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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION
OF MONTANA-DAKOTA UTILITIES CO.
AND OTTER TAIL POWER COMPANY FOR A
PERMIT TO CONSTRUCT THE BIG STONE
SOUTH TO ELLENDALE 345 kV
TRANSMISSION LINE

EL13-028

=====

Transcript of Proceedings
August 13, 2014

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION

GARY HANSON, CHAIRMAN (by telephone)
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER (by telephone)

COMMISSION STAFF

John Smith
Karen Cremer
Greg Rislov
Brian Rounds
Katlyn Gustafson

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

APPEARANCES

Thomas Welk and Jason Sutton, Applicants (by telephone)
Bob Pesall, Intervener (by telephone)
Randall Schuring, Intervener
Bradley Morehouse, Intervener (by telephone)

Reported By Cheri McComsey Wittler, RPR, CRR

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TRANSCRIPT OF PROCEEDINGS, held in the
above-entitled matter, at the South Dakota State Capitol
Building, 500 East Capitol Avenue, Pierre, South Dakota,
on the 13th day of August, 2014.

1 CHAIRMAN NELSON: We will call the PUC meeting
2 to order. This is the ad hoc meeting on August 13, 2014,
3 to consider the matter of EL13-028, The Matter Of The
4 Application of Montana-Dakota Utilities Company and
5 Otter Tail Power Company For A Permit To Construct The
6 Big Stone South To Ellendale kV Transmission Line.

7 This is Commissioner Nelson running the meeting
8 today. Commissioners Hanson and Fiegen are on the
9 telephone with us.

10 At this point I am going to turn to
11 Commissioners. Are there any additional Commissioner
12 questions at this point?

13 COMMISSIONER HANSON: None from me. Thank you.

14 COMMISSIONER FIEGEN: Yes. I do have additional
15 questions.

16 CHAIRMAN NELSON: Proceed, Commissioner Fiegen.

17 COMMISSIONER FIEGEN: I'm not for sure who's all
18 in the room.

19 Is Mr. Ford there?

20 CHAIRMAN NELSON: No. None of the parties are
21 actually in the room. So everybody that is --

22 COMMISSIONER FIEGEN: I didn't hear him in the
23 rollcall.

24 CHAIRMAN NELSON: No. He is not on the
25 rollcall, not in the room.

1 COMMISSIONER FIEGEN: Okay. So I have a soils
2 compaction question of his testimony that he gave dealing
3 with the site manager making those decisions.

4 So who would handle that?

5 CHAIRMAN NELSON: Mr. Welk, who would you like
6 to handle that?

7 MR. WELK: Is Mr. Ford on the line?

8 CHAIRMAN NELSON: No.

9 MR. WELK: Who from Otter Tail is -- is Al on
10 there?

11 MR. KOECKERITZ: I am here.

12 MR. WELK: Al, can you answer that question from
13 Otter Tail?

14 MR. KOECKERITZ: Possibly after hearing the
15 question.

16 COMMISSIONER FIEGEN: It's not an in-depth
17 question. We just had a discussion during the
18 evidentiary hearing about soil compaction and the
19 importance of making a decision that the soil is
20 reasonable and you can go in and work the fields.

21 What Henry Ford suggested is the site manager
22 makes those decisions.

23 Commissioner Nelson, am I echoing?

24 CHAIRMAN NELSON: You're fine on this end.

25 COMMISSIONER FIEGEN: Okay. Great.

1 Anyway, lots of questions on how the site
2 manager was educated and et cetera. My question is what
3 is the recourse? Because we are not -- and this might be
4 for Brian Rounds also. What is the recourse a landowner
5 has if they do believe that the site manager is not
6 making a good decision on soil compaction and the soil is
7 way too wet and the site manager says, no, it is fine, we
8 can go ahead with construction?

9 Who does the landowner go to? Because we don't
10 have a liaison in this Stipulation. Do they come
11 directly to the Public Utilities Commission, or who do
12 they go to in case there's a situation like that?

