BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

Docket No. EL25-028

REQUESTER'S REPLY TO APPLICANTS' RESPONSE TO REQUEST FOR ACCESS TO CONFIDENTIAL INFORMATION UNDER ARSD 20:10:01:43 (Appendix G)

The undersigned, appearing on my own behalf as an individual, replies to the Applicants' Response filed 10/19/2026, under the Commission's Order Cancelling Hearing and Providing Notice of New Hearing Date dated 10/19/2026, and states as follows.

Background

1. My request for access to part of Appendix G was docketed on 10/07/2026. In paragraph 3 of that request I stated that I do not seek the location of any archaeological site or unmarked burial, or any site-specific coordinates or mapping. In paragraph 12 I asked for either a public version of Appendix G redacted only to remove site location information, or a public statement answering seven questions about the survey. In paragraph 17 I stated that if the Applicants answered those questions on the record, I would narrow or withdraw the request accordingly.

2. The Applicants ask that the request be denied because I am not a party, because ARSD 20:10:01:43 does not name non-parties, and because of SDCL 1-20-21.2 and SDCL 1-27-1.5(13). The Response does not answer any of the seven questions. It does not say whether the survey covers the route adjustment filed 04/07/2026. And it does not identify any request for confidential treatment of Appendix G under ARSD 20:10:01:41.

This record should be public

3. Appendix G was filed in a public permit proceeding, and the Commission may rely on it in deciding whether to grant the permit. The public has a right to see the record the Commission relies on. South Dakota law protects information that would reveal where a known archaeological site is, what it is, or who owns it. I do not ask for that information. Everything else in Appendix G should be part of the public record, as the rest of the Application is.

The Commission has authority to decide this request

4. The Response argues that the Commission lacks personal jurisdiction over me. But this request does not ask the Commission to exercise authority over me or impose any obligation on me. It asks the Commission to decide the status of a document the Applicants filed with it. The Applicants are parties, and the document is in the Commission's own files.

5. **ARSD 20:10:01:42 provides: "The commission shall determine confidentiality after a request for access to the information is received."** The rule does not say a request from a party. It makes the determination mandatory once a request is received.

6. The Response concedes that ARSD 20:10:01:43 "does not say who may file a request." A rule that names no limit on who may file imposes none. The Commission received this request and set a procedural schedule under ARSD 20:10:01:43(2) by its notices of 10/09/2026 and 10/19/2026.

7. A protective order is required only "for information that it determines to be confidential." ARSD 20:10:01:43(3). My primary request is for a public version, which needs no protective order. A concern about enforcing a protective order goes to the form of relief, not to whether the Commission may decide the request.

No request for confidential treatment of Appendix G is on file

8. **ARSD 20:10:01:41 requires a request for confidential treatment to state** the portions for which confidentiality is requested, the length of time requested, a contact person, "[t]he statutory or common law grounds and any administrative rules under which confidentiality is requested," and "[t]he factual basis that qualifies the information for confidentiality."

9. The only reference to confidentiality in the Applicants' filings is one sentence in their cover letter of 08/07/2025: "Please note that the Application includes a confidential version of Appendix G (Level III Cultural Survey)." That sentence states no portions, no grounds, no factual basis, no time period and no contact. The docket filing list shows no other request, and the Response does not identify one. **Without a request that meets ARSD 20:10:01:41, there is no basis on file for treating Appendix G as confidential in its entirety.**

10. Under ARSD 20:10:01:42, the party requesting confidentiality "has the burden of proving by a preponderance of the evidence that the information qualifies as confidential information." The Response cites two statutes but makes no showing for any portion of Appendix G.

The statutes reach site information, not the whole survey

11. SDCL 1-20-21.2 provides: "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." **It covers (a) records maintained by the state archaeologist under § 1-20-21, and (b) only those records "pertaining to the location of an archaeological site."** The

Response's point that the state archaeologist may not release those records to the general public concerns location records. I have not asked for any.

12. SDCL 1-27-1.5(13) exempts "[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." The statute is limited in three ways. **It reaches "portions of records," which contemplates redaction rather than withholding a whole document. It reaches only information that "would reveal the location, character, or ownership of any known" site. And it applies only "if necessary to protect the site from a reasonably held fear of theft, vandalism, or trespass."** The Response quotes the statute but makes no showing of necessity.

