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IN THE MATTER OF THE APPLICATION
BY WESTERN MINNESOTA MUNICIPAL
POWER AGENCY AND MISSOURI RIVER
ENERGY SERVICES FOR A FACILITY
PERMIT FOR AN ENERGY CONVERSION
FACILITY AND ASSOCIATED FACILITIES
INCLUDING AN ELECTRIC
TRANSMISSION LINE IN DEUEL COUNTY,
SOUTH DAKOTA

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1. Pratt is not a party to the docket, which means that the Commission lacks personal jurisdiction over her. In administrative proceedings, “the term jurisdiction has three aspects,” the first of which is “personal jurisdiction, referring to the agency’s authority over the parties and intervenors involved in the proceedings.” *O’Toole v. Board of Trustees of South Dakota Retirement System*, 648 N.W.2d 342, 346 (S.D. 2002). The Commission has no common-law jurisdiction, no inherent powers, and only the authority granted by the legislature. *Id.* By statute, a party under the Administrative Procedures Act is “each person or agency named or

admitted as a party, or properly seeking and entitled as of right to be admitted as a party.” SDCL § 1-26-1(6). A party to a proceeding under SDCL Ch. 49-41B is further defined as Commission Staff; the applicant; each municipality, county, and governmental agency where the facility is proposed to be sited if application is timely made; and any person residing in the area where the facility is proposed to be sited, or any directly interested person, if timely application is made for party status.” SDCL § 49-41B-17. Pratt is none of these. She did not apply for party status in this docket and is therefore not a party. Thus, the Commission lacks jurisdiction over her and her request.

2. The administrative rule under which Pratt has requested relief does not create party status or jurisdiction. Pratt cites ARSD 20:10:01:43 as the basis for her request, but the rule does not extend to non-parties. The rule states in the passive voice that a request shall be filed with the Commission’s executive director, but does not say who may file a request. The rule does not say that a non-party may file such a request. Because the Commission has only the authority granted by statute and no statute gives a non-party the right to file a request under ARSD 20:10:01:43, the Commission lacks the authority to consider Pratt’s request. The terms of ARSD 20:10:01:43 illustrate why this makes sense. If the Commission grants a request for access to confidential information, it must “issue a protective order for information that it determines to be confidential.” ARSD 20:10:01:43. But the Commission lacks personal jurisdiction over Pratt as a non-party and so would have no authority to enforce its protective order against her. Pratt cannot consent to jurisdiction. *O’Toole*, 648 N.W.2d at 346 (an agency “may not acquire jurisdiction by estoppel or consent”).

3. The information Pratt seeks is confidential by statute. Pratt seeks Appendix G to the application filed in this docket, a Level III Cultural Survey, which contains information about

the location of archaeological sites containing cultural resources. This information is protected by statute. "Any records maintained pursuant to § 1-20-21 pertaining to the location of an archaeological site shall remain confidential to protect the integrity of the archaeological site." SDCL § 1-20-21.2. This statute allows the state archaeologist to make such information available to any state agency, any political subdivision of the state, or any tribe, "which, in the opinion of the state archaeologist, may conduct an activity that affects any such site." *Id.* The state archaeologist may also make such information available to the owner of the land or to any qualified researcher or research entity. *Id.* But the statute does not give the state archaeologist the authority to provide such information to any member of the general public. The protection provided by the statute would be undone if the Commission were allowed to provide such information to persons not recognized in the statute.

4. The information Pratt seeks would not be open to inspection under South Dakota's open-records laws. Under SDCL § 1-27-1.5 (13), "[r]ecords or portions of records kept by public bodies, which would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site in South Dakota, if necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass," are expressly not open to inspection or copying.

For these reasons, Applicants respectfully request that Pratt's request be denied.

Dated this 19th day of October, 2026.

WOODS, FULLER, SHULTZ & SMITH P.C.

By /s/James E. Moore

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of October, 2026, a true and correct copy of the foregoing Applicants' Response to Suzie Pratt's Request for Access to Confidential Information was served via email upon the following service list:

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