

South Dakota

# LANDOWNER INFORMATION

January 2015



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## Land rights and permitting contact information

### **Vicki Severson, RWP**

#### **Land rights and permitting**

Otter Tail Power Company  
215 South Cascade Street  
Fergus Falls, MN 56537

📞 **Phone:** 218-739-8389  
📱 **Cell:** 218-770-1561  
📠 **Fax:** 218-739-8442

## Commission contact information

### **South Dakota**

#### **Public Utilities Commission**

Capitol Building, 1st floor  
500 E. Capitol Ave.  
Pierre, SD 57501-5070

📞 **Phone:** 605-773-3201

## Transmission line owners contact information

### **Otter Tail Power Company**

**24-hour emergency contact: 800-257-4044**

215 South Cascade St | Fergus Falls, MN 56537-0496

📞 **Phone:** 800-257-4044

💻 **Web:** [www.otpc.com](http://www.otpc.com)

✉ **Email:** [vseverson@otpc.com](mailto:vseverson@otpc.com)

### **Montana-Dakota Utilities Co.**

**24-hour emergency contact: 1-800-638-3278**

400 North 4th St | Bismarck, ND 58501-4092

📞 **Phone:** 800-638-3278

💻 **Web:** [www.montana-dakota.com](http://www.montana-dakota.com)

✉ **Email:** [Daniel.Albrecht@mdu.com](mailto:Daniel.Albrecht@mdu.com)

## What is the project?

The Big Stone South to Ellendale (BSSE) Transmission Line is an approximately 160-170 mile transmission line from the Big Stone South substation near Big Stone City, South Dakota, to the Ellendale substation near Ellendale, North Dakota. Project owners Otter Tail Power Company and Montana-Dakota Utilities Co. anticipate the project to cost between \$293 million and \$370 million and the line to be in service in 2019.

## What are the benefits?

According to the South Dakota Public Utilities Commission, the project will:

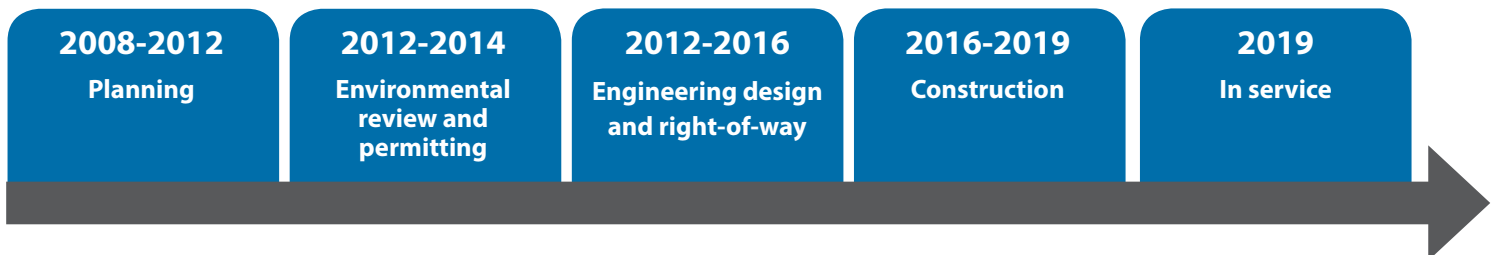
- **Improve reliability** of the regional power system, including in South Dakota.
- **Increase transmission system capacity** to address the growth of regional demand.
- **Support public policy** by enabling renewable energy to be integrated in the system.
- **Boost regional economies** by creating jobs and supporting local businesses.
- **Facilitate future wind generation** in the region, including in South Dakota.
- **Create additional tax revenues.**

## Who are the project owners?

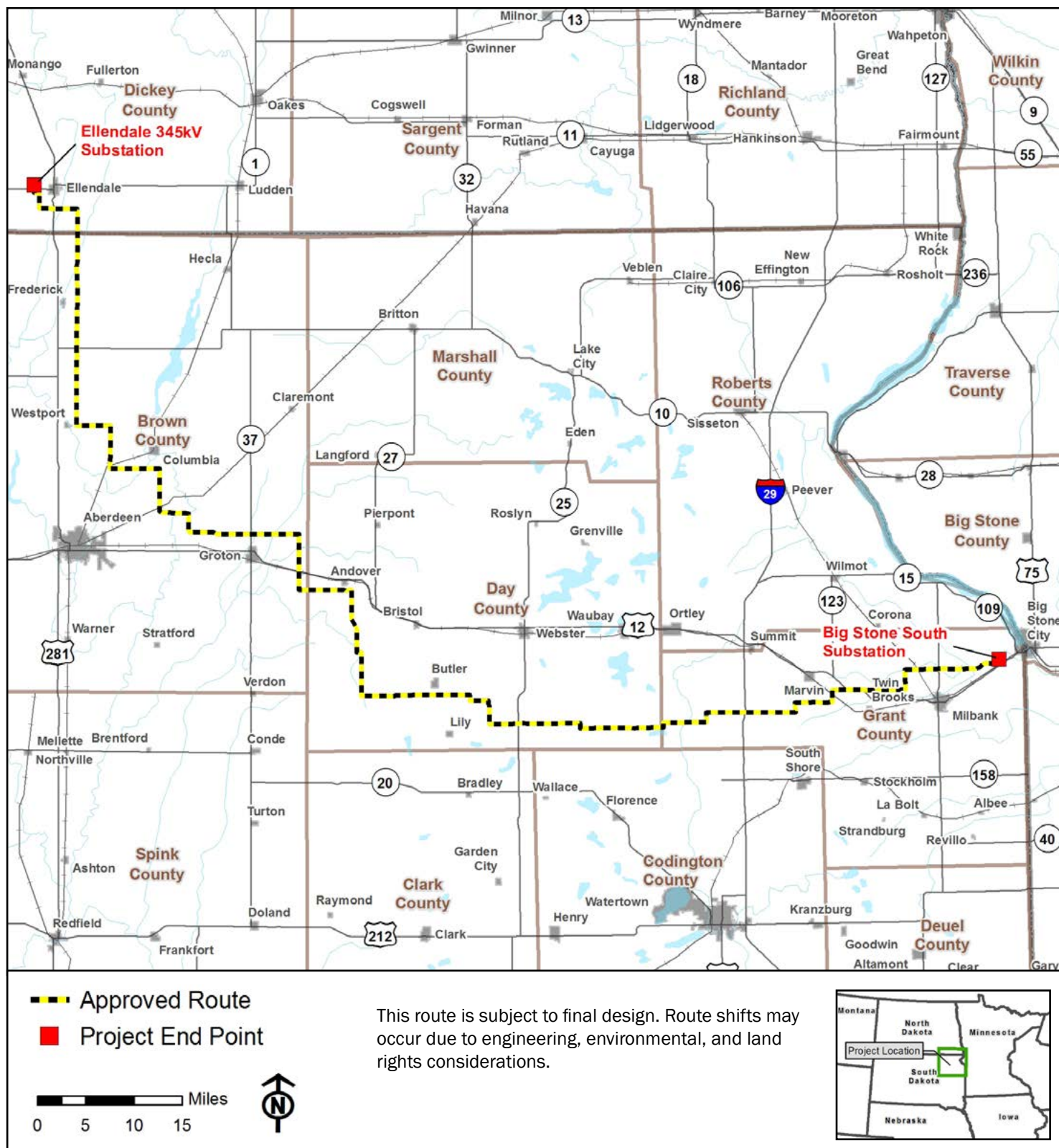
Otter Tail Power Company serves about 130,000 customers in a 70,000 square-mile area of northeastern South Dakota, eastern North Dakota, and west central Minnesota. Otter Tail Power Company is a subsidiary of Otter Tail Corporation.

