

# STATE OF NORTH DAKOTA

## PUBLIC SERVICE COMMISSION

**Otter Tail Power Company  
Sargent County 230 kV Reroute  
Siting**

**Case No. PU-401-00-108**

### **RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**July 9, 2001**

#### **Appearances**

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505-0480, substantive Hearing Officer.

Bruce Gerhardson, Associate General Counsel, Otter Tail Corporation, 215 South Cascade Street, Fergus Falls, MN 56537, on behalf of Otter Tail Power Company, a division of Otter Tail Corporation.

Jerry Lien, Staff Analyst, Public Service Commission, State Capitol, Bismarck, ND 58505-0480, on behalf of the Public Service Commission.

#### **Preliminary Statement**

On March 9, 2000, Otter Tail Power Company ("Otter Tail"), 215 South Cascade Street, Fergus Falls, MN 56537, wrote to inform the Commission that a storm had caused a portion of Otter Tail's Hankinson-Forman 230 kilovolt (kV) transmission line to topple and render the line out of service. Otter Tail also requested emergency authority to relocate and reconstruct the line. Commission Staff informed Otter Tail that it had emergency authority to relocate and reconstruct the line.

On July 31, 2000, Otter Tail filed a Consolidated Application for a Waiver of Procedures and Time Schedules, a Certificate of Corridor Compatibility, and a Route Permit for the construction and relocation of approximately one-half mile of 230 kV electric transmission line around the South and East sides of a semi-permanent wetland in Section 6, Township 130 North, Range 54 West in Sargent County, North Dakota. This proposed relocation had been constructed under the power emergency conditions declared by Otter Tail in their March 9, 2000 letter, described above.

In its Application, Otter Tail requested that the Commission waive procedures to allow for combining filing of Applications for a Corridor Certificate and Route Permit, to

waive the requirement for hearings on the Applications for a Corridor Certificate and Route Permit. More specifically, Otter Tail requested the Commission: (1) waive the provisions of N.D.C.C. § 49-22-13(2) and N.D. Admin. Code § 69-06-01-02(3), which require a public hearing on the waiver request, and Otter Tail requested that a Notice of Opportunity for Hearing be published instead; (2) waive the provisions of N.D.C.C. § 49-22-08 and 08.1, § 49-22-13 and N.D. Admin. Code § 69-06-01-02 insofar as they require separate application filings, hearings on the separate filings, and certain time schedules. The Application also included a filing fee of \$5,000.

On October 16, 2000, Otter Tail filed a Supplement and Amendment to its Application to provide further justification for its request for waiver of procedures and timelines, to further describe how Otter Tail considered the relative value of each facility siting criteria in determining the proposed corridor and route, and to include a request that the Commission waive the requirements that Mylar maps be included with the Application.

On October 25, 2000, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a consolidated public hearing for November 29, 2000, at 1:00 p.m. in the Sargent County Courthouse, Commission's Room, 355 Main Street, Forman, North Dakota. The issues to be considered in the hearing were:

1. Will the location, construction, and operation of the proposed transmission line produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed transmission line compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed transmission line corridor and route minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?
4. Is the proposed transmission line of such length, design, location, or purpose that it will produce minimal adverse effects so that procedures and time schedules may be waived?
5. Does a demonstrable emergency exist which requires immediate construction so that adherence to procedures and time schedules will jeopardize the utility's system?
6. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the Application?

On November 29, 2000, the date the public hearing was scheduled to be held, weather conditions made it impossible for the Commission, as well as Otter Tail representatives, to travel to the location of the hearing. Therefore, the hearing was postponed until May 15, 2001, at 1:00 p.m.

On May 15, 2001, the postponed public hearing was held as rescheduled.