13 MR. KOECKERITZ: Commissioner, this is
14 Al Koeckeritz. Typically how we've handled projects in
15 the past is we will assign, from the project's
16 perspective, a land agent that will have negotiated the
17 easement with the landowner, and we would expect that
18 that land agent would maintain contact with that
19 landowner.

20 So we would always encourage the landowner to
21 contact the land agent and speak to them as kind of a
22 liaison in some regards back through the project
23 management and potentially down to the construction
24 manager.

25 So that's how we would intend to make the

1 landowners not have to deal directly with the
2 construction manager if there is that issue.

3 Of course, we would always encourage them as a
4 last resort perhaps to contact the Commission or
5 Commission Staff and have them hear the question as
6 well.

7 But that has typically been successful for us in
8 the past. And as I believe others spoke to last week, we
9 have not had ourselves problems with compaction and
10 landowners, and I think we've done a highly successful
11 job in past projects in handling potential compaction and
12 damage concerns about landowners.

13 COMMISSIONER FIEGEN: Thank you.

14 Mr. Rounds, do you have any additional
15 comments?

16 And, as you know, like Brown County has been
17 very wet the past I don't know how many years, and so
18 some of those counties have had more wet soil than
19 others.

20 MR. ROUNDS: Sure. This is Brian Rounds for
21 Staff. I'll just kind of add how this works in the
22 Stipulation that we signed on to.

23 If you look at the terms and conditions,
24 Condition No. 4 requires the company to provide a whole
25 bunch of information to any landowners that they'll be --

1 on whose land they'll be working on.

2 COMMISSIONER FIEGEN: Right.

3 MR. ROUNDS: And I guess, you know, included
4 would be the Order which would have any of the
5 conditions. To the extent that the company is not
6 following those conditions, they would have our --

7 COMMISSIONER FIEGEN: I saw that on our website,
8 that phone number, et cetera.

9 MR. ROUNDS: Yep. So they could -- I mean, they
10 would just call us, you know, in worst case.

11 COMMISSIONER FIEGEN: Okay. That's what I
12 wanted to check on, to make sure that there was a neutral
13 party that they would be able to go to, and I wondered if
14 that was the subset D in that.

15 CHAIRMAN NELSON: Commissioner Fiegen, before
16 you proceed, if I could interrupt for a moment,
17 Brad Morehouse, have you joined us on the line?

18 MR. MOREHOUSE: Yes, I have.

19 CHAIRMAN NELSON: Excellent. And also for
20 everybody's information, Mr. Schuring has joined us in
21 the committee room. So we've got all the players.

22 Go ahead, Commissioner Fiegen.

23 COMMISSIONER FIEGEN: Thank you.

24 The next question is more a comment than a
25 question and also a belief of where I'm going to put my

1 faith. As you have all heard, I had several questions
2 and concerns, and since June I've wrestled with the dairy
3 farm and what impact that may have on a dairy. And we
4 don't know.

5 And when you continued to listen to the evidence
6 we had some information about the Bath, South Dakota
7 dairy, but not very many facts were given to us. And we
8 also had information about Metropolitan Life and their
9 investments in livestock facilities, but in the
10 evidentiary hearing we didn't really have any facts
11 presented to us.

12 So I have looked at considerations and more
13 stipulations to put on that, but I am going to put my
14 faith in the company of Montana-Dakota Utilities and
15 Otter Tail. And I am going to put my faith that they're
16 going to have the best route and also protect the dairy
17 farmers.

18 So that was just a comment because I'm not going
19 for an extra condition today on that one.

20 CHAIRMAN NELSON: Commissioner Fiegen, if I
21 could once more interrupt, Mr. Ford has now joined us in
22 the committee room, for your information.

23 COMMISSIONER FIEGEN: Oh. So did Mr. Ford hear
24 that?

25 MR. FORD: Just the very last part.

1 CHAIRMAN NELSON: He just walked in about
2 15 seconds ago.

3 COMMISSIONER FIEGEN: Mr. Ford, you can go back
4 and hear what I just stated, but I stated about the dairy
5 farm and my concern and what I've wrestled with. But
6 I'm not going to bring an additional stipulation or amend
7 the stipulations right now, but I'm putting my faith in
8 you that you will have the best route for that dairy
9 farmer.

