

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company
230 kV Electric Transmission Line - Sargent County
Siting Application

Case No. PU-09-674

ORDER

February 24, 2010

On September 23, 2009 Otter Tail Power Company ("Otter Tail") filed a Letter of Intent to reroute a 0.53 mile portion of its Hankinson-Ellendale 230 kV transmission line located in water near Fiala Lake, west and south of Forman in Section 14 of Township 130 North (Forman), Range 56 West in Sargent County, North Dakota.

On October 14, 2009 the Commission acknowledged Otter Tail's Letter of Intent, assessed a filing fee of \$5,000, and shortened the one-year waiting period between filing a letter of intent and a siting application to three (3) weeks.

On January 12, 2010, Otter Tail filed an application for a waiver of procedures and time schedules, requesting that the Commission waive the requirement for filing of applications for a certificate of corridor compatibility and route permit and public hearings and forthwith issue a certificate and route permit authorizing the proposed construction and relocation. Otter Tail asserts that the proposed reroute will produce only minimal adverse effects and that a demonstrable emergency exists that requires construction before the existing line structures can be damaged by spring ice flows.

On January 27, 2010 the Commission issued a Notice of Opportunity for Hearing on Waiver Application, which provided until February 22, 2010 for receiving written comments or requests for hearing. No response has been received. The notice identified the following issues to be considered:

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 reroute 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 would jeopardize the utility's system?
6. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

Otter Tail's Hankinson to Ellendale transmission line is an integral component of the regional 230 kV transmission system integrating baseload electric generation at the Big Stone Plant in eastern South Dakota and the Hoot Lake Plant in western Minnesota and wind generation in southeastern North Dakota and serving retail load in southeastern North Dakota, northeastern South Dakota and Western Minnesota.

Otter Tail reports that Fiala Lake has expanded so that structures from its Hankinson to Ellendale transmission line that were once adjacent to the lake are now well within the lake water. Otter Tail is concerned that the effect of high water conditions, seasonal ice flows and high winds during spring months, in conjunction with the fragile condition of the existing facility, constitute an emergency that requires immediate construction such that adherence to procedures and time schedules would jeopardize Otter Tail's 230 kV high-voltage network.

The estimated cost of the relocation is approximately \$260,000.

Otter Tail wrote letters describing the project to the state agencies and officers entitled by NDAC § 69-06-01-05 to notice of jurisdictional transmission facility routing plans, as well as the U.S. Fish & Wildlife Service, the U.S. Army Corps of Engineers, and the U.S. Department of Agriculture – Natural Resources Conservation Service.

The North Dakota Game and Fish Department reviewed the project and does not believe it will have significant adverse effects on wildlife or wildlife habitat provided impacts to wetland areas are avoided or replaced in kind and disturbed areas are reclaimed to pre-project conditions.

The North Dakota Department of Labor and Job Service North Dakota each reviewed the project and had no comments or permit requisites.

The North Dakota Department of Commerce reviewed the project and supports the project in light of the transmission line's importance to integrating both baseload and wind generated power in southeast North Dakota into the electrical grid.

The North Dakota Parks and Recreation Department reviewed the project and concluded that it does not affect state park lands it manages or Land and Water Conservation Fund recreation projects it coordinates. The Department reviewed the North Dakota Natural Heritage biological conservation database and found no known occurrences of any plant or animal species of concern or other significant ecological communities within or adjacent to the project area.

The State Historical Society of North Dakota reviewed the project and found no historic properties affected.

The North Dakota Department of Health reviewed the project and believes that environmental impacts from the proposed construction will be minor and can be controlled by proper construction methods.

The North Dakota Department of Transportation (NDDOT) reviewed the project and concluded no adverse effect on NDDOT highways.

The U.S. Department of Agriculture – Natural Resources Conservation Service reviewed the project and found that the proposed project does not convert important farmland to non agricultural use; therefore the Farmland Protection Policy Act (FPPA) does not apply and no further action is required.

The North Dakota State Water Commission staff reviewed the project and concluded that the property is not located in an identified floodplain and believes the project will not affect an identified floodplain.

The U.S. Army Corps of Engineers reviewed the proposed project, and requested that Otter Tail submit a location map and completed Corps permit application describing all proposed work and construction methodology if a permit is required under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. On November 30, 2009, Otter Tail wrote the Corps seeking permission for the project. The Corps on January 5, 2010 authorized Otter Tail to proceed with the proposed project in accordance with the terms and conditions of the Department of the Army Nationwide Permit No. 12, found in the March 12, 2007 Federal Register (72 FR 11092), Reissuance of Nationwide Permits.

The Commission finds the location, construction, and operation of the proposed transmission line reroute will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

The Commission finds the proposed transmission line reroute compatible with the environmental preservation and the efficient use of resources.

The Commission finds the proposed transmission line reroute minimizes 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.

The Commission finds the proposed transmission line reroute is of such length, design, location, or purpose that it will produce minimal adverse effects so that procedures and time schedules may be waived.

The Commission finds a demonstrable emergency exists, which requires immediate construction so that adherence to procedures and time schedules would jeopardize the utility's system.

