

**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)

**FINAL DECISION AND
ORDER; NOTICE OF ENTRY**

EL13-028

PROCEDURAL HISTORY

On August 23, 2013, Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a Delaware corporation, (MDU) and Otter Tail Power Company, a Minnesota corporation, (OTP) (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.¹ 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.

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 the Order 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 Commission served the Order 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 (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 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 resulted in some additional landowners who were not originally noticed coming within the half-mile

¹ The Application, Commission Orders in the case, and all other filings and documents in the record are available on the Commission's web page for Docket EL13-028 at: <http://www.puc.sd.gov/Dockets/Electric/2013/EL13-028.aspx>

Project corridor, on March 17, 2014, the 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 (McKane, Olson, Schuring, Morehouse, and Anderson, respectively). On April 15, 2014, Applicants filed their responses to Staff's second set of data requests and a Request for Confidential Treatment of such responses. On April 25, 2014, Applicants and Pesall filed pre-filed direct testimony.

On May 1, 2014, the Commission issued an Order Granting Intervention and Party Status to McKane, Olson, Schuring, Morehouse, and Anderson. On May 9, 2014, Applicants filed pre-filed rebuttal testimony. On May 13, 2014, the Commission issued an Order for and Notice of hearing setting the matter for hearing on June 10-12, 2014, at the Capitol Building in Pierre. On May 20, 2014, the Commission held the additional public hearing in Aberdeen as scheduled. On May 23, 2014, Applicants filed pre-filed supplemental rebuttal testimony, and Pesall filed pre-filed rebuttal testimony. On May 29, 2014, Commission Counsel held a prehearing teleconference attended by counsel for Applicants, Pesall, and Staff, Staff analysts assigned to the docket, Randy Schuring, owner of Schuring Farms, Inc., and Bradley Morehouse.

On June 3, 2014, Schuring filed pre-filed exhibits, and Applicants filed their exhibit list and exhibits for hearing. On June 5, 2014, Pesall filed his exhibit list and exhibits for hearing, and the Commission issued a Prehearing Conference Order setting forth and adopting certain stipulations involving admissibility of exhibits, procedural schedule for filing additional exhibits and post-hearing briefs, maintenance of confidentiality of material filed "Confidential," exchange and filing of witness lists, and other procedural and scheduling matters. On June 6, 2014, Applicants filed a letter responding to a question asked by Commissioner Nelson at the May 20, 2014, public hearing and a letter sent by Applicants to landowners Lyle and Catherine Podoll. On June 9, 2014, Applicants and Staff filed a Joint Motion for Approval of Settlement Stipulation and Settlement Stipulation, and the Commission issued an Order Changing Hearing Location from room 413 to room 414 of the Capitol Building. The formal evidentiary hearing was held as scheduled on June 10-11, 2014, with Applicants, Pesall, Schuring, Morehouse, and Staff appearing and participating in the hearing.

On June 20, 2014, Applicants and Staff filed an Amended Settlement Stipulation containing amendments to conditions 32 and 33 in response to questions by Commissioner Nelson at the hearing. TR 373-377.² On June 20, 2014, Schuring filed an email with attachments regarding its crop insurance policy in response to questions by Staff and Commissioners. On June 26, 2014, Schuring filed certain provisions of its insurance policy dealing with crop yield calculations. On June 27, 2014, Pesall filed its crop insurance provisions. On July 11, 2014, Schuring filed additional crop insurance policy provisions.

On July 18, 2014, Pesall filed Gerald Pesall's Post-Hearing Initial Brief; Applicants filed Montana-Dakota Utilities Co. and Otter Tail Initial Post-Hearing Brief, Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law, a Proposed Order Granting Permit to Construct Facilities, and Montana-Dakota Utilities Co. and Otter Tail's Motion For Leave to Submit Documentary Evidence; and Staff filed a letter stating that they concurred with

² References to the June 10-11, 2014, Hearing Transcript are in the format "TR" followed by the Hearing Transcript page number(s) referenced, and references to Hearing Exhibits are in the format Ex followed by the exhibit number and, where applicable, the page number(s) referenced or other identifying reference and, where applicable, the attachment or sub-exhibit identifier and page number(s) referenced.

Applicant's initial brief and that they would not file a brief due to such agreement and the Settlement Stipulation. On August 1, 2014, Applicants filed Montana-Dakota Utilities Co. and Otter Tail Power Company Post-Hearing Reply Brief, and Pesall filed Gerald Pesall's Posthearing Rebuttal Brief. On August 4, 2014, Lyle Podall, a non-party to the case, filed an email regarding Applicants' landowner acquisition actions, and Staff filed a response email.