Montana-Dakota Utilities Co. distributes natural gas and generates, transmits, and distributes electricity and provides related services in the northern Great Plains. The company serves approximately 134,000 electric customers and 256,000 natural gas customers in 262 communities in North Dakota, South Dakota, Montana, and Wyoming. Montana-Dakota Utilities Co. is a division of MDU Resources Group, Inc.

## What is the schedule?



## Route map





## Building and planting

### Q. What will happen to trees or buildings located within the right-of-way?

**A.** We will remove trees and buildings within the 150-foot-wide right-of-way to ensure safety. We also will trim or remove danger trees, or trees outside the right-of-way that lean toward the right-of-way or are tall enough to pose danger to the line, to reduce potential damage caused by falling limbs or trees. We'll follow all federal and state regulation requirements.

If you're considering planting a tree near the right-of-way or already have trees on your property near the right-of-way, remember these safety tips:

- » Call one of the transmission line owners shown on the inside cover before planting any trees or shrubs near right-of-way.
- » Don't plant trees or shrubs within the right-of-way.
- » Teach your children always to look up for the transmission line and explain why they shouldn't climb trees near it.
- » If trees come in contact with the transmission line, immediately contact one of the transmission line owners shown on the inside cover or emergency personnel to safely remove them.

- » Call a professional to trim or remove trees that could come in contact with the transmission line.
- » Remember that even if trees look like they have adequate line clearance other factors change every day, like the weather causing the transmission line to stretch and sag.

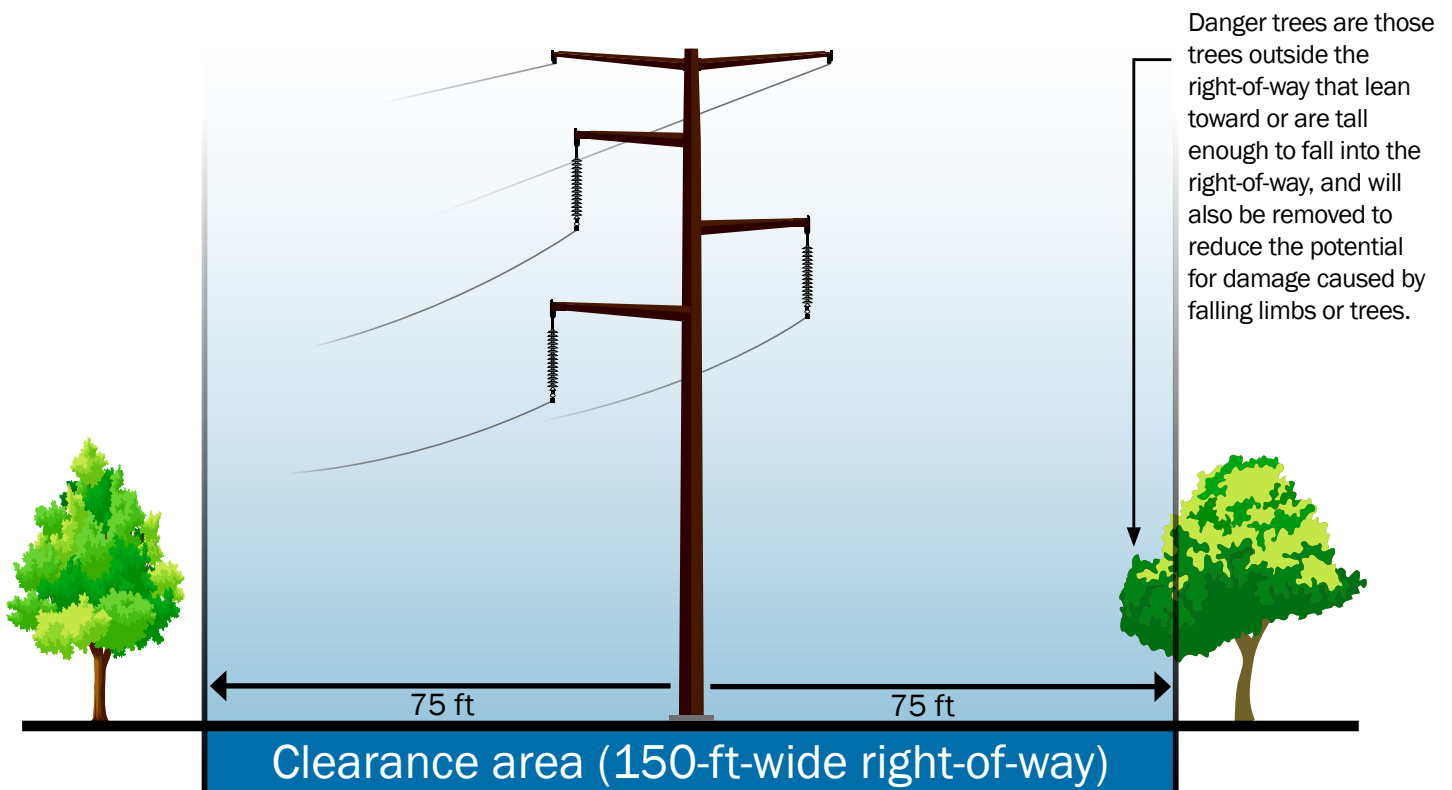
The erection of any type of structure must be approved by the transmission line owners to ensure it's compatible with the line.

