Thompson, Pamela J.

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Filing Accepted

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Case Number: 08-2025-CV-02068
Case Style: Wano Township, et al. vs. North Dakota Public Service Commission, et al.

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May 21, 2025

VIA U.S. MAIL AND EMAIL: ndpsc@nd.gov
Steve Kahl
Executive Director
North Dakota Public Service Commission
State Capitol Building
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

Re: Otter Tail Power Company/Montana-Dakota Utilities Co. 345kV Transmission Line-Jamestown to Ellendale Public Convenience & Necessity
Case No. PU-24-91

Dear Mr. Kahl:

Enclosed please find the following original documents for filing in the above-referenced proceeding:

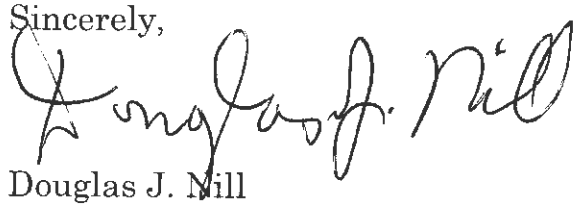
1. Petition To [Intervene, Rescind, and Reopen Proceedings];
2. Declaration of Douglas J. Nill with Exhibits 1-15;
3. Motion for Admission Pro Hac Vice with Exhibit 1 (Affidavit of Douglas J. Nill In Support Of Pro Hac Vice Admission) and Exhibit 2 (Certificate of Good Standing); and
4. Declaration of Service.

This petition is brought by landowners, townships, and other interested parties seeking to intervene in this proceeding. Petitioners respectfully request that the Commission rescind its November 20, 2024 Order approving the proposed 345kV transmission line from Jamestown to Ellendale and reopen the proceedings to provide procedural due process, complete the evidentiary record, and fully consider new and material evidence bearing on the public interest.

The accompanying motion seeks the admission *pro hac vice* of Douglas J. Nill as counsel for the petitioners.

Please feel free to contact me with any questions.

Sincerely,



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Enclosures
By electronic service and First-Class mail

Cc:
Brian Lee Johnson
Matthew Olsen
Robert Endris
Travis Jacobson
Allison Waldon
Steven J. Leibel
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STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota Utilities Co. 345kV Transmission Line-Jamestown to Ellendale Public Convenience & Necessity	Case No. PU-24-91

PETITION TO RESCIND THE NOVEMBER 20, 2024 ORDER APPROVING A 345kV TRANSMISSION LINE AND TO REOPEN THE PROCEEDINGS FOR FAILURE TO ENSURE DUE PROCESS, COMPLETE THE RECORD, AND PROTECT THE PUBLIC INTEREST

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Counsel for the Petitioners
A Coalition of Landowners, Townships, and Interested Parties

Dated: May 21, 2025

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INTRODUCTION

This petition is brought by landowners, townships, and other interested parties seeking to intervene in this proceeding. Petitioners respectfully request that the Commission rescind its November 20, 2024 Order approving the proposed 345kV transmission line from Jamestown to Ellendale and reopen the proceedings to provide procedural due process, complete the evidentiary record, and fully consider new and material evidence bearing on the public interest.

This petition is timely. Although the Public Service Commission is generally exempt from the Administrative Agencies Practice Act under N.D.C.C. § 54-57-03(1), the principles reflected in N.D.C.C. § 28-32-39(1) and (2)—which require agency decisions to include findings of fact and conclusions of law—establish a baseline for what constitutes a final, reviewable order. The Commission's November 20 Order lacks those fundamental elements. It contains no findings, no conclusions, and no reasoned explanation sufficient to inform affected parties of the basis for the decision. Without those core components, the Order does not satisfy the legal standards for finality and cannot trigger any statutory deadlines for reopening, reconsideration, or judicial review. Accordingly, under N.D.C.C.

§ 28-32-39(1) and (2), the Order is not a final agency action.[1]

Recent legislative developments, including the recent enactment of House Bill 1258, further underscore the need to reopen the proceedings. That law retroactively imposes procedural safeguards and reinforces township participation in the siting process for major transmission facilities. Reopening the docket is necessary to ensure compliance with those requirements and to safeguard the due process rights of affected communities and landowners.

Additionally, the Commission retains continuing jurisdiction over these proceedings under N.D.C.C. §§ 28-32-40(5), 49-03, and 49-22. That jurisdiction authorizes the Commission to reopen a proceeding when due process has been denied, critical information has been omitted, or new evidence emerges bearing directly on the public interest. Petitioners respectfully request that the Commission exercise that authority here.

Petitioners include:

- Landowners whose properties lie directly within the path of the proposed line and who face involuntary loss or encumbrance of property rights;

[1] Although the Commission is generally exempt from the Administrative Agencies Practice Act, certain proceedings, such as high-voltage transmission line siting under N.D.C.C. ch. 49-22, are expressly subject to chapter 28-32. *See infra* Parts B and C(4) (Legal Basis for the Petition).

- Townships whose land-use authority has been undermined by the Commission's summary approval; and

- North Dakota ratepayers and citizens who will bear increased electric rates to advance private commercial interests rather than a legitimate public necessity.

While the majority of the Commission concluded in the November 20 Order that the "public convenience and necessity will be served," it issued no findings of fact or separate legal conclusions supporting that determination. As a result, the Order does not comply with the requirements of N.D.C.C. § 28-32-39 and fails to evaluate evidence relating to environmental compatibility, alternatives, or compliance with applicable law as required by N.D.C.C. § 49-22-09. A dissenting Commissioner identified these and other material omissions, highlighting deficiencies in the Applicants' submissions and the Commission's review.

Since the Commission's November 20 decision, the townships of Wano and Willowbank in LaMoure County, both located along the proposed transmission line route, voted to deny Conditional Use Permits for the project, on January 29 and April 9, 2025, respectively. These two townships, along with the townships of Russell (LaMoure County), Corwin (Stutsman County), and Valley (Dickey County), now join as Petitioners in this proceeding.

Although N.D.A.C. §§ 69-02-06-01 and -02 and N.D.C.C. § 28-32-42 establish deadlines for petitions to reopen, reconsider, or appeal, those deadlines are triggered only upon issuance of a final order. Under N.D.C.C. § 28-32-39(1)–(2), an agency order is not final unless it contains explicit findings of fact and separate legal conclusions and is served on the parties. Because the Commission's Order lacks these essential components, it does not qualify as a final order, and the statutory deadlines have not yet commenced.

This understanding of finality is consistent with broader administrative law principles, including in analogous contexts. For example, in *Rued v. Commissioner of Human Services*, No. A22-1420, slip op. at 3 (Minn. Oct. 23, 2024), the Minnesota Supreme Court held that the 30-day deadline to appeal an agency decision under Minn. Stat. § 256.045, subd. 7, is a waivable limitations period, not a jurisdictional bar—meaning that if a party to the proceeding or an agency fails to provide adequate notice, including required findings, the appeal period does not begin to run. While *Rued* arose under Minnesota law, its reasoning reinforces the principle that deadlines do not run from legally insufficient orders lacking the required findings.

Even if the Order were final, the Commission retains continuing jurisdiction under N.D.C.C. § 28-32-40(5) to reopen any proceeding where authorized by statute. That continuing authority includes the Energy Conversion and Transmission Facility Siting Act ("Siting Act"), N.D.C.C. ch. 49-22, and related provisions in Chapter 49-03. Any decision upon reopening must conform with § 28-32-39 and the requirements of N.D.C.C. § 28-32-46.

Importantly, the Commission's November 20 Order appears to have been issued solely under Chapter 49-03, which governs Certificates of Public Convenience and Necessity. At present, the record contains no indication that the Commission has initiated the siting procedures required under Chapter 49-22 of the North Dakota Century Code. Because the proposed 345kV transmission line qualifies as a transmission facility under N.D.C.C. §§ 49-22-03(6) and 49-22-07(1), the Commission's failure to comply with Chapter 49-22, including requirements for environmental review, alternatives analysis, and engagement with local governments, constitutes a significant legal deficiency. These omissions underscore the need to reopen the proceedings to ensure statutory compliance and protect affected stakeholders.

These statutory mandates, along with the Commission's constitutional obligation to provide due process, compel reopening where a decision is

rendered without explanation, where material misrepresentations have tainted the record, or where new facts have emerged bearing on the public interest.

The November 20 Order is arbitrary. It fails to articulate a reasoned basis for concluding that the proposed transmission line is necessary, thereby falling short of both statutory requirements and Petitioners' due process rights. As the dissenting Commissioner observed, the record contains material omissions and unresolved factual issues that warrant further examination.

The Applicants' assertion of public necessity does not withstand scrutiny. In reality, the proposed transmission line is being driven by private wind generation interests west and north of Ellendale and the commercial imperative of exporting electricity to out-of-state markets via Jamestown and eastern transmission corridors. North Dakota ratepayers would be saddled with the financial burden, while the primary benefits accrue to private developers. The alleged transmission constraints are speculative and contingent on unbuilt generation projects. By branding the line as a "Jamestown to Ellendale" project, the Applicants mischaracterize its function—masking a strategy to offload electricity generated in western

Dickey County to utilities outside the state.

These stated objectives—"accommodating new electric generation projects" and "reducing transmission constraints to export more North Dakota electricity"—serve to advance the business model of companies such as EDF Renewables North America, a subsidiary of the French utility EDF Group. While EDF is not a party to this proceeding, it has pursued extensive lease agreements across western Dickey County in support of future wind development. The financial and operational burdens imposed on North Dakota landowners and ratepayers by infrastructure that primarily benefits out-of-state markets raise serious questions about whether the project serves a legitimate public need.

The Commission's November 20 decision is inconsistent with North Dakota law. The Order must be rescinded, and the permit proceedings reopened to allow Petitioners to present evidence that the project advances private interests, not a legitimate public need. As one court has observed, a public utility certificate cannot be justified where the infrastructure primarily serves private purposes:

> "A sharply divided Commission entered an order rescinding the petitioner's certificate that was previously issued after concluding that the proposed pipeline was likely only to serve the petitioner's private needs and; further, that a public need for the pipeline did not exist."

Quantum Pipeline Co. v. Illinois Commerce Commission, 709 N.E.2d 950, 952 (Ill. App. 1999).

At this stage, the issue is not whether the project is ultimately necessary, but whether the Commission has complied with the legal requirements for approving such a project. Because it has not, the Order must be rescinded and the proceedings reopened to ensure statutory compliance and protect the rights of affected stakeholders.

PETITION TO INTERVENE

Petitioners Mike and Patty Bartel; Richard and Susan R. Long; Steven and Julia Nelson; Phyllis P. Otterness and Patricia A. Vick; Brandon and Tausha Schweigert; Shockman Farm Partnership, LLLP; Debra Sue Wald; and Lucas and Jill Wald (each owning land in LaMoure County in the path of the proposed transmission line); Wano Township, Willowbank Township, and Russell Township (LaMoure County); Corwin Township (Stutsman County); Valley Township (Dickey County); Tim Leppert (Dickey, ND); Orr Farms (Ypsilanti, ND); Steve M. and Sandra J. Rupp (Edgeley, ND); David A. and Denette M. Schweigert (Edgeley, ND); Allen D. and Inna N. Swiontek (Berlin, ND); David and Holly Wald (Edgeley, ND); Weston Wald (Edgeley, ND); and Willowbank Hutterian Brethren Association (Edgeley, ND), by and through

counsel Douglas J. Nill and Steven J. Leibel, hereby petition to intervene pursuant to N.D.A.C. § 69-02-02-05.

Petitioners respectfully request that the Commission rescind its November 20, 2024 approval of the proposed 345kV transmission line between Jamestown and Ellendale and reopen the proceedings on the grounds of due process violations, material omissions, and newly emerged evidence warranting Commission review in the public interest.

This petition is brought under N.D.A.C. § 69-02-06-01. In the alternative, Petitioners seek relief under N.D.A.C. §§ 69-02-06-02, 69-02-01-11, and N.D.C.C. § 28-32-40(5), as well as under general principles of procedural due process that apply to all governmental decision-making, without prejudice to the Applicants.

Although the Public Service Commission is generally exempt from the Administrative Agencies Practice Act under N.D.C.C. § 54-57-03(1), certain proceedings, such as high-voltage transmission line siting under N.D.C.C. ch. 49-22, are expressly subject to the Act. Furthermore, the principles reflected in N.D.C.C. § 28-32-39, which require final agency decisions to include findings of fact, conclusions of law, and service on all parties, offer a persuasive framework for evaluating the adequacy and finality of the

Commission's actions.

The November 20 Order does not meet those basic standards. It contains no findings of fact or conclusions of law and offers no reasoned basis for its determination. As such, it does not constitute a final decision under generally accepted administrative law principles, and statutory timelines for rehearing or judicial review have not been triggered. The Order remains interlocutory and legally deficient.

The Commission retains continuing jurisdiction over the permit proceedings under N.D.C.C. §§ 28-32-40(5), 49-03, and 49-22, and has both statutory and inherent authority to correct procedural errors, address material omissions, and consider new evidence bearing on the public interest.

Standing and Grounds for Intervention

Petitioners possess direct, substantial, and legally protectable interests that will be adversely affected if intervention is denied. Their intervention is timely, will not expand the scope of issues, and any resulting delay will be neither undue nor unjustified in light of the serious legal and factual deficiencies in the existing record.

Petitioners satisfy the criteria for intervention under N.D.C.C. § 28-32-28 and N.D.A.C. § 69-02-02-05. See *Minn-Kota Ag Prods., Inc. v. N.D. Pub.*

Serv. Comm'n, 938 N.W.2d 118, 130–31 (N.D. 2020) (applying North Dakota's liberal intervention standard).

Petitioners fall into three distinct but overlapping categories:

A. Directly affected landowners.

The following landowners face imminent involuntary loss or encumbrance of property rights from the proposed transmission line:

- Mike and Patty Bartel, Sec. 4-134-63W, LaMoure County
- Richard and Susan R. Long, Sec. 33 T134 R63; SE¼ Sec. 4 T133 R63 N½, LaMoure County
- Steven and Julia Nelson, T133N R63W, Sec. 9 W½, Sec. 16 NW¼, LaMoure County
- Phyllis P. Otterness and Patricia A. Vick, NE¼ 9-134-63 and NW¼ 10-134-63, LaMoure County
- Brandon & Tausha Schweigert, SW 33-134-63, LaMoure County
- Shockman Farm Partnership, LLLP, SE 16-134-63, LaMoure County
- Debra Sue Wald, NW 21-134-63, SW 21-134-63, and NW 33-134-63, LaMoure County
- Lucas and Jill Wald, NW28-134-63 and NW33-134-63, LaMoure County

These landowners will present evidence showing that the project is not a public necessity, but rather an infrastructure giveaway to private

commercial wind developers seeking to export energy out of state.

Their rights are not adequately protected by any existing party, and their intervention is essential to ensure that property rights are not subordinated to private interests under the guise of a public project.

B. Undermined townships.

The following townships have lawfully denied Conditional Use Permits for the proposed line and have voted to intervene through this Petition to defend their local land use authority:

- Wano Township, LaMoure County – Denial: January 29, 2025, Declaration of Douglas J. Nill ("Nill Decl."), Ex. 1; Vote: April 29, 2025. Nill Decl., ¶ 2.
- Willowbank Township, LaMoure County – Denial: April 9, 2025, Nill Decl., Ex. 3; Vote: April 30, 2025. Nill Decl., ¶ 3.
- Russell Township, LaMoure County – Vote: April 29, 2025, Nill Decl., ¶ 4.
- Corwin Township, Stutsman County – Vote: April 28, 2025. Nill Decl., ¶ 5.
- Valley Township, Dickey County – Vote: April 29, 2025. Nill Decl., ¶ 6.

The Commission's approval directly undermines the townships' lawful zoning authority and constitutional right to self-govern land use within their borders.

C. Ratepayers forced to subsidize private gain.

The following ratepayers, customers of Otter Tail Power Company and Montana-Dakota Utilities Co., will be forced to bear rate increases to finance a project that serves private developers, not the public:

- Tim Leppert, Dickey, ND
- Orr Farms (Darron Orr), Ypsilanti, ND
- Steve M. and Sandra J. Rupp, Edgeley, ND
- David A. and Denette M. Schweigert, Edgeley, ND
- Allen D. and Inna N. Swiontek, Berlin, ND
- David and Holly Wald, Edgeley, ND
- Weston Wald, Edgeley, ND
- Willowbank Hutterian Brethren Association, Edgeley, ND

Petitioners will show that the project is a private expansion plan disguised as public infrastructure, improperly shifting financial risks onto North Dakota citizens.

Conclusion

The Commission must grant this Petition to Intervene, rescind its November 20 Order, and reopen the proceedings to correct serious procedural defects, protect property and governance rights, and ensure that only genuine

public necessities—not private commercial interests—receive regulatory approval.

BACKGROUND

A. Overview of the transmission line project and the approval process.

On February 29, 2024, Otter Tail Power Company (Otter Tail Power) and Montana-Dakota Utilities Co. (MDU) filed a joint application for a Certificate of Public Convenience and Necessity to construct, own, and operate approximately 85 miles of 345kV transmission line from Ellendale to Jamestown (JETx), along with the expansion of four substations located in Stutsman, LaMoure, and Dickey Counties in North Dakota.

On March 27, 2024, the Commission issued a Notice of Opportunity for Hearing, inviting written comments or requests for a hearing by May 10, 2024. Although the Commission contends that no responses were received, Petitioner Tim Leppert submitted a timely letter to the Commission. Based on subsequent discussions with residents and township officials, it appears that many affected landowners did not recognize the Notice as pertaining to a major electric transmission line project and were not aware of its significance at the time.

The March 27 notice outlined two main issues for consideration:

1. Whether public convenience and necessity will be served by construction and operation of the facilities.

2. Are [Otter Tail Power/MDU] technically, financially, and managerially fit and able to provide the service?

On July 8, 2024, the Commission discussed these issues in an informal hearing, which was electronically recorded. On August 19, 2024, the Commission held a work session, also electronically recorded. On October 14, 2024, the Commission received comments from the Midcontinent Independent System Operator, Inc. (MISO).[2] Following this, on October 17, 2024, the Commission held another work session, which was electronically recorded. On November 20, 2024, the Commission issued an Order granting the certificate in a 2-1 vote, with the majority finding that "public convenience and necessity" would be served. However, the majority decision lacked any rationale or explanation to support this conclusion. In dissent, Commissioner Randy Christmann criticized the responses to the Commission's questions as "vague," stating that Otter Tail Power and MDU had multiple opportunities to provide more detailed answers, but failed to do so.

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[2] MISO is a non-profit organization that manages the electric grid and wholesale electricity markets across a large portion of North America. Utilities like Otter Tail Power and MDU are members of MISO.

As noted, the responses from Otter Tail Power and MDU were considered vague because there is no clear evidence that the transmission line serves a public necessity**.** The Applicants' own documents suggest that the line serves private interests, rather than the public. Specifically, MISO's October 14, 2024, letter indicated that the transmission line would "allow for the continued interconnection of new generation resources in areas with higher capacity factors for intermittent resources, such as wind generation." In simpler terms, the transmission line would enable companies with wind towers in the Missouri Coteau, a significant part of the North Dakota duck flyway, to transmit electricity out of North Dakota.

The resulting cost to customers is an additional *$0.123 per month* for MDU customers and *$0.117 per month* for Otter Tail Power residential customers, as noted in the November 20 Order**.** This means that North Dakota customers would be funding a transmission line that primarily benefits wind energy companies looking to export electricity out of the state. This clearly represents a private need, not a public necessity.

The key issue at this stage is not whether the transmission line serves public convenience and necessity. Rather, the issue is the failure of the Commission majority to provide a clear rationale or reasoning for their

decision. Once the November 20 Order is rescinded and the permit application process is reopened, the petitioners intend to pursue discovery to further address the private interests driving the permit application.

B. Petitioners' interests and how they are affected by the project.

As detailed in the Petition to Intervene, Petitioners include landowners, local governments, and ratepayers whose distinct and directly affected interests warrant intervention under N.D.A.C. § 69-02-02-05.

C. The Commission's majority provides no rationale to support its finding of public convenience and necessity.

The November 20 Order largely recites procedural background, including the roles of Otter Tail Power and MDU, their participation in MISO's Long-Range Transmission Planning, and cost allocations. However, the Commission stated without explanation that "the public convenience and necessity will be served" by the proposed transmission line. The Order contains no findings of fact or legal analysis to support this assertion, as required by N.D.C.C. § 28-32-39 and due process principles. *See* Order at 1–2. Critically, the Order fails to identify a specific public need within North Dakota, assess the adequacy of existing transmission infrastructure, evaluate reasonable alternatives, address land use, environmental, or community

impacts, or provide a rational connection between the asserted facts and the Commission's conclusion. This lack of reasoning renders the decision arbitrary and deprives Petitioners of a meaningful opportunity to respond.

D. The dissent identifies material omissions and unanswered questions.

Commissioner Randy Christmann, dissenting in the November 20 Order, highlighted significant gaps in the Applicants' evidence and analysis. He stated (emphasis and paragraph breaks added):

> Throughout the last seven months *the explanation has remained vague*. MISO's long term transmission study is [cited] which shows dozens of voltage and thermal problems that this project would relieve. However, the vast majority of the problems are forward looking, meaning they do not exist yet. It will be future actions that will cause most of these problems. *No clear information is provided* that allows us to determine who will be causing these future actions, whether they are preventable, nor whether they are realistic.
>
> One of the few examples provided of the coming changes that would create the need for this transmission is 800 megawatts of solar electric generation, but much of that even appears to be conjecture because *no information is provided regarding who would build these nor where they would be built.*
>
> One key factor that is known about the future of transmission in this area is a large new load near Ellendale, ND that is already partially operational and partially under development. We know this facility has already relieved congestion in this area of the state. MISO *refuses to update their Tranche #1 study*, which is more than two years old, or even take this new load into consideration.
>
> Adding costs of this significance to North Dakota ratepayers deserves

careful scrutiny. Perhaps this project is a necessity, but *there have been multiple opportunities for the applicants to answer more questions and provide more detail. They have not done so.* Until better justification is provided this Certificate should be denied.