On August 6, 2014, the Commission took this matter up for decision as scheduled. Acting in the capacity of hearing examiner, Chairman Hanson admitted Exhibits 26, 26A, and 301A into the hearing record with no party objecting. After hearing from the parties, the Commission deferred taking action and scheduled the matter for final decision on August 13, 2014. On August 11, 2014, Commissioner Nelson filed a Motion to be Offered by Commissioner Nelson at the August 13 Ad Hoc Meeting. On August 13, 2014, the Commission again took this matter up for decision at an ad hoc Commission meeting. After discussion, the Commission voted unanimously in favor of Commissioner Nelson's Motion to amend Condition 17 of the Amended Settlement Stipulation and to approve the permit subject to the terms and conditions of the Amended Settlement Stipulation as amended by the Commission.

Having considered the evidence of record, applicable law, and the briefs and arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law, and Decision:

FINDINGS OF FACT

Procedural Findings

1. The Procedural History set forth above is hereby incorporated by reference in its entirety in these Procedural Findings. The procedural findings set forth in the Procedural History are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and decisions rendered by the Commission in this matter.

Parties

2. Montana-Dakota Utilities Co. (MDU), a division of MDU Resources Group, Inc., a Delaware corporation, and Otter Tail Power Company (OTP), a Minnesota corporation, jointly filed the Application with the Commission. Ex 1. The Applicants seek issuance of an energy facility permit for the construction and operation of 160 to 170 miles of 345-kV transmission line from a new substation to be built near Ellendale, North Dakota to a substation near Big Stone City, South Dakota.

3. MDU is headquartered in Bismarck, ND, and provides natural gas and/or electric service to parts of Montana, North Dakota, South Dakota, and Wyoming with a service area covering about 168,000 square miles and approximately 312,000 customers. Ex 16A, p. 4.

4. OTP is headquartered in Fergus Falls, MN, and provides electric service to parts of Minnesota, North Dakota, and South Dakota with a service area covering about 70,000 square miles and approximately 129,400 customers in 422 communities. Ex 16A, p.4.

5. MDU and OTP will jointly own the Project with a percentage ownership of approximately fifty percent each. Ex 1, p. 13.

6. Pesall is a landowner owning agricultural land in Section 17, T120N, R56W, Day County over which the final Project route, as of the hearing date, plans to cross. TR 279; Ex 21C; Ex 101, p. 2.

7. Morehouse is a landowner residing in Day County located within one-half mile of the transmission line route reflected on Ex 22.

8. Schuring is a landowner located in Day County that owns land located within one-half mile of the transmission line route reflected on Ex 22.

9. Intervenors McKane, Olson, and Anderson did not appear at the evidentiary hearing, file any prefiled testimony or exhibits, or present any evidence, and their status is not a matter of record in this case. Intervenors McKane, Olson, and Anderson did not indicate whether they object to issuance of the facility permit.

10. Staff participated fully as a party in this matter and entered into a Settlement Stipulation with Applicants resolving all of Staff's issues in the case. Ex 301. Following the evidentiary hearing, Staff and the Applicants entered into an Amended Settlement Stipulation, which was filed with the Commission on June 20, 2014, and which is marked as Exhibit 301A. In Staff's opinion, the Project, if constructed in conformity with the Amended Settlement Stipulation, meets the requirements of SDCL 49-41B-22 and is entitled to an energy facility permit. TR 20-21.

The Project

11. The Project involves the construction and operation of 160 to 170 miles of 345-kV transmission line from a new substation to be built near Ellendale, North Dakota to a substation near Big Stone City, South Dakota. The transmission line will run from a new Ellendale substation, enter South Dakota in northern Brown County, and then route through Brown, Grant, and Day Counties before terminating at the Big Stone South substation near Big Stone City in Grant County, South Dakota. Approximately 150 to 160 miles of the transmission line will be located in South Dakota. Ex 16A, p. 9.

12. As designed, the transmission line will utilize steel monopoles approximately 120 to 155 feet above ground in height. The poles will be placed on a concrete foundation approximately 6 to 11 feet in diameter. Ex 1, §23.1. The structures, which consist of poles, foundations, and cross-arms, will be placed approximately every 700 to 1,200 feet, which results in the Project having five to six structures per mile of transmission line. The minimum transmission line clearances will conform to National Electric Safety Code (NESC) standards with a minimum ground clearance of 30 feet. TR 172, 194, 209-210; Ex 19, p. 10; Ex 24, p. 11.

13. The total cost for the Project is estimated to be between \$293 and \$370 million in 2013 dollars. Of that amount, \$250 to \$320 million dollars are estimated to be spent on the South Dakota portion of the facility. Ex 1, §5.0.

14. The Applicants presented evidence of need for the Project. TR 105-107; Ex 1, §6.0. The Project will be used by area utilities to transport electric supply to and from lower voltage transmission and distribution lines for delivery to retail customers, including customers located in South Dakota. The Project also will facilitate development of future wind generation projects located within eastern South Dakota. TR 139.