Having heard and considered this matter, the Hearing Officer makes the following:

### **Findings of Fact**

1. Otter Tail is a public utility under Title 49 of the North Dakota Century Code, headquartered at 215 South Cascade Street, Fergus Falls, Minnesota 56537. Otter Tail serves customers in central and Eastern North Dakota, as well as Western Minnesota and Northeastern South Dakota.
2. On March 8, 2000, a wind storm swept across North Dakota, causing a one-half mile portion of Otter Tail's Hankinson-Forman 230 kV transmission line to topple and render the line out of service. When the transmission line was constructed in 1960, the structures along this one-half mile stretch were located on dry land near the shore of a wetland. Since that time, the water levels of this particular wetland have risen to an extent that structures along this portion of the facility were located in the water.
3. Otter Tail states that after the March 8, 2000, outage, it was imperative that the line was re-energized as soon as practically possible. In evaluating all possible options, sound utility practice required rerouting the section out of the wetland and onto higher ground. The reroute required moving approximately 1700 feet of line approximately 600 feet to the East.
4. Designation of a corridor and a route for a proposed transmission facility must be made in accordance with the criteria established pursuant to N.D. Admin.Code § 69-06-08-02 and the considerations set out in N.D.C.C. § 49-22-09.
5. The proposed facility has been constructed using wood pole H-frame structures. The structures range from 55 to 70 feet high, and the spans have an average length of 590 feet. The structures support three-phase conductors and two overhead shield wires for lightning protection. The conductors are constructed of steel reinforced aluminum strands with the trade designation 477RTZ. All construction, testing, and operation will conform to the requirements of the National Electric Safety Code.
6. The total estimated cost of the project is \$70,000.
7. Otter Tail completed easement acquisition, vegetation clearing, and construction, and energized the line in March 2000.

8. Otter Tail requests approval of a route, approximately one-half mile long, running between a point on the existing route near the Southwest shore of the semi-permanent wetland and a point also on the existing route on the easterly shore of the semi-permanent wetland. This proposed route includes a right-of-way 120 feet wide (60 feet on either side of the centerline).

9. Otter Tail contacted the North Dakota Parks and Recreation Department, the U. S. Fish and Wildlife Service, and the North Dakota Game and Fish Department on March 20, 2000, to notify them of the proposed corridor and route. On April 3, 2000, Otter Tail contacted other state and federal agencies to notify them of the proposed corridor and route.

10. Blue Stem, Incorporated ("Blue Stem"), an environmental consulting firm, compiled data from numerous sources to analyze the biological, environmental, historic, and archeological conditions within the proposed corridor and along the proposed route. The data included information received following agency consultations, data publicly available from other sources, and data collected during field examinations. Blue Stem used this data to produce maps showing the existence and nonexistence of criteria (as defined in N.D. Admin. Code § 69-06-08-02) within the proposed corridor and route.

11. No designated or registered national parks, memorial parks, historic sites, landmarks, natural landmarks, monuments, or wilderness areas are located within the proposed corridor or along the proposed route.

12. No designated or registered state parks, historic sites, monuments, historical markers, archeological sites, or nature preserves are located within the proposed corridor or along the proposed route. No park or recreational facilities are located within the proposed corridor or along the proposed route.

13. There are no areas within the proposed corridor or along the proposed route that are critical to the life stages of federally threatened or endangered species.

14. There are no areas within the proposed corridor or along the proposed route where animals or plant species unique or rare to North Dakota would be irreversibly damaged.

15. There are no federal waterfowl production areas, designated or registered national historic districts, wildlife areas, wild, scenic, or recreational rivers, wildlife refuges, or grasslands within the proposed corridor or along the proposed route.

16. There are no wildlife management areas or other designated or registered state wild, scenic, or recreational rivers, game refuges, game management areas, management areas, forests, forest management lands, or grasslands within the proposed corridor or along the proposed route.

