

**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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**SETTLEMENT STIPULATION**

**EL17-042**

It is stipulated and agreed by and between Otter Tail Power Company (the "Applicant") and the South Dakota Public Utilities Commission Staff ("Staff") (who may be referred to separately as "Party" or collectively as "Parties"), that the following Settlement Stipulation ("Stipulation") may be adopted by the Public Utilities Commission of the State of South Dakota ("Commission") in the above-captioned matter. In support of its Application to the Commission for a Facility Permit ("Facility Permit"), the Applicant does hereby offer this Stipulation, the Application dated October 5, 2017, as amended and supplemented ("the Application"), and all responses by the Applicant to the Staff's data requests, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions without any material condition or modification.

**I. INTRODUCTION**

The Applicant proposes to develop, construct, own, operate, and maintain an approximate 250 megawatt simple-cycle natural gas fired energy conversion facility and related components, which is known as the Astoria Station Project ("the Project"). Related components include a short segment (less than 1,000 feet) of approximately 10-inch diameter natural gas pipeline necessary to connect to the Northern Border Pipeline, a short segment (less than 0.5 miles) of a 345 kilovolt (kV) generation-tie electric transmission line necessary to interconnect to the Big Stone South to Brookings County 345 kV electric transmission line, and a short segment (less than 1,500 feet) of approximately 5-inch diameter water pipe necessary to supply process water and potable water. Otter Tail owns the real property on which the energy conversion facility will be located along with the short segments of natural gas pipeline and water pipeline associated with the Project. Otter Tail has also acquired the easement necessary for the 345 kV generation-tie electric transmission line from a single landowner.

## 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. EL17-042. 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 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 Applicant. 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.
5. 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.
6. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.

7. 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.
8. 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 terms, conditions, or modifications, a permit for the development, construction, ownership, 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. The Applicant will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency or any other governmental unit for construction and operation activity prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by the Applicant shall be sent to the Commission.
2. The terms and conditions of the Facility 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 to 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 60 days unless exigent circumstances require action sooner.
3. If construction of the Project commences more than four years after the date the permit is granted, the Applicant must certify to the Commission before the construction commences that such facilities will meet the permit conditions pursuant to SDCL 49-41B-27.
4. The Permit granted by the Order in this matter shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.
5. The Applicant shall develop, construct, own, operate, and maintain the Project in a manner consistent with:
  - a. Descriptions in the Application,
  - b. Application supplements,
  - c. Responses to any data requests,
  - d. The Terms and Conditions of the Permit to Construct Facilities,

- e. All applicable laws and rules, including all requirements of SDCL Chapter 49-41B and ARSD 20:10:22,
  - f. Any applicable industry standards, and
  - g. Any permits issued by a Federal, State, or Local agency.
6. 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.
7. The Applicant shall provide the following information to the landowner on whose property the 345 kV generation-tie electric transmission line is to be constructed:
- a. A copy of the Commission Order Granting Permit to Construct Facilities;
  - b. Detailed safety information describing:
    - i. Reasonable safety precautions for existing activities on or near the Project,
    - ii. Known activities or uses that are presently prohibited near the Project, and
    - iii. Other known potential dangers or limitations near the Project;
  - c. Construction/maintenance damage compensation plans and procedures;
  - d. The Commission's address, website and phone number; and
  - e. Contact person for Applicant, including name, e-mail address, and phone number.
8. 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 Applicant involved in this Project be made aware of the terms and conditions of this Permit.
9. Except as otherwise provided in the conditions of this Stipulation, Applicant shall comply with all mitigation measures set forth in the Application, Application Supplements, and Applicant responses to Staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
10. Not later than one month prior to commencement of construction, Applicant shall commence contacts with state, county and municipal emergency response, law enforcement and highway, road and other infrastructure management agencies serving the Project area in order to educate such agencies concerning the planned construction schedule and the measures that such agencies should begin taking to prepare for construction impacts and the commencement of Project operations.
11. Applicant will negotiate road use agreements with Deuel County and any affected townships, if required. 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 of any soils or mud deposits by construction equipment when necessary.

12. Applicant shall comply with the following conditions regarding road protection:
  - a. Applicant shall acquire all 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 through 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 resulting from construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads, 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, the Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
  - g. 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, the Applicant shall furnish an indemnity bond in the amount of \$250,000 to comply with the requirements of SDCL 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, Scandinavia Township and Deuel County. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicant shall give notice of the existence and amount of this bond to Scandinavia Township and Deuel County.
  
13. Applicant will provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual of Uniform Traffic Control Devices as published by the Federal Highway Administration.

14. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the siting area that Applicant becomes aware of and that was not previously reported to the Commission.
15. Applicant agrees to avoid cultural resources sites not evaluated, eligible for listing on, or already listed on the National Register of Historic Places (NRHP). When NRHP not evaluated, eligible, or listed sites cannot be avoided, Applicant shall 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 treatment measures.
16. 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 impact or threat to the resource.
17. Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP), for both Project construction and operation, to the Commission when Applicant has a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP will be completed before submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.
18. Applicant will repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical. In order to facilitate compliance with this Condition, the Applicant shall:
  - a. Strip topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing, in all areas disturbed by the Project;
  - b. Store topsoil separate from subsoil in order to prevent mixing of the soil types;
  - c. Remove all excess soils generated during project construction from the site, unless the landowner requests, and/or agrees, otherwise;
  - d. When revegetating non-cultivated grasslands not owned by the Applicant, the Applicant shall use a seed mix that is recommended by the Natural Resource

Conservation Service (NRCS), or other land management agency, and agreed upon by the landowner in writing; and

- e. Work closely with impacted landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds.
19. Applicant's obligation with respect to reclamation and maintenance of the 345 kV generation-tie electric transmission line right of way shall continue throughout the life of the transmission line for disturbances caused by Applicant's or its agent's actions.
  20. Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between the Applicant and landowner. All excess construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees to otherwise.
  21. In order to mitigate interference with agricultural operations during and after construction, Applicant shall locate all structures in the 345 kV generation-tie electric transmission line right of way, to the extent feasible and prudent, to minimize adverse impacts and interferences with agricultural operations, shelterbelts and other land uses or activities. Applicant shall take appropriate precautions to protect livestock and crops during construction. Applicant shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed with the landowner or designee. Applicant shall be responsible for the repair of private roads damaged when moving equipment or when obtaining access to the right-of-way.
  22. Applicant shall repair or replace all property removed or damaged during all phases of construction, including but not limited to, all fences, gates and utility, water supply, irrigation or drainage systems. Applicant shall fully compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair, replacement and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicant and affected landowners where such agreements exist.
  23. Applicant shall indemnify, defend and hold harmless the landowner, from and against any third-party claims for loss or damage to property or for any injury or death of any person occurring as a result of the Applicants' negligent installation, maintenance, operation, or removal of the transmission lines and facilities upon the easement area, except to the extent such claims are caused by the negligent or otherwise wrongful act of omission of the Landowner.

24. Applicant shall notify the Commission prior to making any material deviations to the Project and afford the Commission the opportunity to review and approve such modifications. For purposes of this paragraph, the term "material deviations" shall mean any action or activity outside the reasonable parameters of this Permit (such as, for example, if the Project is constructed differently than described in the Application).
25. If the Project causes 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.
26. If requested, Applicant will provide Global Positioning System (GPS) coordinates of 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.
27. Not less than 30 days prior to commencement of construction work in the field, Applicant will provide to Staff the most current preconstruction design, layout and plans of the energy conversion facility and 345 kV generation-tie electric transmission line. Applicant will also provide such additional Project preconstruction information as Staff requests.
28. Within 90 days of the Project's completion, Applicant shall submit a report to the Commission that provides the following information:
  - a. As-built location of the energy conversion facility and related Project components;
  - b. The status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulted from construction activities; and
  - c. A summary of known landowner complaints and Applicant's plan for resolving those complaints.
29. The noise levels exclusively associated with the Project shall not exceed the following standards at the nearest occupied, existing residences (determined on the date the permit is issued) not owned by the Applicant:
  - a. a day-night average (Ldn) sound level of 55 dB(A), which includes a nighttime penalty of 10 decibels; and
  - b. a maximum (Lmax) C-weighted sound level of 65 dB(C) applicable at all times.
30. A post-construction operational noise assessment shall be completed based on measurements by an independent third-party noise consultant, approved by Staff, to show compliance with



the noise standards. The noise assessment shall be performed in accordance with American National Standards Institute (ANSI) B133.8 – Gas Turbine Installation Sound Emissions.

31. Applicant shall seek local input to properly and effectively coordinate an emergency response plan consistent with local resources and response abilities. Upon completion of construction, the initial draft of the Project's emergency response plan shall be filed with the Commission for public availability.
32. If the Project is decommissioned, Applicant will follow the decommissioning plan laid out in Section 26.0 of the Application. The Commission shall be notified prior to any decommissioning action.
33. The Applicant shall work with Scandinavia Township to improve approximately ½ mile of 482<sup>nd</sup> Avenue from SD Highway 28 north to the Astoria Station plant entrances for construction and plant access.
34. The Applicant shall assess the use of Brookings-Deuel Rural Water System as recommended by the Local Review Committee and submit the assessment to the Commission 30 days prior to construction. The assessment shall include justification for not pursuing the use of Brookings-Deuel Rural Water System for the Astoria Station water supply if the Applicant elects to utilize on-site wells.

**[Signature Page Follows]**

Otter Tail Power Company

By: J. Royette

Its: President

Dated: 7/11/18

South Dakota Public Utilities Commission Staff

By: [Signature]

Its: Staff Attorney

Dated: 7/12/2018

**[SIGNATURE PAGE TO SETTLEMENT STIPULATION DOCKET NO. EL17-042]**