10 And, number three, my very last question
11 actually is for Mr. Ford. And this is something
12 different that we talked about during the evidentiary
13 hearing, but I haven't asked a lot of questions about it
14 since then. And it's the electric magnetic field.

15 And I don't know if we have it in state statute,
16 and Brian or John may be able to help me with that. But
17 a lot of times there's stipulations where there's a
18 maximum electric field limit of like 8 kilovolts per
19 meter at a one meter above the ground at the edge of the
20 right of way.

21 Have you had that in a stipulation before or is
22 that in state statute or can John, Brian, or Henry talk
23 about different stipulations they may have had in
24 transmission lines before?

25 MR. SMITH: This is John Smith. I would say

1 that I am unaware of any such statute. I guess I can't
2 definitely say it doesn't exist, but I have never heard
3 of such a thing.

4 COMMISSIONER FIEGEN: But you've seen it in a
5 stipulation before?

6 MR. SMITH: Well, I think what applies -- and
7 it's an indirect thing -- is the National Electric Safety
8 Code.

9 COMMISSIONER FIEGEN: Oh.

10 MR. SMITH: Which is a national code that sets
11 the standards. And this line is being constructed in
12 conformity with the National Electric Safety Code.

13 And maybe Mr. Ford can comment further on that.
14 But that's what sets those kind of standards, and it's
15 just a general adoption of that.

16 COMMISSIONER FIEGEN: Correct.

17 Mr. Ford, could you make anymore comments on
18 that?

19 CHAIRMAN NELSON: We're going to have Mr. Ford
20 come forward. We do have a court reporter here so he's
21 going to share the dais with the court reporter.

22 COMMISSIONER FIEGEN: Thank you.

23 MR. FORD: Good morning.

24 CHAIRMAN NELSON: Good morning.

25 MR. FORD: There is in the Application --

1 CHAIRMAN NELSON: Just introduce yourself for
2 the record.

3 MR. FORD: Henry Ford with Montana-Dakota
4 Utilities.

5 But there is something within the Application
6 that talks about that. We did do an engineering study of
7 what that amount is. I don't remember the exact amount,
8 but it was within acceptable standards and norms, I
9 guess, for the industry.

10 COMMISSIONER FIEGEN: Okay. Thank you. I know
11 you guys have done a lot of work on a lot of different
12 issues.

13 CHAIRMAN NELSON: Commissioner Fiegen, I'm going
14 to interject for a moment.

15 Mr. Weiers, do you have any information on this
16 that you'd be able to add?

17 MR. WEIERS: Yes. This is Mr. Weiers with
18 Otter Tail Power. I do not. I believe Mr. Jon Lemman was
19 our expert during the evidentiary hearings.

20 CHAIRMAN NELSON: Thank you.
21 Go ahead, Commissioner Fiegen.

22 COMMISSIONER FIEGEN: That is my last question,
23 Commissioner Nelson.

24 CHAIRMAN NELSON: Thank you.

25 Commissioner Hanson, did that spur any questions

1 from you?

2 COMMISSIONER HANSON: No. I'm good. Thank you,
3 Mr. Chair.

4 CHAIRMAN NELSON: And I have no further
5 questions at this point. So that brings us to the point
6 of Commission action.

7 At this point Commissioner action.

8 COMMISSIONER HANSON: Mr. Chairman.

9 CHAIRMAN NELSON: Go ahead, Chairman Hanson.

10 COMMISSIONER HANSON: In Docket EL13-028, I move
11 that the Commission grant the Motion for approval of
12 Settlement Stipulation and approve the Amended Settlement
13 Stipulation as the basis for its Final Decision and
14 Order. I realize -- that's the length and breadth of the
15 Motion.

