakota.

Gerald Pesall applied for party status in this proceeding, pursuant to S.D.C.L. 49-41B-17, on October 18, 2013. He was granted party status on November 6, 2013. James R. McKane III, Clark T. Olson, Schuring Farms, Inc., Bradley Morehouse, and Kevin Anderson similarly applied for party status on April 14, 2014. They were granted party status on May 1, 2014.

A Prehearing Conference was conducted on May 29, 2014, and the Commission issued its Prehearing Conference Order. That Order provided, among other things, for the filing of initial briefs by all parties by July 18, 2014, and rebuttal briefs by August 1, 2014.

Applicants and Commission Staff executed and filed a Settlement Stipulation on June 9, 2014. This Settlement Stipulation was amended following the evidentiary hearing. It does not include all parties to the proceeding.

The Commission conducted an evidentiary hearing on June 10 and 11, 2014. Applicants, Pesall, Morehouse, Schuring and the Commission Staff appeared. The other interveners did not appear. Pursuant to the Prehearing Conference Order, Gerald Pesall now submits the following Initial Brief. References to the evidentiary hearing transcript will be designated "TR:" followed by the appropriate page and/or line number. References to exhibits will be designated by number and page.

II. STATEMENT OF THE CASE AND FACTS

At the evidentiary hearing, the parties presented evidence and testimony regarding the Applicants proposed transmission line. This evidence included the impact it would have on the environment and the impact it would have on the inhabitants of the proposed route. Most of the facts testified-to at that hearing were uncontested. Conflicting evidence was presented on several issues, however. For clarity, the following S*tatement of the Case and Facts* is sub-divided into facts which were generally uncontested, and those for which conflicting evidence or testimony was presented.

A. Uncontested Facts

The Applicants seek a permit to construct a 345kV transmission line which will be between 160 and 170 miles long. If constructed, it would start at a new substation near Ellendale, North Dakota. It would run through Brown, Day, and Grant counties in South Dakota, and terminate at another new substation near Big Stone City, South Dakota. Exhibit 1, p. 11.

At the Big Stone City substation, this line would connect to a second 345kV line which would run to a substation near Brookings, South Dakota. From there, a third 345kV line which would

terminate near Minneapolis, Minnesota. Exhibit 1, Appendix B1, p. 1-2.

The idea to construct at 345kV line between substations near Ellendale and Big Stone City originated with MISO. Among the stated purposes for this line is the desire to comply with state-law renewable energy mandates and improve reliability. Id. MISO did not select the route proposed by the applicants, however. TR, p. 43.

The general flow of power is expected to be from North Dakota to load centers in Minnesota. TR, pp. 116-117. No wind farm connections or other generating facilities in South Dakota are expected to interconnect with the proposed line, and apart from the substations on either end, the applicants do not anticipate any other interconnections. TR, pp. 42-43. Applicants were not able to identify specific customers in North Dakota, South Dakota, or Minnesota who would benefit from the construction of the project. Exhibit 4, pp. 4, 6 and 8.

Physically, the proposed line would be suspended by steel monopole towers. Individual contractors and large construction and drilling equipment would be employed to erect these towers. Each tower would be about 125 feet tall. It would rest on a cylindrical concrete foundation roughly six feet in diameter and 25 to 30 feet deep. Construction would require the removal of around 30 cubic yards of soil per tower. TR, pp. 174-177.

With respect to the positions taken by local government, only a few entities have expressed an official position in writing. However, those which took a position have all opposed the issuance of a permit in this case TR, p. 42.

The applicants were aware of their obligation to provide economic impact information as part of the application process, but did not actually examine the economic impact the project would have on farms in the siting area. TR, pp. 157-158 Applicants testified that property value studies were

conducted by one of their consulting firms, TR, pp. 41, 156. These studies, however, do not appear to have been offered into evidence.

One of the environmental hazards posed by the proposed line is the spread of soybean cyst nematode (SCN.) SCN is a soil-born parasite which can cause soybean productivity losses of up to 50% in infected fields. Once SCN is present in a field, it cannot generally be removed or eliminated. It can be spread by farming activities, wildlife, or even wind. Construction activities like those necessary to construct and maintain the proposed line, however, pose a greater risk of spreading the parasite from field-to-field or farm-to-farm. Exhibit 102.