This candid assessment reflects what the record confirms: Applicants Otter Tail Power and MDU have failed to meet their burden of proof. Their reliance on outdated studies and speculative projections cannot support a finding of public necessity.

The omission of current data and failure to disclose material facts may reasonably be construed as a misrepresentation by omission—an issue that warrants investigation and weighs heavily against approval of the Certificate.

E. The transmission line primarily serves private, rather than public, interests.

1. Project motivated by private generation, not public necessity.

The Applicants' July 8, 2024 PowerPoint presentation to the Commission explicitly identifies private development—not public need—as the driving force behind the proposed Ellendale to Jamestown transmission line. According to the presentation, the project is intended to:

- "Enable new commercial and industrial loads"
- "Accommodate new electric generation projects"

- "Reduce transmission constraints to export more North Dakota generation"
-

See Nill Decl., Ex. 5.

Although the Applicants claim the existing 230 kV system is "heavily constrained" with "[e]xcessive loadings" and "voltage depressions," they acknowledged that these issues are caused by prospective surplus generation in the future from privately-owned wind projects west and north of Ellendale, Nill Decl., Ex. 6 (PSC Informal Hearing, July 8, 2024, at 0:14:55 ("contingency analysis of this *future condition*") (emphasis added); and the intent is to move that generation out of state. *See* Oct. 16, 2024 Memorandum by PSC Public Utility Analyst Christopher C. Hanson addressing an October 14, 2024 letter from Jeremiah Doner, the Director of Cost Allocation with MISA: "it creates *additional capacity for more wind to be transmitted from North Dakota eastward*." (Emphasis added). Nill Decl., Ex. 8.

2. MISO's justification is generation-driven, not reliability-driven.

Otter Tail Power's spokesperson stated that MISO focused on the project because "the amount of generation being built in this region is far outpacing what's happening in other parts of MISO," and they are "trying to

get ahead of the transmission needs" associated with that private generation. Nill Decl., Ex. 6 (PSC Informal Hearing, July 8, 2024) at 0:34:50.

3. Claimed public benefits are not part of the MISO case.

When asked about the public benefits used to justify the line, such as landowner easement payments and tax revenue, Otter Tail admitted these are not included in MISO's business case for the project:

> (Commissioner Fedorchak): "And the benefits that you mentioned in your discussion … those aren't part of the MISO business case, are they?"
>
> (Speaker Weirs): "They are not actually part of the MISO case."

Ex. 6 at 0:41:05–0:41:24.

4. Cost burden on North Dakota ratepayers.

Despite the private nature of the need, the cost burden is placed on North Dakota residential customers:

> (Speaker Weirs): "Otter Tail residential customers are going to see a rate impact of 18 cents per month, MDU customers will see an impact of 12 cents per month."

Ex. 6 at 0:46:42.

5. Admission: JETx enables private wind projects.

The Applicants themselves concede that the line is essential for enabling further private wind development:

(Speaker Weirs): "…without projects like this, it's hard to develop additional generation within the state."

Ex. 6 at 0:56:34.

6. Commissioner concerns: benefits disproportionately favor developers.

PSC Commissioner Christmann clearly expressed concern that the project disproportionately benefits private developers:

"So our ratepayers pay to build this and the benefits are … mostly to whoever the new developer is that comes in and builds another wind farm, a few landowners, but not to most of these Otter Tail and MDU customers."

Nill Decl., Ex. 7 (PSC Work Session, Aug. 19, 2024) at 0:22:26. He further emphasized:

"If the issue is somebody else's out-of-state's need for energy … fine, pay for it. Not our rates all the time." *Id.* at 0:23:53. And:

"… among the project benefits are to accommodate new electric generation projects. And to me, that's who out to be paying … because that, to me, is the key benefit." *Id.* at 0:30:35.

7. Transmission constraints are based on speculative future wind development.

According to a PSC memorandum dated October 16, 2024, prepared by analyst Christopher C. Hanson, the transmission constraints that the proposed line is intended to address are not present conditions, but rather projected issues based on long-term forecasts of load and generation growth.

See Nill Decl., Ex. 8 (Hanson Memo re: letter from Jeremiah Doner, Director of Cost Allocation, MISO) (emphasis added):

> "Specifically, he states that this project will remedy the N-1 and N-1-1 issues noted in the previous memo and he identifies the elements that are projected to be affected by thermal and voltage issues. These N-1 and N-1-1 events are *projected* based upon each company's long-term forecasts of load and generation growth."

Further, Hanson quotes Doner as stating:

> "These projects will allow for the continued interconnection of new generation resources in areas that offer higher capacity factors for intermittent resources, such as wind generation."

See also Nill Decl., Ex. 6 (PSC Informal Hearing, July 8, 2024, at 0:14:55 (referring to "contingency analysis of this future condition"). In other words, the transmission line is being built to enable export capacity for wind projects that have not yet materialized; not to address any present reliability concerns.

F. Local opposition: Wano and Willowbank Townships deny Conditional Use Permits and Wano, Willowbank, Russell, Corwin, and Valley Townships vote to participate as Petitioners in this proceeding.

Wano Township: On January 29, 2025, the Wano Township Zoning Board held a meeting, with strong community attendance. *See* Nill Decl., Ex. 1. Kris Koch represented Otter Tail Power. Concerns were raised by residents, particularly regarding potential impacts on local roads and wind

towers:

> "There was a lot of concern expressed about the wind towers, someone said there were 285 proposed to be installed in Stutsman and LaMoure counties that could tie into the line … Lots of people sounded uncomfortable with the proposed changes regarding the power line and wind towers."

After discussion, the Board voted to deny the Conditional Use Permit. On April 29, 2025, the Wano Township Board voted to participate as a Petitioner in this proceeding. Nill Decl., ¶ 2.

Willowbank Township: On January 22, 2025, the Willowbank Township Zoning Board held a meeting attended by Kris Koch of Otter Tail Power. *See* Nill Decl., Ex. 2. The meeting, which was livestreamed on Facebook, drew significant participation from local residents. Koch presented an overview of the proposed JETx transmission line project, including the planned route, and stated that directly affected landowners would receive an average one-time payment of $55,000. Following his 27-minute presentation, the floor was opened for questions and public comment.

Residents expressed numerous concerns, including whether the proposed transmission line was necessary. In response, Koch stated that "there is congestion, and the power needs to be moved from one area to another." However, Koch did not provide the full context: the congestion he

referenced stems from projected future generation by private wind tower projects, and the Applicants intend to export this power from North Dakota to Minnesota. Additional concerns raised by residents included the condemnation process if easements are not signed, the anticipated installation of 285 wind towers occupying approximately 3,000 acres of farmland, increased energy demands from Artificial Intelligence (AI) data centers in Ellendale and Jamestown, and potential health impacts.

Due to the presence of only two board members, no final action was taken. The Board voted to table the decision on the Conditional Use Permit.

On April 9, 2025, with Otter Tail Power Company representatives present, the Willowbank Township Board voted to deny a Conditional Use Permit for the Jamestown to Ellendale transmission line. Concerns were expressed that the transmission line did not comply with the Willowbank Zoning Ordinance to "protect the health, safety, morals, comfort, convenience, prosperity, and general welfare of the people of the Township of Willowbank." On April 30, 2025, the Board voted to participate as a Petitioner in this proceeding.

Russell Township: On April 29, 2025, the Township Board voted to participate as a Petitioner in this proceeding.

Corwin Township: On April 28, 2025, the Township Board voted to participate as a Petitioner in this proceeding.

Valley Township: On April 29, 2025, the Township Board voted to participate as a Petitioner in this proceeding.

LEGAL BASIS FOR THE PETITION

The Commission has jurisdiction to address this Petition for the following reasons:

A. Procedural and substantive due process.

The Commission's failure to articulate the basis for determining public necessity constitutes a violation of both procedural and substantive due process under the Fourteenth Amendment to the U.S. Constitution. It also violates the North Dakota Constitution, including Article I, Section 12 (guaranteeing due process in administrative proceedings) and Article I, Section 9 (ensuring judicial access and remedy).

B. The November 20 Order is not final and does not trigger statutory deadlines.

Under North Dakota law, the deadlines to petition for reopening (N.D.A.C. § 69-02-06-01), reconsideration (N.D.A.C. § 69-02-06-02), or appeal (N.D.C.C. § 28-32-42) do not commence unless and until the Commission issues a final order. Although the Public Service Commission is generally

exempt from the Administrative Agencies Practice Act under N.D.C.C. § 54-57-03(1), the principles reflected in N.D.C.C. § 28-32-39 remain instructive in determining whether an agency order is final and reviewable. Specifically, N.D.C.C. § 28-32-39 requires:

1. "explicit" findings of fact and separate conclusions of law; and

2. service of those findings, conclusions, and the order on all parties.

N.D.C.C. N.D.C.C. § 28-32-39(1), (2).

The Commission's November 20 Order includes neither. It contains no findings of fact, no conclusions of law, and no reasoned explanation for its determination. Accordingly, it does not satisfy basic finality standards and has not triggered any statutory deadline for reopening, reconsideration, or judicial review.

While the Commission may not be formally bound by the adjudicative procedures of N.D.C.C. ch. 28-32 in all respects, it remains subject to binding statutory and constitutional requirements that impose comparable obligations. Under the Energy Conversion and Transmission Facility Siting Act (N.D.C.C. ch. 49-22), the Commission is required to issue decisions "in accordance with the evidence presented at the hearings" and "*with reasons*" for the decision. N.D.C.C. §§ 49-22-08(6) and 49-22-08.1(5) (The Commission

shall designate a route for the construction of an electric transmission facility … in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 *in a finding with reasons for the designation* … .”). (Emphasis added). These are not discretionary. Moreover, the availability of judicial review under N.D.C.C. § 49-22-19 presupposes a decision that contains sufficient findings and legal rationale to permit meaningful appellate scrutiny. A rehearing “must be conducted *pursuant to chapter 28-32*.”). (Emphasis added).

In addition, the Commission is bound by constitutional due process. Even where formal adjudicative rules do not apply, due process under the U.S. and North Dakota Constitutions requires that affected parties receive notice, a meaningful opportunity to be heard, and a reasoned decision supported by the record. This principle is well established in both state and federal law. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254 (1970). Finally, even post-permit, the Commission must comply with all provisions of the Administrative Agencies Practice Act. Section 28-32-46 permits judicial review of agency decisions that are unlawful, unsupported by evidence, or

issued without fair procedure.

This conclusion is further supported by persuasive authority from other jurisdictions:

- *Rued v. Commissioner of Human Services* (Minn. 2024): Appeal clock did not begin to run absent proper notice.
- *First Minn. Bank v. Overby Dev., Inc.*, 783 N.W.2d 405, 409 (Minn. App. 2010): Time to appeal did not run where notice was deficient.
- *Alford v. County of L.A.*, 51 Cal. App. 5th 742, 744 (Cal. App. 2020): Judicial review deadline was not triggered where notice of decision was not in compliance with the statute.

These decisions affirm the basic principle that statutory deadlines do not begin to run until an agency issues a legally sufficient final decision—including adequate notice, findings, and conclusions—even where formal procedural rules may vary by jurisdiction.[3]

C. The Commission retains continuing jurisdiction under N.D.C.C. §§ 28-32-40(5), 49-03, and 49-22.

Even apart from the finality issue, the Commission has authority to

[3] The Commission reopened a permit proceeding in the Dakota Access Pipeline case at the request of the applicant, Energy Transfer, even though the request was untimely. By February 19, 2020 Findings of Fact, Conclusions of Law and Order, PU-19-204, the Commission allowed a new permit application for a pump station in Emmons County, which nearly doubled the pipeline's capacity. This action was taken despite previous permit applications and the project's already extensive regulatory history.

reopen proceedings under N.D.C.C. § 28-32-40(5), which preserves agency jurisdiction where provided by statute. Chapters 49-22 (the Siting Act) confers continuing oversight powers.

Notably, N.D.C.C. § 49-22-20 allows revocation or suspension of permits for:

- False statements in the application;
- Noncompliance with permit conditions or the law;
- Unfair tactics in acquiring land or easements;

This statutory framework reflects legislative intent that the Commission's jurisdiction does not end with the permit order. Rather, it retains authority to enforce compliance and protect the public interest.

1. The Commission was obligated to issue findings under N.D.C.C. § 28-32-39(1).

Section 28-32-39(1) requires the Commission to issue findings of fact and separate conclusions of law. This is not optional. As the North Dakota Supreme Court has held, "[a]n agency's findings are adequate when they enable a reviewing court to understand the agency's decision." *State v. Sandberg*, 956 N.W.2d 342, 347 (N.D. 2021).

Here, while the Commission stated that "public convenience and necessity will be served," it gave no rationale or supporting analysis. That

failure violates both § 28-32-39 and the due process rights of Petitioners. The dissent's identification of critical omissions by the Applicants only underscores the inadequacy of the majority's reasoning.

2. The Commission must issue a final order that provides adequate notice under N.D. C.C. § 28-32-39(2).

The requirement to serve a final order with findings and conclusions is not merely procedural; it ensures that parties understand the agency's rationale and can assess their rights. Without such notice, reconsideration, appeal, or other remedies cannot be meaningfully pursued.

As in *Alford* and *Pan Am. Petroleum Corp. v. Wyo. Oil & Gas Conservation Comm'n*, 446 P.2d 550 (Wyo. 1968), failure to explain the basis for an agency decision defeats judicial review and undermines the rule of law. The PSC's November 20 Order fails that basic standard.

3. The Commission must act in accordance with law under N.D.C.C. § 28-32-46.

Finally, even post-permit, the Commission must comply with all provisions of the Administrative Agencies Practice Act. Section 28-32-46 permits judicial review of agency decisions that are unlawful, unsupported by evidence, or issued without fair procedure.

As the North Dakota Supreme Court recently held in *Zent v. N.D. Dep't of Health & Human Servs.*, 2025 ND 50, ¶ 16, courts must review whether the agency:

- Acted within the law;
- Complied with Chapter 28-32;
- Afforded due process; and
- Supported its conclusions with evidence and rationale.

By failing to issue findings, support its decision, or provide a reasoned rationale, the Commission acted arbitrarily and in violation of law. That error must be corrected now, before construction and condemnation proceed under a legally defective Order.

4. The Commission improperly relied on N.D.C.C. § 49-03, rather than applying the mandatory requirements of N.D.C.C. ch. 49-22 for siting high-voltage transmission facilities.

Although the Commission opened this proceeding (PU-24-91) under N.D.C.C. § 49-03, which governs applications for a certificate of public convenience and necessity, that statute does not control siting decisions for high-voltage transmission lines. The project at issue, a 345kV transmission line extending from Jamestown to Ellendale, falls squarely within the scope of the Energy Conversion and Transmission Facility Siting Act, codified at

N.D.C.C. ch. 49-22. Under N.D.C.C. § 49-22-03(6), any transmission line designed for operation at 115 kilovolts or more and extending more than one mile is a "transmission facility" subject to the Siting Act. N.D.C.C. § 49-22-07(1).

By proceeding solely under Chapter 49-03, the Commission failed to apply critical statutory protections that attach to siting cases under Chapter 49-22. These include—but are not limited to—requirements for findings on environmental compatibility, analysis of alternatives, local land use conformity, and consideration of township input. *See* N.D.C.C. § 49-22-09. The Commission also bypassed the public hearing and local notice requirements that are central to the integrity of the siting process.

This procedural misstep is not harmless. By avoiding the mandatory siting criteria and procedures, the Commission deprived Petitioners, including affected landowners and townships, of their statutory right to full participation in a proceeding designed to protect their interests. It also rendered the November 20 Order legally deficient, as it lacks the findings and framework required by Chapter 49-22 and by N.D.C.C. § 28-32-39.

Accordingly, the Commission's reliance on N.D.C.C. § 49-03 cannot substitute for compliance with the specific siting obligations imposed by

Chapter 49-22. Because the project constitutes a transmission facility as defined by law, the Commission was required to conduct the proceeding under the Siting Act. Its failure to do so further supports Petitioners' request to rescind the Order and reopen the proceeding.

This failure to comply with the governing statute is not a mere technical defect—it deprives affected landowners, townships, and the broader public of the very procedural protections the legislature has deemed essential.

D. The Commission's inherent authority to reopen the permit proceedings to remedy due process violations, address material omissions, and consider new evidence in the public interest.

As previously discussed, the North Dakota Legislature has granted the Commission continuing jurisdiction over electric transmission line permits under N.D.C.C. § 28-32-40(5) and Chapter 49-22. That jurisdiction includes the authority to reopen proceedings. Further, under N.D.C.C. § 28-32-39(1), the Commission must base its findings and conclusions on the record; under N.D.C.C. § 28-32-39(2), it must issue a final order containing those findings and conclusions; and under N.D.C.C. § 28-32-46, it must act in accordance with law.

These statutory mandates, together with the Commission's duty to ensure the integrity of its processes, provide both explicit and inherent authority to reopen proceedings when necessary—particularly where due process has been denied, material omissions have tainted the record, or new evidence has emerged bearing on the public interest.

1. Correct due process failures.

Courts have long recognized the inherent authority of administrative agencies to revisit decisions that are legally deficient. Reconsideration is a fundamental administrative power, especially to correct arbitrary or capricious decisions unsupported by adequate findings or conclusions. *See, e.g., McAllister v. United States*, 3 Cl. Ct. 394, 400 (1983) (holding that if the agency failed to apply the regulations properly or otherwise acted contrary to law, the presumption of inherent authority to reconsider applies); *Bookman v. United States*, 453 F.2d 1263, 1265 (Fed. Cl. 1972) ("[R]econsideration is often the sole means of correcting errors of procedure or substance."); *Citizens Against the Pellissippi Parkway Extension v. Mineta*, 375 F.3d 412, 416–18 (6th Cir. 2004) (holding that it was an abuse of discretion not to remand to allow an agency to correct legal defects); *Iowa Power & Light Co. v. United States*, 712 F.2d 1292, 1294, 1297 (8th Cir. 1983) (ICC had inherent authority

to reconsider a rate decision resulting from legal error); *cf. Rosebud Sioux Tribe v. Gover*, 104 F. Supp. 2d 1194, 1202–13 (D.S.D. 2000), rev'd on other grounds sub nom. *Rosebud Sioux Tribe v. McDivitt*, 286 F.3d 1031 (8th Cir. 2002) (concluding that the agency lacked inherent authority in part because its decision was not arbitrary or capricious); *Ramponi v. Bd. of Selectmen*, 533 N.E.2d 226, 228 (Mass. App. Ct. 1989) (agency had inherent authority to correct a legally defective decision).

2. Address critical omissions.

Agencies also have inherent authority to reopen proceedings where their decisions may have been influenced by fraud, material omissions, or other misleading representations. *See, e.g.*, *Gorbach v. Reno*, 179 F.3d 1111, 1123 (9th Cir. 1999) ("There is nothing remarkable about recognizing an agency's power to reopen and reconsider its own decisions, especially those arguably obtained by fraud."); *Aronson v. Brookline Rent Control Bd.*, 477 N.E.2d 182, 185–87 (Mass. App. Ct. 1985); *Mid-South Rd. Builders, Inc. v. Ark. Contractors Licensing Bd.*, 946 S.W.2d 649, 652 (Ark. 1997); *Alberta Gas Chem., Ltd. v. Celanese Corp.*, 650 F.2d 9, 13 (2d Cir. 1981). This principle applies here, where the applicants failed to disclose critical facts, as detailed in the dissent.

3. Ensuring adequate findings and reasoned decision-making.

The Commission is required to issue findings and conclusions that reflect reasoned decision-making, not arbitrary will. See, e.g., *Matter of Authority to Provide Alternative Operator Services in Minnesota*, 490 N.W.2d 920, 923–24 (Minn. App. 1992) (agency failure to make statutory findings renders decision arbitrary); *Peoples Natural Gas Co. v. Minn. Pub. Utils. Comm'n*, 342 N.W.2d 348, 352 (Minn. App. 1983) (decision unsupported by findings reflects will, not judgment); *Reserve Mining Co. v. Minn. Pollution Control Agency*, 364 N.W.2d 411, 415 (Minn. App. 1985), *pet. for rev. dismissed* (Minn. June 10, 1985) (agency decisions must include more than conclusory findings to withstand judicial review). An agency decision unsupported by such findings is inherently arbitrary and lacks legal durability.

4. Parallels to Rule 60 of the Rules of Civil Procedure.

Minnesota courts have acknowledged that an agency's inherent authority to reopen proceedings parallels Rule 60 of the Minnesota Rules of Civil Procedure, which permits relief from a judgment due to fraud, mistake, or newly discovered evidence within one year. *See In re Minn. Pub. Utils. Comm'n*, 417 N.W.2d 274, 280–83 (Minn. App. 1987). These civil procedural

standards reinforce the agency's obligation to ensure not only legal sufficiency, but justice.

E. Legislative developments reinforce the Commission's duty to ensure procedural integrity.

While Petitioners' claims rest firmly on violations of existing law and the Commission's continuing jurisdiction, recent legislative developments further underscore the necessity of revisiting and reopening these proceedings. As context, the Commission's November 20 Order contains neither findings of fact nor conclusions of law and therefore cannot be considered a final decision under North Dakota law. *See* N.D.C.C. § 28-32-39(1) and (2) (requiring findings of fact and conclusions of law for final orders in adjudicative proceedings).

Subsequently, on January 29 and April 9, 2025, Wano and Willowbank Townships denied Conditional Use Permits for the proposed transmission line. On April 15, 2025, Governor Kelly Armstrong signed House Bill 1258 into law, amending key provisions of the North Dakota Century Code governing the siting of electric transmission facilities.[4] Among other changes,

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[4] H.B. 1258, 69th Leg., Reg. Sess. (N.D. 2025), amending N.D.C.C. § 49-22-16.