The Commission finds it appropriate to waive procedures and time schedules as requested in the application.

Order

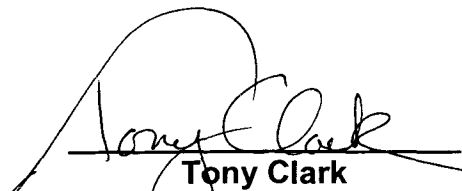
The Commission Orders:

1. Otter Tail's Application for Waiver of Procedures and Time Schedules is granted.
2. Certificate of Site Compatibility for a Transmission Facility Corridor No. 112 is issued to Otter Tail.
3. Route Permit for Construction of a Transmission Facility No. 122 is issued to Otter Tail granting authority to construct the proposed transmission line reroute.
4. Otter Tail shall conduct a preconstruction conference prior to commencement of any construction, and must include an Otter Tail representative, its construction supervisor, and a representative of the Commission staff in order to ensure that Otter Tail fully understands the conditions set forth in this Order.
5. Otter Tail shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of its proposed transmission line reroute and shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction of the transmission line reroute. Otter Tail shall abide by the terms and conditions of the Department of the Army Nationwide Permit No. 12.
6. Otter Tail shall inform the Commission of its intent to start construction on the transmission line reroute prior to the commencement of construction and, once construction has started, Otter Tail shall keep the Commission updated of construction activities on a weekly basis.

7. Otter Tail shall construct and operate the transmission line in the manner described in its application and at the hearing, and in accordance with all applicable safety requirements.
8. Otter Tail shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles that Otter Tail becomes aware of and which were not previously reported to the Commission.
9. If any cultural resource, paleontological site, archeological site, historical site, or gravesite is discovered during construction, it must be marked, preserved and protected from any further disturbance until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.
10. 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 during construction must be restored to their original condition.
11. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.
12. Reclamation along the right-of-way must be continuous and coordinated with construction.
13. Reclamation, fertilization and reseeding is to be done by Otter Tail according to the Natural Resource Conservation Service and County Farm Service Agency recommendations for CRP, native prairie and other lands unless otherwise specified by the landowner and approved by the Commission.
14. Otter Tail's obligations for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission line.
15. Otter Tail shall comply with the Commission's Tree and Shrub Mitigation Specifications attached to this Order, except that the width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 125 feet rather than 50 feet.
16. Otter Tail shall provide the Commission with copies of design specifications for construction of the transmission line reroute showing the location as built.
17. Otter Tail shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the transmission line reroute.

18. Otter Tail shall work with landowners to determine and implement appropriate damage mitigation measures.
19. Otter Tail shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed transmission facility.
20. Otter Tail shall obtain approval from the Commission or Commission staff prior to any changes in structure locations.
21. The authorizations granted by the corridor certificate and route permit are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.
22. After the corridor and route certificates have been issued and all costs of hearings, publication, and any other related expense have been paid from the application fee, the Commission shall refund all but \$5,000.00 of the remaining application fee. If the balance of the application fee at that time is less than \$5,000.00 the Commission shall retain the entire amount. When construction and reclamation are complete and when the Commission has concluded that Otter Tail's tree mitigation project is satisfactory, the remaining balance of the application fee shall be refunded.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
Chairman



Brian P. Kalk
Commissioner

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Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), shall be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts, and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, shall be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1-inch diameter at breast height (dbh) or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way shall be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs shall be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil shall be preserved and replaced after construction. Shrubs shall be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared shall be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission), and approved prior to the start of construction shall define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots shall be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.

8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the Commission.

9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

Replacement

10. Prior to replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the Commission for approval.

11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.

12. Trees and shrubs shall be replaced by the same species or similar species, except in the case of invasive species or noxious weeds, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing those replacement trees or shrubs to be planted at alternative locations.

14. At the conclusion of the project, documentation identifying the actual number, variety, type, location, and date of the replacement plantings shall be filed with the Commission.

15. Tree and shrub replacements shall be inspected once a year for three years, on about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the Commission documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the Commission may order additional planting(s).

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Route Permit

Certificate Number 122

This is to certify that the Commission has designated a transmission facility route for Otter Tail Power Company's 0.53 mile rerouted portion of its Hankinson – Ellendale 230 kV transmission line near Fiala Lake in Sargent County, North Dakota.

This certificate is issued in accordance with the Order of this Commission dated February 24, 2010 in Case No. PU-09-674 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, February 24, 2010.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Director


Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Site Compatibility for a Transmission Facility Corridor

Certificate Number 112

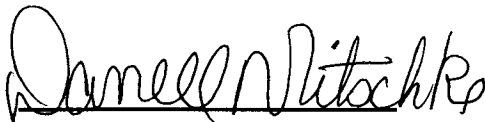
This is to certify that the Commission has designated a transmission facility corridor for Otter Tail Power Company's 0.53 mile rerouted portion of its Hankinson – Ellendale 230 kV transmission line near Fiala Lake in Sargent County, North Dakota.

This certificate is issued in accordance with the Order of this Commission dated February 24, 2010 in Case No. PU-09-674 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, February 24, 2010.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Director



Commissioner