

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

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

EL13-028

**APPLICANTS' RESPONSE TO GERALD  
PESALL'S AMENDED OBJECTION TO  
APPLICANTS' FILING OF  
COMPLIANCE WITH CONDITION 17:  
SCN SAMPLING AND MITIGATION  
PLAN**

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Applicants Otter Tail Power Company and Montana Dakota Utilities Co. (“collectively Applicants”) submitted a filing (“Condition 17 Compliance Filing”) with the Public Utilities Commission of the State of South Dakota (“the Commission”) on July 2, 2015, documenting compliance with Condition 17, as amended by the Commission’s August 22, 2014, Order, of the of the facility permit for the Big Stone South to Ellendale Project (“the Project”).

A hearing regarding the Condition 17 Compliance Filing was originally scheduled before the Commission on August 5, 2015. Pesall filed an objection to the Condition 17 Compliance Filing on July 31, 2015, which, among other things, requested additional time for his expert to review the Condition 17 Compliance Filing. Applicants consented to the continuance, and the hearing on the Condition 17 Compliance Filing was continued until September 1, 2015.

On August 25, 2015, Pesall filed an amended objection to the Condition 17 Compliance Filing (“Amended Objection”). The Amended Objection was only supported by an Affidavit of Gerald Pesall dated August 24, 2015 (“Pesall Aff.”). Applicants submit this filing in response to Pesall’s amended objection. This response is supported by the Affidavit of Gerald Bermel dated

August 28, 2015 (“Bermel Aff.”) and the Affidavit of Monica Peterson dated August 28, 2015 (“Peterson Aff.”) filed with this response.

Tellingly, despite the Project communicating multiple times with hundreds of landowners on the Project route, no landowner other than Pesall has expressed concerns relating to SCN. In fact, after the Project sent the test results to landowners, none of those landowners contacted SDSU about the testing. (Peterson Aff. at ¶ 7). Nor did any of the landowners receiving their results contact the Project to express concerns about their test results and the impact of the Project on spreading SCN. (*Id.*).

In his Amended Objection, Pesall asserts three objections. First, Pesall objects to the SCN plan as an improper delegation of authority to Applicants, or, in the alternative, because the Commission allegedly failed to rule within one-year. Pesall made these same arguments in his appeal to the South Dakota Circuit Court, which rejected the arguments. Pesall has appealed, and these legal arguments are pending in his appeal to the South Dakota Supreme Court. Both the Commission and the Circuit Court previously rejected those arguments.

Second, Pesall objects to the approval of the Condition 17 Compliance Filing because he claims Applicants have not complied with the SCN mitigation plan. Pesall relies upon his affidavit which contains pictures of an unidentified field. Pesall claims to have seen the contractors for the Project travel muddy fields and fail to clean their equipment. Pesall then attaches two photos to his affidavit.

As an initial matter, the photos attached to Pesall’s Affidavit do not show the contractor moving mud from a field or failing to clean equipment. Furthermore, as indicated in the Affidavit of Gerald Bermel, who is a field manager for the Project, the contractor depicted in the

pictures was diligent in cleaning its equipment, and the contractor did comply with the SCN protocol before departing the fields reflected in the photograph. (Bermel Aff. at ¶¶ 6 to 7).

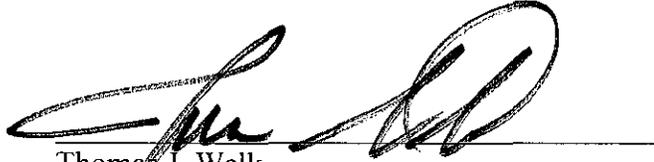
Regarding Pesall's claim that the SCN mitigation plan is inadequate because it fails to provide for the removal and disposal of topsoil during the construction process, this is simply incorrect. Applicants SCN Mitigation Memo is attached as Exhibit 2 to the Condition 17 Compliance Filing dated July 2, 2015. The removal of soil is specifically addressed in the table on page 4 of the SCN Mitigation Memo.

In the Amended Objection, Pesall's third objection relates to the lack of third-party review of mitigation efforts. Applicants' position is that third party compliance is unnecessary and unreasonable. Applicants have adopted an appropriate SCN mitigation plan after consultation with South Dakota State University as required by Condition 17, and there is no need for additional third-party review of compliance with the condition. Under Condition 17, both the Commission and the Commission Staff have the ability to oversee compliance with the SCN mitigation plan.

Finally, as alternative relief, Pesall requests the Project to provide its SCN mitigation plan to landowners. The SCN mitigation plan is publicly filed with this Commission and available on the Commission's website. Pesall also requests that compliance documents be provided to all affected landowners. This request is unclear. The Project understands Pesall to be requesting access to compliance reports for property other than his own property. The Project objects to disclosing compliance reports to landowners for property other than their own property because compliance reports will disclose confidential landowner information to persons who do not own the property.

Based on the foregoing, Applicants respectfully request that the Commission overrule Pesall's objections and approve Applicants' Condition 17 Compliance Filing.

Dated 28<sup>th</sup> day of August, 2015.



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