

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

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**IN THE MATTER OF THE APPLICATION  
OF OTTER TAIL POWER COMPANY  
FOR AN ENERGY CONVERSION  
FACILITY PERMIT FOR THE  
CONSTRUCTION OF A COMBUSTION  
TURBINE GENERATOR AND  
ASSOCIATED INFRASTRUCTURE  
INCLUDING A NATURAL GAS PIPELINE  
AND ELECTRIC TRANSMISSION LINE  
NEAR ASTORIA, SOUTH DAKOTA**

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**APPLICANT OTTER TAIL  
POWER COMPANY’S  
PROPOSED FINDINGS OF  
FACT AND CONCLUSIONS OF  
LAW  
  
EL17-042**

Otter Tail Power Company (“Otter Tail”) filed an Application for an energy conversion facility permit for the Astoria Station Project, dated October 5, 2017 (“the Application”), in the above-entitled docket. Based upon the entirety of the record, Otter Tail and the Staff of the South Dakota Public Utilities Commission (“Staff”) have stipulated and requested, by joint motion, that the Public Utilities Commission of the State of South Dakota (“the Commission”) adopt the Settlement Stipulation and issue the facility permit sought in the Application based upon the terms and conditions identified in the Settlement Stipulation.

In support of its Application, the Otter Tail offers the following evidence: the Application, the First Supplemental Filing in Support of Application; the Second Supplemental Filing in Support of Application; the Third Supplemental Filing in Support of Application; the Responses to Staff’s First, Second, and Third Sets of Data Requests; and the Settlement Stipulation. Otter Tail and Staff offered no testimony, exhibits, or evidence conditioned upon the Commission accepting the Settlement Stipulation. Based upon the Commission’s review of the Settlement Stipulation and the other docket filings in this matter, the Commission enters the following findings of fact and conclusions of law.

## **FINDINGS OF FACT**

1. Otter Tail, a Minnesota corporation, is headquartered in Fergus Falls, MN, and provides electric service to 131,200 customers and 422 communities, including 49 communities in South Dakota.

2. On April 4, 2017, in Docket EL 17-07, Otter Tail submitted to the Commission a notice of intent to apply for an energy conversion facility for the Project.

3. On October 5, 2017, Otter Tail filed an Application with the Commission for a permit to construct and seeks to develop, own and operate an approximately 250-megawatt simple-cycle natural gas fired energy conversion facility and related components, which is known as the Astoria Station Project (“Project”), in the above-captioned docket.

4. The Project will consist of a simple-cycle natural gas fired energy conversion facility; a short segment (estimated at less than 1,000 feet) of approximately 10-inch diameter natural gas pipeline necessary to connect to the Northern Border Pipeline; a short segment (estimated at less than 0.5 miles) of 345 kilovolt (kV) electric transmission line necessary to interconnect to the Big Stone South to Brookings County 345 kV electric transmission line (“Gen-Tie Line”); and a short segment (estimated at less than 1,500 feet) of approximately 5-inch diameter water pipe necessary to supply process and potable water. All of the facilities, including the simple-cycle natural gas fired energy conversion facility, the natural gas pipeline, the Gen-Tie Line, and the water pipeline described in this paragraph are included in the “Project” and subject to the Application.

5. After considering alternative sites, Otter Tail selected the proposed site for the Project based upon its proximity to the Northern Border Pipeline and the Big Stone South to Brookings County 345 kV electric transmission line. The proposed site minimizes the lengths of natural gas pipeline needed to interconnect to the Northern Border Pipeline and Gen-Tie Line needed to interconnect to the Big Stone South to Brookings County electric transmission line

compared to alternative sites. In addition to reducing costs for electric consumers, the site reduces environmental, social, and cultural impacts because there is less land impacted.

6. Otter Tail has acquired all necessary real property interests for the construction of facilities associated with the permit. Otter Tail owns the real property on which the energy conversion facility, natural gas pipeline, and water pipeline will be located. Otter Tail also has acquired an easement for the Gen-Tie Line. Except for one easement granted by a single landowner for right-of-way for the Gen-Tie Line, Otter Tail owns all of the other land on which the Project will be located.

