

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

IN THE MATTER OF THE APPLICATION OF)	
MONTANA-DAKOTA UTILITIES CO. AND)	PREHEARING CONFERENCE
OTTER TAIL POWER COMPANY FOR A)	ORDER
PERMIT TO CONSTRUCT THE BIG STONE)	
SOUTH TO ELLENDALE 345 KV)	EL13-028
TRANSMISSION LINE)	

On August 23, 2013, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a Delaware corporation, and Otter Tail Power Company, a Minnesota corporation, (jointly, the Applicants) filed with the South Dakota Public Utilities Commission (Commission) an Application for a Facility Permit for the Big Stone South to Ellendale 345 kV Transmission Line project (Application) and a Motion to Schedule Prehearing Conference (Motion). The Application requests Commission approval of a permit to construct a 345-kilovolt (kV) transmission line of approximately 150 to 160 miles in South Dakota (Project). The line will cross the South Dakota and North Dakota border in Brown County, South Dakota and extend south and east through Brown, Day, and Grant counties to the Big Stone South Substation in Grant County, South Dakota, near Big Stone City. Modifications to the Project may occur depending on the final route permitted, land rights, and final engineering design. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B and ARSD Chapter 20:10:22.

On August 26, 2013, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearings; Notice of Opportunity to Apply for Party Status (Order). On August 29, 2013, the Commission electronically transmitted notice of the Application and the intervention deadline of October 22, 2013, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On September 6, 2013, Applicants served the Order by certified mail on all landowners within a half mile of the Project. On September 13, 2013, the Order was served on the governing bodies of all counties and municipalities in the project area, and notices of the public hearings were published in project area newspapers as provided in SDCL 49-41B-5.2 and 49-41B-15. On September 13, 2013, the Commission issued an Order Assessing Filing Fee assessing a filing fee not to exceed the statutory maximum of \$360,000 with a minimum fee of the statutory \$8,000 minimum. The public hearings were held as scheduled on October 17, 2013, in Aberdeen and Milbank.

On October 18, 2013, Gerald Pesall filed an Application for Party Status. On October 21, 2013, Applicants filed responses to the Commission staff's (Staff) first set of data requests. On November 6, 2013, the Commission issued an Order Granting Intervention and Party Status to Gerald Pesall. On January 13, 2014, the Commission issued a Procedural Scheduling Order setting the matter for formal evidentiary hearing on June 10-12, 2014, in Room 413 of the State Capitol Building in Pierre beginning at 1:00 p.m. CDT with days two and three beginning at 8:00 a.m. CDT. On January 27, 2014, Applicants filed a First Amendment to Application (Amendment).

Due to Applicants having made some route changes in certain areas of the Project which will result in some additional landowners coming within the half-mile Project corridor, on March 17, 2014, Commission issued a second Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status for an additional public input hearing to be held in Aberdeen on May 20, 2014 (Second Order). The Second Order was served by the Commission on all persons on the service list and notice was published in area newspapers. On March 19, 2014, Applicants served by certified mail all additional landowners now within one-half

mile of the Project as modified. On April 14, 2014, James R. McKane III, Clark T. Olson, Schuring Farms, Inc., Bradley R. Morehouse, and Kevin Anderson filed Applications for Party Status. On May 1, 2014, the Commission issued an Order Granting Intervention and Party Status to James R. McKane III, Clark T. Olson, Schuring Farms, Inc., Bradley R. Morehouse, and Kevin Anderson. On May 13, 2014, the Commission issued an Order for and Notice of hearing.

After an email exchange among the parties who could be reached, on May 29, 2014, Commission Counsel held a prehearing teleconference attended by Tom Welk and Jason Sutton, counsel for Applicants, Karen Cremer, counsel for Staff, Brian Rounds and Darren Kearney, Staff analysts, Bob Pesall, counsel for Gerald Pesall, Randy Schuring, owner of Schuring Farms, Inc., and Bradley Morehouse. The first item discussed was prehearing motions. All parties stipulated that they would not be filing any prehearing motions. The second item discussed was settlement stipulations. Applicants stated that a settlement stipulation between Applicants and Staff to settle all issues between Applicants and Staff was currently under discussion and finalization and could be filed prior to hearing. Applicants' counsel, Tom Welk, stated that a draft settlement stipulation would be provided to Staff by Tuesday, June 3, 2014, and Staff stated it intended to send a draft with its changes back to Applicants by Thursday, June 5, 2014. Staff is intending to try to file the executed settlement stipulation by Friday, June 6, 2014. No other settlement stipulations were reported by the parties.