16 Mr. Chairman, in our previous agenda we had
17 three items which were also part of the Motion. However,
18 on the agenda itself, however, those were dealt with at
19 the previous meeting.

20 If I may make some remarks, Mr. Chair.

21 CHAIRMAN NELSON: Certainly. Appropriate for
22 discussion.

23 Go ahead, Chairman Hanson.

24 COMMISSIONER HANSON: Thank you. This has been
25 a very intriguing Docket, and it's actually brought out

1 some information and discussion on items that we had not
2 previously examined on other transmission systems.
3 Especially of interest was the soybean cyst nematode and
4 the challenges that are existent with our state as a
5 result of it.

6 Excuse me if I stutter just a little bit, but as
7 Commissioner Fiegen pointed out, there is a feedback so
8 we listen to ourselves just after we are speaking. It's
9 a little bit of a challenge here.

10 The South Dakota Codified Law requires us to --
11 well, it requires the Applicant and, in essence, requires
12 us to make certain that the Applicant shows a burden of
13 proof that the proposed facility complies with all of the
14 applicable laws and rules. And I believe it does. And
15 that the facility will not pose a threat of serious
16 injury to the environment or to the social and economic
17 condition of the inhabitants or expected inhabitants in
18 the siting area.

19 And that was one of the more challenging parts
20 of the entire Docket for me. As Commissioner Fiegen
21 pointed out and as Commissioner Nelson and I have
22 discussed through this process, we're certainly very
23 concerned with the potential effect on a dairy farm and,
24 of course, all the other farms.

25 But from the standpoint of electric current

1 with the dairy cattle, just as Commissioner Fiegen
2 pointed out earlier, there's just not the evidence that
3 it's been presented to us. And we have to resolve our
4 issues here based upon the evidence that's presented.

5 And so from a standpoint of examining that, I'll
6 be very interested to see what may or may not occur as a
7 result of this going within a half of a mile of a dairy
8 farm. We don't have any even ancillary information
9 pertaining to other transmission lines. And there's
10 quite a few transmission lines in this state that run
11 fairly close to dairy farms. So if there was evidence, I
12 would think we would have heard it.

13 The more challenging is the soybean cyst
14 nematode in that issue. And I struggle with that because
15 it just seems like such an impossible situation to deal
16 with. And certainly I believe we need to hold the
17 companies accountable for doing the best practices on the
18 construction process.

19 The third issue is that the facility will not
20 substantially impair the health, safety, or welfare of
21 the inhabitants. And I don't believe it will.

22 And fourth, that it will not unduly interfere
23 with the orderly development of the region. And we have
24 a responsibility to give due consideration to the views
25 of governing bodies of affected local units of

1 Government. And we certainly have done that.

2 So from a statutory standpoint I believe that
3 the Applicant has fulfilled their responsibility of the
4 burden of proof. And I look forward to having the
5 information of the experience and seeing whether there
6 are additional challenges that are, in fact -- that would
7 be considered as evidence, should we have another
8 transmission system that goes in proximity to a dairy.

9 Thank you, Mr. Chairman, for the opportunity to
10 give my remarks.

11 CHAIRMAN NELSON: Additional discussion on the
12 Motion?

13 COMMISSIONER FIEGEN: Mr. Vice-chairman, do you
14 have an amendment?

15 CHAIRMAN NELSON: I do, which if you don't care
16 to discuss at this point, I will offer my amendment.

17 COMMISSIONER FIEGEN: And then I will comment
18 after the amendment's put on or whatever.

19 CHAIRMAN NELSON: Very good.

20 I move to amend Condition 17 of the Amended
21 Settlement Stipulation by adding the following language
22 after the existing language in Condition 17:

23 "After the Applicant has finished the soil
24 sample field assessment in accordance with the
25 specifications for such assessment prepared in

1 consultation with an expert in the proper methodology for
2 performing such a sampling survey, Applicant shall submit
3 to the Commission a summary report of the results of the
4 field assessment and Applicant's specific mitigation
5 plans for minimizing the risk of the spread of soybean
6 cyst nematode from contaminated locations to
7 uncontaminated locations. At such time and throughout
8 the construction period, one or more Commissioners or
9 Staff shall have the right to request of Applicant
10 confidential access to the survey results to enable the
11 verification of the survey results, assess the
12 appropriateness of the mitigation measures to address
13 such results, and monitor the execution of the plan
14 during construction."