SCN was first identified in South Dakota in 1997. Exhibit 108. Since then it has spread from county-to-county over time. Exhibit 109, p. 1. SCN has been a known problem in Grant and Day counties significantly longer than other counties such as Roberts or Marshall. Id.

Soybeans are one of the major crops produced in the area where the line would be built. Exibit 101, p. 2. The siting area itself has been primarily developed for agricultural production. Gerald Pesall is one of many farmers who inhabit the citing area and who continue to operate multi-generational family farms. His own has been in continuous operation for over 125 years. TR, 279, 280; Exhibit 101, p 1. Landowner concerns with respect to the proposed line relate in particular to safety issues, liability issues, damage to otherwise productive land, and decreasing property values. Exhibit 101, p.2.

B. Contested Facts

The material presented at the June, 2014 evidentiary hearing included conflicting evidence on several points. The most significant of these relate to (1) The spread of SCN, (2) The proposed line's impact area on farms, and (3) The proposed line's impact on property values.

1. Evidence Regarding SCN

The first significant question for which conflicting evidence was presented was whether construction and maintenance of the proposed line posed a risk of environmental harm by accelerating the spread of SCN.

Through their Discovery Answers, the applicants originally claimed "the construction of the project will have no impact on the field-to-field transmission of soil and plant borne pests." Exhibit 5, p. 6. Henry Ford further testified for the Applicants that, "When this issue was raised by Mr. Pesall's attorney this was not an issue that the owners of this project or the Applicants here were really aware of." However Ms. Piner, one of the Applicants consultants, later testified that she had encountered the SCN issue in a prior project in Wisconsin. TR, p.161.

Testimony from Dr. Gregory Tylka, however, made it clear that SCN transmission can significantly harm soybean production, that is has been a known problem in South Dakota since 1997, and that construction activities like those required to construct and maintain the proposed line are likely to enhance the spread of SCN more than ordinary farming activities. Direct Testimony of Gregory Tylka, pp. 2-3.

Dr. Tylka's exhibits also demonstrated that the SCN problem is somewhat unique to the route selected by the Applicants. SCN has been a known problem in Grant and Day county since the 1990's, but only spread to Roberts, Marshall, and Brown counties more recently. Exhibit 109, p. 1. Applicants acknowledge that they did not consider SCN when selecting their route, and this information suggests that a route through Roberts and Marshall counties could pose less risk of spreading the parasite. Dr. Tylka's evidence is supported by extensive education, experience, and training, and should be accepted.

2. Interference with Farms

The second significant question on which conflicting evidence was presented is the extent to which construction and operation of the proposed line would interfere with, or harm, existing farming operations in the siting area.

In prefiled testimony, Henry Ford and Angela Piner opined that the proposed line would not pose a threat of serious injury to the environment and economic conditions of the inhabitants of the siting area, that it would not impair the health, safety, and welfare of the inhabitants, and that it would not unduly interfere with the orderly development of the region. Exhibit 16A, pp. 21-22; Exhibit 18, pp. 9-10. On cross examination, however, Ford acknowledged that no social or economic studies had actually been conducted on the impact the proposed line would have on local farms. TR, pp. 49-50. Neither Mr. Ford nor Ms. Piner are farmers themselves, they do not have formal education in sociology or economics, and they do not reside in the siting area. TR, pp. 38-39 and 159-160.

In spite of this testimony, Applicants appear to acknowledge some of the risks which the proposed line would create for inhabitants. These include the danger of refueling equipment within 100 feet of the line, TR, p. 57, potential shocks from stray voltage or induced current, TR, pp. 195-196, the risk of collisions between towers, lines, and agricultural equipment, TR, p. 50-51.

By contrast, Mr. Pesall, a farmer in the area, provided ample testimony regarding the potential for (1) Increased landowner liability due to the potential for collisions between farm equipment and the towers or wires, (2) Reduced ability to conduct aerial spraying, (3) Increased risk of injury and decreased productivity due to limitations of working near lines and towers, (4) Lack of a mechanism to address harm to average field production levels for crop insurance purposes. (5) Increased overhead, paperwork, and lost time due to the activities which would be required to accommodate the line.

