

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

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| IN THE MATTER OF THE APPLICATION |) | ORDER GRANTING JOINT |
| BY OTTER TAIL POWER COMPANY AND |) | MOTION FOR APPROVAL OF |
| WESTERN MINNESOTA MUNICIPAL |) | SETTLEMENT STIPULATION; |
| POWER AGENCY FOR A FACILITY |) | ORDER GRANTING PERMIT TO |
| PERMIT FOR A 345-KV TRANSMISSION |) | CONSTRUCT FACILITY; NOTICE |
| FACILITY AND ASSOCIATED FACILITIES |) | OF ENTRY |
| IN GRANT COUNTY, SOUTH DAKOTA |) | |
| |) | EL24-015 |

On April 15, 2024, the South Dakota Public Utilities Commission (Commission) received a facility permit application (Application) from Otter Tail Power Company (Otter Tail) and Western Minnesota Municipal Power Agency (Western Minnesota), through its agent, Missouri River Energy Services (MRES) (collectively, Applicants). Applicants propose to construct a 345-kilovolt (kV) transmission line and associated facilities including substation upgrades (Project) within South Dakota. The Project, known as the Big Stone South to Alexandria Transmission Line Project, originates at Otter Tail's existing Big Stone South Substation, located approximately 2 miles west of Big Stone City, South Dakota, in Big Stone Township and connects to a substation near Alexandria, Minnesota. The South Dakota portion of the Project consists of approximately 3.5 miles of transmission line beginning in Section 24, Township 121N, Range 47W, Grant County, South Dakota, extending east and south to the Minnesota border. Applicants anticipate construction to commence in 2027 or 2028 and be completed in either 2030 or 2031.

On April 18, 2024, the Commission electronically transmitted notice of the filing and the intervention deadline of June 14, 2024, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv. On June 17, 2024, the Commission granted Party status to Daniel and Tamra Jurgens (Jurgens). On December 5, 2024, the Applicants and Jurgens filed a Joint Motion for Approval of Settlement Stipulation. On December 18, 2024, the Commission issued an Order Granting Joint Motion for Approval of Settlement Stipulation Between Applicants and Intervenors; Order Granting Withdrawal of Party Status of Daniel and Tamra Jurgens. On January 15, 2025, Applicants and staff filed a Joint Motion for Approval of Settlement Stipulation.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically 49-41B-1, 49-41B-4, 49-41B-22, 49-41B-24, 49-41B-38 and ARSD Chapter 20:10:01, specifically 20:10:01:19 and Chapter 20:10:22.

At its regularly scheduled meeting on January 28, 2025, the Commission considered this matter. Applicants, through their attorney, verbally acknowledged that the appropriate notice would be provided to the Commission should Applicant choose to add a second circuit to the Project in the future, as contemplated in the Application and Settlement Stipulation. The Commission voted unanimously to grant Otter Tail, Western Minnesota and Staff's Joint Motion for Approval of Settlement Stipulation; and to grant a permit to construct the Project, subject to the conditions included in the Settlement Stipulation. It is therefore

ORDERED, that the Joint Motion for Approval of Settlement Stipulation is hereby granted, and the Settlement Stipulation is hereby approved. The Settlement Stipulation is incorporated by reference into this Order the same as if it had been set forth in its entirety herein. It is further

ORDERED, that prior to construction of the second circuit, Applicants shall provide notice to the Commission and Commission Staff in accordance with conditions 31 and 32. It is further

ORDERED, that the Applicant is granted the requested permit to construct the transmission line and associated facilities subject to the conditions set forth in the Settlement Stipulation.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that this Final Decision and Order Granting Permit to Construct Facility was duly issued and entered on this 30th day of January 2025.

Dated at Pierre, South Dakota, this 30th day of January 2025.

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| 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, electronically or by mail. |
| By: <u>[Signature]</u> |
| Date: <u>30 January 2025</u> |

BY ORDER OF THE COMMISSION:

[Signature: Gary Hanson]

GARY HANSON, Chairperson

[Signature: Chris Nelson]

CHRIS NELSON, Commissioner

[Signature: Kristie Fiegen]

KRISTIE FIEGEN, Commissioner

PERMIT CONDITIONS

1. The Applicants will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency or any other governmental unit for construction and operation activity prior to engaging in the particular activity covered by that permit. Applicants shall file an itemized affidavit with the Commission attesting that all permits were properly obtained prior to construction or prior to undertaking the permitted activity if such activity occurs after the start of construction.
2. The Applicants shall comply with all other terms and conditions as set forth in this Settlement Stipulation, which shall become terms and conditions of the Facility Permit (Permit) for the Project.