15. The Project was approved as part of a portfolio of transmission projects contained in the Midcontinent Independent System Operator (MISO) multi value project portfolio (MVPs). Ex 17,

pp. 15-16. MISO is a not for profit, member based regional transmission organization. Ex. 17, p.5. MISO engaged in extensive studies that support the demand for the transmission facility and the many benefits to be derived from the Project, along with other MVPs. This analysis is set forth in Exhibits B.1 through B.4 of the Application. Ex 1; TR 105-107.

16. Construction of the Project will benefit the reliability of the electrical transmission grid throughout the MISO region, including within the state of South Dakota. TR 106. As indicated in the MISO studies, if the Project is not built, South Dakota will not realize the economic benefits associated with building the project, the existing transmission system in South Dakota will not benefit from the enhanced reliability afforded by the Project to provide service to retail customers in South Dakota and elsewhere, and future wind projects may not be developed in the favorable wind energy environment found in the general Project area in northeastern South Dakota. TR 106-107.

17. The Project will create additional transmission capacity within the current transmission system, which will increase reliability of service in South Dakota and enable future wind generation projects in South Dakota. TR 105-107, 114, 117-19.

18. One factor contributing to MISO's approval of the Project is that the added transmission capacity created by the MVPs, including the Project, is needed to enable future economic wind generation in the upper Midwest including South Dakota. Ex 17, pp. 23-27; TR 105-106.

19. Wind generation projects in South Dakota could interconnect with the 345-kV transmission line created by the Project, either directly, or more probably, indirectly through the lower voltage system. TR 137-138. Additionally, MISO approved this Project because wind projects are currently in the MISO queue requesting to interconnect with MISO's transmission grid, which includes this Project. TR 118-120.

20. The Project is scheduled to commence construction in 2016. The Project is expected to be in service by 2019. Ex 1, §18.0.

21. The construction and operation of the Project will result in substantial benefits to South Dakota. The Project, when completed, will generate approximately \$1.75 to \$2.25 million in property taxes per year based on the current effective composite tax rate for South Dakota. On a county-by-county basis, the Project is estimated to create annual property tax revenue as follows: approximately \$715,000 to \$885,000 for Brown County; approximately \$535,000 to \$755,000 for Day County; and approximately \$490,000 to \$605,000 for Grant County. Additionally, during the construction phase, it is expected that the Project will generate sales tax and contractor excise taxes of \$5.5 to \$9 million. Ex 2, Response to Data Request 1-5.

22. The construction will also contribute to local economies. It is estimated that the monies spent by the construction crews on hotels, meals, fuel, and other expenses directly benefitting communities in South Dakota will be approximately \$3.0 to \$7.0 million. Ex 4, Answer to Interrogatory 7.

23. The benefits and costs savings of the MVP Portfolio, of which this Project is a component, will generate total benefits of between 1.8 to 3.0 times the aggregate cost to construct those projects constituting the MVPs. Ex 3, Response to Data Request 2-4.

24. The Project is a backbone element of the MISO Regional Expansion Plan. TR 137.

Route Selection, Route Changes, and Route Change Requests

25. As described in section 8.0 of the Application, Ex 1, and as described in answer to Interrogatory No. 14 in Montana-Dakota Utilities and Otter Tail Power Company's Answers to Pesall's First Set of Discovery Requests to Applicants Dated January 28, 2014, Ex 4, Applicants engaged in an extensive route selection process. In selecting the route, the Applicants considered the following factors: minimizing total length and construction costs; minimizing impacts to humans and human settlements, including (but not limited to) displacement, noise, aesthetics, cultural values, recreation, and public services; consideration of effects on public health and safety; offsetting existing right-of-way (ROW) (roadway or other utility ROW) or section lines to minimize impacts to land-based economies, including (but not limited to) agricultural fields and mining facilities; minimizing effects on archaeological, cultural properties, and historic resources; minimizing impacts to wetlands, surface waters, and rivers; minimizing impacts to rare or endangered species and unique natural resources; minimizing effects to airports and other intensive land uses; constructing the transmission lines near existing roadway ROW or close to the half section lines to minimize impacts to agricultural fields; placing structures to minimize impacts to movement of farm equipment and agricultural production; avoiding a diagonal route across agricultural fields wherever possible; and preference for mono-pole structures rather than H-frame structures. Based on these routing criteria, the Applicants selected the route stated in the Application. Ex 1; Ex 4.

26. The Project route changed from the proposed route in the Application to the route reflected on Exhibit 25 due to route changes requested by landowners and adopted by the Applicants. Each proposed route change goes through a standard review process by a committee comprised of the representatives of the Applicants, consultants from the design engineer, environmental, right-of-way, and legal teams. Ex 3, Response to Data Request 2-25. The route change is evaluated using the same routing criteria used to select the original route. TR 31-32. If practicable to honor the request to move the route location, the Applicants attempted to do so. Ex 3, Data Request 2-25. If the impacts are too great, or if the route change is not mutually agreed upon by adjacent landowners impacted by the proposed route, the requested relocation might not be granted. Ex 3, Data Request 2-25. In selecting the route, the Applicants also engaged in extensive public outreach, including open houses and communications and meetings with federal, state, and local governmental and tribal agencies. Ex 1, §8.1 and Appendix C.

