

October 9, 2026

Ms. Leah Mohr
Executive Secretary
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 East Capitol Avenue
Pierre, SD 57501

Re: In the Matter of the Application of Xcel Energy and Otter Tail Power Company for an Energy Facility Permit to Construct the PowerOn Midwest Project Consisting of a 765-kV Transmission Line, a 345-kV Transmission Line, and Associated Facilities
Docket EL 26-026

Dear Ms. Mohr:

Northern States Power Company, doing business as Xcel Energy, and Otter Tail Power Company (Otter Tail) (collectively, Applicants) filed an Application for a Facility Permit (Application) with the South Dakota Public Utilities Commission (Commission) in the above-captioned docket on September 4, 2026. Included with the Application was confidential Appendix D, a Level I Cultural Resource Records Search Report (Report).

Consistent with Commission practice,¹ SDCL § 1-20-21.2 and SDCL § 1-27-1.5(13), and ARSD 20:10:01:39, Applicants filed the Report as confidential in its entirety. Applicants formally request confidential treatment pursuant to ARSD 20:10:01:41 of the entire Report because it contains information regarding the location of cultural resources, which must be maintained as confidential:

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. The state archaeologist may make the information from the records of an archeological site available to any agency of state government and any political subdivision of the state or to any tribe, which, in the opinion of the

¹ See, e.g., *In the Matter of The Application by Philip Wind Partners, LLC, for Energy Facility Permits of a Wind Energy Facility and a 230 KV Transmission Facility In Haakon County, South Dakota for The Philip Wind Project*, Docket EL25-029; *In the Matter of the Application by Otter Tail Power Company and Western Minnesota Municipal Power Agency for a Facility Permit for a 345-kV Transmission Facility and Associated Facilities in Grant County, South Dakota*, Docket EL24-015; *In the Matter of the Application by Deuel Harvest Wind Energy South LLC for Energy Facility Permits of a Wind Energy Facility and a 345-kV Transmission Facility in Deuel County, South Dakota, for the South Deuel Wind Project*, Docket EL24-023; *In the Matter of the Application by North Bend Wind Project, LLC for a Permit to Construct and Operate the North Bend Wind Project in Hyde County and Hughes County, South Dakota*, Docket No. EL21-018.

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state archaeologist, may conduct an activity that affects any such site. The state archaeologist shall also make the information from the records of an archeological site available to the owner of the land that is an archeological site and may make the information available to any qualified researcher or research entity.²

Additionally, records 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 exempt from public records requests.³

Accordingly, because the Report contains information regarding the location of cultural resources, the Report is confidential under South Dakota law. The Report must be treated as protected data indefinitely.

On October 2, 2026, Suzie Pratt, an organizer with South Dakota for Data Center Transparency, filed a Request for Access to Confidential Information (Request).⁴ Applicants oppose this Request because neither Ms. Pratt nor the organization is a party to this proceeding. The Applicants also oppose this Request on substantive grounds because the Report is confidential for the reasons stated above. In addition, with respect to the information Ms. Pratt seeks in Paragraph 15 of her Request, the information currently available is contained in the Application:

- The results of the Level I cultural resources literature review are discussed in Section 20.5.1 of the Application.
- The area for Level III surveys is provided in Section 20.5 which states that the Level III survey will cover “the portions that have not been surveyed within the past 10 years.”⁵ The survey will be performed in accordance with the South Dakota State Historic Preservation Office’s (SHPO) 2023 *South Dakota Guidelines for Complying with Federal and State Preservation Laws*. The Applicants cannot provide a mileage or percentage estimate to be included in the Level III survey, as the survey area will depend on a variety of factors, such as the route approved by the Commission and will require landowner permission. As noted in the Application, a Level III intensive survey will be completed in the fall of 2026 and spring and summer of 2027 and will focus on identifying Tribal and archaeological resources within a 500-foot survey corridor (250 feet on either side of the Proposed Route) and the Substation Siting Areas, and historic architectural resources within the 1-mile buffer.⁶

² SDCL § 1-20-21.2.

³ SDCL § 1-27-1.5(13).

⁴ See Request for Access to Confidential Information (Oct. 2, 2026). It appears the Request is filed on behalf of Ms. Pratt individually.

⁵ Application, p. 137.

⁶ See Application, p. 123.

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- The Applicants cannot provide a mileage or percentage estimate for the Level III survey. A report detailing the results of the Level III Intensive Survey will be submitted to the South Dakota SHPO and to participating tribes for their review and comment after the anticipated Level III survey in 2027.⁷

The Applicants respectfully request that the Commission deny Ms. Pratt's request to order production of the full, unredacted Report. This decision would be supported by South Dakota law, Commission rules, and longstanding Commission practice. The alternative data Ms. Pratt seeks is also available in the Application, as the Applicants have noted above. Please let me know if you have any questions regarding this correspondence.

Sincerely,

FREDRIKSON & BYRON, P.A.

/s/ Lisa M. Agrimonti

Lisa M. Agrimonti

Direct Dial: 612.492.7344

Email: lagrimonti@fredlaw.com

⁷ See Application, p. 125.