### Q. May I construct a building or other structure beneath the transmission line?

**A.** Not without prior written approval from the transmission line owners. To avoid situations that create unsafe conditions for you and/or utility workers, buildings and other structures generally are not permitted within the right-of-way. Metal buildings near the line may need to be grounded.

### Q. Is the right-of-way allowed to be farmed or grazed?

**A.** We will allow landowners to continue any agricultural activity not impacting the operation of the transmission line and not specifically prohibited in the easement. Most agricultural uses will have no impact.



### **Q. What farming practices are prohibited within the right-of-way?**

**A.** We will not permit installation of structures, planting of tall-growing vegetation, and stock piling of crops under the transmission line.

### **Q. How will you maintain the right-of-way?**

**A.** We anticipate very little maintenance for most of the transmission line. Landowners retain ownership of the property and can continue to use the right-of-way for agricultural purposes or other purposes that do not impact the safety of the transmission line system. We will inspect the line by air, with occasional visits by ground crews as needed.

## **Farm machinery and equipment**

### **Q: What safety precautions should I take when using farm machinery and equipment near the transmission line?**

**A.** When using farm machinery and equipment, always be aware of transmission line wires and guy wires. And although transmission line clearance is designed to accommodate most farm machinery and equipment, always remember:

- » Physical contact, including equipment, with a transmission line can be hazardous and may cause a lethal shock.
- » Don't lift, elevate, build, or pass under a transmission line any object, tool, or vehicle that may contact wires.
- » To help prevent arc flash or electric shock, keep equipment, antennas, and people at least 15 feet away from any energized transmission line.

### **Q. Can I safely fuel my machinery near the transmission line?**

**A.** Keep a minimum distance of 100 feet from the line for refueling. If you must fuel a vehicle under a transmission line, as with any situation in which a portable fuel tank is used, use a fuel tank with a flame arrester. Both the vehicle and the fuel container should be grounded while fueling to reduce the risk of sparks.

### **Q. Will the transmission line affect my GPS?**

**A.** Transmission structures near satellite-based GPS farm equipment may block or reflect GPS signals like a building, but the presence of multiple GPS satellites usually prevents this from being a significant issue.

Transmission structures also can impact ground-based GPS, such as Real Time Kinematic (RTK) GPS, but this issue can be

overcome by relocating the base station or using repeater stations.

Electric-field corona from a transmission line can produce radio frequency emissions, but these emissions generally are at a lower frequency than the frequencies used for GPS systems.

### **Q. Who should I contact if I experience interference to radio, television, communication, or GPS equipment near the transmission line?**

**A.** Contact one of the transmission line owners shown on the inside cover to discuss the situation and receive guidance.

## **Fencing**

### **Q. Will nonelectric fencing pose a safety hazard near the transmission line?**

**A.** Nonelectric fencing made of barbed wire or similar materials directly attached to steel posts are adequately grounded and will not collect an electric charge. Nonelectric metallic fencing installed on insulating posts such as wooden poles could have induced voltages if the fence is parallel to the transmission line.

An induced voltage occurs when electric charge accumulates on an otherwise neutral object due to electric and magnetic fields from a nearby energized object, such as a transmission line.

If you are planning to install a wire fence parallel to and near the transmission line, contact one of the transmission line owners shown on the inside cover to determine the distance required between grounding posts.

If you own a fence that is within 100 feet of the right-of-way, contact one of the transmission line owners shown on the inside cover to address possible mitigation of induced voltage.

### **Q. Can electric fencing build up an electrical charge?**

**A.** Although electric fencing is insulated from the ground, it still can pick up a charge from the transmission line. In most cases the charge will drain off when the DC charger unit is connected to the fence. However, a small shock may occur when the DC charger is disconnected for maintenance or when the fence is being built.

Some of the factors attributed to electrical charges in fencing include:

- » The length of fence paralleling the line.
- » The distance between the line and the fence.
- » The amount of moisture in the fence posts and the ground.

- » The presence of grounding devices such as metal fence posts or weeds growing next to the fence.

### Follow these steps to mitigate electric fencing shock:

- » Short out one or more of the fence insulators to the ground with a wire when the charger is disconnected.
- » Install an electric filter to ground charges induced from the transmission line while allowing the DC charger to be effective.
- » Contact one of the transmission line owners shown on the inside cover if you have a problem or concern regarding induced voltage to fencing or other structures within 100 feet of the edge of the transmission line right-of-way.

## Construction and maintenance practices

### Q. How will you keep the transmission line safe?

**A.** We'll build and maintain the transmission line to meet or exceed safety standards specified by the National Electrical Safety Code (NESC) and the North American Electric Reliability Corporation (NERC). To keep the line safe, we don't recommend refueling equipment under the transmission line and won't permit new construction within the right-of-way. We designed the transmission line and line infrastructure to withstand extreme weather conditions.

Protective devices at line terminals stop the electricity flow under abnormal operating circumstances. Refer to the contact information in this booklet and on your easement agreement for

activities we allow near the transmission line.

### Q. What is sag? And what is the height of the lowest sag?

**A.** Sag is the vertical drop from the structure attachment point to the lowest point of the wire curvature. The amount of sag varies with the wire tension, temperature, and distance between structures. The height above ground at the lowest point of the sag is determined through engineering analysis and may vary throughout the project. The minimum ground clearance will be about 30 feet above ground to the lowest point of the sag.