Exhibit 101, p. 2-3. TR, pp. 282-284; Exhibit 111. Mr. Schuring, another farmer in the siting area, also testified that these problems would arise if the line were constructed. TR, p. 314 et seq.; TR. p.

Applicants did not conduct any social or economic studies as to the impact the proposed line would have on actual farming operations. None of the Applicants' witnesses are farmers, and none reside in the siting area. Therefore, the most credible testimony as to the expected harm and interference the line would cause to area farms is that from Mr. Pesall and Mr. Schuring. Their testimony should be accepted.

3. Property Values

The third significant question for which conflicting evidence was presented is whether the proposed line would negatively impact land values for property under or adjacent to the proposed line.

Through their Application and Discovery Answers, the Applicants claimed that the proposed line will not "have significant short- or long-term effects on … land values … due to the relatively minimal footprint of the Project." Exhibit 1, p.72; Exhibit 4, pp. 2-3. Henry Ford restated that claim during cross examination, and further asserted that a property value study had been conducted by KLJ, which was referenced in prefiled testimony. TR, p. 41. However, Applicants' prefiled testimony does not appear to address either the property value study Mr. Ford described, nor does it provide any other credible assessment of the impact the proposed line would have on nearby land values.

By contrast, Mr. Pesall testified that it would in fact lower his land values. Exhibit 101, p. 2. Mr. Schuring also testified that land values would be lower for property burdened by the proposed line. TR, pp, 325-326.

Applicants did not offer into evidence any studies on or expert testimony as to the impact the proposed line would have on nearby land valuates in the siting area, only a naked assertion that values

would not change. The testimony from Mr. Pesall and Mr. Schuring, who are both experienced farmers and land-owners in the area, is therefore more credible and should be accepted.

III. ARGUMENT AND AUTHORITIES

In considering the Applicants' request for a permit, the Commission should follow a two-step approach. First, it should determine whether the Application itself meets with the statutory requirements of S.D.C.L. 49-41B-11 and any applicable administrative rules adopted pursuant to S.D.C.L. 49-41B-35. Second, it must determine whether the Applicants have met their burden of proof for each element of S.D.C.L. 49-41B-22 through the evidence presented at the evidentiary hearing.

As with courts in civil matters, the general standard of proof for administrative hearings is by a preponderance, or greater convincing weight, of the evidence. *Dillinghan v. North Carolina Dept. of Human Resources*, 513 SE2d 823 (N.C. App. 1999). Each element to be proved must be established by reliable, probative, and substantial evidence, such that the judge can conclude that the existence of facts supporting the claim are more probable than their nonexistence. *U.S. Steel Min. Co., Inc. v. Director, Office of Worker's Compensation Programs, U.S. Dept. of Labor*, 187 F.3d 384 (4th Cir. 1999).

Unlike civil courts however, the Commission is not bound by "stare decisis." Meaning, although the Commission ruled one way in a particular case, it is not bound to make a similar ruling in a factually similar subsequent case. *Interstate Telephone Co-op., Inc. v. Public Utilities Com'n of State of S.D.*, 518 N.W.2d 749, 552 (S.D. 1994) This is because the public interests which the both the Commission and S.D.C.L. 49-41B-22 were created to protect may change over time.

A. Requirements for the Application

In addition to the items which an applicant must prove under S.D.C.L. 49-41B-22, both statutory and administrative rules require specific information to be included with the application. An

application may be "denied, returned, or amended" when it is not filed "generally in the form and content required by this chapter and the rules promulgated thereunder." S.D.C.L. 49-41B-13.

1. Consumer Demand Information

Applicants are obligated to meet both statutory and administrative rules regarding the contents of their applications. The statutory requirements for the application are set out in S.D.C.L. 49-41B-11. Of particular concern in this case are the requirements in SDCL 49-41B-11(9). This section requires applicants to provide, in their application, "Estimated consumer demand and estimated future energy needs of those consumers to be directly served by the facility." This information is essential if the Commission is to assess whether the proposed facility is in the public interest.