HB 1258 imposes new procedural requirements: the Commission must provide notice to affected townships upon receiving a transmission line application, and may not hold a public hearing fewer than 45 days after such notice.[5]

The statute also clarifies that local zoning requirements are not automatically preempted. Instead, they remain in effect unless the Commission finds by a preponderance of the evidence that the requirements are "unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location," or that they conflict with state or federal law.[6] Importantly, HB 1258 applies retroactively to January 1, 2025.[7]

Although the law was enacted after the Commission's November 20 Order, its retroactive effect encompasses the critical time period during which Wano and Willowbank exercised zoning authority. Wano Township's

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[5] N.D.C.C. § 49-22-16(2)(d) (2025) ("The commission shall notify... The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent...").

[6] N.D.C.C. § 49-22-16(2)(c) (2025).

[7] H.B. 1258, § 2 (2025) ("This Act applies retroactively to January 1, 2025.").

denial on January 29, 2025, and Willowbank's on April 9, 2025, both fall squarely within the statute's scope. The record reflects no notice to these townships, no opportunity to submit local regulations, and no compliance with the mandated 45-day hearing window. These omissions further underscore the need for the Commission to re-evaluate the permit in light of the procedural framework and local participation requirements now codified in law.

Petitioners do not contend that HB 1258, standing alone, invalidates the Commission's prior Order. Rather, the statute reflects a legislative reaffirmation of core principles—transparency, procedural fairness, and meaningful local input—that were absent from the original proceeding. Under N.D.C.C. §§ 28-32-39, 28-32-40(5), 28-32-46, and 49-22, the Commission retains continuing jurisdiction to reopen a proceeding in light of material changes in law or fact. HB 1258 is precisely such a development.

Reopening the matter under these circumstances is not only authorized by statute; it is necessary to preserve the integrity of the process. Allowing the permit to stand despite the absence of the notice, timelines, and participation now required by law would frustrate legislative intent and undermine fundamental principles of due process.

GROUNDS FOR REOPENING THE PROCEEDINGS

The Commission must vacate its November 20 Order and reopen the proceedings. That Order violates fundamental requirements of due process, fails to meet the Commission's statutory obligations, relies on materially incomplete or misleading evidence, and has been overtaken by new facts and legal developments that compel reconsideration. Under North Dakota law, including N.D.C.C. §§ 28-32-39, 28-32-40(5), 28-32-46, 49-03 and 49-22, the Commission retains jurisdiction to reopen this matter and is obligated to do so under the present circumstances.

I. The Order fails to include the findings of fact and conclusions of law required by North Dakota law.

The Commission's November 20 Order fails to include the findings of fact and conclusions of law required to support a lawful determination of public necessity. The Order offers only a conclusory assertion that "public convenience and necessity will be served" without identifying specific facts or demonstrating that the statutory criteria have been met.

North Dakota law, particularly N.D.C.C. §§ 28-32-39 and 28-32-46, requires the Commission to provide a reasoned decision that includes adequate findings and conclusions. *See also* N.D.C.C. §§ 49-22-08(6) and 49-22-08.1(5). These findings must be sufficiently detailed to enable informed

public review and judicial scrutiny. Yet the Order fails to:

- Identify a specific public need within North Dakota;
- Assess the adequacy of existing transmission infrastructure;
- Evaluate reasonable alternatives;
- Address land use, environmental, or community impacts;
- Provide a rational connection between asserted facts and the conclusion.

Although the Commission appears to rely heavily on the project's inclusion in MISO's Long-Range Transmission Plan, deference to a regional planning body does not relieve it of its independent statutory duty to assess public necessity and siting requirements under North Dakota law.

Because these omissions render the findings legally and procedurally defective, the Order does not qualify as valid final agency action under N.D.C.C. § 28-32-39(1) and (2) and must be reopened under the Commission's continuing authority to correct such deficiencies. Petitioners respectfully request that the Commission reopen the proceeding to develop a proper factual record, apply the statutory criteria, and issue a lawful decision supported by specific findings and conclusions.

II. The Order rests on material misrepresentations and omissions.

The Commission has authority to reopen proceedings where a permit

was granted based on materially incomplete or misleading information. That is the case here. The Applicants failed to disclose critical facts regarding the generation projects the line is intended to serve, the private entities that stand to benefit, and the limited and private scope of the asserted "public necessity." Despite repeated opportunities to clarify the record, the Applicants withheld basic information. These omissions invalidate the permit and warrant reopening.

A. The dissent identifies key evidentiary gaps.

Commissioner Christmann's dissent is not merely a policy disagreement; it exposes evidentiary deficiencies that undermine the Order's validity. As the dissent details, the record lacks credible analysis of load forecasts, in-state demand, or feasible alternatives. Applicants also failed to disclose the identities of the customers or describe their commercial arrangements. The dissent highlights the speculative and incomplete nature of the Commission's decision:

- "Throughout the last seven months, the explanation has remained vague."
- "No clear information is provided that allows us to determine who will be causing these future actions, whether they are preventable, nor whether they are realistic."
- "No information is provided regarding who would build these nor

where they would be built."

- "There have been multiple opportunities for the applicants to answer more questions and provide more detail. They have not done so."

- "Until better justification is provided, this Certificate should be denied."

The Applicants' refusal to provide basic information demonstrates disregard for the landowners directly affected, the townships that have denied local permits, and the North Dakotans who will be asked to subsidize a project that benefits private actors—many of them based outside the state or country.

B. The claimed public necessity is a pretext for private gain.

As previously discussed in their July 8, 2024 presentation, the Applicants cited three core justifications for the project:

- Enabling new commercial and industrial loads;

- Accommodating new electric generation projects; and

- Reducing transmission constraints to export more electricity.

Each rationale, however, advances private commercial interests, not a genuine public necessity.

1. "New commercial and industrial loads" reflect private—not public—demand.

The primary "new load" is Applied Digital's 100MW data center west of Ellendale; a three-story, 363,000-square-foot facility designed to leverage North Dakota's wind energy. In a January 22, 2025 meeting with the Willowbank Township board, Otter Tail Power spokesperson Kris Koch acknowledged that "there [is] more data processing planned, and this line will be needed." Nill Decl., Ex. 2.

This is a private industrial demand driven by speculative future growth. Local residents and small businesses, who will bear the cost through rate increases, receive no offsetting benefit. One of the primary corporate beneficiaries is Macquarie Asset Management, an Australian investment firm with ownership interest in Applied Digital. Nill Decl., Ex. 12.

2. "Accommodating new electric generation projects" prioritizes out-of-state developers and imposes local environmental costs.

Petitioners will show that the project is a private expansion plan disguised as public infrastructure, improperly shifting financial risks onto North Dakota citizens. Among the primary beneficiaries are foreign and out-of-state developers seeking to export electricity eastward from wind energy projects sited in sensitive prairie and migratory bird habitats. These projects

do not address any documented local demand for new generation capacity. Instead, they are designed to feed electricity into regional and national markets through high-voltage transmission infrastructure paid for in part by North Dakota communities.

Among the targeted generation projects are:

- The Drift Prairie Wind Project, developed by EDF Renewables, a French company operating via a U.S. subsidiary, which is proposed to include turbines in German, Northwest, Hamburg, Potsdam, and Whitestone Townships, all located in the Prairie Pothole Region of western Dickey County. Nill Decl., Ex. 13.

- The Wallflower Wind Farm, a 650 MW facility by First Mile Development in Dickey and LaMoure Counties, is slated to interconnect directly with the proposed Ellendale to Jamestown transmission line. Nill Decl., Ex. 14.

Local landowners report devastating impacts on migratory wildlife

Local residents near existing wind projects have already reported significant negative impacts. For example, near the 150 MW Merricourt Wind Project, landowners have observed substantial harm to migratory birds and protected wildlife. Brandon Schweigert, a directly affected landowner and Petitioner in this proceeding, described his experience farming cropland on the Coteau Hills Ridge west of Ellendale:

> "What I've witnessed in the last 10 years of farming that location has become rather disheartening. Twice a year, during bird migration, the

> area becomes a slaughter zone. Mallard ducks, Canadian geese, snow and blue geese are frequently struck by turbine blades, dying either on impact or later after being injured, often finished off by coyotes. We've even found dead bald eagles. It's never a good day planting through a field strewn with dead geese and a pair of bald eagles. Perhaps there's no perfect place for a wind farm, but common sense tells me not to place one in the largest migratory bird flyway in the United States."

Nill Decl., Ex. 15 (Declaration of Brandon Schweigert, May 1, 2025, at ¶ 4).

These wind projects are concentrated along the Missouri Coteau migratory flyway, one of the most critical wildlife corridors in North America. The environmental cost to local ecosystems, combined with the lack of local demand and the foreign ownership of generation assets, underscores the central flaw in the transmission proposal: it is not a project in the public interest, but a profit-driven scheme advancing nonresident economic interests at North Dakota's expense.

3. "Reducing transmission constraints" benefits exporters, not local residents.

The final justification, that the project will ease transmission constraints, means only that companies like EDF and First Mile will be able to export more electricity. Local consumers are not requesting more turbines or transmission infrastructure. The claimed benefit is not to the public, but to private developers and their investors.

III. New evidence demonstrates local opposition and township permit denials.

Petitioners submit new and material evidence supporting the reopening of this proceeding: two townships directly in the proposed path of the transmission line—Wano and Willowbank Townships in LaMoure County—have voted to deny Conditional Use Permits for the project. In addition, Wano, Willowbank, and Russell Townships in LaMoure County, Corwin Township in Stutsman County, and Valley Township in Dickey County have voted to join this Petition.

These actions, taken after public deliberation, reflect growing community opposition and further rebut the Applicants' claims of public necessity.

North Dakota law affirms the zoning authority of townships over energy infrastructure within their borders. These denials are significant because:

- *They reflect informed, democratic decisions.* The township boards reviewed project materials, heard public comment, and concluded that the project is not in the public interest.

- *They expose a gap between claimed and actual public benefit.* The communities most directly affected do not support the project and have denied it local permits.

- *They constitute new and material evidence.* These actions were not part

of the original record and trigger the Commission's authority to reopen proceedings under N.D.C.C. §§ 28-32-39 and 28-32-40(5).

The Commission cannot ignore these official township decisions. Where local governments determine, after public process, that the project is not justified, the Commission cannot rely on a conclusory finding of "public necessity" unsupported by facts or reasoned analysis.

IV. Legislative developments reinforce the Commission's duty to reopen the proceedings.

Although this Petition rests on existing law and the Commission's continuing jurisdiction, recent legislative developments underscore the need for reconsideration. The North Dakota Legislature's enactment of House Bill 1258 affirms the importance of transparency, local participation, and procedural rigor in siting decisions.

HB 1258 codifies minimum notice requirements, expands local input rights, and affirms township zoning authority. While enacted after the November 20 Order, it applies retroactively to January 1, 2025—squarely encompassing the permit denials by Wano and Willowbank Townships.

Petitioners do not contend that HB 1258 nullifies the Order on its own. Rather, it reinforces what existing law already requires: meaningful findings, respect for local land use decisions, and adherence to due process. The

Commission must reopen the proceedings to align its process with the Legislature's clear intent and restore public confidence in the integrity of this decision.

CONCLUSION

Otter Tail Power and MDU seek to construct a high-capacity transmission line from Ellendale to Jamestown based on speculative projections tied to wind generation projects proposed by private developers like EDF Renewables, a U.S. subsidiary of a French corporation. Their asserted justification—relieving transmission congestion—serves primarily out-of-state energy markets and foreign investors, not North Dakota consumers. The purported public benefits are, in reality, a pretext for private commercial gain.

State ratepayers would be asked to subsidize a project that lacks verified demand, clear necessity, or local support. The speculative need to transmit power from unbuilt generation projects cannot meet the legal standard of "public necessity." The record is devoid of the factual findings required to justify this designation, and the Commission must not allow private interests to dictate the state's energy infrastructure at the expense of North Dakota landowners, communities, and ratepayers.

Crucially, the Commission's November 20 Order is not a final, appealable decision under North Dakota law. It includes no findings of fact or conclusions of law as required by N.D.C.C. §§ 28-32-39(1) and (2), and therefore does not trigger statutory timelines for rehearing, appeal, or judicial review. The Commission retains full jurisdiction to reopen the matter.

Moreover, the recent enactment of House Bill 1258, with retroactive effect to January 1, 2025, reinforces the need to revisit the proceeding. HB 1258 imposes new procedural safeguards, including township notice requirements, a mandatory 45-day waiting period before public hearings, and clarified protections for local zoning authority. These requirements were not observed in this case, despite Wano and Willowbank Townships asserting jurisdiction during the relevant timeframe.

For all these reasons—material omissions, due process violations, new evidence, local permit denials, and intervening legal developments—Petitioners respectfully request that the Commission rescind the November 20 Order and reopen the permit application proceeding in the interest of transparency, accountability, and the public good.

REQUEST FOR RELIEF

Petitioners respectfully request that the Commission exercise its continuing jurisdiction under N.D.C.C. §§ 28-32-39, 28-32-40(5), 28-32-46, and 49-22 to vacate the November 20, 2024 Order and reopen the permit proceedings. Petitioners further request that the Commission suspend any further construction, acquisition, or condemnation activity related to the proposed transmission line pending the outcome of reopened proceedings and issue a revised decision only after developing a complete factual record, evaluating statutory criteria, and incorporating input from affected local governments and communities.

Dated: May 21, 2025

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (MN # 0194876)
DOUGLAS J. NILL, PLLC
d/b/a FARMLAW
1850 Fifth Street Towers
150 South Fifth Street
Minneapolis, MN 55402
(612) 573-3669
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Steven J. Leibel (ND # 07361)
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(701) 255-2010
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Counsel for the Petitioners

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota Utilities Co. 345kV Transmission Line-Jamestown to Ellendale Public Convenience & Necessity

Case No. PU-24-91

MOTION FOR ADMISSION PRO HAC VICE

Pursuant to Rule 3(A) of the North Dakota Admission to Practice Rules, the Intervenors ("Petitioners") respectfully move the Commission for an Order admitting Douglas J. Nill, of the firm Douglas J. Nill, PLLC, d/b/a FarmLaw, 1850 Fifth Street Towers, 150 South Fifth Street, Minneapolis, MN 55402, to appear pro hac vice for the limited purpose of representing Petitioners in the above-captioned proceeding. In support of this Motion, the undersigned states the following:

1. Douglas J. Nill is an attorney in good standing and an active member of the bar of the United States Supreme Court (since 2004), the United States District Court for the District of Minnesota (since 1991), and the State of Minnesota (since 1988). Mr. Nill seeks admission pro hac vice to represent the Petitioners in this matter before the Commission.

2. Attached hereto as Exhibit 1 is the Affidavit of Douglas J. Nill In

Support Of Motion for Admission Pro Hac Vice, attesting to his qualifications, professional standing, and compliance with the requirements of Rule 3.

3. Also, hereto as Exhibit 2 is a Certificate of Good Standing from the Minnesota Office of Lawyer Registration.

4. A copy of this Motion, including the Affidavit and Certificate of Good Standing, has been transmitted to the State Board of Law Examiners as required by Rule 3(1)(3).

WHEREFORE, the undersigned requests that the Commission enter an Order admitting Douglas J. Nill pro hac vice for the special and limited purpose of participating in this proceeding on behalf of the Petitioners.

Dated: May 21, 2025

Respectfully submitted,

By: /s/ Steven J. Leibel (ID 07361)
Knoll Leibel LLP
P.O. Box 858
1915 N. Kavaney Drive, Ste. 3
Bismarck, ND 58501
(701) 255-2010
steve@bismarck-attorneys.com

Counsel for the Petitioners

EXHIBIT 1

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota Utilities Co. 345kV Transmission Line-Jamestown to Ellendale Public Convenience & Necessity

Case No. PU-24-91

AFFIDAVIT OF DOUGLAS J. NILL IN SUPPORT OF MOTION FOR PRO HAC VICE ADMISSION

I, Douglas J. Nill, being duly sworn, depose and state the following is true and correct based upon my personal knowledge:

1. I am an attorney with the law firm of Douglas J. Nill, PLLC, d/b/a FarmLaw, 1850 Fifth Street Towers, 150 South Fifth Street, Minneapolis, MN 55402. I received my J.D. from Hamline University School of Law in 1988.

2. I am an active member in good standing of the bar of the United States Supreme Court (since 2004), the United States District Court for the District of Minnesota (since 1991), and the State of Minnesota (since 1988). I respectfully request that this Court admit me pro hac vice, pursuant to Rule 3 of the North Dakota Admission to Practice Rules, to represent the Intervenors/Petitioners in this matter before the Court.

3. I am not presently subject to a disciplinary proceeding in any

jurisdiction.

4. I am not under any restriction or probation in the practice of law in any jurisdiction.

5. I am not presently, nor have I ever been, suspended or disbarred from a court in any jurisdiction. I received a private admonition from the Board of Professional Responsibility in the State of Minnesota in the mid-1990s, for contacting a university psychiatrist when I reasonably should have known the psychiatrist was represented by university counsel.

6. I have not practiced in any action in North Dakota during the past three years. I appeared pro hac vice with local counsel in a personal injury case in Rugby in 2000. I argued an appeal before the North Dakota Supreme Court in *Sollin v. Wangler*, 2001 ND 96, 627 N.W.2d 159 (N.D. 2001).

7. I am familiar with and will comply with the North Dakota Rules of Professional Conduct, the North Dakota Rules of Court, including the rules of e-filing and service, and all applicable statutes, rules, and procedures governing the conduct of attorneys in North Dakota.

8. Attached to this Affidavit is a Certificate of Good Standing from the Office of Lawyer Registration for the State of Minnesota.

9. I designate Steven J. Leibel of Knoll Leibel LLP in Bismarck, North Dakota, as local counsel and associate attorney of record with me in all phases of this case. Mr. Leibel is a member in good standing of the Bar of North Dakota and maintains an office within the state.

10. The required fee for pro hac vice admission has been paid to the North Dakota State Board of Law Examiners.

I declare under penalty of perjury under the laws of the State of North Dakota that the foregoing is true and correct.

FURTHER AFFIANT SAYETH NOT

Douglas J. Nill, PLLC

Douglas J. Nill (MN #0194876)
DOUGLAS J. NILL, PLLC
d/b/a FARMLAW
1850 Fifth Street Towers
150 South Fifth Street
Minneapolis, MN 55402
(612) 573-3669 (direct)
(612) 355-2210 (fax)
dnill@farmlaw.com

Subscribed and sworn to before me
this 20th day of May, 2025.

ERIN D SIMAT
Notary Public
State of Minnesota
My Commission Expires
January 31, 2027

Notary Public

EXHIBIT 2

STATE OF MINNESOTA
IN SUPREME COURT

Certificate of Good Standing

This is to certify that the following lawyer is in good standing

DOUGLAS J NILL

was duly admitted to practice as a lawyer and counselor at law in all the courts of this state on

October 28, 1988

Given under my hand and seal of this court on

April 25, 2025

Emily J. Eschweiler

Emily J. Eschweiler, Director
Office of Lawyer Registration

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota Utilities Co. 345kV Transmission Line-Jamestown to EllendalePublic Convenience & Necessity	Case No. PU-24-91

DECLARATION OF DOUGLAS J. NILL
WITH EXHIBITS 1-15

1. I am an attorney licensed to practice law in Minnesota and I represent the Intervenors-Petitioners in this proceeding.

2. On April 29, 2025, I was formally retained by Wano Township to represent its interests in this matter.

3. On April 30, 2025, I was formally retained by Willowbank Township to represent its interests in this matter.

4. On April 29, 2025, I was formally retained by Russell Township to represent its interests in this matter.

5. On April 28, 2025, I was formally retained by Corwin Township to represent its interests in this matter.

6. On April 29, 2025, I was formally retained by Valley Township to represent its interests in this matter.

7. Attached as Exhibit 1 is a true and correct copy of the minutes for

the January 29, 2025 Wano Township Zoning Committee meeting.

8. Attached as Exhibit 2 is a true and correct copy of the minutes for the January 22, 2025 Willowbank Township Board meeting.

9. Attached as Exhibit 3 is a true and correct copy of the minutes for the April 9, 2925 Willowbank Zoning Board meeting.

10. Attached as Exhibit 4 is a true and correct copy of a June 26, 2024 Memorandum by Christopher C. Hanson, Public Utility Analyst.

11. Attached as Exhibit 5 is a true and correct copy of a JETx PowerPoint presentation by the Applicants to the PSC on July 8, 2024.

12. Attached as Exhibit 6 is a true and correct copy of a transcript of the July 8, 2024 Informal Hearing in this proceeding.

13. Attached as Exhibit 7 is a true and correct copy of the transcript of an August 19, 2024 Work Session.

14. Attached as Exhibit 8 is a true and correct copy of an October 16, 2024 Memorandum by Christopher C. Hanson, Public Utility Analyst.

15 Attached as Exhibit 9 is a true and correct copy of the transcript of an October 17, 2024 Work Session.

16. Attached as Exhibit 10 is a true and correct copy of a September 13, 2024 response by Jason Weiers to Data Requests from the August 19,

2024 work session.

17. Attached as Exhibit 11 is a true and correct copy of October 14, 2024 Comments by the Midcontinent Independent System Operator, Inc. (MISO), drafted by Jeremiah Doner, Director, Cost Allocation and Competitive Transmission, MISO.

18. Attached as Exhibit 12 is a true and correct copy of a media report that Australia's Macquarie agreed to take a 15% stake in Applied Digital's artificial intelligence computing date center in North Dakota.

19. Attached as Exhibit 13 is a true and correct copy of the EDF Renewables form lease circulated to landowners in Dickey County.

20. Attached as Exhibit 14 is a true and correct copy of a Wallflower Wind Farm solicitation by First Mile Development.

21. Attached as Exhibit 15 is a true and correct copy of a May 1, 2025 Declaration by Brandon Schweigert, a directly affected landowner and one of the petitioners requesting to intervene and reopen this proceeding.

I make this Declaration in support of the Petitioner's petition to intervene in this proceeding, and request that the Commission rescind the November 20, 2024 Order approving the 345kV Transmission Line from Jamestown to Ellendale and reopen the proceedings, under penalty of perjury

under the laws of the United States and the State of North Dakota.