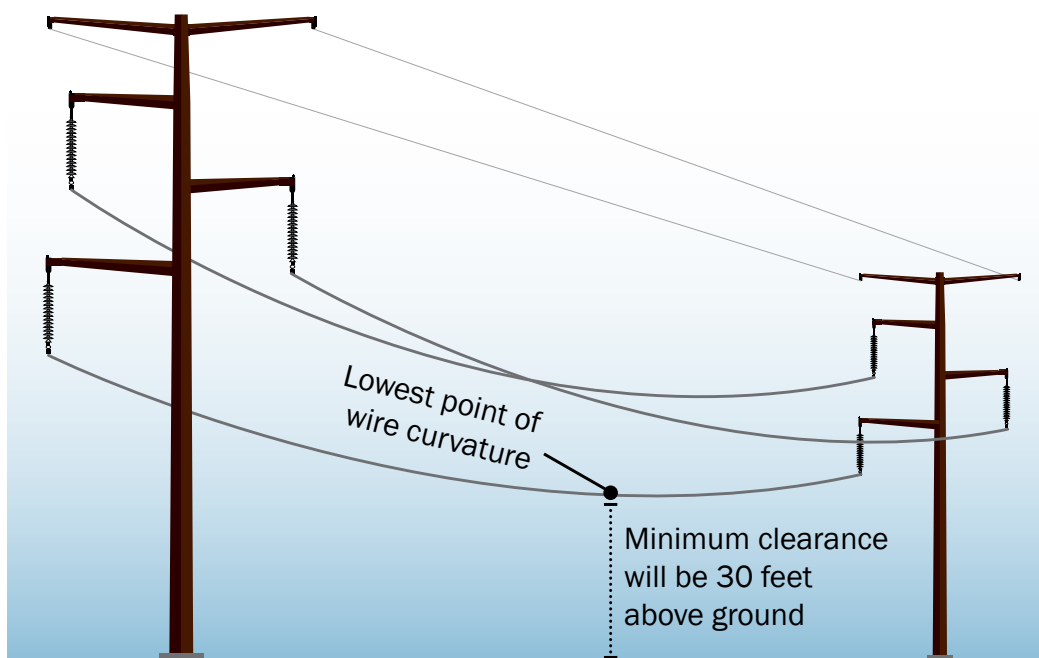
## Health and safety

### Q. What is EMF? Is it harmful?

**A.** EMF stands for electric and magnetic fields. These fields are present wherever electricity is generated, transmitted, and used. These fields are found in nature. For example, the earth has a magnetic field that causes a compass to point north, and storms produce extremely high electric fields resulting in lightning. Electric and magnetic fields also are used by devices such as cell phones to transmit signals over long distances.

Electric fields are produced by the separation of opposing charge and magnetic fields are produced by the flow of charge (electric current).

Several scientific organizations, including the American Medical Association, American Cancer Society, American Physical Society, and National Academy of Sciences, state that EMF exposure does not present a human health hazard.



**Q. I own a building near the transmission line. How might it be affected?**

**A.** Large buildings or metallic objects near the right-of way could have an induced voltage due to EMF. The charge typically will drain through plumbing, building electrical service, framing, etc. If the charge doesn't drain, it may result in nuisance shock. You can mitigate this by grounding the building or metallic object. Contact one of the transmission line owners shown on the inside cover with any shock-related problems or questions about grounding buildings or objects.

**Q. Will the transmission line impact pacemakers?**

**A.** Transmission lines are only one of a number of sources of electromagnetic interference (EMI) that could interfere with a pacemaker. EMI is a disturbance in the operation of an electrical circuit due to electromagnetic fields emitted from an external source.

Medical research studies show a wide range of responses for the threshold at which pacemakers and other implanted devices responded to an external EMI source.

The exposure to EMF and, therefore, the potential for EMI directly beneath a 345-kV transmission line is no greater than that from some common household appliances. The main risk factors for medical devices include device sensitivity, distance from the source, and field strength and orientation.

Individuals with pacemakers should consult their physicians or implant manufacturers to determine whether their implants may be susceptible to electrical interference. If a person with a pacemaker is in an electrical environment and the pacemaker begins to produce a regularly spaced pulse that is not related to a normal heartbeat, the person should leave the environment and consult a physician.

**Q. What is stray voltage? And does it pose a health threat?**

**A.** Stray voltage is a situation in which voltage (or electric current) is present where not intended due to non-ideal operating conditions on the connected distribution system.

Stray voltage can pose a health threat to humans or animals if severe. However, transmission lines don't create stray voltage because they don't connect directly to businesses or residences. Stray voltage may be an issue from distribution lines because of the direct connection to the system to which it delivers power. We don't expect stray voltage issues, however, we'll take appropriate measures to address concerns on a case-by-case basis.

## **Activity near transmission lines**

A general rule of thumb is to limit or be extremely cautious when involved in recreational activities directly under or near the transmission line.

**Q. May I hunt near the transmission line?**

**A.** Yes, but be aware of the transmission line before aiming or firing a gun. Intentionally shooting a transmission line is illegal. Shooting insulators or conductors can break a wire or cause hazards such as an electrical discharge or arc flash.

**Q. Can I build a bonfire, burn leaves, or build another type of fire under the transmission line?**

**A.** No. Never start a fire under the transmission line or within the right-of-way. Smoke and hot gases from fires can create a conductive path for electricity. A fire could damage the poles or wires and result in an outage. It's possible that the transmission line could flash to the ground through hot air and smoke.

**Q. Can I ride my snowmobile under or near transmission lines?**

**A.** As a landowner, you have the right to allow and restrict access to your land for snowmobiling. We don't recommend that the transmission line right-of-way be used for snowmobiling and encourage snowmobilers to watch for utility poles, guy wires, fencing, and underground cable junction boxes. Remember that these dangers aren't easily seen from a speeding snowmobile, especially in the dark.

## **Storms**

**Q. Will the substation or transmission line attract lightning?**

**A.** Because they're one of the tallest objects in the general vicinity, substations and transmission lines may attract lightning. However, a shield wire along the top of the structures provides protection from lightning strikes.

**Q. How do I stay safe if the transmission line falls during a storm?**

**A.** If the transmission line falls, don't touch anything in contact with it, stay far away, and immediately contact one of the transmission line owners shown on the inside cover or your local fire or police department. And if you're in your house, unplug any appliances that may still be running.

## Irrigation and watering

The potential for water and metal to conduct electricity makes it important to take safety precautions when irrigating near the transmission line.