The next item for discussion was witness lists. Because of the probable settlement stipulation, Staff did not file pre-filed testimony and did not have any intended hearing witnesses. Applicants and Mr. Pesall stated that their witnesses would be the same persons who filed prefiled testimony. Mr. Schuring and Mr. Morehouse stated that their witnesses would be themselves. As to exhibits, Mr. Welk presented a proposal for marking that diverges from the Commission's normal marking convention of a party designation together with a number or letter. Mr. Welk proposed numbers 1-100 be assigned to Applicants, numbers 101-200 to Mr. Pesall, numbers 201-300 to other intervenors, and 300 and above to Staff. Mr. Welk stated that Applicants intend to have all of their exhibits not previously marked and filed, filed and provided to other parties by Tuesday, June 3, 2014, and he asked whether the other parties would also file and serve their exhibits by such date as well. Mr. Pesall stated that he was agreeable to that and that as of now, his exhibits would just be the seven prefiled testimony and associated exhibits already on file. Mr. Morehouse and Mr. Schuring did not believe at this time that they would have any exhibits. Staff stated that, as of now, its only exhibit would be the settlement stipulation when completed and executed, which would be marked as Exhibit 301. The parties also discussed exhibits in prefiled testimony and agreed that each such exhibit would be separately marked from the prefiled testimony itself, if possible with the same exhibit number as it had in the prefiled testimony.

With respect to foundation for admission of exhibits, the parties agreed that they would not object to admission on the basis of foundation or other grounds except that Mr. Pesall stated he may have certain objections, including but not limited to foundation, with respect to Applicant's exhibits containing MISO documents. Mr. Welk and Mr. Pesall agreed to conduct an email exchange to attempt to resolve Mr. Pesall's concerns with the admissibility of the MISO documents. The parties acknowledged and agreed that agreeing to admission of exhibits does not indicate a party's position on the truth, credibility, and weight to be afforded any evidence contained in such exhibits.

The parties then discussed order of testimony. Mr. Smith explained that all of a witness's prefiled testimony, both direct and rebuttal, is addressed in oral testimony on direct. The parties agreed that direct testimony of witnesses with prefiled testimony would be limited to a brief summary of both the direct and rebuttal prefiled testimony, except to the extent that the witness is addressing an event occurring or filing made after the witness's filing of the prefiled testimony. Mr.

Welk stated that Applicants are intending to file additional testimony or exhibits involving a mitigation plan to address the risk of the spread of soybean cyst nematode to land that is currently not affected by the parasite.

The parties agreed to schedule August 6, 2014, as the date for decision by the Commission with simultaneous initial briefs from all parties and any proposed findings of fact and conclusions of law due on or before July 18, 2014, and simultaneous rebuttal briefs due on or before August 1, 2014. The parties also agreed that opening statements are appropriate, which is the Commission's normal practice, and to reserve the right to present closing oral arguments at the conclusion of the evidentiary hearing.


The parties next addressed the treatment of certain exhibits filed "Confidential" by Applicants, some of which are required to be maintained confidential by law and others of which contain proprietary landowner information. The parties agreed that the order issued by the Commission would include a provision requiring any party to this proceeding who obtains access to a confidential document or is present at hearing during the consideration of confidential documents to maintain the confidentiality of the information contained in such documents and not to disclose it to any person not subject to the confidentiality maintenance requirement of this Order or any nondisclosure agreement executed by such party.

Finally, the parties discussed direct testimony in light of prefiled testimony and agreed to keep witnesses testimony on direct examination to a summary of not more than fifteen minutes. In furtherance of the stipulations, agreements, and commitments made by the parties at the prehearing conference, it is therefore

ORDERED, that the stipulations, agreements, and commitments made by the parties at the prehearing conference as set forth above are hereby adopted by the Commission and shall be followed by the parties except as the Commission shall otherwise order or as circumstances shall otherwise require or justify. It is further


ORDERED, that each party to this proceeding who requests access to any document filed "Confidential" and obtains such access or who attends any portion of the hearing in this matter where confidential information is disclosed shall maintain the confidentiality of the information contained in such document or disclosed at hearing and shall not disclose any of such confidential information to any person not subject to the confidentiality maintenance requirements of this Order.

Dated at Pierre, South Dakota, this 5th day of June, 2014.

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:	
Date:	<u>6/5/14</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:


GARY HANSON, Chairman


CHRIS NELSON, Commissioner


KRISTIE FIEGEN, Commissioner