Executed on this 21st day of May, 2025, in Hennepin County, State of Minnesota.

Respectfully submitted,

By: /s/ Douglas J. Nill
Douglas J. Nill (MN #194876)
DOUGLAS J. NILL, PLLC
d/b/a FARMLAW
1850 Fifth Street Towers
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EXHIBIT 1

Meeting of Wano Township Zoning committee was called to order by Wayne Wald January 29, 2025 at the Edgeley Career Academy at the High School. Dave Schweigert, Wayne Wald, Cody Rupp and Mike Bartle were present. Also present were many members of the community and several representatives from Ottertail Power Company.

Purpose of the meeting was to discuss the Conditional Use Permit for Ottertail Power for construction of a 345 KV line running north-south through sections 4, 9, 16, 21, 28, and 33. Route might change if warranted.

Kris Koch of Ottertail Power started the discussion. He described what would be installed, that there would be video taken of roads used for construction, and they would fix whatever is damaged. There would be large trucks, cranes, cement trucks and other vehicles used for the project. They will need about 90 miles of power line between substation north of Jamestown, and substation north of Ellendale.

He said there would be a State Public Hearing later, date to be determined.

Hoping construction would start August of 2026, and finished in 2028.

Steve Rupp pointed out that Willowbank has a bad bridge, some of that township is one way in, one way out. They need to clarify situation with Willowbank.

Deb Wald asked about PSC meeting, who will be at it, and she wants to be at the meetings. Again, time to be determined.

Lucas Wald commented on the Willowbank meeting.

Patty Wood Bartle asked (1) why is this needed. They said MISO plan for future transmission lines is based on reliability and projected loads on the system. Also, the 2023 ice storm was brought up, more redundancy in transmission is preferred. (2) How was the route decided upon?

Allen Fischer asked about health effects for cattle and humans. They cited an EMF study from the 1970's that did not find any health effects from the EMF. But were the strength of the EMF of what is proposed studied? Fischer was also worried about cattle not cycling for breeding. Stray voltage effects not from transmission line, but from loose neutrals. He also asked about cancer effects, they said nothing was found.

Steve Nelson asked if we could harvest any stray magnetism that shows up in fence lines. They said it was not safe to try that.

Lines will be minimum of 28 feet off the ground.

Patty Wood Bartle said that only 25% of the land owners have signed easements. What happens if they do not get 100%. Response was that there is a Condemnation Process used to get the easements. IF 60% of all landowners along the line sign easements, they will start Condemnation Process on the unsigned parties. Which will be a lawyer vs lawyer negotiation at that point.

These are private companies, so they will get a state permit for the final route. Which means the state will support the condemnation process.

345 KV, lines will carry 3000 amps, so 1800 MW load will be the sizing of the lines. What actually goes through the lines will depend on conditions in the 2 systems.

Deb Wald said we are used to what is here. These are 100-year easements with access to the lines. She is not comfortable with granting them unlimited access to the ground, and seeing the power line.

Patty Wood Bartle asked about the tower construction, looks like a second set of wires could be added. They said it depends on the load, but it could be done, depending on what happens in the future.

There is a similar line along I94 between Fargo and Minneapolis, the plans are to add the second set of lines about 10 years after the first one was installed.

Richard Long said he had heard that the Data Centers need 2 GigaWatts to operate. That they are the artery supplying all the other headaches they want to add here, the Wind Towers, fertilizer plant at Spiritwood.

Why not run the line next to the one that goes from Jamestown to Edgeley? One is a WAPA line for the cooperatives, the 41.6KV line that goes from Jamestown to Edgeley needs different transformers at each spot.

As regulated utilities, Ottertail Power and MDY do have the right for Condemnation Process (a version of eminent domain).

Brandon Schweigert pointed out that an Ottertail Power line goes across his farmland, and that they needed to repair it last summer. No one has talked to him about compensation for crop damage, he had not given them permission to go across his field, they just went. Response was that it was an emergency outage, they went out as fast as possible to fix the lines. Koch said he would contact someone in Ottertail regarding compensation.

Question was asked if they would use local contractors, answer was yes, if there were any qualified to do the work. Dirt work and Fuel could be local.

Question was asked "why not pay annually, not just once?"

Tim Leppert pointed out that Black Rock has investments in the two power companies and the windmill company, looks like they are running the show.

Patty Wood Bartle said she does not want them in her back yard, the line is ¼ mile from the house. They said they would discuss placement of the line, need a personal meeting to figure it out.

There was a lot of concern expressed about the wind towers, someone said there were 285 proposed to be installed in Stutsman and Lamoure counties that could tie into this line.

Lots of people sounded uncomfortable with the proposed changes regarding the power line and wind towers.

Cody Rupp moved to deny the application. Dave Schweigert seconded the motion. Meeting adjourned.

EXHIBIT 2

Willowbank Township
Zoning Board Meeting with Ottertail Power Co. Minutes
January 22, 2025

The meeting was brought to order at 6:30 by Robert Senger reading the newspaper notice. Many Willowbank Township and Wano Township residents were present. The meeting was livestreamed on Facebook. Robert Senger and Justin Hill present for Zoning board. Absent was Calvin Wipf due to family emergency.

A presentation was given by Kris Koch from Ottertail Power company. Mr. Koch gave an outline of the JetX transmission line project and the proposed route. He explained the building process of the towers and the hanging of the line by helicopters. He gave an example of the payment the landowners would receive as 150' X ½ mile should pay out on the average a one-time payment of $55,000. The JetX website will be updated on the route.

After 27 minutes the floor was opened up for questions and discussions. Sandy Rup asked what happens if the landowners in these two townships do not sign the easements. The answer from Mr. Koch was that condemnation would be used. Alan Fischer asked what this line would open up for other things to move into the area. He also commented that no one here benefits from the bitcoin. Mr. Koch's response was that there is congestion, and the power needs to be moved from one area to another and will close a loop. Why not follow highway 281? answer was they try to stay 1 ½ to 2 miles from other power lines. Deb Wald wanted more information on eminent domain. Condemnation process will go to court and can take a few years. Mr. Koch says easement covers installation and getting to them for maintenance at any given time. Comes down quarter section line. Sandy Rupp commented that 285 wind towers are trying to come in and will take up 3000 acres of farmland. Also asked about selling out to another company that will come in. Mr. Koch says he is not surprised that MISO is planning to have wind towers come in. Deb wald commented she was approached to sell 20 acres for a substation. Tim Leppert wanted to know where MISO is? They need to come and talk to people. MISO controls power grid. Steve Nelson wanted to know if MISO is a government agency or private. They are private. Tharen Ness wanted to know who has the final say who taps into this transmission line. It is MISO's decision only.
More questions and concerns are why only one payment. Answer was because the line is not generating revenue only transportation. Steve Nelson argued transportation costs money. Sandy Rupp asked about tornados and damage to farm equipment. Answer was they are built to withstand an ef1 tornado. Other comments included asking if there are health issues which they had no answer. Senate bills 2208 and 1258 were discussed and BlackRock owning Ottertail and MDU was brought up. Also, no real answer for that. Tim

Leppert asked about PSC raising rates to pay for this line. Again, they didn't know.
Mr. Koch says there are more data processing planned, and this line will be needed.
Richard Long asked if Ottertail was given projections as to what will be needed for the bit coin and data processing centers.

Robert Senger made a motion to close the question session. Seconded by Justin Hill.
Robert made a motion to table the decision on approving or denying the conditional use permit due to only having 2 board members present. Justin seconded it.

Robert made a motion to close the meeting . Justin seconded it.

Robert requested that MISO be at the next meeting due to all the questions directed at them. A second meeting will be planned.

Jane Coleman
Willowbank Township Clerk

EXHIBIT 3

Willowbank Zoning Board minutes
April 9th, 2025

Board members present are Calvin Wipf, Robert Senger, Justin Hill
Clerk Jane Coleman
There was a sign up sheet at the door for attendees.
Meeting with Ottertail Representatives was brought to order at 6:30 by Calvin Wipf.
Clerk Jane Coleman stated the purpose of this meeting with Ottertail Power Company is to go over the denial letter sent to Ottertail with their representatives and have a question and answer session.
Ottertail Representative handed out typed sheets with their responses to our denial reasons. They went through each one line by line. Most the reasons stated that it was a landowner issue, not a township issue. Jane Coleman pointed out that in Willowbank's Zoning Ordinance it states that the Purpose and Intent is to protect the health, safety, morals, comfort, convenience, prosperity, and general welfare of the people of the Township of Willowbank. This is stated in 1.2.1 of our ordinance . Ottertail said they did not read that, and only read the part that pertained to electrical lines. They finished going through the letter. Floor was opened for any questions by Bob. Question asked to Kris Koch was why he had stated the West side of 281 was a hard no. Why was East side any different? He said they already had easements on the East side. Comment was made by Tim Leppert that is all for big corporations like Blackrock and not the landowners.
No more questions, Calvin motioned to close the Zoning meeting, Bob seconded.
Closed at 7:20. .

Township meeting brought to order at 7:20.
Bob made a motion to deny the Conditional Use Permit for Ottertail Power JetX project. Calvin Seconded. All in favor AYE. There were no NAYs. Township meeting adjourned at 7:25pm.

Clerk Jane Coleman
Willowbank Township

EXHIBIT 4

Memorandum

To: Commissioners Christmann, Haugen-Hoffart and Fedorchak

From: Christopher C Hanson Public Utility Analyst

Date: 6/26/2024

Re: Otter Tail Power Company/Montana-Dakota Utilities Co., 345kV Transmission Line-Jamestown to Ellendale, Public Convenience & Necessity, Case No. PU-24-91

On February 29, 2024, Otter Tail Power Company (OTP) and Montana-Dakota Utilities Co. (MDU) filed a joint application for a Certificate of Public Convenience and Necessity to construct, own and operate approximately 85 miles of 345kV transmission line and expand four substations located in Stutsman, LaMoure, and Dickey Counties in North Dakota.

A Notice of Opportunity for Hearing was issued on February 29, 2024, with a due date of May 10, 2024. No requests for hearing were received.

Both OTP and MDU are members of the Midcontinent Independent System Operator (MISO), which is a Regional Transmission Organization (RTO) responsible for overseeing and managing the electric power transmission grid across 15 U.S. states as well as the Canadian province of Manitoba.

In July 2022, MISO approved the first phase or "tranche" of its Long-Range Transmission Planning (LRTP). Tranche 1 consists of 18 projects, with a total of more than 2,000 miles of lines totaling over $10 billion in investments. As noted above, this specific project is comprised of 85 miles of 345kV lines with a total estimated investment of $440 million and is expected to be in service by the end of 2028. $380 million of this cost is directly related to the 345kV line and the remaining $60 million is for upgrading four substations to serve the line. Ownership of the facilities is roughly 50/50 with some facilities being owned and operated by one or the other company and some facilities being jointly owned.

MISO utilizes three criteria to determine the necessity of a project. These criteria are that it 1) addresses projected violations of a reliability standard, 2) has a benefit-to-cost ratio in excess of 1.0 and 3) supports the reliable and economic delivery of energy.

This project was identified as a priority by MISO along with the Big Stone South-Alexandria- Big Oaks 345 KV project to relieve 40 transmission elements with excessive thermal loadings for N-1 contingencies and 70 for N-1-1 contingencies which relate to the

ability to maintain normal operations in the event of a single (N-1) or series (N-1-1) of contingent events. Additionally, this project along with other Zone 1 (MSIO subregion containing MDU & OTP operating areas) projects were determined to have a benefit-to-cost ratio of between 2.6 and 4.0. This and the other Tranche 1 projects supports the projected addition of 90 GW of generation in the MISO Midwest Subregion, including over 4.5GW in North Dakota. All of these facts meet or exceed the criteria specified by MISO. MISO has further deemed OTP & MDU capable of constructing and maintaining these facilities.

While these factors support the determination of public convenience and necessity as defined in North Dakota Century Code (NDCC) 49-03.1-04, the costs and benefits entailed are based upon those accrued by MISO as a whole, rather than strictly MDU and OTP individually. Thus, further analysis of the costs and benefits as they related to these companies and their customers is warranted.

A critical point to make regarding this project is that none of MDU's and only a small percentage of OTP's investment in this project will be allocated to the North Dakota jurisdictional rate base. MISO pays the owner of these facilities a return on the investment, depreciation expenses plus an estimate of operating and other expenses based upon standard formulas and thus a majority of this investment is considered to be in the 'FERC' (Federal Energy Regulatory Commission) jurisdictional rate base.

Costs for projects approved under MISO's LRTP Tranche 1 will be recovered on a prorata basis utilizing each company's energy use as a proportion of the MISO Subregion total. For MDU this prorata basis is 0.67% and for OTP it is 1.57%. This results in a combined net cost to MDU's and OTP's North Dakota customers of an estimated $469k annually or roughly $234-235k each. That translates in an additional cost of $0.123 per month for MDU and $0.177 per month for OTP residential customers consuming 1000 kWh per month.

These facilities will also be liable for several million dollars of property taxes paid to various governmental entities in North Dakota based upon the value of these facilities.

Staff requested that MDU & OTP analyze the overall impact of all of the MISO Tranche 1 projects upon their customers as well as this single project. As noted, MISO Tranche 1 is comprised of 18 projects with a total value of $10.324 billion with a revenue requirement of approximately $1.25 billion in 2031 after all of the projects are scheduled to be completed. Based upon this analysis, it is estimated that total impact of MISO Tranche 1 will be an additional cost of $3.15 per month for MDU and $5.75 per month for OTP residential customers consuming 1000 kWh per month.

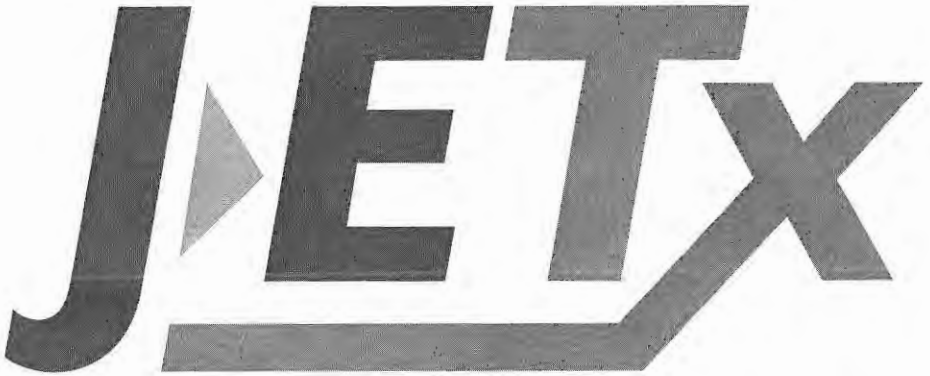
An informal hearing on this matter is scheduled for July 8, 2024, from 1:30-3:00.

Cc Matt Olsen-Otter Tail Power
Travis Jacobson- Montana-Dakota Utilities

EXHIBIT 5

JAMESTOWN – ELLENDALE 345 KV PROJECT

Request for a Certificate of Public Convenience & Necessity (CPCN)



Jamestown to Ellendale

OTTER TAIL POWER COMPANY

MONTANA-DAKOTA UTILITIES CO.
A Subsidiary of MDU Resources Group, Inc.
In the Community to Serve®

17 PU-24-91 Fil
Informal Heari
Otter Tail Pow

Presentation to the North Dakota Public Service Commission | July 8, 2024

AGENDA

- Description of Applicants
- Project Description
- Project Need
- Project Benefits
- Project Alternatives
- MISO Long Range Transmission Plan
- Multi-Value Projects under MISO's Tariff
- Project Schedule
- Compliance with CPCN Requirements
- Conclusions

APPLICANTS

Otter Tail Power Company (Otter Tail)

- Investor-owned electric utility headquartered in Fergus Falls, MN;
- Serves over 133,000 customers spanning 70,000 square miles in eastern North
  northeastern South Dakota and western Minnesota;
- Owns ~6,000 miles of transmission lines and ~1,100 MW of generation capacit
- Transmission-owning member of the Midcontinent Independent System Opera
- Certified copy of Otter Tail's Articles of Incorporation on file with the Commissi
  677), as well as a 2024 certificate of good standing (PU-23-039)

Montana-Dakota Utilities Co. (Montana-Dakota)

- Investor-owned electric utility headquartered in Bismarck, ND;
- 128,000 customers served over 86,000 square miles in western and central No
  eastern Montana and north central South Dakota;
- Owns ~3,400 miles of transmission lines and ~709 MW of generation capacity;
- Transmission-owning member of the Midcontinent Independent System Opera
- Certified copy of Montana-Dakota's Articles of Incorporation on file with the C
  08-710), as well as a 2024 certificate of good standing (PU-08-710)

PROJECT DESCRIPTION

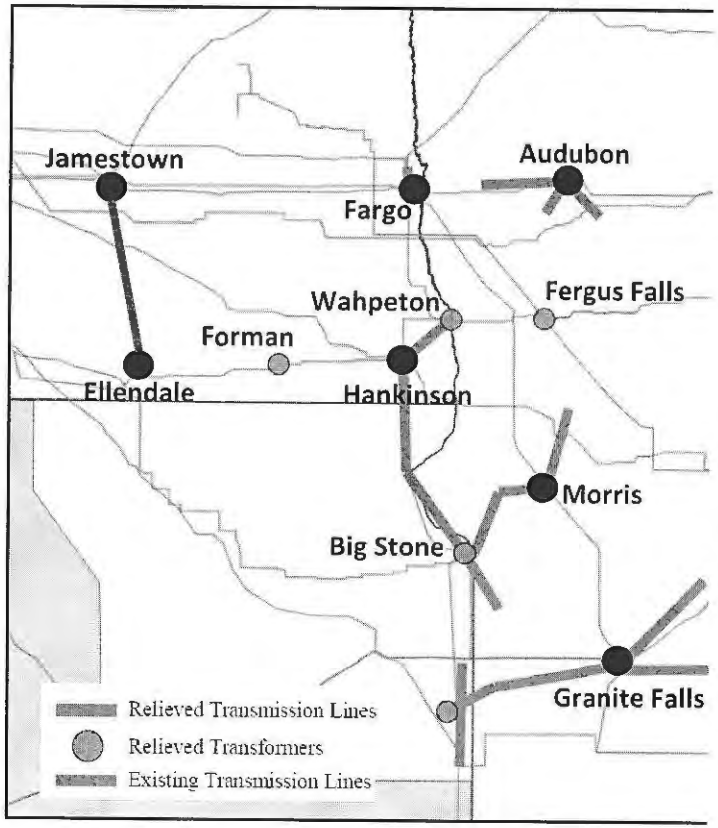
- Project involves a new 345 kV transmission line between Otter Tail's existing Jamestown Substation and Montana-Dakota's existing Ellendale Substation with underlying substation upgrades.
  - 345 kV Transmission Line: 85 – 95 miles long;
  - Jamestown Substation Expansion: New 345 kV termination;
  - Ellendale Substation Expansion: New 345 kV termination;
  - Maple River Substation Expansion: Replace existing 345/230 kV transformers;
  - Twin Brooks (SD) Substation Expansion: Install new 345 kV reactors.

- Anticipated typical structures
  - Double circuit (one circuit installed initially);
  - Steel monopole, self-supporting structures with average height of 150 feet;
  - Concrete foundations with between 4 - 6 Structures per mile.

- Estimated cost = $440 million

PROJECT NEED

- Existing 230 kV system in eastern North Dakota, eastern South Dakota and west-central Minnesota is heavily constrained for different seasons of the year, especially during peak conditions.
  - Reliability concerns during system intact conditions and N-1 contingencies
    - Excessive loadings
    - Voltage depressions
- The Project, along with the Big Stone South – Alexandria – Big Oaks 345 kV project, most effectively addresses these reliability concerns.



