

IN CIRCUIT COURT
FIFTH JUDICIAL CIRCUIT

Gerald Pesall, Appellant

v.

Montana Dakota Utilities, Otter Tail Power, Schuring Farms, Inc., Bradley Morehouse, and the
South Dakota Public Utilities Commission, Appellees

APPEAL FROM THE PUBLIC UTILITIES COMMISSION
IN DOCKET NUMBER EL13-028
PIERRE, SOUTH DAKOTA

CIV. 14-53

APPENDIX

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The Notice of Appeal was filed on the 5th day of December, 2014

**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.

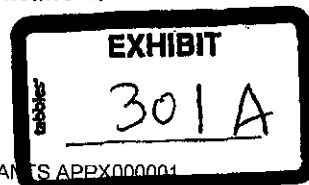
I. INTRODUCTION

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.

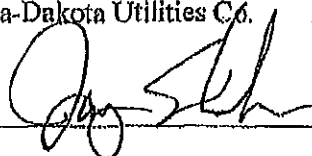
If the presence or operation of the Project causes unreasonable interference with any unlicensed agricultural navigation communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide 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