27. Pesall proposed a change to the route so that the Project would not cross his property. Ex 16, p. 17; Ex 8. The Applicants rejected the proposed change because Pesall's proposed route change resulted in greater landowner objection than the Project's proposed route. TR 30-35.

Project Impacts and Measures to Minimize or Mitigate

28. As indicated in Sections 9 through 19 of the Application, the Applicants have developed reasonable mitigation plans to mitigate any environmental concerns arising from the construction or operation of the Project. Ex 1. The Amended Settlement Stipulation also contains conditions, which when complied with by the Project, will mitigate environmental concerns. Ex 301A. The Commission finds that the Project will not cause serious injury to the environment based on the mitigation measures addressed in the Application and the Applicants compliance with the conditions imposed by the Amended Settlement Stipulation in their construction and operation of the Project.

29. The only contentions that have been made that the Project may harm the social or economic condition of the inhabitants and expected inhabitants of the siting area relate to the effect

of the Project on agricultural practices in the area, the effect of the presence of the transmission line on property values, and the effect of Project construction on the roads in the area. Based on the mitigation efforts discussed in the Application, and the conditions imposed by the Amended Settlement Stipulation, the Commission finds that the effect of the facility on agricultural practices, and the effects of construction on area roads will not cause serious injury to the social and economic condition of inhabitants and expected inhabitants in the siting area. As discussed in more detail below, no evidence was introduced to demonstrate any effect of the Project on property values.

30. As stated in Section 19.2 of the Application, the conditions in the Amended Settlement Stipulation, and the testimony presented by Applicants at the evidentiary hearing, the Applicants have adopted reasonable measures to minimize the effect of the Project on farming practices. The Applicants' efforts include the use of monopoles, placing structures in the field to allow farming around structures, creating spans between the structures of approximately 700 to 1,200 feet, and working with landowners to reasonably address the effect of the Project on farming practices. Applicants have attempted to address landowner concerns through routing changes. The Project will continue to consider landowner concerns during the construction phase and will respond to those concerns as provided for in the Amended Settlement Stipulation. The Commission finds that these efforts are sufficient to prevent the Project from posing a serious injury to the social and economic condition of the expected inhabitants in the Project area.

31. The construction and maintenance of the Project will not prevent landowners from engaging in reasonable agricultural practices.

32. The Commission finds that construction and operation of the transmission line will not materially interfere with global position system (GPS) assisted farming practices. TR 191-192, 374-376. Conditions 26 and 33 of the Amended Settlement Stipulation sufficiently mitigate any minimal risk associated with interference with GPS assisted farming practices. Ex 301A.

33. The Project, as designed, will not negatively impact livestock production. Ex 20, pp.7-8.

34. Regarding the economic condition of the inhabitants near the siting area, the Commission finds that the Project will not pose a serious injury to the existing infrastructure in the siting area. The primary infrastructure concern is the effect on roads in the siting area. The Applicants' use of best management practices (BMPs) and their development of a plan to monitor and mitigate any road damage, along with the statutory bond required by SDCL 49-41B-38 for remedying any road damage and the conditions in the Amended Settlement Stipulation, provide sufficient mitigation measures to address the effects of the construction of the Project on existing roads.

Pesall's Objection to the Project

35. According to the final route map for the Project, the 345-kV transmission line will cross one parcel of Pesall's land. The transmission line will be more than one-quarter mile from Pesall's residence. Ex 21A, Ex 21B, and Ex 21C. At this time, it is expected that two structures consisting of two monopoles with concrete foundations will be placed on Pesall's land. Ex 21A; Ex 21B; TR 290.

36. The Pesall land to be crossed is open farm ground with no obstructions. Ex 21A; 21B; Ex 21C. The Project's placement of the route on Pesall's property will not materially impede

Pesall's farming practices because of the open spaces and Pesall's ability to farm around the two structures on his property. Ex 21A; Ex 21B.

37. Pesall's objection is less an objection to the issuance of the Permit than an objection to the placement of the transmission line on his property. Pesall admitted that if the Project would simply move the line off of his property, then he would "go away and disappear." TR 312.

38. Pesall has identified the possible spread of soybean cyst nematode (SCN) from the construction and maintenance of the Project as an environmental and economic concern warranting denial of the requested transmission facility permit. TR 282.

39. Pesall raised the concerns about the spread of SCN before he tested his property to determine whether he had SCN. TR 303. As of the time of the evidentiary hearing, Pesall had not received the results of the testing for SCN. TR 282. There is no evidence indicating whether or not Pesall has SCN on his property. If Pesall already has SCN, then there is no risk of spreading SCN to Pesall's property through construction.