PROJECT BENEFITS

- Enhanced reliability
  - Address loading and voltage violations
- Increased transmission capacity
  - Enable new commercial and industrial loads
  - Accommodate new electric generation projects
  - Reduce transmission constraints to export more North Dakota generation
- Increased resilience to extreme weather events
  - Reliability benefits to Jamestown and Ellendale load pockets
- Support local residents, political subdivisions and businesses
  - Landowner payments
  - Political subdivisions: property tax, sales tax, special assessments, etc.
  - Local suppliers/services: road improvements, tree clearing, concrete, gravel, fuel, meals lodging, etc.
- Increased employment opportunities

PROJECT ALTERNATIVES

#	Project 1	Project 2
-	Jamestown – Ellendale 345 kV Line	Big Stone South – Alexandria – Big Oaks 3
1	Jamestown – Ellendale 345 kV Line	Big Stone South – Alexandria 345 kV Line
2	Jamestown – Ellendale 345 kV Line	Big Stone South – Hankinson – Fergus Fall
3	Jamestown – Ellendale 345 kV Line	Big Stone South – Hazel Creek – Blue Lake
4	Jamestown – Ellendale 345 kV Line	Big Stone South – Alexandria 345 kV line + Big Stone South – Hazel Creek – Blue Lake
5	Jamestown – Ellendale 345 kV Line	Big Stone South – Breckenridge – Barnesvi

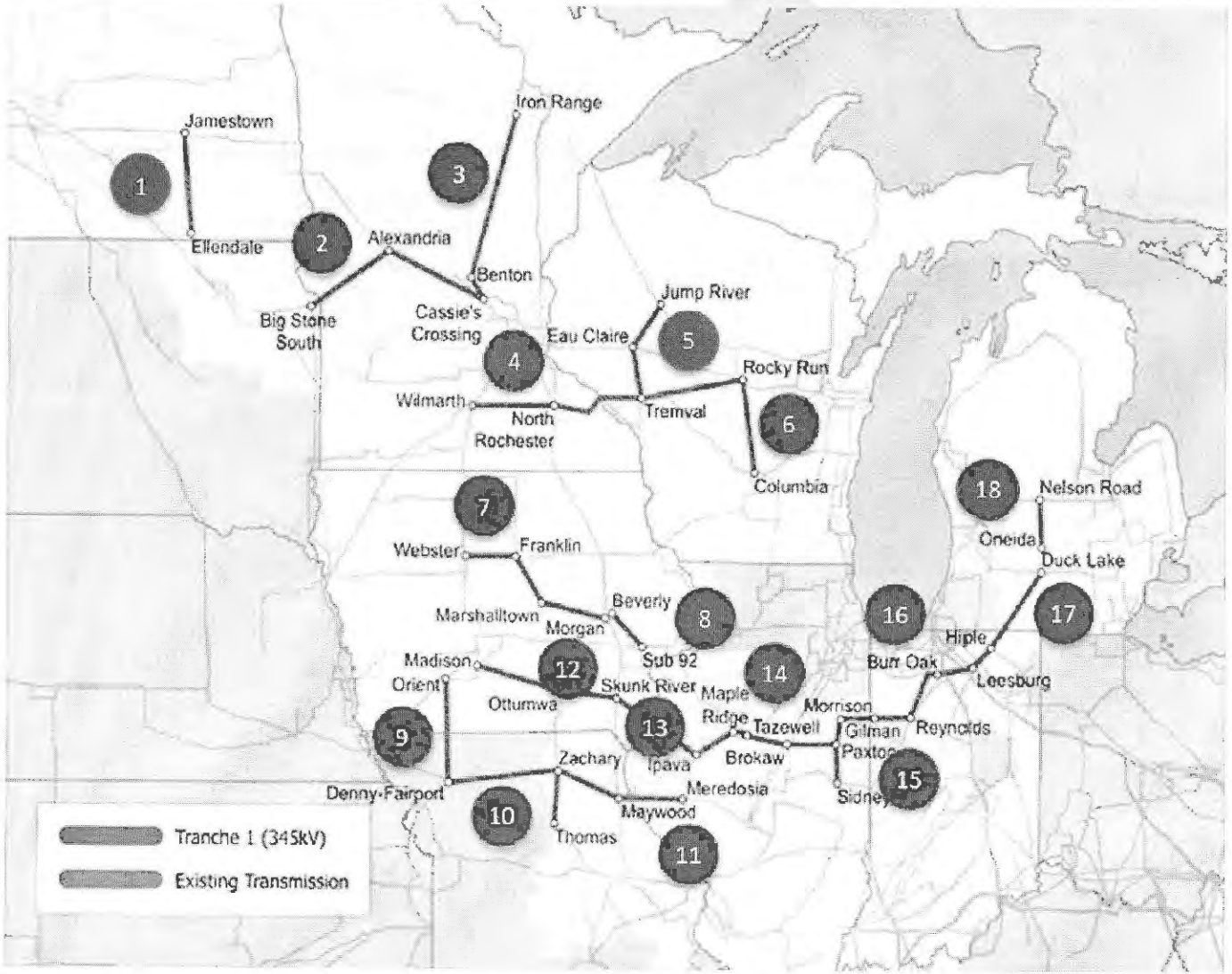
- The Project is common to every combination of alternative proje considered by MISO to address the issues on the heavily constrai system in eastern North Dakota, eastern South Dakota and west- Minnesota.

MISO'S LONG RANGE TRANSMISSION PLAN (LRTP)

- MISO's Long Range Transmission Plan (LRTP) was initiated in 202 objective to provide an orderly and timely transmission expansio results in a transmission system that is reliable, cost-efficient, ac flexible.

  - Tranche 1: Approved by MISO in July 2022 for the Midwest subregion.
  - Tranche 2: Focused on the Midwest subregion.
    - Tranche 2.1: MISO approval anticipated in Dec. 2024.
    - Tranche 2.2: MISO studies to follow in 2025/2026.
  - Tranche 3: Focused on South subregion.
  - Tranche 4: Intraregional project(s) between Midwest subregion and South subregion.

MISO'S LRTP TRANCHE 1 TRANSMISSION PORTFOL



- MISO approved 18 transmission proje 2022 as part of th portfolio.
  - Represents over 20 new and upgraded transmission lines t $10 billion of invest
- New transmission approved as Multi Projects (MVPs).

MULTI-VALUE PROJECT (MVP) UNDER MISO'S TARI

- Multi-Value Projects (MVPs):

  (1) address transmission issues that are a violation of a reliability standard;

  (2) provide multiple types of economic value across a broad area with a benefit-to-cost ratio of 1.0 or higher; or

  (3) support the reliable and economic delivery of energy.

- Cost for MVPs in the Tranche 1 Portfolio are allocated on a pro-rata basis to all load in the MISO Midwest subregion based on energy usage.
  - Otter Tail's ND load ratio share = 0.61%
  - Montana-Dakota's ND load ratio share = 0.47%

JETX PROJECT SCHEDULE

2023: 1st Half
- Define Study Area
- Develop Corridors
- Public Meeting #1
- Landowner Outreach

2024: 1st Half
- Start Securing Land Rights
- CPCN Submitted to ND PSC

2025: 2nd Half
- PSC Decision on ND Route Permit
- Tree Clearing
- Pre-construction Activities

2023: 2nd Half
- Develop Routes
- Public Meeting #2
- Landowner Outreach
- Identify Preferred Route
- Surveys

2024: 2nd Half
- PSC Decision on CPCN
- Route Permit Submitted to ND PSC
- Public Hearing(s)

2026: 1st Half
- Start Construction
  - Foundations
  - Structures
  - Conductor

202
- Fin
- En
- Res

COMPLIANCE WITH CPCN REQUIREMENTS

NDCC	Description	Compliance
49-03-01.4	Electric public utility or electric transmission provider does not violate or threaten to violate any of the provisions of section 49-03-01 through 49-03-01.5 or does not interfere with or threaten to interfere with the service or system of any other electric public utility or rural electric cooperative.	• The Project will not provi service and will not inter service provided by any u • The Project provides re capacity, among severa can be accessed by any stakeholder.
49-03-02 (1)	Certified copy of articles of incorporation	• Otter Tail has articles of i available in Case No. PU- • Montana-Dakota has arti incorporation available ir 710.
49-03-02 (1)	Evidence showing that the applicant has received the consent, franchise, permit, ordinance or other authority of the proper public authority	• The Applicants will obtai permits from federal, sta authorities prior to const • The Applicants anticipa certificate of corridor c permit application with Q3 2024.

CONCLUSIONS

- Public convenience and necessity will be served by the Applicants construction, ownership and operation of the Project because of reliability and economic benefits provided to North Dakota custor

- The Project is part of MISO's Long Range Transmission Plan (LRTP as part of the 2021 MISO Transmission Expansion Plan ("MTEP21" integral to delivering the reliability and economic benefits of the Portfolio.

- The Applicants are fit, willing and able to construct, own and oper Project as proven through their articles of incorporation, certifica standing and success in past transmission projects.

QUESTIONS

JETx

Jamestown to Ellendale

OTTER TAIL POWER COMPANY

MONTANA-DAKO UTILITIES CO.
A Subsidiary of MDU Resources Group, Inc.
In the Community to

www.JamestowntoEllendale.com

EXHIBIT 6

PSC Work Session – July 8, 2024

0:00:00
(Speaker Christmann)
Good afternoon. This is an informal hearing on a case that is a combinational case, Otter Tail Power and MDU. And it's a certificate of public convenience and necessity request regarding the Jamestown to Ellendale transmission line. It is case number PU-24-91. It's **July 8th, 2024** at 1:32 p.m. I'm Randy Christmann, Chair of the Commission, joined by Commissioner Sherry Haugen-Hoffart. You're in the room with me and Commissioner Fedorchak is on the phone and I believe in transit. I didn't have any opening comments that Commissioner Haugen-Hoffart, well Commissioner Fedorchak did you have any opening comments?

(Speaker Fedorchak) I don't, nope thank you.

(Speaker Christman) Okay so I'll save yours and combine. I want to emphasize this is an informal hearing so it involves only undisputed facts. If anything comes up that is disputed, we will have to stop the informal and proceed to scheduling a formal case. The applicant goes first, but I'll first turn it over to Commissioner Haugen-Hoffart, who is a portfolio holder, for any opening comments.

0:01:36
(Speaker Haugen-Hoffart)
Okay, well, thanks everyone. I think this is going to be an interesting overview and questions regarding a joint filing. So it's so good to see so many people here. And because Julie is on the phone, before we turn it over to you guys to present, why don't we go around the room and introduce everyone so Julie knows who's going to be presenting but who's also in the room. So I'll go to Brian.

0:02:04 Brian Johnson, PSC staff.

Chris Hansen, PSC staff.
Robert Frank, Montana Dakota.

Allison Walden, representing Montana Dakota.

Jason Weirs, Otter Tail Power Company
Robert Endress, Otter Tail Power Company.
Todd Langston, Otter Tail Power Company.
(Speaker Haugen-Hoffart) Do we want everyone in the back?
(Speaker Christmann) Yeah, please pass the mic back.
Joanne Thompson, Otter Tail Power Company.
Matt Olson, Otter Tail Power Company.
Travis Jacobson, Montana, Dakota.
Darcy Nygum, Montana, Dakota.
Mark Hanson, Montana, Dakota.
Adam Rinsen, staff.

Victor Shook, PSC staff.
Claire Vigessa, North Dakota Transmission Authority.

0:02:54
(Speaker Haugen-Hoffart)
Well, thank you everyone for the introductions. My only question is, as you go through the PowerPoint, do you want us to ask questions at that time or do you want questions held until the end?

0:03:21
(Speaker 2 Jason Weirs) Please interrupt with questions along the way.

(Speaker Haugen-Hoffart) Okay, so we will turn it over to you guys for your presentation.

(Speaker Robert Endres)
Thank You Commissioner, Robert Endres appearing on behalf of Otter Tail Power Company. Today, Jason Weirs will be our main presenter and main responder to questions, but of course we have the full Otter Tail and MDU complement here to help with answers.

(Speaker Haugen-Hoffart). Okay.

0:03:59
(Speaker Weirs)
All right. Good afternoon, everybody, and thanks again for the opportunity to be here today to talk about Otter Tail and Montana Dakota's joint petition for a certificate of public convenience (CUP) and necessity for the Jamestown to Ellendale 345 KV project. Today's presentation is going to start with a brief overview of the applicants. We'll then cover the project description, the need for the project, benefits of the project, and the alternatives considered to the project. We will then explain how the project fits into MISO's long-range transmission plan and why it was classified as a multi-value project.

0:04:35
(Speaker Weirs)
We'll next review the project schedule and wrap up with a review of the CPCN requirements in the North Dakota Century Code and our conclusions that support granting a certificate of public convenience and necessity for the JETx project.

0:04:53
(Speaker Weirs)
So as mentioned earlier, the applicants in this case are Otter Tail Power Company and Montana Dakota Utilities. Otter Tail and Montana Dakota will co-own the Jamestown to Ellendale project. As you look back on Otter Tail and Montana Dakota's history, you'll note that we have over 200 years of combined experience in serving customers in North Dakota. Over this time frame, we've built an extensive network

0:05:17
(Speaker Weirs)
of transmission and generation facilities. And currently, Otter Tail owns about 6,000 miles of transmission and about 1,100 megawatts of generation, while Montana Dakota Utilities owns about 3,400 miles of transmission and about 700 megawatts of generation. Otter Tail and Montana Dakota have been

0:05:37
(Speaker Weirs)
long-standing business partners for many, many years, dating back to the 1970s when we first partnered in building the Big Stone plant. In the 1980s, that partnership continued in partnering to build the Coyote Station, and most recently, we partnered in building the Big Stone South to Ellendale 345 kV transmission project between 2011 and 2019. These past successes on these previous projects, along with our articles of incorporation and our continued certificates of good standing that are on file with the commission, prove that we are fit, willing, and able to construct, own, and operate the Jamestown to Ellendale project.

0:06:21
(Speaker Weirs)
MISO approved the Jamestown to Ellendale 345 kV project with five distinct facilities. These five distinct facilities are shown here on the slide. The first facility is a new 345 kV double circuit transmission line. The project is expected to be between 85 and 95 miles in length and traverse the counties of Stutsman County, LaMoure County, and Dickey County. The line will be co-owned between Otter Tail and Montana Dakota Utilities. The next facility approved by MISO was the Jamestown substation expansion.

0:06:56
(Speaker Weirs)
This is needed to accommodate the new 345 kV line termination as well as an Ellendale substation expansion that will be needed again to accommodate the new 345 line. The Jamestown substation is currently owned and will continue to be solely owned by Otter Tail, while the Ellendale substation is currently owned and will continue to be solely owned by Montana Dakota. In addition to those core project components, there's also upgrades required at the Maple River substation. This substation is located north of Fargo, and an expansion is needed there, as approved by MISO to accommodate the replacement of two existing 345 230 kV transformers and lastly, there's also a Twin Brooks substation expansion that's been approved by MISO as part of the project. This is located down in South Dakota, just west of Big Stone, and we'll be expanding this substation to accommodate new 345 kV reactors. The Maple River substation is currently solely owned by Otter Tail, and the Twin Brook substation is jointly owned by Otter Tail and Montana Dakota Utilities.

0:0B:02
(Speaker Weirs)
The anticipated structures for the project will look very similar to the picture you see on this particular slide, and they will be

constructed with steel model pool self-supporting structures. They will be double circuit capable structures, and we will be installing one circuit initially, but we'll have space for that second circuit in the future when the need arises.

0:08:23
(Speaker Christmann) When you talk about joint ownership of the transmission line part, is it equal or is it a percentage one and a percentage the other?

0:08:31
(Speaker Weirs) Equal ownership rights. So 50% ownership rights.

0:08:37
(Speaker Haugen-Hoffart)
So, meanwhile we're on the joint ownership. So if something goes down, is there like a primary contact, secondary contact? I mean, how does that work as far as doing the expansion work, recovery, whatever?

0:09:00
(Speaker Weirs)
Very good question, Commissioner. We do have a series of agreements that we have executed and are continuing to work on that will actually designate the lead responder in the case of a maintenance need. So those arrangements will be memorialized and documented as part of the ownership arrangements between Otter Tail and MDU.

0:09:22
(Speaker Haugen-Hoffart) OK. So from the onset of doing the expansion work all the way through on maintaining it?

0:09:30
(Speaker Weirs)
Correct. Yup. The average structure height is expected to be 150-feet tall and the structures will be installed on concrete foundations with between four to six structures per mile. The estimated cost for the overall project is $440 million as we've included in our application. The need for the project is driven by reliability concerns that are existing on the 230 kV system in southeastern North Dakota, eastern South Dakota, and west central Minnesota. I've included a graphic here that shows the existing transmission facilities in this part of the region. The existing 230 kV system from Ellendale all the way over to Wahpeton plays an important part today in exporting generation from North Dakota. Today, what happens on the system is an outage of the Big Stone South to Ellendale 345 kV line results in excessive loadings on the existing 230 kV line. This excessive loading also leads to some voltage depressions. After completion of the new 345 kV line from Jamestown to Ellendale, the generation that is forced to flow on that 230 kV system during that Big Stone south to Ellendale outage will now have an alternative path to head north from Ellendale up to Jamestown where it can then jump on the existing 345 kV facilities and make its way towards Fargo. The green dots and the green lines on this map actually represent the facilities that no longer have excessive loadings after we complete the Jamestown to Ellendale project as identified in the studies that have been completed by MISO. And I did get this real handy dandy laser pointer so I could actually show that on the map if I would have been thinking ahead of time, but I can certainly show it now.

0:11:30
(Speaker Weirs)
So the Big Stone South to Ellendale project is this gray line through this part of the system here, and then the existing 230kV system is here from Ellendale heading east to Forman, over to Hankinson, and then up to Wahpeton. So as I was mentioning earlier, in today's system, a loss of the Big Stone South to Ellendale 345 kV line forces the generation coming from North Dakota to have to go down the 230 kV system, which is constrained today. As we look at the future condition of the system and the addition of Jamestown to Ellendale, an outage of Big Stone South to Ellendale will now allow for an alternative transmission path for the generation to flow from Ellendale up to Jamestown, where it will then be able to jump onto the 345 kV line from Jamestown towards Fargo and make its way to the rest of the region.

0:12:25
(Speaker Christmann)
I just want to repeat that back to make sure I understand what we're trying to fix. It's the worry that the Ellendale to Big Stone goes down, forcing everything to go from Ellendale to Hankinson?

0:12:53
(Speaker Weirs) On the existing 230 kV system, correct.

0:12:57
(Speaker Christmann) That's inadequate. So now, if this were constructed, if that Big Stone to Ellendale goes down, it can divert up to Jamestown and go east.

Correct, yep.

(Speaker Haugan Hoffart) And there's plenty of capacity from Jamestown to Fargo to take that on?

0:13:11
(Speaker Weirs)
Yeah. So MISO is studying the system out in 2030, and as they've done the contingency analysis, looking at the various combination of outages that are possible, there were no additional overloads identified as you go from Jamestown towards Fargo. That's correct.

0:13:31
(Speaker Christmann)
What is the flow of most of the energy? But when we say Big Stone to Ellendale, I think of energy that is being created at the Big Stone plant and coming north. But when you were talking, you said the energy produced in North Dakota that's flowing down to Ellendale. And so which is the predominant?

(Speaker Weirs) That's a great question, Commissioner.

0:14:04
(Speaker Christmann) Energy that we're dealing with here?

0:14:05
(Speaker Weirs)
Yep, great question, Commissioner Christmann. Most times during the course of the year, as you look at the generation patterns on the system, there is a predominant flow of energy in this region from west to east. So we are seeing flows from Ellendale to Big Stone South most of the year. And this is especially predominant when we have the off-peak or light load conditions, where we have high generation and low load. We see the bias of flow in the system from west to east, most of the time from Ellendale to Big Stone South.

(Speaker Christmann) And so when we always refer to it out of habit as Big Stone to Ellendale, it's really more the other way around?

0:14:43
(Speaker Weirs) Yeah, and the line can flow either way, as an AC transmission line, but generally speaking, the historical flows have been from Ellendale to Big Stone South.

0:14:55
(Speaker Christmann) Yeah, okay.

0:14:55
(Speaker Weirs)
All right, the Jamestown to Ellendale project will bring several benefits to the local and regional area. As we think about adding a new transmission line like this, we've already talked about the enhanced reliability that the project will bring to the area. Through the course of the MISO analysis, they've identified that this project will relieve excessive loadings on 70 transmission facilities and address 97 voltage violations as they've done their contingency analysis of this future condition.

0:15:38
(Speaker Haugen-Hoffart?) Repeat that again.

0:15:41
(Speaker Weirs)
The analysis performed by MISO looking at the various contingencies on the system has identified that this project will help relieve excessive loadings on 70 different transmission elements and address 97 voltage violations in those future out-year conditions. **The project will also increase transmission capacity that will have the ability to enable new commercial and industrial loads. And when you think about a 345 kV line of this magnitude, we're talking about load additions that are possible in the magnitude of what we've already seen happening ont in this area. As folks are aware, Applied Digital has added some load at Jamestown and Ellendale. A project like this is going to help serve that load and also result in the ability to add more larger scale loads like that, not only at the endpoints, but also anywhere along the line through the course of a future interconuection.**

0:16:38
(Speaker Christmann)
I just got to go back to what I was talking about before with the Ellendale to Big Stone flow. So really this is more about Ellendale to Jamestown than it is Jamestown to Ellendale. But we need the vowel in the middle for the really cool acronym, right? The flow will generally be when it's needed going north.

0:17:04
(Speaker Weirs)
That's my understanding. As you look at the system as an integrated system, interconnected in all those different places, really the Jamestown to Ellendale line will provide relief on that existing 230 system for an outage of the Big Stone South to Ellendale line.

0:17:22
(Speaker Christmann) Thank you.

0:17:25
(Speaker Weirs)
All right, the JETx project will also accommodate new generation in North Dakota. I'll just mention **as a part of MISO studies of these future conditions they added about 4,500 megawatts of new generation in North Dakota, and this line will help accommodate that future generation development.** It's also going to help reduce transmission congestion. That's going to help allow existing North Dakota generation to operate more often to get their product to the market. In addition, the project will also increase resilience to extreme weather events. I believe Otter Tail was in front of the Commission in the past talking about the 2023 Christmas ice storm and the conditions that we experienced out at Jamestown. We had a situation this past Christmas season where we had lost both 345 kV lines into the Jamestown load pocket and that forced us to have to operate the Jamestown pocket as an island for the matter of about one and a half days. We supported that entire load pocket through the use of our existing peaking plants that run on diesel fuel.

As we look at adding the Jamestown to Ellendale project, we'll now have a third source into the Jamestown load pocket, and this will help reliably support that load in the event that we lose both of those 345 kV lines in the Jamestown again. So tremendous reliability benefits for the Jamestown area. As we look at the southern end of this project at Ellendale, there's also going to be benefits to that area as we think about the current line from Big Stone South to Ellendale really ends at Ellendale as a 345 kV line. **Connecting Jamestown down to Ellendale will now create a looped 345 kV system and help address some of those voltage stability concerns that are present today at Ellendale.**

0:19:16
(Speaker Christmann) What are the two 345 lines that are currently going into Jamestown?

0:19:23
(Speaker Weirs)
There's 2 lines today. One comes from Center and goes over to Jamestown and then it continues east to Buffalo, North Dakota and then ultimately over to Bison substation and then Maple River, which is just outside of Fargo. All right, going down the benefits here, the next benefit is support to local landowners. **As we think about boosting the local economy, Otter Tail and Montana Dakota Utilities estimate that we'll be paying over $10 million to local landowners in this area as a result of the easement payments that we'll be paying for the project.**

0:19:54
(Speaker Weirs)
It's also going to generate tax revenues for many of those governmental entities that support or that collect taxes, primarily in the form of property taxes. And also, as you think about the work needed to construct a project of this magnitude, we'll also be looking to leverage some of the local service providers in the area. It could be tree clearing companies, it could be local contractors to help with road improvements, collecting or getting gravel, getting the aggregate concrete.