The Application purports to meet this requirement by making reference to Appendix B-1, page 30. Exhibit 1, p. 19. Appendix B-1 is a 2012 MISO Multi Value Project Portfolio report. Page 30 in that report provides no information about estimated consumer demand. Rather, it provides that the stated purpose of the line is to "[move] mandated renewable energy from the Dakotas to major 345 kV transmission hubs and load centers." The report as a whole makes it clear that, from the MISO perspective, the purpose of creating a transmission line between Ellendale and Big Stone City is not consumer demand at all. Rather, the motivating force has been public policy decisions and mandatory Renewable Portfolio Standards (RPS).

The report does provide general projections for demand across the MISO footprint, but provides no real information as to current or estimated future demand by South Dakota consumers. Whatever the merits of RPS, without specific consumer demand information, the application fails to provide the Commission with essential information to render a decision, and fails to meet the requirements of the statute.

2. Reducing Eminent Domain Use

Similarly, A.R.S.D. 20:10:22:12(3) requires the application to provide "a discussion of the extent to which reliance upon eminent domain powers could be reduced by use of an alternative site." As with consumer demand, this information is essential if the Commission is to weigh the public interests protected by SDCL 49-41B-22 against the proposed project.

Again, however, the Application fails to meet this requirement. Rather than providing a discussion, the application makes the unsupported assertion that "Applicants have no reason to believe that eminent domain powers could be reduced by use of an alternative site." AP: 27.

3. Decommissioning the Facility

Finally, ARSD 20:10:22:33 requires the application to "provide a plan or policy statement on action to be taken at the end of the energy conversion facility's on-line life. Estimates of monetary costs, site condition after decommissioning, and the amount of land irretrievably committed shall be included in this statement."

In this regard, the application fails to provide any information what-so-ever. In fact, the rule appears to have been was entirely omitted from the applicants "Completeness Checklist." The proposed facility would be constructed over family farms which may out-live the proposed line, TR:279, so this information is also essential if the Commission is to assess its long term impact.

Because the application fails to meet all three of these legal requirements, and because the missing items are required for the Commission to adequately assess both the project and the public interest, the application should be denied.

B. Applicants' Burden of Proof

The proposed siting area consists primarily of farmland, and family farms are the primary way

in which the region has been developed. Many of these have been in continuous operation for over one hundred years. It is against this background that the Commission must assess whether the applicants have met their burden of proof under S.D.C.L. 49-41B-22. This section provides as follows:

> "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 the social and economic condition of the inhabitants or expected inhabitants of 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."

For family farms in agricultural regions, many of the elements in subsections 2, 3, and 4 overlap. Environmental harm that leads to crop damage will ultimately cause social and economic harm. Economic harm can create health, safety, and welfare risks for farmers who survive based on their own ability to produce crops in a competitive global market. Economic harm to these farmers, in turn, can harm the orderly development of the agricultural region where they live. Because these elements overlap, they will be treated together below. The rest of these elements will be addressed in turn.

1. Compliance with Laws and Rules

The first element the applicants must prove is that the "proposed facility will comply with all applicable laws and rules." There are numerous state and federal legal requirements which must be met by a project of this scope, most of which have not been raised as issues by the parties. The evidence presented on this point generally consists of statements by the witnesses that, in their opinion, the facility will comply with the law. See eg. Exhibit 18, p.10; Exhibit 16A, p.21. However, one issue

of legal compliance merits closer examination.

That issue is whether the proposed facility will comply with the conditions of the permit in the future, if one is granted. S.D.C.L. 49-41B-34 makes it a criminal offense not to do so. In this regard, Applicants executed a Settlement Stipulation which was accepted into evidence as Exhibit 301. This Stipulation, having been offered into evidence, is effectively a statement by the applicants that they will meet the set of proposed conditions contained in it. Page 2 of the Stipulation, however, also states that this statement is expressly withdrawn in the event that the Commission would impose any terms materially different from those in the Stipulation itself.

In short, Exhibit 301, on its face, effectively states that the Applicants may *not* comply with permit conditions, unless those conditions are the ones the Applicants themselves have written. This considerably different than stating they will comply with "all" applicable laws and rules.

This issue is compounded by the fact that many of the proposed conditions in Exhibit 301 are ambiguous to the point of being difficult or impossible to enforce. For example, on page 6, the Applicants propose a permit condition requiring them to "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." Issues with the soybean cyst nematode (SCN) are addressed in detail below. But from a pure "legal compliance" perspective, this language is so ambiguous that it makes the condition unenforceable. Apart from some sampling standards, neither the stipulation nor Exhibit 23 provides any information about the qualifications of the "expert," or even basic elements of planned mitigation activities. Without more detail, it would be impossible for citizens to bring complaints, or for the Commission to act upon them, in the event of a violation.

