

**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**

Docket No. EL26-028

**REQUESTER'S REPLY TO APPLICANT'S RESPONSE TO REQUEST FOR ACCESS
TO CONFIDENTIAL INFORMATION UNDER ARSD 20:10:01:43
(Appendix F)**

The undersigned, appearing on my own behalf as an individual, replies to the Applicant's Response filed 10/21/2026, under the Commission's Amended Notice of Hearing dated 10/19/2026, and states as follows.

Background

1. On 10/02/2026 I requested access to part of Appendix F 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 17 I stated that if Otter Tail answered the questions in paragraph 14 on the record, I would narrow or withdraw the request accordingly.

2. Otter Tail's Response answers question (i). The firm that prepared the Level I review and the Amendment is HDR Engineering. I accept that answer and no longer ask for that item.

This record should be public

3. Appendix F 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 makes one category of that record confidential: records of the state archaeologist "pertaining to the location of an archaeological site." I do not ask for that information. Everything else in Appendix F should be part of the public record, as the rest of the Application is.

Questions (ii) and (iii) remain unanswered

4. Question (ii) asked what the Amendment's review of the post-06/26/2026 route adjustment found, in general terms and without locations. Otter Tail answered: "The amended report did not affect any of the recommendations in the application." That describes the effect of the Amendment, not what the review found. It does not say, for example, whether any previously recorded site or previous survey lies within the adjusted route.

5. Question (iii) asked which field survey is planned, what share of the route it will cover, and when results will be filed. It noted that Table 26-1 (p. 109) of the Application describes a Level III survey to be completed in 2026 and 2027, while Section 21.5.1.3 (p. 94) describes a Level II sample survey. Otter Tail answered that “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.” That answers none of the three parts. The two statements in the Application remain unreconciled.

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

SDCL 1-20-21.2 has two limits, and the Response lists only one of them

7. 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.” SDCL 1-20-21 directs the state archaeologist to conduct a survey of archaeological sites “and maintain records of such sites.”

8. The statute is limited in two ways. **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.”** The Response quotes only the words “any records” and argues the statute covers everything obtained from SHPO, including “the other surveys performed.” That reading drops the words “pertaining to the location of an archaeological site.” A statute means what all of its words say. Quoting part of it does not widen its reach. South Dakota’s public records law points the same way: SDCL 1-27-1 opens public records to inspection “[e]xcept as otherwise expressly provided by statute,” so a confidentiality statute reaches only what it expressly covers.

9. The type of survey planned, the share of the route it will cover, its filing date, and a general description of what a review found are not location information. Most of that is HDR’s and Otter Tail’s own work, not the state archaeologist’s records.

The Response does not address the Amendment

10. Paragraphs 6, 7 and 15 of my request showed that Otter Tail’s Request for Confidential Treatment, filed 09/08/2026, describes the protected material as the “Level I Cultural Resources Review” and does not mention the Amendment. **ARSD 20:10:01:41 requires a statement of grounds for each item.** The Response does not address this point.

Confidentiality is limited to the portions identified

11. ARSD 20:10:01:41(1) requires a filer to identify “the portions of the document for which confidentiality is being requested,” and subsection (5) requires “[t]he factual basis that qualifies the information for confidentiality.” 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.” Here the entire Appendix was withheld, and the public version states only that it “is CONFIDENTIAL in its Entirety.” I respectfully ask the Commission, in this docket and going forward, to require filers to identify

the specific portions they claim are confidential and to file a public version with only those portions redacted.

The burden is on Otter Tail

12. 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 by showing that disclosure would result in material damage to its financial or competitive position, reveal a trade secret, or impair the public interest.” Beyond its reading of SDCL 1-20-21.2, the Response makes no showing for any portion of Appendix F that does not disclose site locations.

A protective order is needed only as a backstop

13. The Response argues that because I am not a party, a protective order might not bind me. My primary request is for a public version, which needs no protective order. ARSD 20:10:01:43 does not limit who may request access, and subsection (3) provides that the Commission “shall issue a protective order for information that it determines to be confidential.” 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 11/09/2026, and I ask that the Commission tell me so in time to apply.

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

14. The Response states that I have “provided no explanation” of why I seek this information. No explanation is required. 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). In the same way, ARSD 20:10:01:42 places the burden on the party claiming confidentiality, not on the person asking. Even so, paragraphs 11 to 13 of my request set out the reasons. Federal NEPA review for this project is scheduled after the Commission’s permit decision, so the desktop Level I review may be the principal cultural resources record before the Commission when it decides. Roberts County carries 60.4 of the project’s 70.9 South Dakota miles, and 34.5 of those miles lie within the historic boundaries of the Lake Traverse Reservation. And Otter Tail asks that Appendix F be returned when the docket closes.

15. ARSD 20:10:01:43 does not require a requester to live near a project. The address on my filings is a mailing address.

16. The Response suggests I seek the information from SHPO. SHPO’s files would not show what Otter Tail filed with, and asked the Commission to rely on in, this docket.

Appearance at hearing

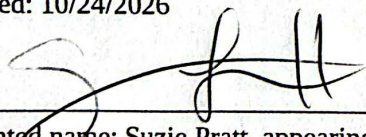
17. I intend to appear and be heard on this request at the Commission's meeting on 11/04/2026. I ask to participate by conference call and will also reserve a line by contacting the Commission at 605-773-3201 as its agenda directs. Please direct service and correspondence in this matter to southdakotadct@protonmail.com; the address on my 10/02/2026 request is no longer used for service.

Request

18. I ask the Commission to:

- a. order Otter Tail to file a public version of Appendix F, including the Amendment, redacted only to remove archaeological site location information;
- b. find that the Amendment is not within Otter Tail's Request for Confidential Treatment, or require Otter Tail to state its grounds for it under ARSD 20:10:01:41;
- c. in addition, order Otter Tail to state on the record, without locations: (i) what the Amendment's review of the route adjustment found, including whether any previously recorded site or previous survey lies within the adjusted route; and (ii) which level of field survey is planned for which portions of the route, what share of the route each will cover, and when results will be filed;
- 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 F other than site locations to be confidential, grant me access to that portion under a protective order, which I agree to be bound by.

Dated: 10/24/2026


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

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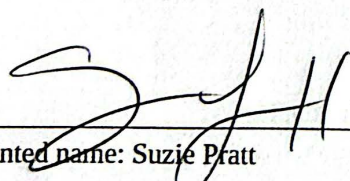
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