7. Otter Tail has demonstrated need for the Project. Construction of the Project will generate power needed by Otter Tail's customers, including those located in South Dakota. The Project will allow Otter Tail to reliably meet future anticipated generation need, including need associated with expiring capacity purchase agreements and the 2021 retirement of the 1950s-era coal-fired Hoot Lake Plant near Fergus Falls, MN.

8. The total cost of the Project is expected to be approximately \$165 million dollars.

9. Construction of the Project is anticipated to commence in the Spring of 2019. The Project is expected to be in service in 2021.

10. The construction and operation of the Project will result in substantial benefits to South Dakota. The Project qualifies for a program providing property tax relief during the first five years of the Project. After those five years, the Project is expected to generate approximately \$1 million dollars per year in annual property tax payments to local governments.

11. Project construction will also contribute to local economic development. The Project will create three to five new permanent jobs associated with operation of the Project after constructed. The Project also will provide construction employment opportunities, increased demand for locally-supplied construction equipment, and continued reliability of electrical power.

The Project will result in local expenditures by construction workers, and it is likely that Otter Tail will procure a variety of construction materials, supplies, and fuel in the area.

12. Otter Tail filed the Application for issuance of a facility permit for the Project on October 5, 2017. Otter Tail provided a copy of the Application to the Brookings County Financial Officer and Deuel County Auditor via first-class mail on October 16, 2017.

13. On October 12, 2017, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status (“October 12 Order”). The October 12 Order scheduled a public input hearing on the Application for Monday, November 27, 2017, at 6:30 p.m. at Deubrook Elementary School gymnasium in Toronto, SD.

14. The October 12 Order set a deadline of December 4, 2017 for applications for party status.

15. The Commission twice published its notice of the public input hearing and notice of the deadline for applications for party status in three separate newspapers: the Brookings Register on November 1 and November 22, 2017; the Clear Lake Courier on November 1 and November 22, 2017; and the Tri-City Star on November 2 and November 23, 2017.

16. On October 24, 2017, Otter Tail notified all landowners within one-half mile of the proposed site as required by SDCL 49-41B-5.2. The letter notification enclosed a map showing the proposed location for the Project; provided notice of the public input hearing; and advised landowners of the deadline for applying for party status. The letter was sent to all landowners via certified mail.

17. As required by SDCL 49-41B-5.2, Otter Tail published notification of the Project and the public input hearing in newspapers of general publication in Brookings and Deuel Counties, SD. Otter Tail published notification of the Project and the public input hearing in the following: the Brookings Register on October 25 and November 1, 2017; the Clear Lake Courier

on October 25 and November 8, 2017; and the Tri-State Star on October 26 and November 2, 2017.

18. On November 14, 2017, Otter Tail filed a motion for a finding of substantial compliance with the publication notice requirement or, in the alternative, extension of the deadline for publishing notice of the public input hearing (“Substantial Compliance Motion”). Otter Tail requested a determination that its notice publication substantially complied with the requirements of SDCL 49-41B-5.2, even though Otter Tail’s second publication of notice was published in the Clear Lake Courier more than two weeks after the first publication. Although Otter Tail properly requested that the second publication be published one week after the first notification, the Clear Lake Courier failed to publish the second notification because a substantially similar notification was already being published in the Clear Lake Courier on that day, as requested by the Commission. When Otter Tail requested that the second notice be published a week later, after discovering the Clear Lake Courier’s mistake, the impact was that notice of the Project and public input hearing was published three consecutive weeks in the Clear Lake Courier. The Commission on November 28, 2017 granted the motion for substantial compliance of the publication notice requirement.

19. The Commission held a public input hearing on November 27, 2017 at 6:30 p.m. Otter Tail provided a PowerPoint presentation at the public input hearing, a copy of which was filed in the above-captioned docket.

20. Forms for application for party status were available at the public input hearing on November 27, 2017.

21. A court reporter was present at the November 27, 2017 public input hearing and a written transcript is available.

22. No one filed an application for party status. As a result, the only parties in this matter are Otter Tail and the Staff.