40. There is no evidence indicating whether any of the landowners over whose land the transmission line will travel do or do not already have SCN. Pesall's expert, Dr. Tylka, testified that SCN is present in Brown, Grant, and Day Counties. TR 241. Dr. Tylka admitted that he does not know which parcels in those counties are infected with SCN. TR 242. He also admitted that he does not know whether any of the landowners on the proposed line have SCN on their property. TR 243.

41. There was no evidence presented that construction of any transmission line project caused the spread of SCN. TR 246. The evidence indicated that SCN can be spread by wind, water erosion, and animals such as birds. TR 244-245, 270-271. SCN also can be spread through farm equipment in typical farming practices or even by boots. TR 244, 259. Dr. Tylka admitted that even his own research team does no more to mitigate the spread of SCN than knock clumps of soil off tires, boots, and soil probes. TR 259-260. Once a field is infected with SCN, there is no way to determine how the field became infected. TR 256-267.

42. The Commission finds that reasonable and prudent steps can be taken during construction to minimize the spread of SCN. Following Pesall's identification of the SCN issue in his direct prefiled testimony, the Applicants created a mitigation plan to mitigate the spread of SCN. Ex 23.

43. The Commission finds that the appropriateness of the mitigation plan is confirmed by the steps taken by Dr. Tylka to prevent the spread of SCN when performing research. When working in infected fields, Dr. Tylka's research teams do not steam wash or powerwash their equipment. Instead, they simply knock as much dirt off their boots and equipment as possible. TR 258-260. Similarly, when moving equipment from field to field, Pesall did not wash his equipment but instead just uses a hammer to knock the soil off the equipment. TR 295.

44. The Commission finds that maintenance of the transmission line will not increase the risk of spread of SCN. Dr. Tylka admitted that the risk of spreading SCN through maintenance activities is minimal, similar to vehicles driving through fields. TR 250.

45. The only mitigation plan provided regarding the spread of SCN was provided by Applicants. Pesall did not present a mitigation plan.

46. Even if farmers have SCN in their fields, farmers can employ mitigation techniques to reduce the impact of SCN. These mitigation techniques include growing non-host crops such as corn, including non-host crops in a crop rotation, and planting SCN resistant variety seed. TR 248.

47. Although the Amended Settlement Stipulation contains Condition 17 requiring the implementation of an SCN mitigation plan, the Commission finds that Condition 17 is lacking in clarity concerning exactly what process Applicants would follow in the SCN soil assessment survey of the route and mitigation plan development and execution and the Commission's ability to verify and exercise its oversight authority over the development and execution during construction. Ex 301A. The Commission accordingly finds that the following language should be added to Condition 17:

After Applicant has finished the soil sample field assessment in accordance with the specifications for such assessment prepared in consultation with an expert in the proper methodology for performing such a sampling survey, Applicant shall submit to the Commission a summary report of the results of the field assessment and Applicant's specific mitigation plans for minimizing the risk of the spread of soybean cyst nematode from contaminated locations to uncontaminated locations. At such time and throughout the construction period, one or more Commissioners or Staff shall have the right to request of Applicant confidential access to the survey results to enable the verification of the survey results, assess the appropriateness of the mitigation measures to address such results, and monitor the execution of the plan during construction.

48. The Commission finds that the Project's SCN mitigation plan, along with the conditions required by the Amended Settlement Stipulation as amended by the Decision, will reasonably minimize the risk of the spread of SCN during construction of the Project. If the Commission were to find that the existence of any risk of the spread of SCN whatsoever would mandate denial of a permit, no energy facility permit, or certainly no linear facility, could ever be issued again involving the substantial areas of the state where SCN has been found, which areas are almost certain to increase in number and size over time.

49. The Commission finds that the risk of spread of SCN from construction or maintenance of the Project does not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area and does not warrant denial of the Permit.

50. Pesall admitted that other than SCN, he was not concerned about the spread of other pests because those pests can be controlled with chemicals. TR 295-296.

51. Pesall also objects to the Project out of concern for the effect of the construction on township roads. TR 285. As indicated in Findings of Fact 29 and 34 above, the Applicants have adequately mitigated the risk of road damage. Ex 301, Conditions 8 and 27.

52. Pesall also contends the height of farm equipment poses a safety threat under the transmission line. Ex 101. Because of the design criteria of the Project, which is designed to industry safety standards, the clearance is sufficient that the Project does not pose a safety concern to persons in farm equipment. TR 193-94, 197, 208-10.

53. Pesall also objects to the Project because he contends it will decrease his property values. Ex 101. Whether the Project will decrease property values or the amount, if any, of the reduction in property values is speculative. No expert testimony or other evidence was introduced as to the actual effect of construction of the Project on property values. The Commission thus finds

that reduced property values do not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area warranting denial of the permit.