### Q. What precautions should I take when irrigating near the transmission line?

**A.** If you irrigate near the transmission line it's important to remember:

- » Never let a solid stream of water contact the transmission line.
- » Make sure your irrigation system is well grounded.
- » When unloading irrigation pipes, stay at least 50 feet from the transmission line to avoid raising them too close to the wires.
- » Install long lengths of metal pipe at right angles to the transmission line, if possible, to reduce risk of the pipes building up an induced voltage.
- » Take extra precautions when using fertilizers and pesticides because they increase water conductivity.

If you're questioning whether your irrigation system is adequately grounded or you're planning to install a new irrigation system, contact one of the transmission line owners shown on the inside cover.

### Q. How will the line impact center-pivot irrigation systems?

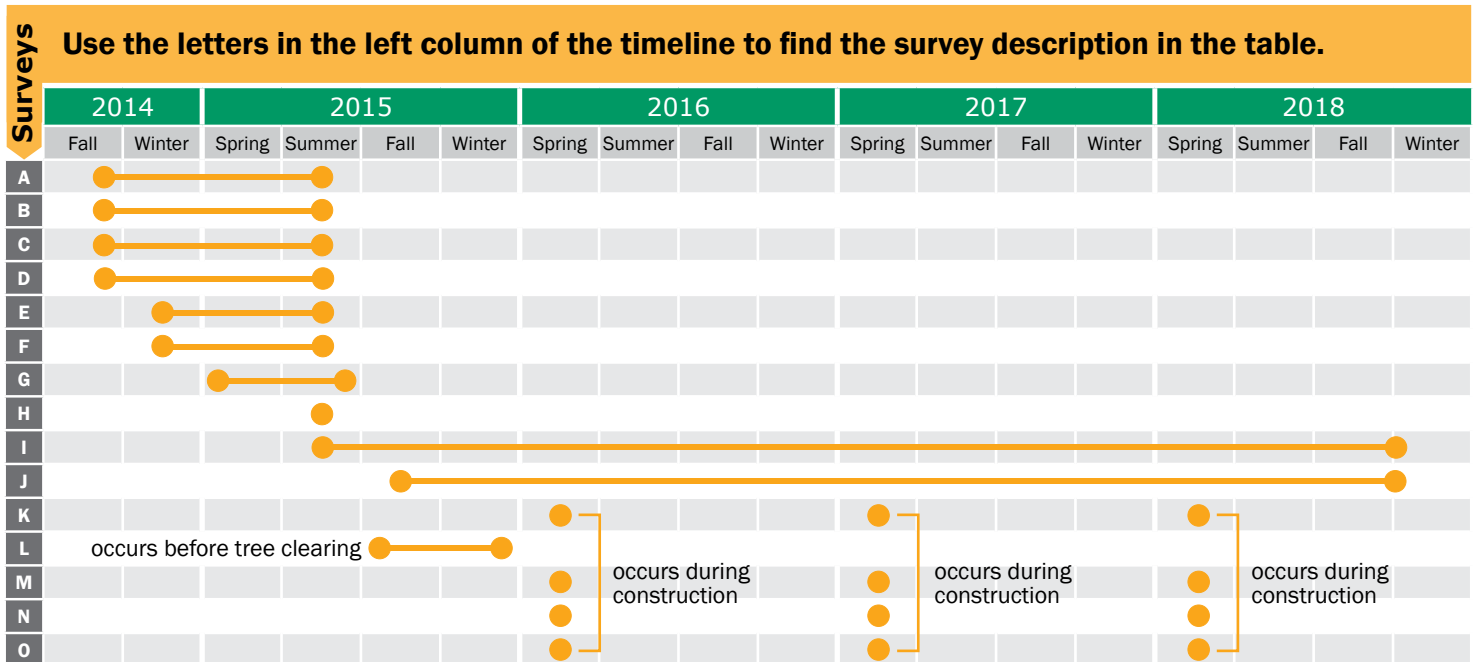
**A.** A transmission line near a center-pivot irrigation system typically will span the outer arc of the center pivot arm to provide clearance at the end of the pivot arm to limit interference with irrigation operation.

Several factors determine the ability of the transmission line to span the outer arc of center-pivot irrigation system including the proximity and orientation of the pivot to the transmission line, the length and height of the center-pivot, and the terrain of the property.

We will work with landowners where center pivots exist to minimize impacts to center-pivot irrigation systems. If you plan to install a new center-pivot irrigation system, please contact one of the transmission line owners shown on the inside cover to discuss the location.