17. Blue Stem contracted with Powers Elevation Co., Inc. (historical and archeological consultant) to conduct archeological investigations along the proposed route. A Class I Inventory (files search) was made along the corridor for the entire proposed transmission line route. An on-the-ground field study was also conducted at the time of construction initiation. A report of this Class I inventory and on-the-ground field survey was submitted to the State Historical Society for review, along with detailed maps of the corridor. The Historical Society notified Otter Tail that no archeological or historic properties were affected by the facility.

18. No areas within the proposed corridor or along the proposed route are geologically unstable.

19. There are two rural residences within the proposed corridor. However, the proposed route does not come within 1,000 feet of any structure being used for a residence or a business.

20. There are no reservoirs or municipal water supplies within the proposed corridor or along the proposed route.

21. There are no water sources for organized rural water districts located within the proposed corridor or along the proposed route.

22. There are no irrigation permits located within the proposed corridor or along the proposed route.

23. There are no areas of recreational significance otherwise designated located within the proposed corridor or along the proposed route.

24. The corridor is made up largely of agricultural production lands and wetlands. Construction created minimal adverse impacts upon agricultural production along the route, and operation of the proposed facility will create minimal adverse impacts upon agricultural production along the route.

25. The proposed facility is not expected to have any impact upon surface drainage patterns and groundwater flow patterns.

26. The proposed facility is expected to have very minimal impacts upon noise sensitive land uses. The North Dakota Department of Health recommended that all construction equipment be equipped with recommended mufflers in good working order, and construction activities near homes and places of business be limited to normal working hours. Otter Tail has complied with this recommendation.

27. The proposed facility will be visible to landowners and community residents who live near the proposed facility.

28. No gravel or sandpits are located within the proposed corridor or along the proposed route.

29. There are numerous wetlands within the proposed corridor. In fact, the need for the reroute is specifically because the waters of a semi-permanent wetland have risen in such a way as to impact the existing facility in this location. The U.S. Fish and Wildlife Service maintains a conservation easement over the wetlands existing within Section 6, Township 130 North, Range 54 West in Sargent County, North Dakota, which is in the area of the proposed reroute. Permits and mitigation would be required by the Service and the U.S. Army Corps of Engineers wherever wetlands are impacted. However, because Otter Tail Power Company's reroute has not impacted any wetlands in the effected area, the U.S. Fish and Wildlife Service has indicated it will not require any permits or mitigation.

30. A number of woodlands and shelterbelts are located within the proposed corridor. However, the proposed route does not impact any woodlands, shelterbelts, or trees.

31. No impacts to radio or television reception or other communication or electronic control facilities are anticipated from the proposed facility.

32. Human health and safety are not expected to be impacted by the proposed facility. The North Dakota Department of Health investigated the proposed facility and concluded, "impacts from the proposed construction will be minor and can be controlled by proper construction methods." Otter Tail has agreed to employ proper construction methods to ensure the project will result in minimal impacts to human health and safety. The proposed facility will be designed and constructed to meet or exceed the standards of the National Electric Safety Code.

33. Animal health and safety is not expected to be impacted by the proposed facility.

34. Impacts of the proposed facility on agricultural plant life will be minimal, and landowners will be compensated for any losses. Native plant life will be impacted minimally, and mitigation will be conducted by Otter Tail.

35. Otter Tail has adopted policies and practices that will maximize benefits and, therefore, Otter Tail's Application should be given preference. Examples of such policies and practices are as follows: Otter Tail has policies to minimize and mitigate environmental impacts, to follow the National Electric Safety Code requirements and policies, to design its systems to efficiently transfer electricity, to ensure worker and public health and safety, and to ensure cost-effective methods of meeting its delivery obligations. Furthermore, Otter Tail has policies and practices that encourage training and utilization of available labor in this state for the general and specialized skills required. Also, the electricity transmitted across the proposed facility is largely committed for use in the State of North Dakota. Otter Tail has also coordinated its existing facilities with the proposed facility to ensure reliability and enhance efficiency. As is explained further herein, the need for the proposed facility arose out of rising

water, semi-permanent wetland, and weather conditions. The damage caused by these conditions rendered the Hankinson-Forman 230 kV facility out-of-service. The Hankinson-Forman 230 kV facility provides important transmission to the State of North Dakota, and enhances operational flexibility and reliability in the region. The proposed reroute is the most prudent and feasible method of ensuring that this need is continued to be served