54. Intervenor Pesall also objects to the Project based upon purported health concerns for persons in farm equipment below the transmission line. Ex 101. Based on the evidence introduced, the transmission line, which is designed to be consistent with industry safety standards, will not create health risks for persons below the transmission line. TR 193-96.

55. Intervenor Pesall contends that construction and operation of the Project will result in compaction negatively affecting his agricultural practices. Ex 101. The Commission finds that the Applicants proposed reasonable efforts to address compaction arising from construction. TR 92; Ex 1, §§ 19.2, 22.2.1, and 22.3. The compaction of agricultural ground, as mitigated, will not pose a threat of serious injury to the environment or to the social and economic condition of inhabitants or expected inhabitants in the siting area.

56. Finally, Intervenor Pesall objects to the Project because he contends he and his neighbors do not need additional electricity. TR 296-297. As stated in Findings of Fact 15 to 20, the Commission finds that there is a need and demand for the Project. The Project will serve current and future electricity needs of the public both in South Dakota and other states. There is a public need for the Project. Need is not one of the criteria set forth in SDCL 49-41B-22 for approval of a permit.

57. The Commission finds that none of Intervenor Pesall's objections warrant denial of the permit.

Morehouse Objection to Route of Project

58. The Project route requires the 345-kV transmission line to cross one parcel of Morehouse's property. Ex 22A. Current Project alignment only requires an aerial overhang on Morehouse's property with no structures placed on his property. Ex. 22A. The transmission line will be located approximately 1,200 feet from a feed lot owned by Morehouse. TR 219, 352.

59. Intervenor Morehouse does not object to the Project but only objects to the location of the transmission line in proximity to his feedlot. TR 349.

60. The Project's route was originally going to be directly adjacent to Intervenor Morehouse's feed lot. TR 351. The Project has moved the transmission line so it is approximately 1,200 feet from Morehouse's feedlot. TR 352.

61. A high voltage transmission line such as the Project can induce an electrostatic charge in a metallic object or an electrical current in a linear metallic structure such as a fence in close proximity to the line. TR 195-196. As stated above in Finding of Fact 12, the line will be designed and constructed in accordance with NESC clearance standards and also to meet Institute of Electrical and Electronic Engineers and International Commission on Non-Ionizing Radiation Protection standards to minimize the potential for current inductance. TR 191-193.

62. In the event a metallic structure such as a building or fence is in close enough proximity to the line to have some electrostatic charge or current induction, the issue can be resolved by grounding the structure. TR 196. In Condition 32, Applicants have agreed to assume the obligation of achieving such mitigation at Applicants' expense. Ex 301A.

63. The Commission finds that the Project reasonably addressed Intervenor Morehouse's routing concerns about the effect of the Project on his cattle and feedlot by moving the transmission line to about 1,200 feet away from Morehouse's feedlot and by agreeing to Condition 32 of the Amended Settlement Stipulation.

64. Based on the evidence, the transmission line will not adversely affect Morehouse's cattle in the feedlot. TR 193.

65. The Commission finds that Intervenor Morehouse's objection to the location of the transmission line in proximity to his feedlot does not warrant denial of the permit.

Schuring Objection to Route of Project

66. Schuring does not object to the issuance of the permit but objects to the location of the transmission line due to the proximity of the 345-kV transmission line in relation to Schuring's dairy. TR 318. The transmission line will be more than one-quarter mile from Schuring's dairy. Ex 22A; TR 19.

67. The Project route requires the 345-kV transmission line to cross two parcels of Schuring's property. Ex 22A. Similar to Morehouse, the proposed route would only require aerial overhang on Schuring's property, and thus, no structures will be placed on his property. Ex 22A.

68. The transmission line is located more than one-quarter mile from the dairy barns of Schuring. TR 319. Schuring's dairy cows are confined to the dairy barns. TR 320-21. As a result, the dairy cows are more than one-quarter mile from the transmission line. At this distance, the transmission line will not negatively affect the dairy cows or the production of Schuring's dairy. TR 193.

69. Schuring also objects to the location of the transmission line due to his claim it will devalue his dairy. TR 315-17. No evidence was presented by any party concerning devaluation, and any finding of devaluation of the Schuring dairy would be speculative.

70. The Commission finds that Schuring's objection to the location of the transmission line in proximity to its dairy does not warrant denial of the permit.

Satisfaction of Requirements for Issuance of the Transmission Facility Permit

71. The Amended Settlement Stipulation contains terms and conditions that are essentially the same as the set of terms and conditions that the Commission has approved for all electric transmission projects permitted in recent years with the addition of Conditions 17, 32, and 33, as amended by this Decision, to address specific concerns expressed by intervenors in this matter. The electric transmission projects constructed in compliance with this set of terms and conditions in recent years have been completed and put into operation successfully without significant issues arising and have not resulted in complaints to the Commission by landowners or local governments in the project areas.