15 Discussion on the Amendment.

16 As I had indicated at the last meeting, I think
17 Mr. Pesall raised a valid point in his last filing with
18 us that this particular condition, the Settlement
19 Stipulation, was not specific enough for us to actually
20 enforce it. And, in fact, during the evidentiary hearing
21 I had asked some questions about that because I wasn't
22 certain it was specific enough.

23 Based on the information that Mr. Ford provided
24 at our last meeting, it sounds like the plans are in
25 place to do all of what I am asking here, and this simply

1 formalizes it as an actual requirement and gives the
2 Commission access to some of this information that we
3 might not have had otherwise.

4 And so I think this really kind of closes the
5 loop on this particular question, formalizes the process,
6 gives us access to the information without unduly
7 burdening with additional regulation the Applicant.

8 And with that I would hope that my fellow
9 Commissioners could support the Amendment.

10 Additional discussion on the Amendment?

11 COMMISSIONER FIEGEN: Mr. Chairman or
12 Mr. Vice-chairman today, I want to thank you for
13 extending your Amendment to all of us and then adding
14 additional items such as the access to the confidential
15 information. I appreciate you adding that. And I
16 totally agree with this.

17 But, first of all, I want to thank
18 Montana-Dakota Utilities and Otter Tail for having a
19 plan. We appreciate them coming up with this, and I
20 appreciate Commissioner Nelson's amendment.

21 CHAIRMAN NELSON: Additional discussion?

22 Hearing none, we will proceed to vote on the
23 amendment. Those in favor will say aye. Those opposed
24 nay.

25 Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Fiegen votes aye.

2 CHAIRMAN NELSON: Commissioner Hanson.

3 COMMISSIONER HANSON: Aye.

4 CHAIRMAN NELSON: Commissioner Nelson votes aye.

5 The amendment carries.

6 Additional discussion?

7 COMMISSIONER FIEGEN: Mr. Nelson, Vice-chairman,
8 Chairman, Mr. Nelson, whatever it all is, first of all, I
9 want to say today is a great day for South Dakota. We
10 are building infrastructure that is very important to
11 South Dakota and our region.

12 And it kind of reminds me of the interstate
13 system when we put that in in the '60s when we built 29
14 and Interstate 90 how important infrastructure is to our
15 state. And I believe this is kind of a landmark
16 situation where we're certainly impacting our future and
17 our economy.

18 And I appreciate Montana-Dakota Utilities and
19 Otter Tail for taking a complex project and really
20 improving our electrical GRID. That's really what it's
21 all about. Our electrical grid doesn't have state lines.
22 It goes across the nation. And I appreciate all of their
23 support.

24 It's amazing to site a line that's about 160 or
25 170 miles. That's a lot of miles and about 169 sections.

1 That's a lot of land. 740 poles. That's a lot of poles.

2 And I totally appreciate Montana-Dakota
3 Utilities and Otter Tail looking at 25 different areas
4 when they had to site this. And they did this all within
5 a year anyway of the filing. I know they worked before
6 that. But they had to look at air quality and water
7 quality and environmental issues, all of those type of
8 things.

9 But they really keyed in on a couple of things
10 the Commission asked, and one of them was the Mitigation
11 Plan, which Commissioner Nelson just addressed, and they
12 also keyed in on the induction of current voltage on --
13 (Inaudible).

14 MR. SMITH: Did you say the induction of current
15 voltage on fences?

16 COMMISSIONER FIEGEN: Right.

17 MR. SMITH: Okay.

18 CHAIRMAN NELSON: Continue.

19 COMMISSIONER FIEGEN: (Inaudible).

20 CHAIRMAN NELSON: Oh. You're muddled.

21 COMMISSIONER FIEGEN: I don't know why. Anyway,
22 thank you. I appreciate it. And with 33 conditions and
23 14 subsets, I think consumers are protected.