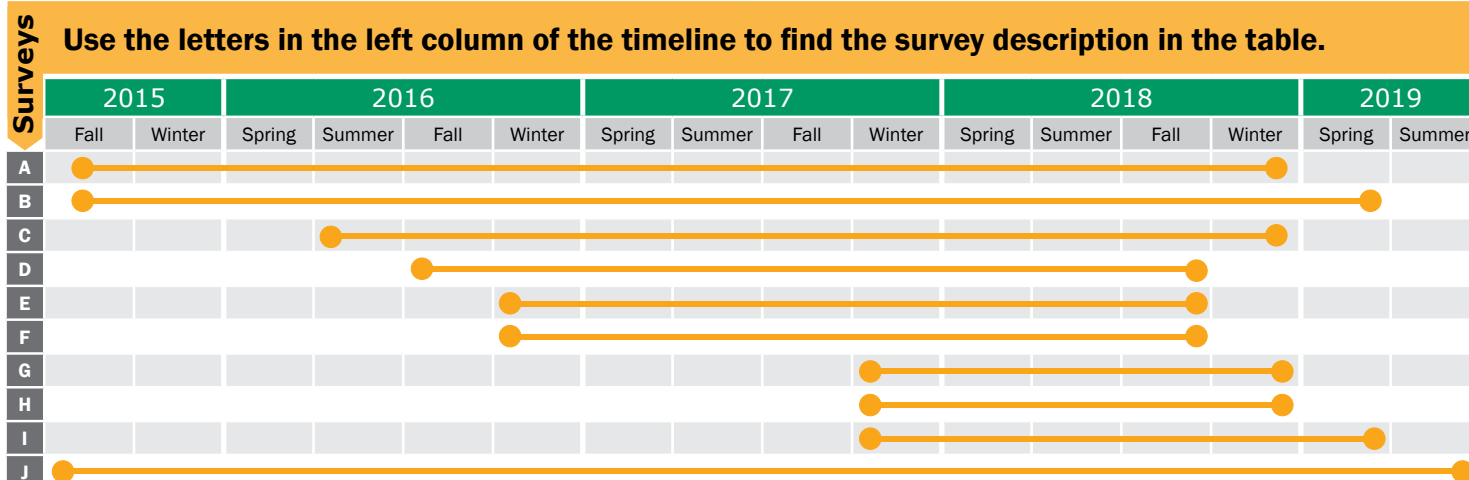
## SURVEY SCHEDULE








ID	Survey	Timeframe	Survey Area	Survey Method
A	<b>Class III cultural resources survey (archaeological)</b> Crews review areas with high probability for archaeological resources.	Fall 2014 through summer 2015	Areas within a 500-foot buffer of the route with high probability for archaeological resources	Property access required for walking and soil sampling
B	<b>Historic architectural survey (standing structure)</b> Crews review houses and outbuildings within a half-mile buffer of the route for historical significance.	Fall 2014 through summer 2015	Within a half-mile buffer of the route	No property access required for photographs of structures
C	<b>Wetland verification and delineations</b> Crews verify wetland boundaries and delineate US Army Corps of Engineers Jurisdictional Wetlands.	Fall 2014 through summer 2015	Right-of-way	Property access required for walking and soil sampling
D	<b>Soybean cyst nematode soil sampling</b> Crews collect soil samples to test for the presence of the soybean cyst nematode.	Fall 2014 through summer 2015	All tilled property within the right-of-way	Property access required for walking and soil sampling
E	<b>Preliminary engineering review</b> Engineers review constructability and possible obstacles.	Winter 2014 through summer 2015	Right-of-way and all structure locations	Property access required for walking and vehicle
F	<b>Soil borings</b> Crews perform soil borings at each structure location, up to 50 feet around the structure, to gain soil characteristics for design.	Winter 2014 through summer 2015	Work will occur at the structure locations. Right-of-way and non-right-of-way access may be required.	Property access required for walking and vehicle



ID	Survey	Timeframe	Survey Area	Survey Method
G	<b>Preliminary structure staking</b> Engineers and surveyors review each structure location for acceptability and constructability.	Spring and summer 2015	Work will occur at the structure locations. Right-of-way and non-right-of-way access may be required.	Property access required for walking and vehicle
H	<b>Prairie butterfly occurrence survey: Dakota Skipper and Poweshiek Skipperling</b> Crews review the Dakota skipper and Poweshiek skipperling habitat during flight time.	Summer 2015	High probability areas from the 2012 and 2013 surveys	Property access required for walking
I	<b>Engineering staking review</b> Engineers review structure locations.	Summer 2015 through 2018	Work will occur at the structure locations. Right-of-way and non-right-of-way access may be required.	Property access required for walking and vehicle
J	<b>Final structure and right-of-way staking</b> Survey crews stake the final structures, edge of right-of-way, clearing and access locations, and wetlands or other environmentally sensitive areas.	As early as fall 2015 through 2018	Right-of-way	Property access required for walking and vehicle
K	<b>Bald eagle and raptor stick nest surveys</b> Crews review a half-mile buffer of the route for bald eagle nests and the right-of-way for other raptor nests before tree clearing.	During construction in spring 2016, 2017, and 2018	Within a half-mile buffer of the route	Property access required for walking
L	<b>Tree inventory (North Dakota only)</b> Crews record the number and species of trees and shrubs that may be removed within the right-of-way.	Fall through winter 2015 before tree clearing	Right-of-way (North Dakota only)	Property access required for walking
M	<b>Sharp-tailed grouse lek survey</b> Crews survey sharp-tailed grouse leks during the lekking season (March 1 through June 30). If leks are present, construction will be restricted in that location.	During construction in spring 2016, 2017, and 2018	Large contiguous grasslands and pastures of Coteau des Prairies and Hecla Sandhills	Property access required for walking
N	<b>Migratory nesting bird occurrence survey</b> Crews survey for ground bird active nests in grasslands during the nesting season (April through August).	During construction in spring and summer 2016, 2017, and 2018	Pasture and grassland areas within the right-of-way	Property access required for walking
O	<b>Piping plover nest survey</b> Crews survey for piping plover during the territory establishment and nesting season (May through June).	During construction in spring and summer 2016, 2017, and 2018	Alkali wetlands or wetlands with exposed fringe within a half-mile buffer of the route	Property access required for walking

## CONSTRUCTION SEQUENCE






ID	Task	Timeframe	Where task will occur	Access type and equipment	Visits to location
A	 <p><b>Stake for final structures and right-of-way</b> Survey crews stake the final structures, edge of right-of-way, clearing and access locations, and wetlands or other environmentally sensitive areas.</p>	As early as fall 2015 through 2018	Entire right-of-way	Foot and vehicle <ul style="list-style-type: none"> <li>• Pickups</li> <li>• ATVs</li> </ul>	<p><b>Visits to location:</b> 1 to 3</p> <p><b>Visit duration:</b> 1 to 3 days per visit</p>
B	 <p><b>Build access points and laydown yards</b> Crews build access points and laydown yards for construction. This may include installing road approaches, improving existing roads, clearing trees, blading rough terrain, laying wood timber matting in wet areas, and installing gates.</p>	As early as fall 2015 through spring 2019	Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• ATVs</li> <li>• Skid steers</li> <li>• Backhoes</li> <li>• Bulldozers</li> <li>• Dump trucks</li> <li>• Tractors and trailers</li> <li>• Matting</li> <li>• Straight trucks (2.5 Ton Flat Bed)</li> <li>• Wheel loaders</li> </ul>	<p><b>Visits to location:</b> multiple as required</p> <p><b>Visit duration:</b> 1 to 5 days per visit depending on property</p>