3. If construction, expansion, or improvement of the Project commences more than four years after the date the permit is granted, the Applicants must certify to the Commission before the construction commences that such facilities will continue to meet the Permit conditions pursuant to SDCL 49-41B-27.
4. The Permit granted by the Order in this matter shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.
5. The Applicants shall construct, operate, and maintain the Project in a manner consistent with:
 - a. Descriptions in the Application,
 - b. Application supplements, including testimony filed by Applicants to date,
 - c. Responses to any data requests,
 - d. The Terms and Conditions of the Permit,
 - e. Any applicable industry standards, and
 - f. Any permits issued by a federal, state, or local agency.
6. Applicants agree that the Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners and other persons sustaining damage as the result of Applicants' failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit.
7. Before commencing construction, the Applicants shall provide each landowner on whose property the Project is to be constructed with the following information:
 - a. A copy of the Commission Order Granting the Permit;
 - b. Detailed safety information describing:
 - i. Reasonable safety precautions for existing activities on or near the Project,
 - ii. Known activities or uses that are presently prohibited near the Project, and
 - iii. Other known potential dangers or limitations near the Project;
 - c. Construction/maintenance damage compensation plans and procedures;
 - d. The Commission's address, website and phone number; and
 - e. Contact person for Applicants, including name, e-mail address, and phone number.
8. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, the Applicants shall inform all employees, contractors, and agents of Applicants involved in this Project of the terms and conditions of this Permit.
9. Except as otherwise provided in the conditions of this Permit, Applicants shall comply with applicable mitigation measures set forth in the Application, Supplements to the Application (including testimony filed by Applicants to date), and Applicants' responses to Staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
10. Applicants shall obtain road use agreements with Grant County, and all affected townships, if required. Applicants will comply with the terms of all road use agreements. Applicants 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 of any soils or mud deposits by construction equipment when necessary.

11. Applicants shall comply with the following conditions regarding road protection:
 - a. Applicants shall acquire all necessary permits authorizing the crossing of federal, state, county, and township roads.
 - b. Applicants shall coordinate road closures with federal, state, and local governments and emergency responders.
 - c. Applicants shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public.
 - d. After construction Applicants shall, at the discretion of the governmental entities, repair and restore deteriorated roads resulting from construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads, 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 Applicants need to widen any existing roadways during construction of the Project, the Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
 - g. Applicants shall use appropriate preventative measures to prevent damage to paved roads and shall also remove excess soil or mud from such roadways, as needed.
 - h. Before commencing construction, the Applicants shall furnish an indemnity bond in the amount of \$400,000 to comply with the requirements of SDCL 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the transmission facilities. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicants shall give notice of the existence and amount of this bond to all counties, townships and other governmental entities whose property is crossed by the transmission facilities.
12. Applicants shall provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration, as applicable.
13. Applicants shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the siting area that Applicants become aware of and that was not previously reported to the Commission.
14. Applicants shall design the transmission line following the Avian Power Line Interaction Committee Suggested Practices for Avian Protection on Power Lines.
15. Applicants agree to avoid direct impacts to cultural resources that are unevaluated, eligible for, or listed in the National Register of Historic Places (NRHP). When a NRHP unevaluated, eligible, or listed resource cannot be avoided, Applicants shall notify the State Historic Preservation Office (SHPO) and the Commission prior to excavation of the area of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
16. If during construction Applicants discover what may be a cultural resource, human skeletal remains, or associated funerary objects, Applicants or their contractors and agents shall

immediately cease work at the location and notify the landowner(s), the SHPO, and other authorities as appropriate (per SDCL 34-27-25, SDCL 34-27-26, and SDCL 34-27-28). If it is determined, in coordination with SHPO, that a significant resource is present, Applicants shall develop a plan that is reasonably acceptable to the landowner and SHPO that minimizes the impact or threat to the resource.

17. Applicants shall implement the Stormwater Pollution Prevention Plan (SWPPP) to the Commission when Applicants have a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP will be completed before submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.
18. Applicants will repair and restore areas temporarily disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical.
19. Applicants shall work closely with landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds in areas disturbed by construction or maintenance activities. Landowner permission shall be obtained before the application of herbicides.
20. Applicants' obligation with respect to restoration and maintenance of the ROW shall continue throughout the life of the Project for disturbances caused by the actions of the Applicants. Where the soil is disturbed during construction or maintenance of the line, Applicants shall restore vegetation in and along the ROW.
21. Applicants shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between Applicants and landowner or Applicants and appropriate federal, state, and/or local government agencies. All excess construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
22. In order to mitigate interference with agricultural operations during and after construction, Applicants 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. Applicants shall take appropriate precautions to protect livestock and crops during construction. Applicants shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed with the landowner or designee. Applicants shall be responsible for the repair of private roads damaged when moving equipment or when obtaining access to the ROW.
23. Applicants shall, at the discretion of the owner, repair or replace all property removed or damaged during all phases of construction, or compensate the owner for their repair or replacement of such property removed or damaged, including but not limited to, all 7 fences and gates and utility, water supply, irrigation, or drainage systems. Applicants shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair,

replacement, and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicants and affected landowners where such agreements exist.