23. On October 30, 2017, Otter Tail filed the First Supplemental Filing in Support of the Application.

24. On November 17, 2017, the Staff issued the first set of data requests to Otter Tail. Otter Tail responded to the first set of data requests on December 4, 2017, and the responses were filed in the above-captioned docket.

25. On December 29, 2017, the Staff issued a second set of data requests to Otter Tail. Otter Tail responded to the second set of data requests on January 16, 2018, and the responses were filed in the above-captioned docket.

26. On January 24, 2018, the Staff issued a third set of data requests to Otter Tail. Otter Tail responded to the third set of data requests on February 6, 2018, and the responses were filed in the above-captioned docket.

27. On March 1, 2018, Otter Tail filed the Second Supplemental Filing in Support of the Application.

28. On June 28, 2018, Otter Tail filed the Third Supplemental Filing in Support of the Application.

29. The Commission finds that prefiled testimony is not warranted and would be an unnecessary waste of economic resources to the Otter Tail, Staff, and the Commission because there are no intervenors, and the Application, along with the responsive and thorough responses to the data requests, prove the Application should be granted and the facility permit issued. Requiring prefiled testimony would not materially benefit the Commission, and instead, would cause unreasonable, additional cost for the Project.

30. The Commission finds that due to the lack of intervention and the completeness of the information provided in the Application and in responses to the data requests, the preparation of an environmental impact statement pursuant to SDCL 49-41B-21 is not necessary or warranted in this matter.

31. The Commission finds that Otter Tail has satisfied its burden of proof, by a preponderance of the evidence, to justify issuance of the permit under SDCL 49-41B-22.

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

32. The Commission finds that Otter Tail has 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 permit.

33. Otter Tail has furnished all information required by the applicable statutes and Commission regulations.

34. Otter Tail will further comply with all the conditions provided in the Settlement Stipulation. The Commission finds that such compliance with the Settlement Stipulation conditions further satisfies Otter Tail's obligation to prove the facility will comply with all applicable laws and rules.

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

35. Otter Tail has satisfied its burden of proving that the construction, operation, and maintenance 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. As indicated in sections 8 through 28 of the Application and in responses to Staff's data requests, Otter Tail has developed reasonable plans to mitigate any environmental concerns arising from the construction or operation of the Project, and to address any harm to the social or economic condition of the inhabitants and expected inhabitants of the siting area. The Settlement Stipulation also contains terms and conditions, which when complied with by the Project, will mitigate environmental, social, and economic concerns.

36. There has been no allegation or evidence offered by any party or person that that the construction of the Project, with the mitigation efforts adopted in the Application and the

Settlement Stipulation, would cause serious injury to the environment or to the social and economic condition of inhabitants or expected inhabitants in the Project area.

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

37. Otter Tail has satisfied its burden of proving that the construction, operation, and maintenance of the Project will not substantially impair the health, safety, or welfare of the inhabitants near the facility. The Application and the conditions in Settlement Stipulation adequately address any health, safety, or welfare concerns arising from the construction or operation of the Project.

38. There has been no allegation or evidence offered by any party or person that that the construction and operation of the Project, with the mitigation efforts adopted in the Application and Settlement Stipulation, would substantially impair the health, safety, or welfare of the inhabitants near the facility.

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

39. Otter Tail has satisfied its burden of proving the Project 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 or allegation that the Project will affect the orderly development of the region. Several local governmental units have provided resolutions of support for the Project and no local governmental unit has provided any comment in opposition to the Project.

40. As required by SDCL 49-41B-6, the Commission designated a Local Review Committee. The members of the Local Review Committee include representatives from the following local governments in the area of the Project: Brookings County, Deuel County, Deubrook School District, Deuel School District, Town of Astoria, Town of Brandt, Town of Toronto and a representative from the Company. The Local Review Committee also included a



representative of Otter Tail. On December 28, 2017, the Local Review Committee filed a report supporting issuance of a permit for the Project.

41. Because Otter Tail has satisfied its burden of proving each of the elements in SDCL 49-41B-22, the Commission finds that the issuance of the facility permit is appropriate and the Application should be granted. The facility permit is issued conditioned upon Otter Tail's compliance with the conditions contained in Settlement Stipulation.