24 CHAIRMAN NELSON: Thank you. And we did catch
25 that last bit there. Cheri is shaking her head. We

1 caught that. Very good.

2 Additional discussion on the Motion?

3 COMMISSIONER HANSON: Mr. Chair.

4 CHAIRMAN NELSON: Commissioner Hanson.

5 COMMISSIONER HANSON: Thank you. I would echo
6 everything that Commissioner Fiegen just stated. The
7 entire economy runs on electricity, and she's absolutely
8 correct, we do need to participate and be a part of that.

9 During the process here of the Docket hearings,
10 we discussed the challenges of running a transmission
11 line through our state that's going to take electricity
12 from a different state and provide electricity to yet a
13 third state and whether or not it's appropriate to run
14 that across our lands.

15 And, obviously, electricity needs to have that
16 transmission system. We need to be a part of the
17 country. We need to be a part of the process. We need
18 to make certain that our entire economy in our country
19 continues to have the strength and vitality that it
20 enjoys. And the only way to do that is if we all
21 participate.

22 Other states do similar -- as was pointed out
23 with the interstate transmission system, other states
24 have accomplished the same thing for us.

25 And, secondly, I'd like to say I sincerely

1 appreciate the participation by the Interveners. The
2 Interveners' information and evidence that was presented
3 to us by them and their representatives made this a much
4 better Docket. And their participation, therefore, will
5 make everyone's lives, I would hope, easier.

6 I'd like to thank the Applicant for the process
7 of providing all of the information and going to the
8 extent of all of the public meetings that we had. And
9 certainly from the standpoint of Staff for the PUC did an
10 excellent job of coordinating all of the activities and
11 putting the information together and representing the
12 citizens of South Dakota.

13 I think we have a very good piece of -- I won't
14 call it legislation, although I'm tempted to. A very
15 good Docket and a result of it.

16 And, Mr. Chairman, I thank you for the Amendment
17 that you suggested because the SCN, or soybean cyst
18 nematode, has been a great concern to me for some years,
19 and I'm fearful that it's going to create significant
20 degradation in our state. And I hope that the Amendment
21 that you made makes it much more difficult for it to
22 continue to be prolific.

23 Thank you, Mr. Chair.

24 CHAIRMAN NELSON: Thank you. If I might add
25 some comments on my own behalf, first of all, I think

1 those issues have been resolved. Some not. But those
2 that have not been resolved I don't believe violate the
3 statutory requirement that we issue a permit.

4 I want to thank the Staff for their Settlement
5 Stipulation. You've covered the issues that needed to be
6 covered. We've made a couple of changes. You've
7 accepted those, and I appreciate that and appreciate the
8 company working together on that.

9 As I mentioned at the last meeting, the one in
10 my mind really unresolved area is the whole Podoll
11 situation that in my mind I don't have closure on, but we
12 don't have enough evidence on the record. And those
13 folks chose not to become Interveners, and so we didn't
14 have any of their information as part of the evidentiary
15 hearing. And so at this point I don't believe that
16 there's anything that we can do in that area beyond what
17 has already been done.

18 The last thing I would say, based on our
19 experience with another MVP line, that one the line going
20 from White to Big Stone, we know that the owners of that
21 line, even after they received their permit, continued
22 working with landowners and continued making some
23 adjustments to the line to suit landowners. And, as a
24 matter of fact, we've got a filing in front of us from
25 the owners of that line saying here are some additional

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STATE OF SOUTH DAKOTA)

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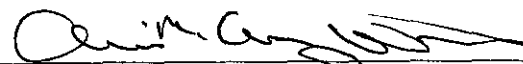
CERTIFICATE

COUNTY OF SULLY)

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 13th day of August, 2014, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 26th day of August, 2014.


Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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