

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

<b>IN THE MATTER OF THE PETITION FOR ) DECLARATORY RULING FILED BY THE CITY ) OF PIERRE REGARDING A TRANSMISSION ) LINE )</b>	<b>DECLARATORY RULING  EL98-004</b>
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On March 19, 1998, the South Dakota Public Utilities Commission (Commission) received a Petition for Declaratory Ruling from the City of Pierre, South Dakota (City). In the Petition, the City asked that a determination be made as to whether or not a permit from the Commission is necessary to build a proposed 115 kV transmission line as described in the Petition or whether it may be built under an exception to the permit statute.

On March 26, 1998, at its regularly scheduled meeting, the Commission considered the matter along with comments from attorneys for the City, private landowners, and Oahe Electric Cooperative, Inc. The timing restrictions of ARSD 20:10:01:35 were discussed and a procedural schedule was set by the Commission.

At its regularly scheduled April 9, 1998, meeting the Commission granted Petitions to Intervene by the following: Harvey Buhl; Bernard and Thelma Beastrom; Terry Barge; Ben Handcock; Ron Nagle; Monte Leiferman; Brian Knox; Mark Steiner; Marie Bellander; Blalin Bellander; Bruce D. Johnson; John Thompson; and Brian and Mary Puckett

The hearing was held as scheduled on April 22, 1998, in Room 468 of the State Capitol Building, Pierre, South Dakota. The issue at the hearing was whether a permit from the Commission is necessary to build a proposed 115 kV transmission line as described in the Petition or whether it may be built under an exception to the permit statute. Robert D. Hofer and Jerry Wattier represented the City. Thomas M. Maher and Thomas P. Maher represented Brian and Mary Puckett, Bernard and Thelma Beastrom, Harvey Buhl, and Terry Barge. Brent Wilbur represented John Thompson. A late-filed intervention filed by Donald and Delores Kurvink on April 21, 1998, was granted at the hearing without objection by any of the parties. Following the hearing, briefs were filed by the City and by the intervenors represented by Mr. Maher.

At its May 28, 1998, meeting, the Commission requested that the City supplement the record by providing additional information on Segment A of the proposed transmission line. The additional information was filed on June 1, 1998. On June 8, 1998, Mr. Maher responded to the filing of the additional information.

At its June 12, 1998, meeting, the Commission considered this matter. The Commission found that the proposed City of Pierre 115 kV transmission line is not exempt from the Commission's siting jurisdiction because more than one mile in length does not follow section lines, property lines, roads, highways, or railroads.

Based on the evidence and testimony of record, the Commission makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. On March 19, 1998, the Commission received a Petition for Declaratory Ruling from the City of Pierre (City). In the Petition, the City asked that a determination be made as to whether or not a permit from the Commission is necessary to build a proposed 115 kilovolt (kV) transmission line as described in the Petition or whether it may be built under an exception to the permit statute.
2. A 115 kV transmission line is subject to the Commission's siting jurisdiction "if more than one mile in length of the transmission line does not follow section lines, property lines, roads,

highways or railroads, or is not reconstruction or modification of existing transmission lines and existing associated facilities located on abandoned railroad rights-of-way. . . ." SDCL 49-41B-2.1(2).

3. The City prepared a map purporting to show the location of the transmission line and the distance in feet. Exhibit A. The line was marked into various segments, and was color-coded to show what parts of the line the City believed followed and did not follow section lines, roads, highways, and property lines. Id.

4. The City's position was that the proposed transmission line failed to follow section lines, property lines, roads, and highways for a total of 4,270 feet. Tr. at 31; Exhibit A. Since this measurement was under one mile, the City's position was that the proposed transmission line was not subject to the Commission's siting jurisdiction. Tr. at 31.

5. The City divided its proposed transmission line into Segments A through L. Exhibit A. The City used the term "preferred zone" to designate those parts of the proposed transmission line that it believed followed section lines, property lines, roads, or highways. Tr. at 153.

6. The typical easement for a 115 kV transmission line is 100 feet. Tr. at 169. The City expected that the proposed transmission line would be within 12 to 14 feet of a property line. Tr. at 35. The City's consultant believed that the proposed transmission line would never be more than 20 feet from a property line. Tr. at 160. However, since the line had not yet been designed, the exact number of feet the proposed transmission line would be from a property line or section line had not yet been determined. Tr. at 159.

7. Segment F follows a section line that does not have an existing road. Exhibit A; Exhibit 63. The City planned to place the proposed transmission line 37 feet from the section line. Exhibit 63. This means the transmission line would be 4 feet outside of the section line public highway which is located 33 feet on each side of a section line. See SDCL 31-18-1.

8. Segments I, H, and G also follow a section line; however, there is a road located within the section line public highway. Exhibits A, 42, 63. For Segment G, the City stated the proposed line would be 14 feet from the property line. Exhibit 63. Segment H would go from 14 feet from the property line at the east end of the segment to 4 feet at the west end. Id. The City stated that Segment I, which immediately follows Segment H, would then be 4 feet from the property line. Id.

