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 EXISTING FACILITY PERMIT TO CONSTRUCT THE POWERON MIDWEST PROJECT CONSISTING OF A 765-kV TRANSMISSION LINE, A 345-kV TRANSMISSION LINE, AND ASSOCIATED FACILITIES	* * * * * * *	**STAFF'S RESPONSE TO THE APPLICATIONS FOR PARTY STATUS BY MISO AND LAKE COCHRANE IMPROVEMENT ASSOCIATION** **EL26-026**

The Commission Staff, by and through its attorney of record, hereby files this response in the above-captioned siting proceeding.

Midcontinent Independent System Operator, Inc.'s Petition to Intervene.

Staff has reviewed the Petition to Intervene by Midcontinent Independent System Operator, Inc. (MISO) and has no objection.

SDCL 49-41B-17(4) specifically declares parties to a proceeding under chapter 49-41B include "any person residing in the area where the facility if proposed to be sited, or any directly interested person if timely application therefore is made." South Dakota Supreme Court has held that "the interest which entitles a party to intervene must be a direct interest, by which the intervening party is to obtain immediate gain or suffer loss by the judgment which may be rendered between the original parties,"[1] and that "one whose interest in the matter of litigation is not a direct or substantial interest, but is an indirect, inconsequential, or contingent one, cannot intervene."[2]

[1] Jackson v. Bd. of Cnty. Comm'rs for Pennington Cnty., 76 S.D. 495, 499, 81 N.W.2d 686, 688 (1957).
[2] In re Adoption of D.M., 2006 S.D. 15, ¶ 6, 710 N.W.2d 441, 444–45.

As MISO explains in its Petition, "MISO is responsible for operational oversight and control and market operations of the transmission systems of its member transmission owners, including Applicants" and under federal law "has legal obligations to ensure the ongoing ability of the regional transmission system to reliably and efficiently serve demand." This interest is unique to MISO and is not shared by the public at large.

The Commission's decision in this filing to grant or deny PowerOn's Application will directly affect construction of a line recommended by MISO to meet the forecasted energy and reliability needs in the region and reduce congestion. This decision could potentially affect MISO's ability to meet its legal obligations and may affect MISO's pecuniary interests. For this reason, it is clear the decision in this docket could result in a substantial gain or loss by MISO with respect to a peculiar interest that is not represented by any other party to the proceeding. For these reasons, MISO appears to have a direct interest in this docket and Staff does not object to MISO's Petition to Intervene.

Lake Cochrane Improvement Association's Application for Party Status

Staff has reviewed the Application for Party Status by Lake Cochrane Improvement Association (LCIA) and PowerOn's Response and provides the following analysis.

SDCL 49-41B-17(4) provides two specific bases for persons to obtain party status in a siting docket. Specifically, upon timely application, those residing in the area the facility is proposed to be sited and those with a direct interest may become parties. However, the statute does not specifically identify a particular distance from the project that would fall within this area. Looking at the statutes as a whole, there appears to be a recognition that special circumstances apply to those residing close to the project, with special notice considerations

applying to landowners within one-half mile of the project.[3]. The Commission has applied a 2-mile intervention distance based on location of residence in previous dockets, however, the PUC is not bound by stare decisis, and therefore the decision made in a previous decision is not controlling in this case. Additionally, the South Dakota Supreme Court has recognized discretion in intervention decisions, specifically "that intervention is strictly procedural and 'that intervention standards are flexible, allowing for some tailoring of decisions to the facts of each case.'"[4] Therefore, Staff supports consideration of PowerOn's proposed 1-mile distance from the project as the guideline for intervention of those residing in the area where the facility is proposed to be sited.

Staff does not dispute PowerOn's assessment that there were factors present in previous dockets that may have resulted in the decision to grant those residing within 2-miles of the project area intervention without showing a direct interest, and those factors do not necessarily carry over to a transmission line. Specifically, while construction activities and traffic would be common concerns among all siting dockets, there are significantly different impacts associated with carbon pipelines and battery storage facilities than those impacts associated with a transmission line. Significantly, carbon pipelines posed specific safety risks to a larger area surrounding a project, particularly as it related to possible leaks after construction where harmful gas could potentially carry for a large distance. While Staff is aware there are potential safety concerns and impacts associated with all siting projects, Staff has not seen evidence that the potential safety concerns will extend a significant distance in the same manner as a carbon pipeline or battery storage facility. For these reasons, Staff supports consideration of the

[3] SDCL 49-41B-5.2
[4] In re Adoption of D.M., 2006 S.D. 15, ¶ 4, 710 N.W.2d 441, 443.

establishment of a different area of the proposed facility than the 2-miles adopted in previous dockets.

In this instance, Applicant is proposing intervention be limited to those residing within 1-mile on each side of the proposed line, unless a direct interest is shown. Applicant's proposal incorporates the full area noticed in conjunction with this project. Based on information available in the docket and known to Staff at this time, PowerOn's proposal does not appear arbitrary or unreasonable. There does not appear to be data showing a significant impact of a 765-kV transmission line, a 345-kV transmission line, or a substation would extend more than 1-mile If there is such data, Staff would reevaluate its position in this case. Further, limiting intervention based on residential location to those residing within 1-mile of the project does not prohibit anyone outside of this area from seeking party status, such a decision would only mean those persons must show they have a direct interest in the project to be granted intervention.

Because the proposed area is two times greater than the specific landowner notice area required in 49-41B-5.2, there is not significant factors showing specific risks of this project area extending past 1- mile, and because interested parties residing outside of the proposed area can still obtain party status by showing a direct interest in the project, Staff does not oppose PowerOn's proposal to limit intention to those residing within 1-mile of the proposed project, unless there is a direct interest in the proceeding. Should the Commission adopt the proposed 1-mile area, LCIA's Application should be denied because to Staff's knowledge, no homes within LCIA lie within 1-mile from the proposed line. However, if the Commission determines the 2-mile area is applicable in this docket, Staff has no objection to granting LCIA's Application for Party Status based on residences in LCIA being located less than 2 miles from the proposed project.

Alternatively, LCIA could be granted intervention based on a showing of a direct interest in the docket. LCIA's initial Application for Party Status identified general environmental impact of the placement of a 765-kV line near homes, lake, and outdoor recreation areas as the reason for intervention. As explained supra, the South Dakota Supreme Court has held that "the interest which entitles a party to intervene must be a direct interest, by which the intervening party is to obtain immediate gain or suffer loss by the judgment which may be rendered between the original parties."[5] and that "one whose interest in the matter of litigation is not a direct or substantial interest, but is an indirect, inconsequential, or contingent one, cannot intervene."[6] Staff agrees with PowerOn's assessment that the generalized concerns raised by LCIA in its Application for Party Status and Rely to PowerOn's Response do not meet the level of a direct interests, nor are the concerns raised by LCIA appear to be peculiar to LCIA or distinguishable from the interest common to the public. Therefore, Staff supports PowerOn's objection to LCIA's Application for Party Status unless LCIA can show the Association has a direct interest in the outcome of this proceeding.

Dated this 29th day of October 2026

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[5] Jackson v. Bd. of Cnty. Comm'rs for Pennington Cnty., 76 S.D. 495, 499, 81 N.W.2d 686, 688 (1957).