24. Applicants shall, in the manner described in its written landowner agreements, indemnify and hold the landowner harmless for loss, damage, claim, or actions resulting from Applicants' use of the easement, including any damage resulting from any release, except to the extent such loss, damage, claim, or action results from the negligence or willful misconduct of the landowner or the landowner's employees, agents, contractors, or other representatives.

25. With respect to the Project, Applicants may adjust the structure locations within the 150 foot wide ROW (as depicted in Figures 4a-4f of Exhibit B to the Pre-Filed Supplemental Direct Testimony of Jason Weiers) so long as: (a) impacts to cultural resources are avoided or mitigated in consultation with the SHPO; (b) wetland impacts are avoided or are in compliance with applicable U.S. Army Corps of Engineers (USACE) regulations; (c) the ROW and structures will not be located in potentially undisturbed grasslands (as depicted in Figure 12 and Figure 15 of Exhibit B to the Pre-Filed Supplemental Direct Testimony of Jason Weiers); and (d) all other applicable regulations and requirements are met. Any adjustment that falls outside of the 150 foot ROW identified in the Application, Application supplements, and Applicants' Testimony, or that does not meet the above stated limitations is considered a "material change." If a "material change" is proposed, Applicants shall file a request for approval of the "material change" prior to making the adjustment pursuant to the following approval process:

- Applicants will file with the Commission and serve on the official Service List a request for approval of a material change that includes:
 - An affidavit describing the proposed adjustment(s), the reason for the adjustment(s), the reason the adjustment(s) do(es) not comply with one or more flexibility limitations set forth above, and information regarding compliance with all other applicable requirements;
 - Documentation showing the impacted landowner was informed of the material change and indication whether landowner approves of the material change or contests the material change; and
 - A map showing the approved location of the 150-foot-wide ROW and structure locations and the proposed adjusted locations (in different colors).
- Once received, Commission Staff and the Commission shall have 10 business days to request further Commission review.
- If no further review is requested, Applicant may proceed with the adjustment.
- If further review is requested, the Commission will issue a decision regarding Applicants' request at its next available regularly scheduled Commission meeting, subject to notice requirements, after the request for further review is made.

26. For temporary use areas, Applicants shall: (a) secure all necessary land rights; (b) conduct cultural resource field surveys and wetland delineations, if not located in an area previously surveyed; (c) avoid or mitigate cultural resource impacts in consultation with the SHPO; (d) avoid or ensure wetland impacts are in compliance with applicable USACE regulations; (e) avoid potentially undisturbed grasslands (as depicted in Figure 12 and Figure 15 of Exhibit B to the Pre-Filed Supplemental Direct Testimony of Jason Weiers); and (f) meet all other applicable regulations.
27. 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 Permit Condition should not be applied 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 60 days unless exigent circumstances require action sooner.
28. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicants 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.
29. Applicants will provide Global Positioning System coordinates of structure locations to affected landowners upon request during the life of the Project. Coordinates will be provided in writing to landowners within 30 days of a request.
30. Applicants shall secure the necessary easement(s) for a parcel prior to beginning construction of the Project on said parcel.
31. Applicants shall notify the Commission of key Project milestones by making the following filings in the docket: a) Report the date construction will commence as soon as it is known, but no later than five business days prior to commencement; b) Report the date construction was completed within five business days of completion (Project infrastructure is installed and ready for testing); and c) Report the Commercial Operation Date
32. Not less than 15 days prior to commencement of construction work in the field, Applicants shall file the most current preconstruction design, layout, and plans. Applicants will also provide such additional Project preconstruction information as Staff requests.
33. Within 90 days of the Project's Commercial Operation Date, Applicants shall submit a report to the Commission that provides the following information:
 - a. As-built location of structures and route;
 - b. The status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulted from construction activities; and
 - c. A summary of known landowner complaints and Applicants' plan for resolving those complaints.
34. Prior to construction, Applicants will provide notices of construction to the South Dakota Department of Public Safety, the Sheriff of Grant County, and the Offices of Emergency

Management of Grant County along with a schedule and location of work to be performed within the agency's jurisdiction.