0:20:25
(Speaker Weirs)
Those are all things that we hope to be able to leverage the local businesses for. And lastly, as you think about the workforce needed to build a project like this, many of the local businesses will also benefit by purchasing fuel, meals, and lodging during the construction phase of the project. Speaking of construction, we do expect between 100 and 150 employees on site during the construction phase of the project. And we're hoping to be able to leverage some of the local skilled laborers for performing some of this work.

0:20:59
(Speaker Christmann) **Regarding the landowner payments, have you started easement acquisition yet? And how enthusiastic have the landowners been to have that opportunity?**

0:21:11
(Speaker Weirs)
We have started land acquisition efforts. Last August, we started asking for survey permission along a proposed route, and then in February of this year, we started asking for options to get easements on property. Through the course of this interaction, we've actually been taking landowner feedback in the form of suggested revisions to our route, and at this point in time, we've looked at over 30 different reroutes for the line, and negotiations with landowners continue to go well. As of last week, we reached about a 33% voluntary easement status, and we're continuing to work on that, and we'll continue to work on that throughout the development phase of the project.

0:21:54
(Speaker Haugen-Hoffart?) You said you've looked at... I don't remember how many reroutes. Have you rerouted it, or are you looking at it? I'm just curious on that.

0:22:07
(Speaker Weirs)
So over the course of landowner discussions oftentimes we hear alternative ideas on where to reroute the transmission lines. So to date I would say that we've experienced or we've processed over 30 different reroute requests from landowners.

(Major static!)

0:22:24
(Speaker Christmann) I didn't notice you coming.

0:22:53
(Speaker Weirs)
So of the over 30 reroute requests you've gotten from landowners, I don't have an exact number on how many we were able to grant, but it has been most of them. And I don't know if anybody else has any additional color on that on the project team, but I'll open it up if there's any additional feedback.

(Speaker??) Yes, we continue to, as we engage with landowners, we continue to see more and more reroutes. But they're small reroutes, primarily on their property. They just want to move to one side or the other.

0:23:25
(Speaker Christmann) And when you said about 33% of easements acquired, are you talking about the number of landowners that would need to be dealt with or about the linear miles of the line?

0:23:35
(Speaker Weirs) It's based on the number of landowners. At this point, we have about 170 unique landowners along the proposed route, and we've acquired about 33% of the easements that we need for the line so far.

0:23:50
(Speaker Fedorchak)
I have a question about the voltage and the voltage violations that you talked about a little bit ago. Could you give me those numbers again, Jason, and then um, kind of explain, give us some examples of what's happening there. I think you called it loading and voltage violation.

0:24:09
(Speaker Weirs)
Sure. Commissioner Fedorchak, if you don't mind, I'll maybe go back to this previous slide so I can use the map to explain this in a little more detail. So each transmission facility has a rating associated with it, and that rating is set set by the owner to avoid any damage to the facility and to avoid any safety concerns. And as you think about excessive loadings on the transmission system, this is a condition where the loading on the facility has exceeded the safe operating limit of the line. So in those situations, the market may have to re-dispatch to avoid that overload issue or may have to pursue underlying upgrades to fix those loading issues. And on the map again, just to illustrate this, it's this 230 kV path from Ellendale to Forman, to Hankinson, up to Wahpeton, that's experiencing some excessive loadings.

0:25:03
(Speaker Weirs)
And then also from Hankinson as we head down towards Big Stone. You'll see this is the system that's exporting this generation from North Dakota to the neighboring states. So as we look at the addition of the Jamestown to Ellendale 345 kV project, we have found that the additional line will relieve excessive loadings on 70 different transmission elements during this contingency analysis performed for that future condition.

0:25:32
(Speaker Fedorchak) And is that, like, how often? Is it a constant thing? Like, how often are these excessive loadings happening?

0:25:43
(Speaker Weirs)
I don't have an exact count of how many hours per year, but generally speaking, these are typically times of the year when we're seeing a large amount of generation and lower amounts of load. So we have higher flows throughout the system. We also see some of these same challenges during winter peak conditions, when the load in this area is higher than it is in the summer.

0:26:07
(Speaker Fedorchak) Okay.

0:26:08
(Speaker Weirs)
And if I may, Commissioner Fedorchak, just one other quick comment on these excessive loadings. Along with excessive loadings comes depressed voltages. What you'll see on these transmission facilities is the higher you load them, the lower the voltages will get on the system. So generally speaking, we're gonna see excessive loadings and depressed voltages accompanying one another in these same areas, and that's exactly what's happening here. As this 230 kV system is loading up to its maximum rating, the voltages are dipping to a point where it's violating the criteria set by the owner, and we need to do something to fix those issues.

0:26:45
(Speaker Fedorchak)
So when it's, when the demand is lower than the generation, which you said is one of the drivers, is there demand out of the state that wants that power or what's stopping it from just being curtailed? And how will that, I guess, there's a demand, how will more transmission help if there's no demand? Or maybe the demand is just out of someplace else. So explain that a bit.

0:27:15
(Speaker Weirs)
Sure. This would all be basically determined through MISO's dispatch in the energy market. And to the extent that there is demand outside of the state, the MISO market dispatch would try to get that generation out of North Dakota and to those neighboring states as long as we had sufficient transmission capacity available to export that generation. To the extent that that transmission capacity is constrained, then they'd have to curtail generation so that it would be bottled up within North Dakota.

0:27:47
(Speaker Fedorchak)
So is what's happening now is there's this constraint, so it can't get out, there's demand outside, but it's constrained? I'm a little confused by your comment that one of the cause of the voltage violations is it occurs at a time when there's low demand and excessive generation.

0:28:05
(Speaker Weirs) Yeah and that's a situation where the flow on the transmission system is at its maximum rating so that that we can't get any more generation out of the state in those situations.

0:28:20
(Speaker ?) So it's wanted outside of the state. Somebody wants it, it just can't get there. Correct. Okay, so the demand just isn't local. Correct. Got it. All right, and that makes more sense.

0:28:29
(Speaker Christmann) But what about when it's not one? Then by doing this we've just added more generation into the mix that has to curtail.

(Speaker Weirs) Correct. Can you repeat that please?

(Speaker Christmann) Okay, you seem to be alluding to times when the energy is needed somewhere, and this would open more avenues to get it there. But what about the times in the middle of the night and the nice spring and autumn evenings when it's not needed anywhere and we're curtailing and curtailing? If you're right that this will add opportunities for more generation in North Dakota, doesn't it just mean more generation facilities that need to curtail and lose money?

0:29:22
(Speaker Weirs)
It's possible that could be a situation but I'm assuming most generation developers would be doing their homework before they would be interconnecting the grid to make sure that they have a viable business opportunity before proceeding.

(Speaker Christmann) I agree with that. The developers do because they get subsidized. It's the existing ones that are left hanging out to do the curtailing.

0:29:44
(Speaker Weirs)
Yeah. And that comes down to how they set their market prices as they enter the market and MISO chooses which resources to dispatch.

0:29:53
(Speaker Weirs)
Okay, I think we are on slide seven. As MISO performed their studies of the area here, they did evaluate five different alternatives to determine if any feasible alternative was out there that more effectively addressed the reliability concerns that were appearing on that 230 kV system in southeastern North Dakota, northeastern South Dakota, and west central Minnesota. This particular slide has a table that shows all of the various combination of alternatives that MISO considered, and as you'll notice, the list of alternatives here, you'll note that the Jamestown to Ellendale project is part of every different alternative that was tested by MISO, which further reinforces the importance and the benefits of the project to not only the region, but also this local area. The Jamestown to Ellendale project was identified as part of the Tranche 1 portfolio from MISO's Long Range Transmission Plan.

0:31:14
(Speaker Weirs)
This Long-Range Transmission Planning effort started back in 2020 and is planning to be broken into 4 different phases or 4 different tranches of transmission projects. As shown on the slide here, Tranches 1 and 2 are focused on the Midwest sub-region of MISO, while Tranche 3 will then turn its focus to MISO South region, and then Tranche 4 will look at focusing on inter-regional projects to help strengthen the connections between the Midwest sub-region and the South sub-region.

0:31:42
(Speaker ?) It's really 5 tranches.

0:31:49
(Speaker Weirs) Yeah, do you consider tranche 2.1 and 2.2?

0:31:53
(Speaker ?) I'm not buying the marketing.

0:31:54
(Speaker Weirs) Yeah. Understood

0:31:55
(Speaker) Sorry.

0:31:56
(Speaker Christmann) So do you mean there's a fifth one that's not mentioned here? No. Or do you mean 2.1 and 2.2 are two different tranches?

0:32:03 (Speaker) Yes.

0:32:04
(Speaker) Yeah.

0:32:05
(Speaker) They really are.

0:32:06
(Speaker Christmann) So you mentioned this one being $440 million. This project being $440 million. What was the total price tag of Tranche 1?

0:32:17
(Speaker Weirs) $10.3 billion was the approved cost of the Tranche 1 portfolio.

0:32:25
(Speaker Christmann) And go through two, three, and four, you can divide two or put them together.

(Speaker Weirs) Are you talking about the estimated costs? At this point in time, the other tranches aren't known. They're not finalized yet, so it's hard to put a price tag on them.

(Speaker Christmann) But there's estimates out there.

(Speaker Weirs) Yeah, I'm not comfortable stating a specific estimate because I don't believe that the portfolios are finalized yet.

0:32:56
(Speaker ?) Tranche 2 is looking like, if you combine them, $30 to 50 billion. Probably a lot closer to $50. Because Tranche 1, 2.1 is almost 30, actually. Tranche 2.1 is almost $30 billion, right, Adam? Yeah. So they haven't really put a price tag on 2.2 that I've seen, but, um...

0:33:26
(Speaker Christmann) So 2.1, you said, is about $30?

0:33:28
(Speaker) Mm-hmm.

0:33:28
(Speaker Christmann) And 2.2?

0:33:30
(Speaker ?) They haven't really said. And I don't know, is Tranche 3... at all, price tag range?

(Indistinct mumbling.)

0:33:47
(Speaker Weirs)
Okay, moving on to slide nine. Again, refocusing our discussion here on Tranche 1. MISO did take about two and a half years to perform the studies to support the Tranche 1 portfolio through the course of several different stakeholder meetings and workshops. And as a result of all that study work, they did approve 18 new transmission projects in July of 2022 and they call that the Tranche 1 portfolio. As you'll notice on the map here, the Jamestown-Ellendale project is Project Number 1 on the map.

0:34:33
(Speaker ?) I'm just curious, how did you prioritize the difference between Tranche 1 to Tranche 4? What were tbe key components on that? I mean, North versus south?

0:34:50
(Speaker Weirs)
Sure. Thanks Commissioner for the question. The actual prioritization of looking at which parts of MISO was performed by MISO, and the reason that they focused on the Midwest subregion first is because they're seeing the amount of generation being built in this region is far outpacing what's happening in other parts of MISO. So they're attempting to try to get ahead of the transmission needs because of the faster development of generation up in this region.

(Indistinct mumbling.)

(Speaker Weirs) So as Commissioner Christmann had just asked about here, this slide actually indicates that Tranche 1 represents over 2,000 miles of new and upgraded high-voltage transmission and the price tag that was associated with the Tranche 1 was $10.3

billion. As you think about these Tranche 1 projects, they do offer multiple benefits, and because of those multiple benefits, all these projects as part of the Tranche 1 portfolio were approved as multi-value projects, or MVPs, under MISO's Tariff. So under MISO's Tariff, a transmission project can be approved as an MVP if it meets one of three criteria. It needs to address a reliability issue that's in violation of a NERC reliability standard. It needs to provide economic value across a broad area with a benefit to cost ratio of 1.0 or higher, or it needs to support the reliable and economic delivery of energy.

0:36:23
(Speaker Weirs)
Because the benefits of the Tranche 1 portfolio are spread broadly across the entire Midwest sub-region. The cost of the Tranche 1 portfolio is shared on a pro-rata basis to all loads in that Midwest sub-region based on energy usage. **So what this means for Otter Tail's North Dakota customers is that they'll be paying for 0.61% of the projects, and Montana Dakota customers will be paying for about 0.47% of the projects.**

0:36:52
(Speaker Christmann) So does the southern region pay anything for these?

0:36:56
(Speaker Weirs)
In this case, the benefits were limited to just the Midwest sub-region, so that's the only load area that will be allocated, costs from the Tranche 1 portfolio.

(Speaker Christmann): And based on a couple slides ago, Tranche 3 will be just about the opposite.

(Speaker Weirs) Based on the focus for Tranche 3, we expect that the cost allocation would be limited to the Miso South subregion.

0:37:22
(Speaker Christmann) What about that big Tranche 2? That's north.

0:37:27
(Speaker Weirs) The intent is to focus on the Midwest subregion.

0:37:30
(Speaker Christmann) Okay.

0:37:31
(Speaker Weirs)
The next slide has just an overview of the project schedule. As I mentioned earlier, **we started outreach to landowners back in 2023. We actually held some public meetings to get input on the routing process** back in early to mid-2023, and then began defining a proposed route in late 2023. And we started securing land rights for the route in early 2024, in February in fact. We do plan to file a combined certificate of corridor compatibility and route permit application late in Q3 of this year.

0:38:12
(Speaker Weirs)
And **we're hoping for a PSC decision on the combined route permit filing early in the second half of 2025**. Assuming all this goes as planned, we would plan to start pre-construction activities in the fall of 2025. And some of those pre-construction activities would include tree clearing. We'd be working on lay down yards and getting road improvements ready to start construction in the spring of 2026. We'd start first, of course, with foundation drilling, and then that would be followed up with setting structures and then finally stringing conductor.

0:38:45
(Speaker Weirs)
And as the current schedule stands, we would have two to two and a half years construction and wrap the project up and have it in service by the end of 2028. We have reviewed Chapter 49-03 of the North Dakota Century Code and believe that we are in compliance with the requirements needed to obtain a certificate of public convenience and necessity. As you review our application, you'll note that the Jamestown to Ellendale project will not interfere with the service provided by any of the other utilities in the area. Otter Tail and Montana Dakota have articles of incorporation on file with the commission, and Otter Tail and MDU are committed to obtain all the applicable permits from federal, state, and local authorities prior to starting construction.

0:39:43
(Speaker Weirs)

So in conclusion, we believe that public convenience and necessity will be served by Otter Tail and MDU's construction, ownership, and operation of the project because of the reliability and economic benefits provided to customers. The project is part of MISO's long-range plan and was approved as part of their 2021 transmission expansion plan because of the reliability and economic benefits that it enables as part of the overall Tranche 1 portfolio. And Ottertail and MDU are fit, willing, and able to construct, own, and operate the Jamestown-Ellendale project as proven by their Articles of Incorporation, their Certificates of Good Standing, and their success in past projects.

0:40:28
(Speaker Fedorchak) Jason, was this project a standalone on the cost-benefit analysis? Or did it... I forget how it works. Was it all the MVPs were done together?

0:40:50
(Speaker Weirs) That's the latter is correct, Commissioner Fedorchak, all MVPs (multi value projects) were done together.

0:40:54
(Speaker Fedorchak) OK. Have you guys found a cost benefit of just this project?

0:40:59
(Speaker Weirs) We have not. In fact, Otter Tail doesn't have the necessary software to perform that calculation.

0:41:05
(Speaker Fedorchak) OK. And the benefits that you mentioned in your discussion about benefits, including like landowner payments and tax revenue, et cetera, those aren't part of the MISO business case, are they?

0:41:24
(Speaker Weirs)
They are not actually part of the MISO business case. I will mention to the commissioners here today that Otter Tail and MDU have commissioned a study with North Dakota State University to help better quantify the benefits of the project to the local area. And we do plan to include that study as part of our upcoming combined certificate of corridor compatibility and route permit application. So the commission will get a chance to see that coming up as we finalize that and better quantify those local benefits.

0:41:57
(Speaker ?) Who's doing that study?

0:42:01
(Speaker Weirs) We've commissioned North Dakota State University NDSU.

0:42:05
(Speaker Fedorchak)
You mentioned that this will accommodate **4,500 megawatts** of new generation. Do you know where MISO got that figure, or did you guys give that to them? Where does that come from? And is that generation in the queue, where, how do we...do we have confidence that that's actually probably going to materialize?

0:42:31
(Speaker Weirs)
The 4,500 megawatts was determined through a MISO stakeholder process when they built the futures to analyze as part of the LRTP study. And it's my understanding that the 4,500 megawatt assumption of generation in North Dakota was based on a variety of inputs, including stakeholder input from utility integrated resource plans. If there was an announced project, they made sure they included that in their assumptions. And then they also did look at the queue, and they tried to determine where there's been recent activity and used some of those locations as well for a future generation siting assumptions.

0:43:07
(Speaker Fedorchak)
And then you probably covered this, and I missed it, but the O&M for this line, how is that handled in terms of covering the cost?

0:43:38
(Speaker Weirs)
Yeah, the O&M costs for the MVP projects are recovered as part of the overall MISO tariff. So we will calculate O&M charges and pass those through as MVP charges under attachment MM of Otter Tail and Montana Dakota's respective attachments in MISO.

0:43:54
(Speaker Fedorchak)
So is it safe to kind of just in a simple manner assume that this is a decently size investment in both your systems that you'll pay only a fraction of the cost for it?

0:44:15
(Speaker Weirs)
Yeah, that's correct Commissioner Fedorchak, the calculations that have been performed by Otter Tail and Montana Dakota Utilities indicate that **North Dakota customers will pay in roughly 0.61%. I'm sorry, let me back up a minute there. Otter Tail's North Dakota customers will be paying 0.61% of this project cost, and Montana Dakota customers in North Dakota will be paying 0.47% of the overall project cost.**

0:44:42
(Speaker Haugen-Hoffart)
But what's the impact to the maintenance of it? How does that affect the ongoing cost? Because you have maintained 100% ownership on one and joint, but that's got to be some ongoing cost in which repairs will pay for.

0:45:06
(Speaker Weirs)
The MVP costs for O&M are treated the very same way they are for the investment needed to get the projects constructed. So if it's a capital cost up front for part of the construction costs, or an O&M cost after the project goes in service, those costs are allocated similarly across the MISO Midwest subregion.

0:45:26
(Speaker Christmann)
I want to go back to that allocation. It's one thing to talk about that on $440 million, and it was wonderful because we're only paying this small part of the costs of this, but this is the thing with socialization. In agreeing to that, we're paying that same part of the costs of the other more than nine and a half billion dollars involved here and the $30 billion on Tranche 2 and all of that, correct?

0:46:11
(Speaker Weirs) That's correct Commissioner Christmann.

(Speaker Christmann) So what's the rate impact in rate cases? We often talk about typical residential customers, as an example, so that the people that you serve and that we serve understand how they're going to be impacted. What is the impact of this project or Tranche 1 for each company?

Mumbling...You got the number two?

0:46:42
(Speaker Weirs)
Okay, so Otter Tail and Montana Dakota Utilities has performed calculations to determine the rate impact to an average North Dakota residential customer using a thousand kilowatt hours per month. And as you **look at the cost of just the Jamestown to Ellendale project, Otter Tail residential customers are going to see a rate impact of 18 cents per month, MDU customers will see an impact of 12 cents per month for just the Jamestown to Ellendale project.**

0:47:18
(Speaker Christmann) It doesn't really interest me because we're talking about a package deal.

0:47:23
(Speaker Weirs)
So I have those numbers handy here as well. As you look at Otter Tail's impact for North Dakota customers from the full Tranche 1 portfolio, again, an average residential customer for Otter Tail using 1,000 kW hours per month. The rate impact is estimated to be $5.85 per month.

0:47:46
(Speaker ?) Montana Dakota's additional cost for the entire Tranche 1 would be about $3.15 a month.

0:47:52
(Speaker Chris)
Would it be safe to say that if you're considering that it's about roughly $10 billion, we're talking another $30 to $40 billion?

So if you take that number times 4 and add to that, you get an idea of what the cost of Tranche 1, Tranche 2 would be. So it would be somewhere in the mid-$30s per month probably per customer once Tranche 2 and 3 are through. Is that fair to say?

0:48:34
(Speaker Weirs)
From a rate impact perspective, I think that's a fair statement. I just don't want people to lose sight of the benefits that these projects also offer to the local area and the region in general. So, yeah, if you look at it just purely on a rate impact basis, that's a reasonable assumption, Chris. But we also need to look at the full package and the other benefits these future projects will bring to the region and the local area.

0:49:01
(Speaker Christmann)
So when we do that, I completely understand the impact to government with taxes (inaudible)?? I can completely understand the benefits to potential new energy generation that is looking all over the country for places to get in on a transmission system to take advantage of federal subsidies. So I see that as a benefit to them. I'm wondering about the benefit to Otter Tail, and especially to MDU. We talked about the occasional inability to get our power out. Tells me that we have plenty to serve our people.

0:50:02
(Speaker Christmann)
And so we're entering into these compacts for all these socialized projects at a great cost to the system that benefits government and renewable generators, but I'm not getting quite the enormous benefits to the customers of these two companies?

0:50:29
(Speaker Christmann)
And I'll just add this to the question because I like both companies' responses. I started to get Otter Tail's because I understand the push from Minnesota to stop using the Coyote plant power and have all renewable. I don't really see the pressure on MDU.

0:50:56
(Speaker Weirs)
Thanks Commissioner Christmann. If I could maybe start from Otter Tail's perspective and then I'll hand it over to MDU to respond on their behalf. As you look at the Jamestown to Ellendale project, one of the huge benefits for Otter Tail, as I mentioned earlier, is the benefits that we're going to see to the local Jamestown area. As you think about the current load pocket and the existing sources into that load pocket, we were in a very difficult position last Christmas with the ice storm that took down both 345 kV lines that served Jamestown. As a result, we had to run that diesel peaking generation for almost one and a half days that consumed nearly 90,000 gallons of diesel fuel. If we add this new source from Ellendale up to Jamestown, this additional 345 delivery will result in a very much more...a much more resilient and robust transmission system that can serve that Jamestown load pocket, which, by the way, is Otter Tail's largest community, as you think about our service territory across our entire 70,000 square mile service territory.