13. A statute means what all of its words say. Quoting part of it does not widen its reach. SDCL 1-27-1 opens public records to inspection "[e]xcept as otherwise expressly provided by statute," so these statutes reach only what they expressly cover.

14. The items in paragraph 12 of my request are the survey methods and standards, the area surveyed in acres and route miles, whether the survey covers the 04/07/2026 route adjustment, the firm and fieldwork dates, the agencies and tribes contacted, counts of sites identified and recommended eligible, and the report's general conclusions. None of these, stated without locations, reveals the location, character, or ownership of any particular site. In Docket EL26-028, the applicant answered similar questions on the record in its response filed 10/21/2026.

The Response does not address the route adjustment

15. Appendix G was filed 08/07/2025. On 04/07/2026 the Applicants filed the Supplemental Direct Testimony of Brent Moeller with Exhibit A, Summary of Route Adjustment. Table 1-1 of Exhibit A states that "Updated Figure 18 displays the areas that have been previously surveyed." The Response does not say whether the survey before the Commission covers the Project as it now stands.

No reason is required, and the reasons are in the record

16. No explanation is required for this request. ARSD 20:10:01:43 does not ask a requester to state a reason. South Dakota's public records law opens public records to "all citizens of this state, and all other persons interested," SDCL 1-27-1, and its procedure for written requests asks nothing about the requester's purpose. The only party it requires to give reasons is the one withholding a record: a denial "shall be accompanied by a written statement of the reasons for the denial." SDCL 1-27-37(4). Even so, paragraph 11 of my request set out the reasons. No petitions to intervene were filed in this docket, so no one outside the Applicants and Commission Staff is positioned to test the cultural resources record. The Commission extended

its decision deadline to 02/08/2027 on grounds tied to developments in Deuel County, and the route changed after the survey was filed.

Appearance at hearing

17. The Response refers to a meeting on 11/06/2026. By its order dated 10/19/2026, the Commission set this matter for its meeting on 11/04/2026. I intend to appear and be heard on this request at that meeting. I ask to participate by conference call and will also reserve a line by contacting the Commission at 605-773-3201 as its agenda directs. Please direct service and correspondence in this matter to southdakotadct@protonmail.com; the address on my request docketed 10/07/2026 is no longer used for service.

Request

18. I ask the Commission to:

a. order the Applicants to file a public version of Appendix G redacted only to remove information that would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site;

b. find that no request for confidential treatment of Appendix G meeting ARSD 20:10:01:41 is on file, or require the Applicants to file one stating the portions claimed, their grounds and their factual basis;

c. in addition, order the Applicants to answer on the record, without site locations, the questions in paragraph 12(i) through (vii) of my request;

d. require that future requests for confidential treatment in this docket identify the specific portions claimed and be accompanied by a public version with only those portions redacted; and

e. if the Commission finds any other portion of Appendix G to be confidential, grant me access to that portion under a protective order on terms the Commission sets.

Dated: 10/24/2026

Printed name: Suzie Pratt, appearing on my own behalf as an individual
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CERTIFICATE OF SERVICE

I certify that on 10/24/2026, I served a true and correct copy of this Reply by email, with the Reply attached as a .pdf file, under ARSD 20:10:01:22.03, on each of the following persons on the Commission's service list for this docket:

Ms. Leah Mohr, Executive Director, South Dakota Public Utilities Commission, Leah.Mohr@state.sd.us

Mr. Logan Schaefbauer, Staff Attorney, South Dakota Public Utilities Commission, Logan.Schaefbauer@state.sd.us

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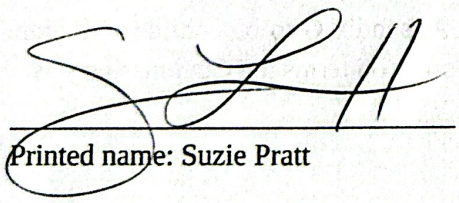
Mr. Terry Wolf, 2nd Assistant Secretary, Western Minnesota Municipal Power Agency, terry.wolf@mrenergy.com

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