

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

**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**

Docket No. EL26-026

REQUEST FOR ACCESS TO CONFIDENTIAL INFORMATION UNDER ARSD

20:10:01:43

(Appendix D)

The undersigned, an organizer with South Dakota for Data Center Transparency (SDDCT), appearing on my own behalf, requests access under ARSD 20:10:01:43 to part of Appendix D to the Application of Xcel Energy and Otter Tail Power Company, and states as follows.

Background

1. The applicants filed their Application in this docket on 09/04/2026. Appendix D is titled on the docket "Appendix D - Level I Cultural Resources Records Search Confidential."
2. On 09/20/2026 I sent a letter making this request to the Executive Director. The Executive Director replied on 09/25/2026 that a request under ARSD 20:10:01:43 must be filed formally in the docket. I file it here in my own name.

What is not requested

3. I do not seek the location of any archaeological site or unmarked burial, or any site-specific coordinates or mapping. I understand that SDCL 1-20-21.2 and SDCL 34-27-33 make that information confidential.

What the public record already shows

4. Section 20.5 of the Application (pp. 123-138) states that Barr completed a Level I literature review in July 2026 under the Secretary of the Interior's standards and the 2023 South Dakota guidelines, using a one-mile buffer (pp. 123-125).
5. Section 20.5 also states that no field survey has yet been done, and that a Level III intensive survey is planned "where landowner permissions are available" in fall 2026 and spring and summer 2027 (p. 123).
6. Section 20.5 further states that the survey area contains 16 archaeological sites, 3 of them eligible for the National Register, 7 unevaluated and 6 not eligible (p. 125); that 36 previous surveys cover about 11 percent of the survey area (p. 131); and that 12 tribes were

sent letters on 12/19/2025. Appendix B contains the applicants' agency and tribal correspondence.

7. Information the applicants have already made public in the Application should not remain confidential within Appendix D.

No request for confidential treatment appears in the docket

8. The docket filing list, as checked on 09/26/2026, shows no request for confidential treatment of Appendix D under ARSD 20:10:01:41.

9. The Executive Director's reply of 09/25/2026 states that the applicants "did not identify the specific factual basis for confidentiality in this filing."

The likely basis does not reach the requested items

10. Staff has noted that SDCL 1-20-21.2 has been cited in other dockets for similar reports. That statute makes confidential records maintained under SDCL 1-20-21 "pertaining to the location of an archaeological site." None of the items requested in paragraph 15 is location information.

11. Under ARSD 20:10:01:42, the applicants bear the burden of showing by a preponderance of the evidence that disclosure would materially damage their financial or competitive position, reveal a trade secret, or impair the public interest.

Why this matters to the public

12. On 04/15/2026 the State Historic Preservation Office recommended that, "[t]o assist ... in meeting the requirements of the South Dakota PUC permit Application," the applicants "[h]ave a qualified archaeologist complete an intensive field survey of the project area" (Appendix B, SHPO letter, pp. 91-92 of 142). The Application was filed with a Level I literature review only.

13. The applicants' 12/19/2025 letter to tribes schedules Commission review for 09/2026 through 09/2027 and "Environmental surveys, local and environmental permitting" for 2027 through 2030 (Appendix B, pp. 27-30 of 142). The same letter states, "We are not currently aware of any portion of the Project that will result in review under Section 106."

14. If most field survey follows the permit decision, and no federal review follows it, the Level I review in Appendix D may be the principal cultural resources record the Commission ever has for this line. The public should be able to know what it concludes and how much of the route it leaves unsurveyed.

Request

15. I ask the Commission to order either (a) a public version of Appendix D redacted only to remove site location information, or, if the Commission finds that impractical, (b) a

public statement from the applicants of the following:

- i. The conclusions and recommendations of the Level I review, in general terms and without locations,
- ii. How much of the route will be left out of the Level III survey. Section 20.5 states that the Level III survey will cover "the portions that have not been surveyed within the past 10 years" (p. 137, repeated p. 138). I ask what share of the route, in miles or percent, is excluded on that basis, and the years of the prior surveys relied on.
- iii. What share of the route the applicants expect to survey before the Commission decides, and whether the Level III results will be filed in this docket before the decision.

16. If a request for confidential treatment of Appendix D was filed, I ask that it be made available. If none was filed, I ask the Commission to require the applicants to state their grounds and factual basis under ARSD 20:10:01:41 before Appendix D is treated as confidential in its entirety.

17. I accept the offer made by Commission Staff on 09/25/2026 to ask the applicants to file a letter stating the specific factual basis for their claim of confidentiality.

18. I ask for notice of any procedural schedule the Commission sets under ARSD 20:10:01:43 and the opportunity to respond to the applicants' grounds. If the applicants answer the questions in paragraph 15 on the record, I will narrow or withdraw this request accordingly.

Dated: 10 / 02 / 2026

Signature

Printed name: Suzie Pratt

Organizer, South Dakota for Data Center Transparency, appearing on my own behalf

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CERTIFICATE OF SERVICE

I certify that on 10 / 22 / 2026, I served a true and correct copy of this Request for Access to Confidential Information by email, with the request 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,
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Signature

Printed name: Suzie Pratt