And, since violations of permit conditions are also criminal offenses under SDCL 49-41B-34,

adopting such ambiguous language may also render those conditions unconstitutionally vague. Constitutional due process provisions require that laws with criminal penalties must be sufficiently detailed so as to give fair notice as to exactly what conduct is forbidden. *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 451-452 (1983), (holding that a rule requiring physicians to dispose of remains in a "humane and sanitary manner" was unconstitutionally vague.)

It may well be that, if a permit were granted with other conditions, the Applicants still intend to comply with those conditions. That, however, is not the question at issue. The question before the Commission at this point is whether, based on the evidence presented, Applicants have proven that the facility will comply with any permit conditions the Commission itself may impose. Because the only conditions to which Applicants have agreed are so ambiguous, and because Exhibit 301 indicates they may not comply otherwise, they cannot be said to have met their burden of proof on this element.

2. Environmental, Social, Economic, Health, Safety, Welfare and Developmental Harms

As noted above, when applied to family farms in agricultural regions, many of the elements listed in S.D.C.L. 49-41B-22 (2), (3), and (4) are interrelated. The primary points of concern for all of these elements, as identified at the evidentiary hearing, were (a) Transmission of SCN, (b) Interference with Farming Activities, and (c) Reduction in Property Values.

(a) Soybean Cyst Nematode (SCN)

The evidence presented at the hearing demonstrated that soybean production is a key element of the economy in the region, and that the SCN poses a significant threat to soybean production. Crop losses can reach up to 50% in fields where SCN is present. SCN is present in the counties through which the transmission line would run.

Due to the presence of SCN in these counties, the proposed facility would pose a threat of

serious injury to the environment, as well as the social and economic condition of the inhabitants. This is because construction and maintenance of the facility would require the movement of large construction equipment from field-to-field, over land comprising multiple independent farming operations. It would also involve extracting and moving around 30 cubic yards of soil for the foundation of each individual tower.

These kinds of activities poses a serious risk of transmitting SCN from infected fields and farms to uninfected fields and farms, and of spreading SCN to new locations within individual fields. The transmission risk created by the proposed construction and maintenance operations is greater than it would be for ordinary farming operations.

The Applicants proposed a mitigation plan, but that plan is too vague to assess or enforce. For example, Applicants offer to consult with a crop pest control expert, but fail to provide any criteria for what kind of expert they would consult. Applicants offer to conduct systematic sampling for SCN in the project area, but provide no information as to the actions they would take when SCN is found. And finally, Applicants offer no information on what they would do with the 30 cubic yards of soil removed for each tower constructed on a field where SCN is present.

Because the Applicants mitigation plan is so vague, neither the Commission nor the other parties can make a meaningful assessment of how well it would work. Therefore, it cannot be said that this plan is sufficient to mitigate the threat of serious environmental, social, and economic injury risk created by the presence of SCN in the siting area.

Ultimately, S.D.C.L. 49-41B-22(2) requires that the Applicants prove that their activities will not "pose a threat of serious injury to the environment." Based on the evidence presented, they have not done so.

(b) Interference with Farming Activities

In addition to the serious threat of environmental, social and economic harm which would be caused by field-to-field transmission of SCN during the construction and maintenance of the proposed line, the evidence presented at the hearing also demonstrated a series of ways in which the proposed facility is expected to harm the health, safety, and welfare of area residents.

These included, but were not limited to (1) Increased landowner liability due to the potential for collisions between farm equipment and the towers or wires, (2) Reduced ability to conduct aerial spraying, (3) Increased risk of injury and decreased productivity due to limitations on handling of fuel near the lines, (4) Lack of a mechanism to address harm to average field production levels for crop insurance purposes. (5) Increased overhead and time lost accommodating the presence of the lines.

Individually, some of these items may not constitute a threat of "serious injury" to social and economic conditions, or "substantial impairment" contemplated by SDCL 49-41B-22(2) and (3) but they must be considered in the aggregate, not individually. Each of these issues requires each farm to spend extra time and money, every year, to accommodate the lines and the risks they create. When accidents happen, and they will, area residents will have to accept those losses as well. Together with the inherent damage which would result from SCN transmission, the evidence tells us that the proposed facility will substantially impair the health, safety and welfare of the inhabitants.