72. Applicants have satisfied their burden of proving that the transmission facility, constructed and operated in compliance with the Terms and Conditions of the Amended Settlement Stipulation and this Decision, will comply with all applicable laws and rules.

73. Applicants have satisfied their burden of proving that the Project, constructed and operated in compliance with the Terms and Conditions of the Amended Settlement Stipulation and

this Decision, 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 siting area.

74. Section 23.4 of the Application, and the conditions in the Amended Settlement Stipulation and this Decision, adequately address any safety concerns arising from the construction or operation of the transmission line. The design of the Project minimizes these safety and health issues arising from the construction and operation of the Project.

75. Applicants have satisfied their burden of proving that construction and operation of the transmission facility, constructed and operated in compliance with the Terms and Conditions of the Amended Settlement Stipulation and this Decision, will not substantially impair the health, safety, or welfare of the inhabitants near the facility.

76. The Applicants have satisfied their burden of proving that the transmission facility 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 that the Project will affect the orderly development of the region. The only concerns expressed by any local government units were those expressed by three townships: Farmington Township; Highland Township; and Valley Township. The only concerns expressed by these townships relating to development of the region concerned the effect of the Project on farming practices. The Commission finds the Project, as designed, will not have a significant negative impact on farming as set forth in the Findings of Fact above. Therefore, the Project will not prevent the orderly development of the region.

77. Applicants have satisfied their burden of proving all of the requirements imposed by SDCL 49-41B-22 for issuance of the permit by the preponderance of the evidence.

78. Applicants have furnished all information required by the applicable statutes and Commission regulations.

79. The Commission finds that the Applicants have complied with the statutory requirements imposed by SDCL Chapter 49-41B and the regulatory requirements imposed by ARSD 20:10:22 for issuance of the transmission facility permit.

80. Because the Applicants have satisfied their burden of proving each of the elements in SDCL 49-41B-22 and have complied with the requirements of ARSD 20:10:22, the issuance of the transmission facility permit is appropriate. The transmission facility permit is issued conditioned upon the Applicants compliance with the Conditions set forth in the Amended Settlement Stipulation as modified by the amendment to Condition 17 set forth in Finding of Fact 47.

81. As amended by this Decision, the Terms and Conditions for construction and operation of the Project set forth in the Amended Settlement Stipulation and this Decision are adopted by the Commission in this Decision as the terms and conditions applicable to the energy facility permit issued by the Commission by this Decision and are incorporated herein by reference and shall have the same force and effect as if set forth herein their entirety.

82. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Application pursuant to SDCL Chapter 49-41B.

2. The Commission lacks legal authority over private landowner transactions or the terms and conditions of any easement granted by landowners for the Project.

3. Following the filing of the Application with the Commission, certain notice requirements were required by law. SDCL Chapter 49-41B. Specifically, Applicants were required to provide the notices required by SDCL 49-41B-5.2. Additionally, the Commission was required to schedule a public hearing under 49-41B-15 and provide the notice required by SDCL 49-41B-15. These notice requirements have been satisfied.

4. Applicants satisfied their obligations to provide notice to landowners required by 49-41B-5.2. Specifically, 49-41B-5.2 required the Applicants 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. The Applicants complied with the landowner notice requirement when they sent the landowner letter via certified mail on September 6, 2013, containing a copy of the Order and a map of the Project's proposed route.

5. After the proposed route for the Project changed such that there were new landowners located within one-half mile of the proposed route of the Project, Applicants sent via certified mail an additional landowner notice letter consistent with the requirements of SDCL 49-41B-5.2 on March 19, 2014, which was sent to the landowners located within one-half mile of those route changes. The March 19, 2014 landowner letter enclosed a revised route map and a copy of the Second Order.

6. SDCL 49-41B-5.2 also required Applicants to publish notice in the official newspaper of each county which the Project is located for two consecutive weeks. Applicants complied with the publication notice requirement of SDCL 49-41B-5.2 when they had notice of the October 17, 2013 public hearings published in the following papers: Aberdeen American News on September 12 and 19, 2013; the Webster Reporter and Farmer on September 9 and 16, 2013; and the Grant County Review on September 11 and 18, 2013.

7. Following the filing of the Application, SDCL 49-41B-15 required the Commission to schedule a public hearing. The Commission scheduled the public hearing through the Order, which set two public hearings on October 17, 2013. The Commission thus complied with SDCL 49-41B-15(1).

8. The Commission also is required to notify the Applicants of the hearing and serve notice of the Application hearing upon the governing bodies of the counties and municipalities totally or partially within the area of the proposed facility. SDCL 49-41B-14(2) and (3). Again, the Commission complied with these requirements by serving the Order on Brown County, Day County, Grant County, City of Frederick, City of Twin Brooks, City of Westport, City of Groton, City of Andover, City of Butler and Big Stone City.

9. The Commission also caused Application to be filed with the County Auditors for Brown County, Grant County and Day County, for filing as required by SDCL 49-41B-15(5).