36. Because of the high water levels, Otter Tail was not able to remove the entirety of the structure materials along the old route. Otter Tail removed all above-water materials and debris, however, some portion of the poles remained below the water. Otter Tail believes that the poles broke off at the ground level (below water) or just above ground level. There is no practical way to remove the remaining materials while they remain underwater, but they will be accessible when the water in the semi-permanent wetland recedes.

From the foregoing Findings of Fact, the Hearing Officer makes the following:

### **Conclusions of Law**

1. The Commission has jurisdiction over the applicant, Otter Tail Power Company, and over the subject matter of this Application under N.D.C.C. Chapter 49-22.
2. The transmission line proposed by Otter Tail is a transmission facility as defined in N.D.C.C. § 49-22-03(11). The proposed transmission line is of such length, location, and purpose that it will minimize adverse effects upon the environment and upon the welfare for citizens of North Dakota.
3. The proposed transmission line is compatible with the environmental preservation and the efficient use of resources. The proposed transmission line corridor and route are of such length, location, and purpose that they will minimize adverse human and environmental impact while ensuring continued system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
4. The proposed transmission line is of such length, design, location, and purpose that it will produce minimal adverse effects so that procedures and time schedules may be waived.
5. A demonstrable emergency existed, which required immediate construction, and adherence to procedures and time schedules would have jeopardized the utility's system.
6. It is appropriate for the Commission to waive procedures and time schedules, as requested in Otter Tail's Application. The Application submitted by Otter Tail meets the corridor and route evaluation criteria required by N.D.C.C. Chapter 49-22.

From the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends the following:

### **Order**

The Commission orders:

1. Certificate of Corridor Compatibility for Transmission Facility No. 81 is issued to Otter Tail Power Company, a division of Otter Tail Corporation, designating a corridor for its proposed transmission facility as shown on the attached map.
2. Certificate of Site Compatibility for Transmission Facility Route No. 91 is issued to Otter Tail Power Company, a division of Otter Tail Corporation, designating a route for its proposed transmission facility as shown on the attached map.
3. Otter Tail Power Company shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed transmission line, and shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission, if any.
4. Otter Tail shall construct and operate the transmission line in the manner described in Otter Tail's Application as supplemented and amended, and in accordance with all applicable safety requirements.
5. All pre-existing roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads or working areas during construction must be restored to their original condition.
6. Reclamation, fertilization, and reseeding is to be done by Otter Tail according to the National Resources Conservation Service recommendation, unless otherwise specified by landowner and approved by the Commission.
7. Otter Tail shall continue to monitor the water levels in the semi-permanent wetland, and when the water levels recede sufficiently, Otter Tail shall remove the remaining structure materials along the old route.
8. Otter Tail's obligation for reclamation and maintenance of the right-of-way will continue throughout the life of the transmission line.
9. Otter Tail shall work with landowners and residents to mitigate any increase in television and residential radio interference that occurs from the transmission line.
10. Otter Tail shall consult with the U.S. Fish and Wildlife Service and the North Dakota Game and Fish Department to see if bird deflectors are needed on the line. Otter Tail shall follow any and all recommendations of the U.S. Fish and Wildlife Service and the North Dakota Game and Fish Department.

11. Otter Tail shall provide the Commission with a copy of the design specification for the construction of the transmission facility showing the location of the transmission facility as built.

12. The authorizations granted by the Corridor Certificate and the Route Permit are subject to modification by the Order of the Commission if deemed necessary to further protect the environment or the public.

By: \_\_\_\_\_  
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