

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

In the Matter of the Application of Otter Tail
Power Company for a Facility Permit for the
Big Stone South to Hankinson to Bison 345 kV
Transmission Line Project

EL26-028

**APPLICANT'S RESPONSE TO
REQUEST FOR ACCESS TO
CONFIDENTIAL INFORMATION
PURSUANT TO ARSD 20:10:01:43**

On September 8, 2026, Applicant, Otter Tail Power Company ("Otter Tail"), filed an application in the above-referenced docket requesting issuance of a facility permit for a 345kV transmission line and related facilities ("the Project"). In support of the application, Otter Tail submitted Appendix F, which is a Desktop Level I Cultural Resources Review and Amendment. As required by South Dakota statute making this information confidential, Otter Tail requested confidential treatment of Appendix F pursuant to ARSD 20:10:01:41.

On October 2, 2026, Suzie Pratt requested that access to Confidential Appendix F under ARSD 20:10:01:43. Alternatively, in paragraph 14 of her request document, Ms. Pratt submits three questions that she would like Otter Tail to answer regarding Appendix F.

As an initial matter, the Commission should deny Ms. Pratt's request to receive Appendix F. South Dakota law requires Otter Tail to keep the information in Appendix F confidential. Specifically, SDCL 1-20-21.2 states in relevant part:

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. . . .

SDCL 1-20-21 refers to the state archeologist's survey of archeological sites located within South Dakota and the records relating to those sites. Under the statute, any records obtained from the State relating to archeological sites must be treated as confidential.

Here, Otter Tail obtained the information from State Historical Preservation Office (“SHPO”). Under SDCL 1-20-21.2, all of the information from SHPO must be filed confidentially. Indeed, consistent with this practice, the applicants in numerous other dockets have filed the applicable archeological studies as confidential.¹

The Commission should deny Ms. Pratt’s request for access to this statutorily protected document. Ms. Pratt is not a party to this proceeding, and she instead is simply a member of the public. Because she is not a party, it remains uncertain whether any protective order entered by the Commission pursuant to ARSD 20:10:01:43 would bind her. There is a very real risk that nothing would legally prevent Ms. Pratt from disclosing this information after receiving Appendix F. There is substantial risk of harm to South Dakota’s archeological resources if this information becomes public.

Further, Ms. Pratt has provided no explanation of why she needs access to this statutorily protected information. Ms. Pratt apparently lives in Brookings, South Dakota, and she is not

1 *See, e.g., In the Matter of the Application of Crowned Ridge Energy Storage I, LLC for a Permit for an Energy Conversion Facility*, EL 26-014; *In the Matter of NorthWestern Energy Public Service Corporation, dba NorthWestern Energy, for an Energy Conversion Facility Permit to Construct the Hub City Energy Park Natural Gas Generation Facility, Including a Natural Gas Transmission Pipeline, Near Aberdeen, South Dakota*, EL 26-03; *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*, EL 25-028; *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*, EL 25-029 (maintaining a confidential Level III Intensive Archaeological Resources Survey); *In the Matter of the Application by Basin Electric Power Cooperative for Energy Facility Permit for a 230 KV Transmission Facility In Haakon County, South Dakota*, EL 25-030; *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*, EL 24-015 (maintaining a confidential Level III Intensive Archaeological Resources Survey); and *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*, EL 21-018 (maintaining a confidential Level I Cultural Resource Inventory & Preliminary Field Review).

located anywhere near the Project. She has made the same request in several additional dockets, and there is no reason that she needs this information.

Ms. Pratt also requests that Otter Tail provide a copy of Appendix F that includes all information except the archeological site locations. That request would still violate South Dakota law. SDCL 1-20-21.2 does not make just the site location confidential. Instead, it is any records maintained pursuant to 1-20-21. That would, for instance, include other information obtained from SHPO such as the other surveys performed. Otter Tail already included the information which it believes it can share in the public portion of the application.

Finally, and most importantly, Ms. Pratt indicates that she really just wants three questions answered. Those questions are identified in paragraph 14 of her request. Otter Tail answers the questions as follows:

- Question: The firm or professional who prepared the Level I review and the amendment.
 - **Answer:** HDR Engineering.
- Question: What the Amendment's review of the post-06/26/2026 route adjustment found, in general terms and without locations.
 - **Answer:** The amended report did not affect any of the recommendations in the application.
- Question: Which field survey is planned. Table 26-1 (p. 109) states that a Level I survey "has been completed for the majority of the Facility, with the Level III survey to be completed in 2026 and 2027," while Section 21.5.1.3 (p. 94) describes a Level II sample survey of portions of the Facility. I ask which is correct, what share of the route it will cover, and when results will be filed.

- **Answer:** The actual level of the survey performed may be different for various portions of the route, and the survey performed will be determined in consultation with SHPO.

By answering these questions, Otter Tail addresses Ms. Pratt's purported reason for seeking access to the confidential Exhibit F. There is no reason to actually give her the entire document, which is statutorily required to be held confidentially. If Ms. Pratt wants the additional information in Appendix F, she should seek it direct from SHPO rather than asking Otter Tail to disregard state law by providing the document.

In sum, South Dakota law mandates Otter Tail file Appendix F as a confidential. This is SHPO's information, and Otter Tail filed it confidentially to protect their information. There is no need for the Commission to grant Ms. Pratt access to the confidential document, and Otter Tail requests that the Commission deny the request.

DATED this 21 day of October, 2026.



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CERTIFICATE OF SERVICE

I, Brock A. Brown, do hereby certify that I am a member of Boyce Law Firm, LLP, attorneys for Otter Tail Power Company and that on the 21 day of October, 2026, a true and correct copy of Applicant's Response to Request for Access to Confidential Information Pursuant to ARSD 20:10:01:43 and this Certificate of Service were served via email to the following addresses listed:

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