So we see tremendous benefits of this project. And over time, we knew something was going to be needed to he done to that Jamestown load pocket. This project is going to be a huge benefit because of the fact that we can share the cost of the project with all of the MISO Midwest customers and get the huge benefit to our customers in the Jamestown area and anywhere along the line as we look to Otter Tail communities, even down as far south as Edgeley.

0:52:31
(Speaker Christmann) Does that happen very often where both those 345 lines were out?

0:52:35
(Speaker Weirs)
I'll mention that because both, last Christmas was certainly a unique situation with an extreme weather event, but I will also mention that even when it comes to reforming maintenance at the substation, when we have the entire load pocket sourced from a single substation, we do get into some very difficult situations when we try to schedule outages and be ready to survive that next contingency, so we don't have a contingency that takes down the entire load pocket. So now this third source will also help ease some flexibility and being able to perform maintenance more often during the year.

(Speaker Christman) Was that always an issue on maintenance or is that just since the addition of the data processing center in Jamestown?

0:53:24
(Speaker Weirs)
It certainly has gotten more challenging as we've experienced load growth in the area. Even before the addition of the

Applied Digital load, we did see some of the residential loads and commercial loads around the Jamestown loop increase over time. As you think about the Spiritwood Energy Park, there's a lot of activity going on there with the soybean facility going on. We have Avico?, Cavendish, a lot of those commercial customers in the area. And at some point, we have reached a load level where the local peaking generation can no longer reliably serve all of that load during certain times of the year. So it's become even more important now to have that third delivery in the Jamestown to help serve that area when we have an outage to the existing facilities.

(Speaker?) When both of those 345 lines went down coming into Jamestown, where did they fail at? Was it in that local area or was it somewhere else?

0:54:28
(Speaker Weirs) I don't know the exact answer to that. It was outside of the Jamestown substation. Actually Todd, do you have any idea?

(Speaker Todd) I know the line between Jamestown and Buffalo failed east of Spiritwood and I'm not sure where the line failed from Jamestown to Center.

(Speaker ?) And that both failures were directly related to the ice storm?

(Speaker Todd) Yes.

(Speaker ?) Okay, how is this line resistant to ice storms and failure like the other two lines?

(Speaker Todd) The conductor on this proposed line, JetX line, is going to be T2. That type of wire, it's a twisted pair, sheds ice. Ice does not form on there and get the galloping that a normal conductor would.

0:55:09
(Speaker ?) Okay, thank you.

0:55:12
(Speaker Christmann)
Before I go to any more, I'd like to get MDU's perspective on the benefit, unless you had a question on the follow-up of Otter Tail's perspective.

0:55:20
(Speaker Haugen-Hoffart?) I don't, I just have some commentary on Tranche 1 and Tranche 2.

0:55:25
(Speaker Christmann) This is sort of a double question, I'd like to get MDU's response.

0:55:30
(Speaker Rob? MDU)
Yeah, I think I'll start and then Darcy probably has some comments to add as well for Montana Dakota. There's some, we definitely see some reliability benefits as well from this increased transmission in the area. I think there's also some opportunities for us from a load serving perspective as well. **We've seen some interest in the area where our transmission has been growing, like Ellendale, where we can realize some benefits as a company and customers in North Dakota for these increased load opportunities that we have to serve like data centers.** And I think that Jamestown to Ellendale also gives us an opportunity to increase the transmission investment in North Dakota and allow a maybe future expansion of MISO's transmission system further west more into our system. And I think Jamestown to Ellendale line gives us that opportunity to continue that transmission further west into more intended?? use system, I think, in the future.

0:56:34
(Speaker Darcy?)
I would agree with what Rob says. And the other one that we're looking at, too, is this looking for a need for additional generation to come into the state, whether it's for ourselves or other developers. So, you know, without projects like this, it's hard to develop additional generation within the state. It does provide those opportunities as well. One for our own utilities to be able to supply the needs for our customers and also at least for additional development to happen in the state that otherwise wouldn't happen.

0:57:10
(Speaker Fedorchak)
So kinda stepping off of those comments, when Tranche 1 was being um discussed and the cost allocation, this is more background

for my colleagues, um when the cost allocation was being discussed, um our office and Darcy, so MDU, tried really hard to get a generator pays component to the formula. I mean, we took many, many runs at it, and we're starting to get some traction. And then people got nervous that we're taking too long and had to get going and it takes so long to build, et cetera, et cetera. So they move forward with this um postage stamp approach. Um and so we ultimately went along with it for the reasons, ya know, both the reliability reasons and recognizing like North Dakota is an exporting state.

0:58:16
(Speaker Fedorchak)
And we have potential to export more, both from the gas side, gas generator side, um uh perhaps through coal with carbon capture and storage if that's proven out, or if the science changes, ya know there might be more hope for um the coal fleet, and through ya know wind and renewables. So this Tranche 1 seemed like much more of a backbone type investments to bring the system um up to speed. I will say, Tranche 2 is much more about helping the states. And they even state this. MISO even states this. Tranche 2 is much more about helping

0:59:04
(Speaker Fedorchak)
the states meet their goals. So in my opinion, I don't think that, and I'm not prepared to just have North Dakota as long as I'm here, go along with Tranche 2, depending on how it all shakes up. But I mean, that's a play that we need to be looking at down the road, but um there should be a generator-based? component to that, and there isn't. And uh they've fought it tooth and nail. And the benefits to our state of that, especially 2.1, where we basically aren't even connected. And they've left MDU high and dry in that. There's no investments.

0:59:46
(Speaker Fedorchak)
They don't even have the system west of Jamestown on the map on their Tranche 2 stuff. So that one is an area where North Dakota needs to be very engaged in watching how the costs um come forward and what the benefits are of those projects, uh how they address the cost-benefit analysis, and um be prepared to not go along with it. Anyway, commentary, not for today's sake.

1:00:22
(Speaker ?)
So there's a lot of flexibility on the difference between the different tranches and the cost allocation?

1:00:28
(Speaker ?) No.

1:00:28
(Speaker ?) Or are you sitting saying, we did this for one, it's got to be this way for two, three, four, whatever?

1:00:35
(Speaker Fedorchak?) There's no flexibility. The cost allocation is set and it would have to be fought at FERC if we wanted to not go along with it.

1:00:43
(Speaker ?) Okay.

1:00:43
(Speaker ?)
A quick question on cost. You know, I don't think I'd be the only one who's a little shocked by the cost of the project. I would imagine you guys are probably maybe not surprised by it. But looking back at the costs of industrial materials and things like that, you've got like 85 miles. And when you do the breakdown between the substations and the lines, you've got somewhere in the ballpark of $4 million a mile for four structures per mile. I mean, how does that compare to more recent projects that you guys have done and what kind of an inflation, is it twice the cost of what you did 10 years ago? Any sense of that?

(Speaker?) Yeah, so it's basically doubled as what we had done on BSSE. BSSE, we hit the steel prices at an all-time low. 1:01:33 Right now, these steel prices, the indices are twice that what we had paid for the BSSE, along with concrete prices also.

1:01:48
(Speaker ?) And what year was that?

(Speaker ?) It was in service in 2019.

1:01:55
(Speaker ?) Julie, you missed the brand. It's very intriguing.

1:02:12
(Speaker ?) On our JETx? Is that how we say it? JETx? Good job.

1:02:38
(Speaker Christmann) Are there other questions?

1:02:48
(Speaker ?) I thought I could just sit quietly back there and I can't. I tried. Okay. So cost recovery of a line such as this, you wouldn't be coming in and asking for cost recovery in your transmission rider as rate based? Correct? You'd be coming in through a MISO charge in the transmission rider. Is that accurate?

Different skillset. I have a lot of good talk.

1:03:35
(Speaker Matt Olsen)
Thanks Victor. Matt Olsen here. Most of it, I think you're accurate about that. There's a small portion that's rate based.

(Speaker Victor) Okay, so what portion would be rate based?

(Speaker Matt Olsen) The small portion that represents North Dakota customers of Otter Tail.

(Speaker Victor) So the 0.6 percent roughly.

(Speaker Matt Olsen) Yeah.

1:03:56
(Speaker Victor)
That portion you would be adding to rate base and getting your North Dakota approved rate of return or your FERC approved rate of return?

1:04:05
(Speaker Matt)
This is where I probably need help from others. Probably, maybe better if we work this out and...

1:04:11
(Speaker Victor) It's just curiosity.

1:04:12
(Speaker Matt) Yeah.

1:04:13
(Speaker Victor) So you could file something just to kind of clarify those points of the cost reduction.

1:04:17
(Speaker 16) And it may be there already, but we can spell it out for you.

1:04:21
(Speaker ?)
Well, Matt, maybe speak to the FERC jurisdiction a little bit. I know MDU and Otter Tail have a little bit of a difference between, you have a small jurisdictional portion, but maybe, I think, and Victor can correct me if I'm wrong, but I had a misconception at first that this would be a rate-based rate recovery item, and maybe kind of speak a little bit to the mechanism that, how that gets recovered through, or how that gets charged back to customers, as opposed to being rate-based with the recovery and base rates and how it flows from MISO instead.

1:04:54
(Speaker Matt)
Yeah, I think I'll probably add confusion by trying to explain it myself, and I'd rather not introduce that here, but certainly...

1:05:02
(Speaker Victor)
That's perfectly fine if you're willing to make a subsequent filing just to kind of lay out the cost recovery of what I think would be interesting to demonstrate for this project, for the Jamestown-Ellendale line, and for the rest of Tranche 1, how that would pass through to North Dakota customers, because I would assume it's slightly different.

1:05:23
(Speaker ?) And we do have some of this in data requests, so we can just do a little addendum.

1:05:27
(Speaker ?) I will point there and spell it out for you there.

1:05:29
(Speaker ?) Sure.

1:05:30
(Speaker Fedorchak) Would it be different for MDU or Otter Tail?

1:05:32
(Speaker ?) Maybe. Next.

1:05:34
(Speaker ?) Yes, it's different. I do know that.

1:05:41
(Speaker Travis)
Travis Jacobson with MDU. Montana Dakota would only see in our transmission cost adjustment where we would see the Schedule 26, the MVP piece of that. And that would be the same for Montana Dakota's JetX project as well as the rest of Tranche 2. That's just going to come through our Schedule 26A, I think.

1:06:12
(Speaker ?) Okay, so then that would be based upon your FERC approved rate of return?

1:06:19
(Speaker Travis) That's true.

1:06:21
(Speaker ?)
Okay. I mean there's other stuff in there other than rate of return, but that's...

(Speaker ?) Same as BSEE and all the other ones today.

(Speaker ?) Absolutely. That's true. Yep. Okay.

(Speaker ?) And there is nothing that we would put in rate base at Montana Dakota.

(Speaker ?) And then that would flow through, it would be charged via the MISO 26?

(Speaker ?) I think it's 26A.

1:06:53
(Speaker ?) So for how many years?

1:06:56
(Speaker ?) Well until it's gone, so 40?

1:06:56
(Speaker ?) 40 years. OK.

1:06:57
(Speaker ?) I think that's all I have.

1:06:59
(Speaker ?) I can go down other rabbit holes if I want. That one seemed the most fun.

(Speaker ?) I'll be 95 when that's done.

1:07:07
(Speaker Fedorchak) What time? I'll be 95 years old when they quit paying for it.

1:07:16
(Speaker ?) Some people are pretty old, too.

1:07:18
(Speaker ?) I'll do.

1:07:19
(Speaker Christmann) I'll be pretty old too.

(Indistinct talking.)

1:07:34
(Speaker Christmann)
I don't know if this is more for staff or what? We're discussing this with Otter Tail and MDU because you're owners of the line and you need this certificate. But this rate impact is going to go to Xcel customers too, right?

1:07:51
(Speaker ?) Mmhmm

(Speaker Christmann) Do you know how much that is?

1:07:57
(Speaker ?) I can speak to that since Alex, I spoke to Alex Nesbitt, as far as the allocation of cost per megawatt hour, it's exactly the same for all of the companies. The difference is, as you see the difference between MDU and Otter Tail's rate for residential customer, theirs is just going to be in that ballpark of what they have. He hasn't gotten back to me on the actual thing, but it has to go through the jurisdictional allocation and the customer class allocations to kind of get at the customer rate. But it's going to be in the same ballpark. So the bottom line is.

1:08:29
(Speaker Christmann) The ballpark is so much different.

1:08:30
(Speaker ?) Well, it.

1:08:31
(Speaker Christmann) A little over three to almost six.

1:08:32
(Speaker ?)
Yeah, and I've asked them to expand upon that. But the point that I make though is when you look at the allocation, the cost per megawatt hour is essentially the same for each company. So, if you think about it like, the way I looked at it on a short basis is, if you jump through all the math, is one customer uses about one megawatt hour per month, and the cost was like, for a Tranche 1, was like $2.51 in 2031 per month. So you'd think it would be $2.51, but it has to go through all the allocations. So it all kind of starts from the same place. So, I'm still waiting to get what that exact number will be, but they all start with the same charges for the same amount of energy from the MISO cross-charters through the transmission route, the 26A or whatever you call it. So I'm waiting to get here what that number is exactly.

1:09:26
(Speaker Christmann) And the cooperatives are also going to be paying on this?

1:09:29
(Speaker ?) Well, if they're on MISO.

1:09:31
(Speaker ?) MISO co-ops.

(Speaker Christmann) Yeah, right.

1:09:45
(Speaker Fedorchak)
Which is MinnKota? No, they have their own deal, don't they? Yeah, they're not members. Got some other tariff. But an answer, I'll get, as soon as Alice gets back, I'll get you that information.

1:09:57
(Speaker 1?) Cass County? No? They're SBP. All right.

1:10:03
(Speaker Christmann) Anything else?

Speaker Fedorchak: I don't think so.

1:10:09
(Speaker Christmann)
Well I'll just say I'm going to continue a lot of discussions with staff. **Like I said, the end in this whole thing is necessity and I get the need, I get the benefit that that comes to government, to renewable developers, and to anyone who really wants to meet Minnesota's policy goals, but I'm not convinced of the rest quite yet, but I'll certainly be doing a lot of discussing and thinking.**

1:11:02
(Speaker ?)
I have one other one, I forgot about this earlier. So I just want to clarify, so this line is not needed because of Applied Digital load at either Ellendale or Jamestown.

1:11:14
(Speaker ?) Speaking specifically for Ellendale, no.

1:11:16
(Speaker 2) And for Otter Tail, no, it's not needed for Applied Digital at Jamestown.

1:11:20
(Speaker ?) And **we've got a couple of concerned landowners who have made that claim**, and I was fairly certain that was the answer. I just wanted to confirm it. So, if neither of those loads showed up, you would still be here requesting the same certificate.

(Inaudible)

1:11:40
(Speaker Christmann)
Okay, one more time. Any other questions? Staff? Commissioners? Okay, is there any objection to the evidence produced today becoming part of the official record and by the evidence I'm talking about the recording of the discussion as well as the slides?

(Speaker ?) No your honor. No commissioner. No objections.

(Speaker Christmann) So the evidence will become part of the official record upon which a decision will be made. Are there any other matters to come before the commission? Hearing none, this informal hearing is concluded. Thank you everyone. Thanks everyone. Thank you.

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https://apps.psc.nd.gov/cases/pscasedetail?getId=24&getId2=91#

Transcribed with Cockatoo

EXHIBIT 7

PSC Work Session – August 19, 2024

0:00:00
(Speaker Christmann) Okay, this is a work session of the North Dakota Public Service Commission on the Otter Tail and MDU Jamestown to Ellendale 345kV transmission line. It's **August 19th, 2024**. It's case number PU-24-91. I don't have anything else before turning it over to the portfolio holder. Commissioner Fedorchak, did you?

0:00:31
(Speaker Fedorchak) No, I don't.

0:00:32
(Speaker Christmann) Okay. All yours, Commissioner Haugen-Hoffart.

0:00:36
(Speaker Haugen-Hoffart) Well, thank you. I guess, going back to our commission meeting last week, I proposed an order and we got into some discussion. And so I think there's those discussion items that we need to go through. And I'm just going to say, I'm going to give just my question or lay it out. And Randy and Julie and staff can answer this. Looking at that Jamestown to Ellendale line, we've identified there's some congestions that we can need to get, be an exporter, get things out. So when I look at MISO and studying Tranche 1, this is an area that was identified. There would be benefits on building this 345 kV line. So my first question is, if it's been identified in the Tranche 1, can we quantify those benefits for MDU and Otter Tail to look at it? That's my first question. Has that been, I guess I assumed, and I shouldn't do that, that that was studied. So can we get some quantification numbers on that, the benefit of that line? So that's my first question. And I guess if we can get that, then that might lead to some more discussion.
So I don't know. I'm going to look to Adam and Chris or Julie to maybe give me some history there on that based on the 2 years that I've been on the Commission and in that area that that was has been identified and I thought MISO maybe did a good job on identifying that and this is the one the only project in Tranche 1 that North Dakota has, what I would say, is maybe benefit. So, I'll give that to...

0:02:56
(Speaker) I think...

0:02:57
(Speaker Adam) So I've got a couple handouts here that might help.

0:03:00
(Speaker Adam) Got the composition here.

0:03:01
(Speaker) Thanks, Adam. All right.

0:03:03
(Speaker Adam) I'll put this in the wrong order. I've got a couple, I only have two more. I've got this one, yeah. Okay, yeah.

There we go. I think it's in that order.

0:03:30
(Speaker Adam)
So we're here to kind of discuss the Jamestown to Ellendale 345kV line that was part of MISO's Tranche 1. I believe it was passed by the MISO Board of Directors in June of 2022. So, the first page you see, it is an overview. When we think of LRTP projects, we kind of have to think of them more in a portfolio approach. And in this particular line, it happens to have been studied and paired well with not just the single line,
which is the Jamestown to Ellendale line, but also the Big Stone South to Alexandria to Casey's Crossing. When it comes down to the benefits, there are benefits in terms of figuring out what kind of reliability benefits there are. And in this case, you'll see that this is from a MISO presentation that indicates that the Jamestown to Ellendale line, as well as in combination with the Big Stone South Casey's Crossings, relieves 40 elements with excess loadings for the first transmission element loss, or the N-1 and 70 elements with excess of loading for the second transmission element. When MISO first started going through their analysis, they looked at several alternatives. They focused a lot on six of them.

0:05:13
(Speaker Adam)
They look at largely, largely what kind of effect in terms of loadings it'll have. And it'll compare to see if, okay, if it can identify a mini

portfolio project, if you will, that relieves the most, and they also tend to look somewhat at the cost of those lines. But really it's a reliability analysis. And they also then perform an economic analysis on it as well. So kind of getting back to the question on the benefits that this provides. This first page shows for zone 1 through 7. We are located in zone 1, so that would be to the yellow to the right of that chart. Now this is the most conservative, what you call cost-benefit analysis, so the entire portfolio costs $10.3 billion, and then they figure out, okay, well, what kind of benefits can we attach to it such that the benefit-cost ratio is 1.0 or greater? So per the tariff, that's the hurdle that we're looking at. And what do I mean by the most conservative one is that they also show this for a 40-year present value for benefits as well as they increase the value of lost load that they give their other metrics to something that is probably a bit unrealistic.

0:07:02
(Speaker Adam)
So I think when people talk about and when you hear numbers reported, tbey're mainly talking about these numbers, which is the most conservative of them. So you can see that we're in zone 1. So the minimum is 2.8. And then that's where the max comes in. So we've always tended to focus on the minimum benefits that we can achieve. And if we then go and look at the second page.

0:07:43
(Speaker Fedorchak) And just to clarify, this is for the whole portfolio, not just this line. Right. Not just the two lines, it's the whole, all of Tranche 1.

0:07:53
(Speaker Adam)
Right, and we have asked before for them to break it down further and more granularly. Yeah, that's maybe something that we're working on, but these benefit metrics and 8C cost ratios are for the entire $10.3 billion. They're all supposed to work together in one portfolio to deliver value.

0:08:19
(Speaker Adam) So if we take a look at the next...

0:08:21
(Speaker Fedorchak) One more quick question on that one, Adam. The inset over there on tbe right, is that North Dakota Resource Additions by 2039?

(Speaker Adam) Yes, they are.

(Speaker Fedorchak) So can you talk about the assumptions that drove that?

(Speaker Adam) Okay, so the assumptions that drive that is that starting off in the futures process when we first start taking a look at where to place these lines. We have to take a look at, okay, we have to meet certain IRPs, right? We have to meet our IRP goals.

0:08:59
(Speaker Fedorchak) And we meaning MISO. MISO, not we.
(Speaker Adam) Yeah, yeah, we.

0:09:02
(Speaker Fedorchak) MISO says, yeah.

(Speaker Adam) So MISO will collect every utility's IRPs and they'll take that and say, okay, we need to achieve that. And then they also will meet a certain amount of goals that are not, that are just goals, they're just wishes, if you will, that aren't mandated by the legislature, for instance.

(Speaker ?) So, give me an example of a goal that we might bring forward.

(Speaker Adam) If it was...

(Speaker Fedorchak) Tbat's not us really, we don't have these. It's other states that have their goals and they'll do a certain percentage of them.

(Speaker Adam) Yep.

(Speaker Christmann) Well we have a goal, but it's long and exceeded.

(Speaker Fedorchak) Well these are more like state... the IRPs are what the companies are planning, right? So they assume that's gonna happen, because the companies are planning for those. They work to build a system that is gonna meet the needs of their members, which are the people with the IRPs. And then they'll build a system to reach a certain percentage of, say, Minnesota's renewable mandates, or Wisconsin's, or whatever. That's the other piece, component.

0:10:31
(Speaker Adam) Yeah, and in this component.

0:10:32
(Speaker Fedorchak) Of the futures. These are the futures.

0:10:34
(Speaker Adam) Yeah, yeah, and that's another important.

0:10:35
(Speaker Fedorchak)
It helps dictate how, and they're not like, you know, meeting 100% of any future. They're just used as the guidelines to begin to imagine what kind of system we're gonna need. Nobody really knows, but these are the things that ya know direct and guide what this future system they think is going to need based on what people are putting in their plans.

