

**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 CONSISTING OF A 765-KV TRANSMISSION
LINE, A 345-KV TRANSMISSION LINE, AND ASSOCIATED FACILITIES**

Docket No. EL26-026

**REQUESTER'S REPLY TO APPLICANTS' LETTER OF 10/09/2026 REGARDING
REQUEST FOR ACCESS TO CONFIDENTIAL INFORMATION UNDER ARSD**

20:10:01:43

(Appendix D)

The undersigned, appearing on my own behalf as an individual, replies to the Applicants' letter of 10/09/2026 regarding my request for access, under the Commission's Order Cancelling Hearing and Providing Notice of New Hearing Date dated 10/19/2026, and states as follows.

Background

1. On 10/02/2026 I requested access to part of Appendix D under ARSD 20:10:01:43. 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 15 I asked for either a public version of Appendix D redacted only to remove site location information, or a public statement answering three questions. In paragraph 18 I stated that if the Applicants answered those questions on the record, I would narrow or withdraw the request accordingly.

2. The Commission's order of 10/19/2026 directed the Applicants to file a response to the request no later than 10/22/2026. As of 10/24/2026, the docket shows no response filed under that order. The only statement of the Applicants' position is their letter of 10/09/2026, and this reply addresses that letter.

3. Footnote 4 of the letter states: "It appears the Request is filed on behalf of Ms. Pratt individually." That is correct. I file in my own name and represent no other person or organization.

4. The letter asks the Commission to deny "Ms. Pratt's request to order production of the full, unredacted Report." I made no such request. Paragraph 3 of my request excludes site locations, and paragraph 15 asks for a redacted public version or answers to three questions. The letter opposes a request that was not made and does not address the one that was.

This record should be public

5. Appendix D 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 D should be part of the public record, as the rest of the Application is.

The request for confidential treatment came late and claims too much

6. The Application was filed 09/04/2026. On 09/25/2026 the Executive Director wrote that the Applicants “did not identify the specific factual basis for confidentiality in this filing.” The letter of 10/09/2026, filed after my request, is the first time the Applicants “formally request confidential treatment pursuant to ARSD 20:10:01:41.”

7. ARSD 20:10:01:41(5) requires “[t]he factual basis that qualifies the information for confidentiality under the authority cited.” The letter requests confidential treatment “of the entire Report because it contains information regarding the location of cultural resources.” **That a report contains some location information is a reason to redact that information. It is not a reason to withhold the whole report.** The authority cited reaches only site information, as set out in paragraphs 11 to 13 below.

8. The letter also states that the Report “must be treated as protected data indefinitely.” ARSD 20:10:01:41(2) requires a stated length of time and a request for handling at the end of it. The letter gives no length of time and no request for handling at the end of it.

9. The letter relies on “Commission practice” and lists dockets in which similar reports were filed as confidential. Under ARSD 20:10:01:42, a request for confidentiality gives information temporary confidential treatment, but “it does not constitute a determination that the information is or is not confidential.” Filing a report as confidential in other dockets is not a ruling that it is confidential. Where there is a prior ruling, ARSD 20:10:01:43(5) directs the Commission to consider “whether or not the circumstances of the request are the same.”

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 letter makes no showing for any portion of Appendix D that does not disclose site locations.

The statutes reach site information, not the whole report

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.”**

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.” **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 letter 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.

The questions remain unanswered

14. Question (i) asked for the conclusions and recommendations of the Level I review, in general terms and without locations. The letter answers that the results “are discussed in Section 20.5.1 of the Application.” That section summarizes the records search. It does not state what the Level I review concluded or recommended.

15. Question (ii) asked what share of the route will be left out of the Level III survey because it was surveyed within the past 10 years, and the years of the prior surveys relied on. The letter states that the Applicants “cannot provide a mileage or percentage estimate.” It does not give the years of the prior surveys, which are already known. Section 20.5 of the Application states that 36 previous surveys cover about 11 percent of the survey area (p. 131). The Applicants can say which of those surveys fall within the past 10 years and how much of the route they cover.

16. Question (iii) asked 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. The letter states that a report “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.” It does not say whether the results will be filed in this docket, or whether they will be filed before the Commission decides.

17. None of this information concerns the location of an archaeological site.

The Commission has authority to decide this request

18. The letter opposes the request “because neither Ms. Pratt nor the organization is a party to this proceeding.” 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. ARSD 20:10:01:43 does not limit who may file a request, and the Commission received this request and set a procedural schedule under ARSD 20:10:01:43(2).

