

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

In the Matter of the Transmission Permit for the
Big Stone South to Ellendale Project

EL13-028

**MONTANA-DAKOTA UTILITIES CO.
AND OTTER TAIL INITIAL
POST-HEARING BRIEF**

Montana-Dakota Utilities Co. and Otter Tail Power Company (collectively “the Applicants”) filed an Application for a facility permit for the Big Stone South to Ellendale 345-kV transmission line (“the Application”). Consistent with the Public Utilities Commission of South Dakota’s (“the Commission) order dated June 5, 2014, Applicants submit this post-hearing brief.

In order to obtain the facility permit, Applicants must prove each of the elements required by SDCL 49-41B-22, which states:

The applicant has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

Applicants must prove each of these elements by the preponderance of the evidence. *See Irine v. City of Sioux Falls*, 2006 SD 20, ¶ 10, 711 N.W.2d 610-11 (“Generally, the burden of proof for administrative hearings is preponderance of the evidence.”).

The Applicants have satisfied each of these elements for the reasons stated in Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law.¹ As a result, the Commission should award the facility permit with the conditions required by the Amended Settlement Stipulation, which is Exhibit 301A. The Commission agrees to the issuance of the permit provided Applicants comply with the conditions required by the Amended Settlement Stipulation, and it jointly requests issuance of the permit. *See Joint Motion for Approval of Settlement Stipulation* filed June 9, 2014.

Three intervenors—Gerald Pesall, Brad Morehouse, and Schuring Farms, LLC—presented evidence at the evidentiary hearing. None of the intervenors’ objections warrant denial of the permit or imposition of additional conditions. Indeed, rather than being an objection to the issuance of the permit, all of the intervenors’ objections are really based upon objections to the route location. Although Pesall purported to object to the Project, his testimony reveals his true objection is to the routing of the Project:

Q: . . . You’ve been asked if you object to project as a whole or just to the part on your land.

Do you object to the project as a whole in spite of the fact that it crosses your land?

A. Well, it wouldn’t affect me as much if they kept it off my land.

Q. Would you think it was good idea if they kept it off your land?

¹ In the interest of brevity, rather than rearguing why each of the elements is satisfied in this brief, Applicants incorporate by reference Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law filed contemporaneously with this brief.

A. It would be a great idea if they kept it off my land. I would go away and disappear.

(HT p.312 (emphasis added)). Similarly, both Morehouse and Randy Schuring, on behalf of the Schuring Farms, LLC, admitted they do not object to the Project but instead only object to the proposed route. (HT pp.318, 349). Objections to the location of the route are not a legally cognizable basis for denying the permit because the Commission lacks the legal authority to determine the route. SDCL 49-41B-36 (“Nothing in this chapter is a delegation to the commission of the authority to route a transmission facility, or to designate or mandate location of an energy conversion facility, AC/DC conversion facility, or wind energy facility.”). Furthermore, even assuming for argument that the intervenors’ objections to the Project are more than objections to the proposed route, none of evidence warrants denial of the application for the reasons stated in Montana-Dakota Utilities Co. and Otter Tail Power Proposed Findings of Fact and Conclusions of Law.

CONCLUSION

Based on the evidence presented at the evidentiary hearing, and based upon the conditions imposed by the Amended Settlement Stipulation, Applicants respectfully request that the Commission grant the application and issue the facility permit based upon the terms and conditions required in the Amended Settlement Stipulation.

Dated 18th day of July, 2014



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