ID	Task	Timeframe	Where task will occur	Access type and equipment	Visits to location
C	 <p><b>Install foundations</b> Crews drill holes for the foundation, set steel cages, pour and cure concrete, and remove forms.</p>	Summer 2016 through 2018	Foundation work will occur at the structure locations. Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• Drill rigs</li> <li>• Straight trucks (2.5 Ton Flat Bed)</li> <li>• Skid steers</li> <li>• Dump trucks</li> <li>• Tractors and trailers</li> <li>• Wheel loaders</li> <li>• Small cranes</li> <li>• Concrete trucks</li> </ul>	<p><b>Visits to location:</b> 2 to 5</p> <p><b>Visit duration:</b> 3 to 15 days per visit</p>
D	 <p><b>Haul structures</b> Crews haul structure sections (pole shaft sections, davit arms, insulators, etc.) to the structure location.</p>	Fall 2016 through fall 2018	Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• Tractors and Trailers</li> <li>• Wheel loaders</li> </ul>	<p><b>Visits to location:</b> 1 to 3</p> <p><b>Visit duration:</b> 1 day per visit</p>
E	 <p><b>Frame structures</b> Crews assemble the structure by bolting the pole shaft sections together, attaching the davit arms, and installing parts of the insulator assemblies.</p>	Winter 2016 through fall 2018	Framing work will occur at the structure locations. Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• Cranes</li> <li>• Air compressors</li> </ul>	<p><b>Visits to location:</b> 1</p> <p><b>Visit duration:</b> 1 day per visit</p>

ID	Task	Timeframe	Where task will occur	Access type and equipment	Visits to location
F	 <p><b>Set structures</b> Crews pick up, set, and bolt the assembled structure to the foundation.</p>	Winter 2016 through fall 2018	Structure work will occur at the structure locations. Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• Cranes</li> </ul>	<b>Visits to location:</b> 1  <b>Visit duration:</b> 1 day per visit
G	 <p><b>String wire</b> Crews install wire by pulling it along the right-of-way and lifting it into place, sometimes by helicopter. Wire setup locations will be at every dead-end structure and approximately every 2 to 4 miles along the right-of-way. Once the wire is installed, it will be sagged and brought up to tension. Crews will place guard structures at road and distribution line crossings during this time.</p>	Winter 2017 through winter 2018	Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• ATVs</li> <li>• Dozers</li> <li>• Stringing equipment</li> <li>• Tractor trailers</li> <li>• Wheel loaders</li> <li>• Helicopters</li> </ul>	<b>Visits to location:</b> 1  <b>Visit duration:</b> 5 to 20 days per visit



ID	Task	Timeframe	Where task will occur	Access type and equipment	Visits to location
H	 <p><b>Clip wire</b> Crews will use bucket trucks to attach the wire to the structure.</p>	Winter 2017 through winter 2018	Wire work will occur at the structure locations. Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• Bucket trucks</li> </ul>	<b>Visits to location:</b> 1  <b>Visit duration:</b> 1 day per visit
I	 <p><b>Clean up and restoration</b> Depending on the right-of-way condition, crews may decompact the ground, reseed pasture, grade roads, remove road approaches and debris, and restore laydown yards by grading and removing all material and debris. Crews will restore roads per county road-use agreements.</p>	Winter 2017 through spring 2019	Right-of-way and non-right-of-way access may be required.	Heavy equipment <ul style="list-style-type: none"> <li>• Pickups</li> <li>• ATVs</li> <li>• Tractors with blade/ripper</li> <li>• Skid steers</li> <li>• Dozers</li> <li>• Seeding equipment</li> </ul>	<b>Visits to location:</b> multiple as required  <b>Visit duration:</b> 1 to 5 days per visit depending on property
J	 <p><b>Inspection</b> Inspectors will monitor the right-of-way and construction throughout the project.</p>	Fall 2015 through summer 2019	Right-of-way and non-right-of-way access may be required.	Foot and vehicle <ul style="list-style-type: none"> <li>• Pickups</li> <li>• ATVs</li> </ul>	<b>Visits to location:</b> multiple as required  <b>Visit duration:</b> as required

# ■ CONSTRUCTION/MAINTENANCE DAMAGE COMPENSATION

## Damage settlement policy

Otter Tail Power Company and Montana-Dakota Utilities Co. understand that construction and maintenance of the transmission line facilities may cause damage to crops and/or temporary damage to your property. Accordingly, we will pay for damages caused by construction or maintenance activities. To determine the impact amount and dollar value associated with crop or property damage, we and/or our representative will:

- » Inspect your property during and after the construction process and before restoration.
- » Contact you and/or your tenants to schedule an onsite meeting. During this meeting, we will jointly measure the disturbed area to determine the acres affected by the construction.

### 1. Crop land damage

Compensation for land with standing crops and where crop planting is prevented because of construction or maintenance activities (including hay crops, excluding pasture) will be based on your calculated yield for the disturbed area in the year of damage.

See below for a sample compensation calculation. We will make a single crop damage payment to the owner of the crops covering all damages in the construction year and the three years following construction.

#### Compensation

##### Construction year:

100% of the calculated crop land damage

##### Example:

Disturbed acres (1.2 acres) x yield in disturbed area (100 bushels per acre) = 120 bushels x unit market price (\$2.50 per bushel) = \$300 ("calculated crop damage")

*Note the average yield for the disturbed area will be determined by sampling the adjoining crops remaining. The crop unit price will be obtained from local market sources.*

Additional crop land damage payments for subsequent years:

**Year 1:** 50% of the calculated crop damage in the construction year

**Year 2:** 25% of the calculated crop damage in the construction year

**Year 3:** 25% of the calculated crop damage in the construction year

We will not pay standing crop damages when construction is undertaken after the harvest of standing crops, such as during the winter, or when the standing crop or land beneath the standing crop aren't damaged. The above payment includes damages to the standing crop and the land beneath the standing crop.

### 2. Uncultivated land damage

For uncultivated land (including pasture) and land where crops have been harvested or were not planted prior to construction, we may elect to self-perform or pay for repair and remediation to the land's preconstruction condition or provide monetary compensation.

#### Compensation

##### Construction year:

15% of the disturbed land value

##### Example:

Value of parcel per acre (\$4,000 per acre) x .15 = \$600 x 1.2 acres disturbed = \$720 ("calculated land damage")

Additional monetary compensation for subsequent years:

**Year 1:** 15% of the calculated land damage in the construction year

**Year 2:** 10% of the calculated land damage in the construction year

**Year 3:** 10% of the calculated land damage in the construction year

### 3. Repair

In lieu of monetary compensation, we may repair damage to the land caused by the construction and maintenance of the transmission facility. The repair should reasonably restore the land to its preconstruction condition. We anticipate that decompaction efforts may include tilling to a maximum depth of 18 inches.