19. 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. For any portion the Commission does find confidential, I agree to be bound by its protective order and to sign any nondisclosure agreement it requires. If the Commission

concludes that a protective order can bind only a party, I note that the deadline to apply for party status in this docket is 5:00 p.m. on 11/03/2026, and I ask that the Commission tell me so in time to apply.

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

20. 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, paragraphs 12 to 14 of my request set out the reasons. On 04/15/2026 the State Historic Preservation Office recommended that 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 Applicants' 12/19/2025 letter to tribes states, "We are not currently aware of any portion of the Project that will result in review under Section 106" (Appendix B, pp. 27-30 of 142). The Application was filed with a Level I review only, and the Level III survey is scheduled for fall 2026 through summer 2027. The Level I review in Appendix D may be the principal cultural resources record before the Commission when it decides.

Appearance at hearing

21. I intend to appear and be heard on this request at the Commission's meeting on 11/04/2026. 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 10/02/2026 request is no longer used for service.

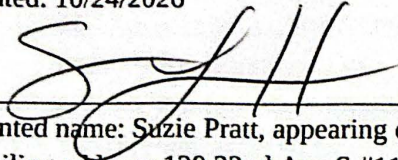
Request

22. I ask the Commission to:

- a. order the Applicants to file a public version of Appendix D redacted only to remove information that would reveal the location, character, or ownership of any known archaeological, historical, or paleontological site;
- b. find that the Applicants' request for confidential treatment of the entire Report does not meet ARSD 20:10:01:41, or require the Applicants to identify the specific portions claimed, their factual basis and the length of time requested;
- c. in addition, order the Applicants to state on the record, without locations: (i) the conclusions and recommendations of the Level I review; (ii) the years of the prior surveys relied on to exclude any part of the route from the Level III survey, and how much of the route they cover; and (iii) whether the Level III results will be filed in this docket, and whether before the Commission decides;

- 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 portion of Appendix D other than site information to be confidential, grant me access to that portion under a protective order, which I agree to be bound by.

Dated: 10/24/2026

A handwritten signature in black ink, appearing to read 'Suzie Pratt', written over a horizontal line.

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

Mailing address: 120 22nd Ave S #117, Brookings, SD 57006

Telephone: 303-437-9351

Email for electronic service: southdakotadct@protonmail.com

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

Ms. Amanda Reiss, Staff Attorney, South Dakota Public Utilities Commission,
Amanda.Reiss@state.sd.us

Mr. Jon Thurber, Staff Analyst, South Dakota Public Utilities Commission,
Jon.Thurber@state.sd.us

Ms. Anuja Oke, Staff Analyst, South Dakota Public Utilities Commission,
Anuja.Oke@state.sd.us

Ms. Lisa M. Agrimonti, Fredrikson & Byron, P.A., representing PowerOn Midwest,
lagrimonti@fredlaw.com

Ms. Haley Waller Pitts, Fredrikson & Byron, P.A., representing PowerOn Midwest,
hwallerpitts@fredlaw.com

Ms. Breann Jurek, Paralegal, Fredrikson & Byron, P.A., Bjurek@fredlaw.com

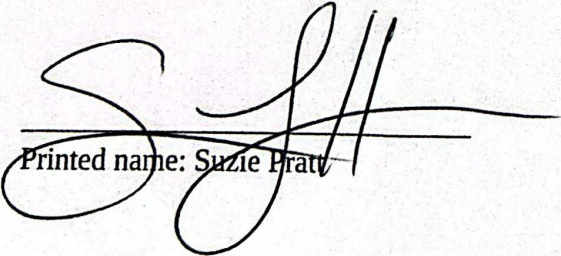
Mr. Dawson Weathers, Xcel Energy, dawson.weathers@xcelenergy.com

Mr. Victor Barreiro, Regulatory Administrator, Xcel Energy,
Regulatory.Records@xcelenergy.com

Mr. Tim Rogers, Senior Manager, Siting and Permitting, Xcel Energy,
timothy.g.rogers@xcelenergy.com

Mr. Robert Endris, Associate General Counsel, Otter Tail Power Company,
rendris@otpc.com

Mr. Kirk Phinney, Senior Manager, Project Management Office, Otter Tail Power
Company, kphinney@otpc.com



Printed name: Suzie Pratt