42. 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 Ch. 49-41B and ARSD Ch. 20:10:22.

2. Otter Tail complied with the requirements of SDCL 49-41B-5 when it provided notice of intent to apply for a permit on April 4, 2017.

3. Following the filing of the Application with the Commission, various notices were required by SDCL Ch. 49-41B. Specifically, Otter Tail was required to provide notice under SDCL 49-41B-5.2. Additionally, the Commission was required to schedule and provide notice of a public hearing under SDCL 49-41B-15. These notice requirements have been satisfied or substantially complied with as provided in the above stated Findings of Fact and in the Commission's November 28, 2017, Order.

4. Otter Tail satisfied its obligations to provide notice to landowners under SDCL 49-41B-5.2. Specifically, SDCL 49-41B-5.2 required the Otter Tail 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. Otter

Tail complied with the landowner notice requirement when it sent the landowner letter via certified mail on October 24, 2017, including the requisite notice and a map of the proposed site for the Project.

5. SDCL 49-41B-5.2 also required that Otter Tail publish notice in the official newspaper of each county in which the Project is located for two consecutive weeks. Otter Tail substantially complied with the publication notice requirement of SDCL 49-41B-5.2 when it caused notice of the November 27, 2017, public hearing to be published in the following papers: the Brookings Register on October 25 and November 1, 2017; the Clear Lake Courier on October 25 and November 8, 2017; and the Tri-State Star on October 26 and November 2, 2017. The Commission held that Otter Tail substantially complied with its notice obligations in an order dated November 28, 2017.

6. Following the filing of the Application, SDCL 49-41B-15 required the Commission to schedule a public hearing. The Commission scheduled the public hearing in its October 12, 2017, Order, which set the public hearing for November 27, 2017. The Commission thus complied with SDCL 49-41B-15(1).

7. The Commission also was required to notify Otter Tail of the hearing and serve notice of the Application and hearing upon the governing bodies of the counties and municipalities totally or partially within the area of the proposed facility. SDCL 49-41B-15(2)-(3). Again, the Commission complied with these requirements by providing notice of the Application and the docket to the Local Review Committee, whose membership includes Deuel County, Brookings County, Deubrook School District, Deuel School District, Town of Astoria, Town of Brandt, and Town of Toronto.

8. The Commission also filed the Application with the county auditors for Brookings and Deuel Counties as required by SDCL 49-41B-15(5).

9. Finally, SDCL 49-41B-15 requires the Commission to publish notice of the time,

place, and purpose of the public hearing in at least one newspaper of general circulation in counties totally or partially within the area of the Project. The Commission complied by publishing notice of the Project and the public input hearing in the Brookings Register on November 1 and November 22, 2017; the Clear Lake Courier on November 1 and November 22, 2017; and the Tri-City Star on November 2 and November 23, 2017.

10. Otter Tail 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.

11. The Commission concludes that no environmental impact statement is appropriate or necessary under SDCL 49-41B-21 because of the lack of evidence that the Project will cause any environmental concerns.

12. Based upon the record and the Settlement Stipulation, Otter Tail has satisfied its burden of proof under SDCL 49-41B-22 for issuance of the facility permit for the Project as requested in the Application, and Otter Tail is entitled to an energy conversion facility permit requested in the Application, but Otter Tail must comply with the conditions imposed by the Settlement Stipulation. The Commission thus concludes that the Application should be granted for the reasons stated in these findings of fact.

13. The Commission grants the facility permit requested in the Application but Otter Tail must comply with the conditions imposed by the Settlement Stipulation. In granting the facility permit for the Project, the Commission is specifically granting permits to construct the following facilities as described in the Application: (1) the simple-cycle natural gas fired energy conversion facility; (2) the natural gas pipeline; and (3) the Gen-Tie Line.

14. 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 \_\_\_\_\_, 2018.

BY ORDER OF THE COMMISSION:

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Kristie Fiegen, Chairperson

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Chris Nelson, Commissioner

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Gary Hanson, Commissioner