Finally, S.D.C.L. 49-41B-22(4) requires the applicants to demonstrate that the proposed 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 units of local government." It is uncontested that the region has been developed primarily for agricultural production. It is clear from the evidence that the proposed facility would interfere with that production. It is uncontested that all of the local

governing bodies who have made written comments to the Applicants on the subject have opposed it. Finally, it is clear from the evidence that, from the perspective of area residents, little or no benefit would result from the presence of the facility.

It is important to note that, for this last element, the legal standard is different and much more restrictive on the Applicants. They need to prove more than just the absence of harm or the risk of harm. For this element, the Applicants must prove that the aggregate impact of the proposed facility will not cause "undue interference" with the region, with heavy weight given to the opinions of local government.

In order to determine whether the line's interference is "undue", the Commission must weigh all of the aggregate risk, harm, and interference this project will create against the purported benefits it will produce. Here again, the Applicants failed to meet that burden.

Applicants were unable to identify any benefits which would be observed individual consumers in South Dakota, or anywhere else. Applicants did not identify any permanent new jobs which would be produced in the region. Indeed, even the contractors, Applicants, witnesses, and consulting firms who worked on this project appear to come in other states. No new generating facilities in the region are expected to make use of this line. Apart from the taxes it would pay, the only benefit for this line which Applicants have shown is that it, as one of 17 other projects, is may reduce competition for existing lines and make it easier for MISO member companies to meet renewable portfolio standards without building new generating facilities.

These few benefits, weighed against the negative impact the line would have on the region, demonstrate that this project would "unduly interfere with the orderly development of the region." Applicants have, therefore, failed to prove otherwise.

(c) Property Devaluation

The last major issue which should be examined in determining whether Applicants have met their burden of proof is the impact the proposed facility would have on property values. Separate and apart from the day-to-day activities of farms and units of local government, the value of the land itself is a significant economic factor.

In this regard, the only credible evidence appears to be testimony from the farmers themselves. That is, that the construction of the line would reduce the value of property over which it passes, far beyond the easement space purchased or taken through eminent domain by the Applicants. Applicants assertions to the contrary are unsupported by any studies or testimony in evidence.

Because the property devaluation is a significant economic issue, because under S.D.C.L. 49-41B-22 (2) the Applicants have the burden of proving that their activities will not pose a threat of serious injury to those property values, and because they have offered no credible evidence to contradict the testimony by Mr. Schuring and Mr. Pesall, Applicants cannot be said to have met their burden under this section.

IV. CONCLUSION

The Commission should deny the permit because the Application provide all of the information required by statute and administrative rule, and therefore does not provide the Commission or the parties with sufficient information to fully assess the proposed line.

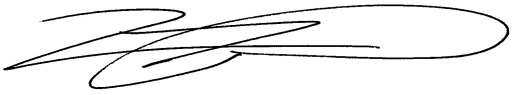
In addition, the Commission should deny the permit because the applicants have not met their statutory burden of proof. The presence of SCN in the region, and the likely spread which would be caused by construction and maintenance activities creates a threat of serious environmental and economic injury. Applicants' mitigation plans do not provide sufficient detail to assess whether they

would be effective or not, and are so vague as to be effectively unenforceable. Unless and until they can produce a credible, detailed plan which will actually mitigate the risk SCN poses, Applicants should not be awarded a permit to proceed.

Likewise, the Applicants have failed to prove that the proposed line will meet the health, safety, welfare standards imposed by law, or that the aggregate impact of the proposed line will not unduly interfere with orderly development of the region. The costs, risk of harm, and inconvenience imposed on each individual farm in dealing with the proposed line on a daily basis is undue given the nominal benefit to the public, both in and out of South Dakota, which would result from its construction.

Ultimately, the question is not whether the proposed line can be made to meet the requirements of the law, but whether the Applicants have proven this based on the evidence presented. They have not, and the permit should be denied accordingly. Applicants would then be free to re-apply in the future for this or another, more appropriate route.

Dated this 18th day of July, 2014



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