10. SDCL 49-41B-15 requires the Commission to publish notice of the time, place and purpose of the public hearing in one newspaper of general circulation in counties totally or partially within the area of the Project. The Commission complied with those requirements when it published notice of the October 17, 2013 public input hearing in the Aberdeen American News, Webster Reporter and Farmer, and the Grant County Review.

11. Following the route changes that resulted in new landowners being placed within one half mile of the Project, the Commission again held an additional public input hearing on May 20, 2014. This additional public input hearing satisfied the notice requirements of SDCL 49-41B-15.

12. The Applicants 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.

13. The Commission held an evidentiary hearing pursuant to SDCL Ch. 1-26 on the Application on June 10 and 11, 2014. Due process rights were afforded to all the parties at the evidentiary hearing consistent with SDCL Ch. 1-26.

14. Intervenor Pesall objects to the admission of the MISO studies which are attached as Exhibit 4 and Appendices B.1 to B.4 of the Application, which is marked as Exhibit 1. The Commission concludes this evidence is admissible and can be considered pursuant to SDCL 1-26-19, which provides for, among other things, the admissibility of evidence that may not be otherwise admissible under the South Dakota's rules of evidence:

When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. SDCL 1-26-19(1).

The Commission concludes that the MISO materials meet this requirement because the information is reasonably relied upon by utilities in South Dakota in making their planning decisions. TR 106. Additionally, the MISO studies are all official documents filed with the Federal Energy Regulatory Commission (FERC) pursuant to a FERC order and decisional documents. TR p.109.

15. Following the evidentiary hearing, based upon the evidence presented, and based upon the Amended Settlement Stipulation as amended by this Decision, the Commission concludes that the Applicants have satisfied their burden of proving the elements required by SDCL 49-41B-22 for issuance of the transmission facility permit as requested in the Application. The Commission thus concludes that the Application should be granted and a facility permit should be issued for the Project for the reasons stated in these Findings of Fact and Conclusions of Law.

16. The Commission concludes that Pesall's stated reasons for denying the Application do not warrant the denial of the Application. Instead, based on the preponderance the evidence presented to the Commission, the Commission concludes that all of the requirements of SDCL 49-41B-22 have been satisfied.

17. The Commission concludes that the objections by Intervenors Morehouse and Schuring all relate to the routing of the Project. The Commission does not have the authority to "route a transmission facility." SDCL 49-41B-36.

18. The Intervenors have not presented evidence sufficient to deny the permit under the applicable statutes and Commission regulations.

19. The Commission grants the transmission facility permit requested in the Application, as amended, subject to the Terms and Conditions of the Amended Settlement Stipulation as amended by this Decision. Applicants are required to comply with the Conditions imposed by the Amended Settlement Stipulation as amended by this Decision. With the Conditions in the Amended Settlement Stipulation as amended by this Decision, the Commission concludes that the necessary requirements of SDCL 49-41B-22 are all satisfied.

20. To the extent that any Finding of Fact set forth above is more appropriately a conclusion of law, that Finding of Fact is incorporated by reference as a Conclusion of Law.

It is therefore

ORDERED, that an energy facility permit is issued for the construction and operation of the Project, subject to the Terms and Conditions of the Amended Settlement Stipulation as amended by this Decision. It is further

ORDERED, that Applicants shall comply with all of the Terms and Conditions set forth in the Amended Settlement Stipulation and this Decision.

ORDERED, that Applicants shall be subject to and shall comply with the following condition provisions in addition to what is set forth in Condition 17 of the Amended Settlement Stipulation:

After Applicants have finished the soil sample field assessment in accordance with the specifications for such assessment prepared in consultation with an expert in the proper methodology for performing such a sampling survey, Applicants shall submit to the Commission a summary report of the results of the field assessment and Applicants' specific mitigation plans for minimizing the risk of the spread of soybean cyst nematode from contaminated locations to uncontaminated locations. At such time and throughout the construction period, one or more Commissioners or Staff shall have the right to request of Applicants confidential access to the survey results to enable the verification of the survey results, assess the appropriateness of the mitigation measures to address such results, and monitor the execution of the plan during construction.

NOTICE OF ENTRY AND OF RIGHT TO APPEAL

PLEASE TAKE NOTICE that this Final Decision and Order; Notice of Entry was duly issued and entered on the 22nd day of August, 2014. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition with the Commission within 30 days after the date of issuance of this Final Decision and Order; Notice of Entry. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 22nd day of August, 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: <u>Joy Lashley</u>
Date: <u>8-22-14</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

Exhibit A

RULINGS ON APPLICANTS' PROPOSED FINDINGS OF FACT

Essentially all of Applicant's Proposed Findings of Fact have been accepted in substance and incorporated in the Findings of Fact, with the form and style modified to form and style generally employed by the Commission and with a few additions and modifications to reflect the Commission's understanding of the record and to add additional citations to the record in some cases.