9. Although the City characterized the proposed transmission line as being 4 to 14 feet from the property line for Segments I, H, and G, the Commission questions the accuracy of this characterization. The City appeared to assume that a property line existed at the end of the 33 foot public highway for the section line road. The City did not present any evidence to show that a property line in fact existed at the end of the outer edge of the public highway. Unless a governmental entity has purchased the property on which the road was constructed, the landowner generally owns and is taxed on the land up to the section line so the section line and property line would be coexistent. See SDCL 10-6-37. It is likely that Segment G is 47 feet from the section/property line, that Segment H goes from 47 feet to 37 feet from the section/property line, and that Segment I is 37 feet from the section/property line.

10. The Commission finds that following section lines means that the transmission line must be located within a section line public highway which means 33 feet on each side of the section line; that following a road or highway means the transmission line must be located within the easement or right-of-way of the road or highway; and that following property lines means the transmission line must be located on the property line.

11. Based on this interpretation, the City of Pierre must apply for a permit because in Segments F, G, H, and I the proposed transmission line will not be within the section line public highway nor will it be located on property lines.

12. Some of the segments followed platted streets and lots. Exhibit 63. The platted streets were not actually used or maintained as streets. Tr. at 52-53; Exhibit 63. The City considered the segments that followed platted streets and lots to be within the "preferred zone." Exhibits A, 63. Questions were raised as to whether the platted streets and lots were ever accepted by the City.

13. Since the Commission has already determined that the City must file an application if it uses its proposed route, the Commission need not decide whether the segments that follow platted streets and lots are within the "preferred zone."

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-41B, SDCL 1-26-15, and ARSD 20:10:01:34, et seq.

2. The South Dakota Legislature requires certain energy facilities to obtain a siting permit for the following reasons:

The Legislature finds that energy development in South Dakota and the Northern Great Plains significantly affects the welfare of the population, the environmental quality, the location and growth of industry and the use of the natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that an energy conversion or transmission facility may not be constructed or operated in this state without first obtaining a permit from the public utilities commission.

SDCL 49-41B-1.

3. Pursuant to SDCL 49-41B-2.1(2), a 115 kV transmission line is subject to the Commission's siting jurisdiction "if more than one mile in length of the transmission line does not follow section lines, property lines, roads, highways or railroads, or is not reconstruction or modification of existing transmission lines and existing associated facilities located on abandoned railroad rights-of-way. . . ."

4. In order to decide whether the proposed transmission line falls within the exception to the siting statute, the Commission must interpret the word "follows." The Commission finds that a reasonable interpretation of the word "follows" as it pertains to section lines means that the transmission line must be located within the section line public highway. Existing along every section line is a public highway that extends 33 feet on each side of the section line. SDCL 31-18-1. The Commission finds that since every section line has an already existing public highway 66 feet wide, it is reasonable to expect that following a section line means it must be located within these 66 feet. It is also reasonable to expect that a person who owns property that borders a section line will be aware that utilities, such as transmission lines, may be located within the 66 foot section line public highway.

5. The Commission similarly finds that following roads or highways means the transmission line must be located within the easement or right-of-way of the road or highway. Again, it is reasonable to assume that a person who owns property that borders a highway or road is aware of the possibility that utilities, such as transmission lines, may be placed within the road or highway easement.

6. The Commission further finds that following property lines means the transmission line must be located on the property line. The Commission finds this is a reasonable interpretation

because, generally, a person's property line does not have an existing easement running on the line. Placing a 115 kV transmission line even 12 feet from someone's property line could have a detrimental effect on that property especially if there were a house located near that property line. The City should be required to prove that the construction of a 115 kV transmission line which could be up to 20 feet from a property line will not pose a threat of serious injury to the social and economic condition of inhabitants in the siting area. See SDCL 49-41B-22(2). The affected inhabitants should be given the opportunity to voice their concerns to the Commission.

7. The Commission's interpretation of SDCL 49-41B-2.1(2) is consistent with the intent of the siting statutes that require the Commission to ensure that transmission facilities will produce minimal adverse effects on the environment and upon the state's inhabitants. See SDCL 49-41B-1.

8. Based on this interpretation, the City of Pierre must apply for a permit because in Segments F, G, H, and I, the proposed transmission line will not be within the section line public highway nor will it be located on property lines.

9. The Commission finds that the proposed City of Pierre 115 kV transmission line is not exempt from the Commission's siting jurisdiction because more than one mile in length does not follow section lines, property lines, roads, highways, or railroads.

It is therefore

ORDERED, that the City's proposed 115 kV transmission line is not exempt from the Commission's siting jurisdiction because more than one mile in length does not follow section lines, property lines, roads, highways, or railroads.

#### NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 30<sup>th</sup> day of June, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 30<sup>th</sup> day of June, 1998.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.	
By:	<u>Allegra Kelso</u>
Date:	<u>6/30/98</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg  
JAMES A. BURG, Chairman

Pam Nelson  
PAM NELSON, Commissioner

LASKA SCHOENFELDER, Commissioner  
dissenting