We may elect to retain a qualified consultant to repair the land affected by the construction process.

We will pay for crop and land damage no later than 45 days after execution of a release and settlement agreement.

## Federal Crop Insurance program information

The BSSE project will be constructed across cultivated agricultural land, including land owned or occupied by participants in USDA's Federal Crop Insurance (FCI) program. Due to potential crop impacts during construction, Otter Tail Power Company and Montana-Dakota Utilities Co. contacted USDA's Risk Management Agency (RMA) to discuss procedures that affected landowners or tenants should follow regarding crop insurance.

### Procedures to minimize impacts and maintain insurance coverage:

We and/or our representative will inform landowners or tenants about construction activities and estimated schedules so that you and/or your tenants have the opportunity to address crop insurance concerns.

You and/or your tenants are responsible for contacting your FCI providers to inform FCI of the impacts to your agricultural operations as a result of the anticipated construction activities.

You and/or your tenants also should inform your crop insurance agents to coordinate the requisite crop appraisal process. FCI coverage can be lost for the construction growing season if potential impacts are not provided to the respective crop insurance provider and licensed crop appraiser prior to appraising crops for the construction growing season.

You and/or your tenants should direct questions to your crop insurance provider who should address the questions with the designated RMA representatives for the region.

Given the short-term nature of construction, impacts are expected to be minimal.

Even if you and/or your tenants follow these procedures, we cannot guarantee that crop insurance will be paid. It is your and your tenant's responsibility to comply with crop insurance requirements.

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

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

**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.<sup>1</sup> 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

<sup>1</sup> 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.<sup>2</sup> 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

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<sup>2</sup> 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.

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



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 in 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 Intervenor 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.

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 22<sup>nd</sup> 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: [Signature]

Date: 8-22-14

(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

[Signature]  
GARY HANSON, Chairman

[Signature]  
CHRIS NELSON, Commissioner

[Signature]  
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.

# Amended Settlement Stipulation

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

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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

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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.

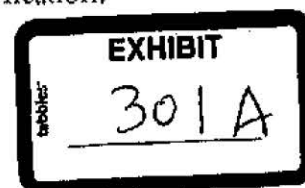
### I. INTRODUCTION

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 c) 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.

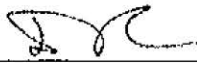
By: 

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



## COMMISSION COMPLAINT PROCESS



### PUBLIC UTILITIES COMMISSION

500 East Capitol Avenue  
Pierre, South Dakota 57501-5070  
[www.puc.sd.gov](http://www.puc.sd.gov)

If you have a dispute with your investor-owned electric, natural gas or telephone service provider, you should first try to resolve it with the company. If those efforts are unsuccessful, you can contact the PUC where a consumer affairs representative will investigate your situation and attempt to help you and your utility settle the complaint through discussions and agreements. Additional PUC staff members with expertise in technical, legal, and financial matters may become involved as well.

#### Requesting PUC assistance with a dispute

You have several options to contact the PUC to request assistance:

- » Fill out the online form at [www.puc.sd.gov/consumer](http://www.puc.sd.gov/consumer)
- » E-mail the PUC at [PUCConsumerInfo@state.sd.us](mailto:PUCConsumerInfo@state.sd.us)
- » Call toll-free: 800-332-1782
- » Fax toll-free: 866-757-6031
- » Mail to:  
SD PUC, 500 E. Capitol Ave.  
Pierre, SD 57501-5070

When contacting the PUC for assistance, please provide the following information to help the consumer affairs representative fully understand and investigate your situation.

- » Your name and complete mailing and physical address(es)
- » The name of the utility and names of company personnel you have talked with about your specific complaint
- » Your utility account number and the status of your account (for example, are you subject to disconnection?)
- » The complete facts of your complaint
- » The action the utility took on your complaint
- » A brief explanation of the solution desired

#### Filing a formal complaint

If you and your utility company reach a resolution through this informal process, PUC staff may advise you to file a formal complaint. A formal complaint is entered into a docket, which is a collection of documents filed with the commission for a particular case. The docket is electronically maintained on the PUC's website. See examples of consumer complaint dockets.

Filing a formal complaint can be a lengthy process that, unless settled, may involve a hearing before the PUC where the three commissioners act as judges, reviewing evidence from both sides of the case. You do not need to be represented by an attorney, but may choose to do so if you wish.

The commissioners follow an established set of guidelines in resolving disputes. These guidelines include South Dakota law, administrative rules, and if appropriate to the complaint, tariffs the utility has filed with the commission. The tariff lists how the utility will provide various services and how much you are expected to pay for those services. The commissioners can only consider the facts of the case and base their decision on the guidelines described.

#### Evaluate your experience

The PUC uses your feedback to evaluate and improve its service to all consumers. Please tell the PUC about your experience.

#### Administrative rules

20:10:01:07.1. Contents of consumer complaint.

20:10:01:08.1. Commission action on consumer complaints.

20:10:01:09. Service of the complaint - Service of other complaints.

20:10:01:10. Actions which satisfy complaint.

20:10:01:15.01. Burden in contested case proceeding.

20:10:01:22.02. Notice of hearing.

#### Statutes

49-13-1. Application to commission by interested party - Direct damage unnecessary - Rules prescribing form and procedure for complaints.

49-13-1.1. Complaint to commission or suit by private person - Election of remedies.

49-13-3. Compliance by telecommunications company or carrier as exoneration only for particular violation complained of.

49-13-4. Investigation of complaint - Inquiry without complaint.

49-13-7. Record - Contents - Transcript of evidence.

49-13-9. Hearing before any commissioner.

49-13-9.1. Corporations and business entities may appear without counsel in certain cases.

49-13-13. Proof of violation - Determination of just rate - Cease and desist order - Duty of telecommunications company or motor carrier to comply.

49-13-14. Determination of damages - Order directing payment.

49-13-14.1 Violations by telecommunications company or motor carrier - Civil liability - Double liability upon suit - Attorney's fees.

49-13-14.2. Necessity for demand before suit.

49-34A-58. Adequacy of service determined by commission - Notice and hearing - Order to correct inadequacy - Transfer of rights on failure to comply.

49-34A-59. Notice and hearing on violations of service area provisions - Time for decision.