0:11:02
(Speaker Adam)
And that's an important point because we're looking at the year 2039. And by 2039, in this particular case of what what all of this benefit metrics is based upon, is that you meet 100% of your IRP goals. Not we, but MISO will say we're going to meet 100% of our IRP goals and we're going to meet 85% of our aspirational goals that they Commissioner Fedorchak was just describing.

0:11:39
(Speaker Fedorchak)
And I do think it's important to reemphasize that MISO is trying to build a system that enables the meeting of those. They aren't meeting them, they're building a system allows their members to meet their IRP goals and like Adam said, 85% of the state mandates. As a planning, that's how they plan. It's their planning protocol. So back to this resource additions. This is based on what they're seeing in North Dakota IRPs, mostly?

0:12:11
(Speaker Adam) IRPs they will put in some units that are model built.

0:12:16
(Speaker Fedorchak) For reliability?

0:12:17
(Speaker Adam)
Yeah, for reliability standards, as well as engineering kind of judgment, I guess, if you will.
You'll notice that there's, in this case, there's actually a combined cycle gas being built. You know, that was, you know, that's likely the conversion of maybe the coal.

0:13:10
(Speaker Fedorchak) Oh, oh, they're looking at converting that to... in their assumptions.

0:13:16
(Speaker Adam) Yeah, we, we in their assumptions. So... um...

0:13:19
(Speaker Fedorchak) Do they take into consideration that EPA regulations?

0:13:29
(Speaker Adam) They haven't. I don't think so. No, they haven't.

0:13:33
(Speaker Adam) So then kind of moving on to the next page. So these are the benefits that they've identified. First benefit is...

0:13:42
(Speaker Fedorchak) Let's talk for a minute about how these get developed. Yeah, okay. Because each one of these processes is like a big long you know stakeholder input on identifying what benefits are going to be used to measure the overall benefit um calculation. And these are where you get some questions from the IML. The last...He's pretty squishy on some of these benefit metrics, but even more so on Tranche 2.
So anyway, was there anything in particular about these benefit metrics that raised concern in the stakeholder process, Adam? I mean, I know we said that we objected to the decarbonization benefit being used. And so then in response to that, they took that out and told us what our cost benefit would be without it. And it was still higher than the one threshold, significantly higher.

0:14:59
(Speaker Adam) Yeah, and there's very little benefit that's derived from this decarbonization benefit, the BC benefit cost ratio goes when you move it goes from 2.8 to 2.6. So, it's kind of saying if you spend like a dollar you get two dollars and six cents back.

(Speaker Christmann) So, the two overwhelmingly large factors in the benefit column for zone 1 are one, congestion and fuel savings, two, avoided capital cost of local resource investment, correct?

(Speaker Adam) Correct. Yep.

(Speaker Christmann) Okay, for this project, not Trancbe 1, but this project, and for North Dakota, not MISO, what are the avoided capital costs of local resource investment that this, what costs does this avoid?

(Speaker Adam) So this avoids the building of local generation that would cost more.

(Speaker Christmann) Like the gas plant tbat we ordered Xcel to build, for example? That's the only one I can think of.

0:16:16
(Speaker Fedorchak) Again it's modeled. It's not necessarily...

(Speaker Adam) Yeah, it's kind of like when we had the original MVP portfolio, we had to...we could share resources and then reduce local overbuild. So, if we're able to spread that out with transmission, then there's a point in which you're supposed to hit the sweet spot, and it's called the bathtub curve, right? In which you want to put your transmission overlay on your resources such that you're all in a sharing pool and you're able to then not build something, not have a grid that's vulcanized, such that we have no wires and we've got to overbuild a ton of maybe thermal generation because we couldn't then use a renewable source.

0:17:26
(Speaker Christmann) So the biggest share of our benefits are avoiding costs that we can't identify?

0:17:33
(Speaker Fedorchak)
That's not, their model costs out to 2039. I mean, you have to look at the time frame. So, um and that these might be good questions for, because MISO should be able to identify those things for this project, for that for actually this line or those two lines. So that's probably a question we could ask them to address. And I think it's an important one to understand, you know, how all this stuff is pulled together.

0:18:10
(Speaker Christmann)
The other one that is very significant in that is the congestion and fuel savings. And so I think any of us that in recent years watched LMP prices, I've seen the congestion that's over in that area, correct? Yeah. And this study was approved in 2022, so it was done well before Applied Digital was even discussed. Because my own just occasional but pretty frequent viewing of LMP prices I've seen and the heat map I'm seeing a lot less congestion problems over there and we've only got the first phase of Applied Digital going, so I don't know that these congestion benefits are really there for us anyway?

0:19:13
(Speaker Fedorchak) It might not be. It's a fair question. And also, Adam's not defending myself.

0:19:19
(Speaker Christmann) Oh.

0:19:20
(Speaker) OK. OK.

0:19:22
(Speaker Fedorchak) Adam is not MISO.

0:19:26
(Speaker Christmann) Well, it's kind of bringing their case.

0:19:28
(Speaker Fedorchak) He's trying so that we can understand it.

0:19:31
(Speaker Haugen-Hoffart)
I guess that was my question in looking at some of this is how much of this, I mean, gets updated you know as things go on, like Randy brought up, Applied Digital. I mean, how is that fed into MISO and updated so we have current more current information?

0:19:51
(Speaker Fedorchak)
Once these projects are approved, they don't go back and update all this. Like, this was agreed on and approved by the board more than a year ago. So, they don't go back and keep changing these. And re-justifying the case or changing the case.

0:20:08
(Speaker Haugen-Hoffart) Well, I have to say re-justify, but just more accurate data that we as PUCs could have. Like when the Tranche 1, when this case comes before us, we have more information, but lesson learned.

0:20:26
(Speaker Fedorchak) And we don't ever see all of Tranche 1.

0:20:29
(Speaker Haugen-Hoffart) Right.

0:20:30
(Speaker Fedorchak) This is the only line we'll see.

0:20:32
(Speaker Haugen-Hoffart) Right. But things have changed since then. I mean, point taken. Yeah.

0:20:37
(Speaker Fedorchak)
We should, we could ask MISO for them to provide us that for this. I don't know if they've got it at that granular level. To provide. The congestion fuel savings, avoid a capital cost of local resource investment. Well, even all the benefit metrics, if they can, for Zone 1, for just Jamestown.

0:21:02
(Speaker Adam) Yeah, okay.

0:21:03
(Speaker Haugen-Hoffart) Or could MDU, I'm sorry but could MDU provide us any of that?

0:21:08
(Speaker Fedorchak) I doubt it. They don't run the models.

0:21:10
(Speaker Adam) Yeah, they wouldn't have access to that level of information and detail in MISO.

0:21:17
(Speaker Fedorchak)
And the thing is, the other thing to remember, and this is just part of the reality of MISO, is if you look at the size of our zone, I mean, there's a lot of what's happening in Minnesota and part of Wisconsin driving Zone 1. And that's the reality for us in North Dakota and Miso. Zone 1 includes all of Minnesota and (inaudible Chanterelle?), Wisconsin.

0:21:44
(Speaker Chris)

So, especially on the fuel cost savings, it's one, because both RTOs do that kind of comparison when they run modeling, and that's one thing I've really struggled with in our zone. Usually, we have trap generation that can't get out, and when they do their model, well, this zone or this area is going to benefit by that trap generation getting out. Well, I suppose the zone as a whole is going to benefit, but our prices go up as a result of that. So that negative congestion that's happening down there changes to even keel with the rest of the system. And primarily in this instance, I think Minnesota's prices probably go down a slight bit, while ours go up to what the rest of the zone is seeing.

0:22:26
(Speaker Christmann)
And this is kind of one of my concerns here is, so our rate payers pay to build this and the benefits are, well there's this investment here, some big benefit, but it's mostly to whoever the new developer is that comes in and builds another wind farm, a few land owners, but not to most of these Otter Tail and MDU customers. And I'm just, I'm not seeing nearly the benefits or congestion improvements as what this seems to want to indicate.

0:23:01
(Speaker Fedorchak)
Well the other issue that I think is, two other issues that are relevant are the reliability savings or reliability impacts and are the access for our broader generation to get out. I mean, if there's congestion, there's generators in North Dakota that are being curtailed. And depending on price, you know, that hurts them. And you know the higher priced ones are the ones probably being curtailed first. So that's another North Dakota issue.

0:23:53
(Speaker Christmann) I guess it's a separate argument of whether this is the right time to have the battle. But therein lies a lot of the reason for me wanting to take on the battle. And I don't even know where or how the battle would occur. But OK, if the issue is somebody else out of state's need for energy, and some developer that wants to come in and set up some more wind farms here, fine, pay for it. Not our rate payers all the time. And so, yes, the RTO forces this cost allocation on us. But if we don't fight for it, or fight against it, successfully, guess what? We're going to be paying for, was it three that's all sells? So maybe not that. Maybe not one of them, but we're going to be paying for all the rest of them, too. And when better than now to fight it?

0:25:07
(Speaker Fedorchak) I don't disagree, and we did fight it. But we...

0:25:16
(Speaker Christmann) At MISO.

0:25:17
(Speaker Fedorchak) At MISO, yeah.

0:25:18
(Speaker Christmann) I'm talking about at FERC (Federal Energy Regulatory Commission).

0:25:20
(Speaker Haugen-Hoffart) So is that how it played out? I mean, going off of that? Tell me if... Yeah, I don't know. Tell, can you walk me, well, first of all, does anybody have anything else, Chris or Adam, to add to these?

0:25:32
(Speaker) Just the scale was...

0:25:34
(Speaker Chris) I was just going to add that the scale of Tranche 1, the numbers that we got from MDU and from Otter Tail were a little like ten and a half billion or somewhere between ten and ten and a half billion. And the cost per megawatt hour that they were estimating in 2031, which was the max rate, was about $2.54 per megawatt, or megawatt hour. So just as kind of a scale, now that, how that impacts, say, residential customers is going to depend upon the company, because each of the companies has their own allocation methodology for transmission costs. But just to kind of give you an average, I think, so Tranche 1 on average would be about you know $2.54 per megawatt hour. So, I'll throw NSP as an example, does a direct allocation per megawatt hour, so that would affect their customers by $2.54 per month for a thousand kilowatts or 1 megawatt hour of usage per month. But then we talked about Tranche 2, 3, 4, you know as you're getting up into that $50 billion range, then you know you're talking $10, $15 per megawatt hour. It is a relative scale.

0:26:52
(Speaker Christmann) OK, then I need to be corrected here and find out where I'm wrong. When we had our informal on July 8, I didn't write down $2.54 a month. I wrote $3.15 a month for MDU and $5.85 for Otter Tail.

(Speaker Chris) Correct. So, as I said, MDU and Otter Tail have an allocation methodology that's different for residential and for commercial, industrial, all that. I use NSP as an example because they do a per megawatt hour allocation, so it's a straight... it's a different methodology, but it's, I guess you could say cleaner. But the average that MISO is allocating, their number was $2.54 based upon their estimates at the peak in 2031 when all the projects are up and running before they start to amortize off. So yes, you are correct, like MDU's number was $3.15. The memo that I had was $5.75 and I think Matt Olson came back and amended that to $5.85 per megawatt hour.
So that's because they used different methodology for allocating those transmission costs. So, you are correct.

0:28:10
(Speaker Fedorchak) All right, so I think that Randy raised a good question about how, if we deny this, say, what is the result? Where does it go? Or do the companies, where can the companies um protest? Or MISO, I guess.

(Speaker ?) Well, I'm still getting acquainted with this case and I know you guys asked me to come in here and have some discussion. But if we have the issue in order, with the denial, obviously it depends on the basis of the denial and it depends on the basis of the challenge. It could either be in federal district court or it could be in state court. So it would be up to the issue. It really is being appealed.

0:29:00
(Speaker Fedorchak) So the comp the Otter Tail or MDU would likely then decide to take it?

0:29:07
(Speaker ?) It would likely be Otter Tail or MDU.

0:29:10
(Speaker Christmann) Or MISO.

0:29:12
(Speaker Fedorchak) Could MISO? Do you have any...

0:29:19
(Speaker ?) Again, depending on the issue and where it's at.

(Speaker Christmann) Well, let's say, I mean, if it went to court and the courts backed the commission on a denial, or no, overturned the commission on the denial, well then it would move forward unless we appealed. But let's say they backed our decision on a denial, wouldn't at some point this get to be a FERC thing, whether the states can stop, and this could be SPP too, stop RTO approved projects through their PCNN process? Isn't that something that is gonna have to get determined at some point or they're just all gonna go to low pays?

(Speaker ?) So, I'm guessing the issue that you're presenting is an interstate commerce issue from the discussion that you're providing. And I'd be happy to have some additional discussion with that, but I probably would not want to be having with that an open meeting without having an opportunity to review the tariffs that we're discussing.

0:30:35
(Speaker Christmann)
So, so we've kind of touched on these, but I want to reemphasize two points. One is, yes, we can talk about avoiding congestion or avoiding additional investment costs. I haven't found any basis for those other than someone who likes doing projects. Put the numbers together, I can't see anything. **I will point out, though, that among the project benefits are to accommodate new electric generation projects. And to me, that's who ought to be paying at least a good part of this, if not all of it.** Because that, to me, is the key benefit in this, is to add the new generators. And to the extent that's for decarbonization or to meet other states' policy goals, irregardless, the point is to add that generation. And I think that is the key benefit that this is looking to solve. The other, though, has to do with reliability in our discussion. This isn't in the presentation I don't think, but I'm using my recollection, correct me if it's wrong, the real reliability issue in North Dakota that was highlighted as an example that this could take care of was the very near miss at Jamestown.

0:32:22
(Speaker Christmann)

I think it's been said before, but kudos again to Otter Tail for still hanging on to that old generator in town there that almost never gets used and being able to keep Jamestown going as they did. But as this plays out in my mind, this project, what I have heard was, in order to add all the new generation, it generally flows from that, like an Ellendale point, down through South Dakota and Minnesota and out. But if there's problems there, they need this alternative route to get it up to Jamestown, and then from there on it can flow through Fargo and away. Okay, as far as to add the new generation, I guess that makes sense.

0:33:25
(Speaker Christmann)
It also tells me there's plenty of capacity in the transmission lines between Jamestown and Fargo for all this to flow that way, which tells me when Xcel builds their gas plant there, it can flow the other way. And that can just as easily be used to help solve any potential energy shortfalls in Jamestown. So I think the one investment that I can see that this is going to eliminate the need for is that generation plant. And I guess it's fine, as long as we're willing to have service when it's windy, but not when it's not. I don't think most of the people are.

0:34:15
(Speaker Fedorchak) Randy, did you review the project benefits identified in the company's um application?

(Speaker Christmann) I have, but it's been a while. And I don't know if I have.

0:34:24
(Speaker Fedorchak) How did we... we had an informal, right? Yep. That's how we...

0:34:30
(Speaker Christman) Was that presented then or was that in the case earlier?

0:34:49
(Speaker Haugen-Hoffart) Well, I think both. It's in their application.

0:34:51
(Speaker Christmann) And what you're looking at, though, is not in this.

0:34:53
(Speaker Fedorchak) This is their application. Right. This is their application.

(Speaker Christmann): What page?

0:34:57
(Speaker Fedorchak) 11. And to some extent, page 9 is Project Need. OK. I just don't know when they when all these um problems reliability problems, like the 40 transmission elements with excessive thermal loading for N1 contingencies and 70 elements with excessive loading. And then down below, the project improves voltages in the Red River Valley by relieving 97 voltage violations and 91 voltage violations for N1 contingencies. Like, how many of those are North Dakota customers? How much of that is a North Dakota issue? And I mean, I am I want to know.

0:36:13
(Speaker Fedorchak) I would have to be reminded of that. I'd have to have a more technical discussion, I think, with the company to understand the implications for our customers of not having this line.

0:36:27
(Speaker ?) Isn't N - 1 what drives congestion pricing?

(Speaker Fedorchak) I don't...Adam?

0:36:31
(Speaker Adam) If it's overloaded, so if it's overloaded, it could be overloaded for a number of reasons. You know, an outage definitely is it. I mean, that creates congestion such that if you can't um, if you can't have, if you can't fire up or move electrons from from point A to point B, and then you might have to go and fire up a more expensive (inaudible) peaker?, for instance, if you've got a line outage, for instance, or something like that.

0:37:23
(Speaker ?)

Right, but congestion pricing, and this is, I think, the case in both RTOs, it isn't because the lines that are in operation at that moment can't handle the load that's going across them. It's in the event of a loss of your biggest element, the remaining system isn't able to pick that load up without tripping.

0:37:47
(Speaker Adam)
It doesn't have to be – like you can get congestion if it just – if it – in the event that it would – if in the event that you had an outage. Right. Then in that case, yeah, then you – but you're not actually in an outage.

0:38:04
(Speaker ?) Right, no, I absolutely agree that you're not in an outage, but the pricing for congestion, I think, is based on that N-1 scenario.

0:38:12
(Speaker Adam) Yeah, that's how the grid operates, yeah.

0:38:16
(Speaker 6)
So, all that is to say, I think that's a good portion of what they're speaking to, and the 40 elements with excessive loading for the first transmission element loss. I think that's largely congestion. Does that make some sense?

(Speaker Fedorchak) And so?

(Speaker ?) I'm not drawing any conclusions from that. You started to talk about it a little bit and I don't know that that's the entire answer.

0:38:51
(Speaker Fedorchak) So the benefits of relieving that are it's not a reliability concern.

0:38:55
(Speaker ?) I'm not even saying that definitively. I think your question was what those 40 elements are and I think probably a good chunk of them are probably that N-1 scenario where overloading...

0:39:09
(Speaker Fedorchak)
Well, no. I'll put it a lot more simply. That's a bunch of technical mumbo jumbo. What I want to know is, how does this matter to North Dakota customers? Does it? Or is it just a bunch of sentences to make it seem like, jeez, that sounds bad. We better prove this. Right? So I don't know. Maybe it is a bunch. Maybe it is a big problem for North Dakota customers.
Maybe it isn't. I don't. I can't tell by this and I don't recall exploring that deeply in our informal with them. So I would want to know that so we don't, you know, so I can have that information.

0:39:49
(Speaker?) Yep.

0:39:50
(Speaker Fedorchak) In making my decision anyway.

0:39:53
(Speaker Chris?) Do you want to know that from the company or from MISO?

0:39:56
(Speaker Fedorchak) The company.

0:39:57
(Speaker Haugen-Hoffart) The company. It's in their application.

0:40:03
(Speaker Adam)
So just for clarification on that, so they're basically saying when they analyze this solution, they're kind of looking at it in conjunction with the Big Stone Alexandria and the other projects on Zone 1. So you're saying, okay, well I get that this applied to all of Zone 1, but

of these issues, how much of the issue applies to North Dakota specifically? So, we're kind of getting lumped in with the whole zone. And this is the issue to the whole zone, but how much of it applies specifically to us?

0:40:34
(Speaker Fedorchak) Yeah, and what is the impact of this? Is it a price issue? Is it a lot, you know, we can't get power at certain times, it's hurting the lines, like what is the actual, what are the issues that it's causing?

0:41:20
(Speaker Fedorchak) Yeah, and same, I mean, the company might have a problem. MISO needs to get us the more specifics of the impacts of this project on the benefit metrics that they've used here. And if they can get those for North Dakota versus all of zone 1, that would he helpful too.

0:41:52
(Speaker Christmann)
You know, when it's simplified down, when, I don't remember who was speaking at the time, I presume Otter Tail, because it was about Jamestown, but between the two, when we had the informal when they talked about that situation in Jamestown that I referenced earlier. Okay yeah that is something that happened, aware of it. It made a good case and point to me. I was thinking like okay now I'm seeing some benefit here. Until like I said, then I thought more about it except for supposedly within a little over a year, or things usually run late, but in the relatively near term, we have a new gas plant going far. Well, that should be able to do it. So I guess when they just say, oh, well, there's all these benefits, it's not very persuasive to me. Tell me what they are, where the shortages are, what can't we do.

0:42:59
(Speaker Christmann)
And we'll see once whether it seems to me that, or it seems to us as a group, as a body, whether those benefits then are primarily going to the rate payers that are being asked to pay for this or to somebody else.

0:43:12
(Speaker Fedorchak)
Yep, good questions. And as you said, like we tried in the cost allocation discussion to make these points.
They weren't, they didn't win the day. This is our next, this is our next tool to try to address them.

0:43:37
(Speaker Christmann) And while we're on this, I have a legal question. Oh, did you have something else?

0:43:43
(Speaker Fedorchak)
But I'm not also, you know, I definitely I'm not sure that this doesn't have just merits for North Dakota on a technical side. So I'm not like, I'm very open to that, hearing what the benefits are to our customers. Because I think that they're... and to our generators, I guess. I'd like to evaluate, be evaluating that along with it. So...

0:44:20
(Speaker ?)
So to clarify... clarify what I think I heard. So we're gonna get a response from MISO on the benefit metrics for zone 1 on this line specifically. So I think if Adam can reach out, that's probably the most efficient. And then whatever response you get, if you wanna pass that through Chris. And then Chris, if you can work with the Otter Tail and MDU on a response for what these elements, savings, and benefits are. And then, you know, if it's reliability benefit, how and in what circumstance. And we'll get all of that submitted into a couple of docket entries, hopefully, rather than just some emails flying around. And, you know...

0:45:04
(Speaker Christmann)
Yes, I know these things take time, but there's a reason why they take time. People don't make bad decisions. But it seems like as far as anything having to do with congestion in that area of the state, this should be recalculated based on Applied Digital's second phase being in effect.

0:45:31
(Speaker Christmann)
Because I understand they're pretty far along with it already, and the first phase is already going. Like I say, from my just viewing of heat maps, it's having quite an impact. So maybe I'm wrong about that, but it doesn't appear that way.

0:45:49
(Speaker Fedorchak)
But it's a good point to evaluate. Yeah, and then maybe they can provide information about what additional generation they've sited there in their long-range transmission planning that drove the need for these lines, cuz it isn't just what exists today, it's much more of what they modeled to be coming. So, you know, that is that is part of this equation. So they should explain that.

0:46:18
(Speaker ?) The generation that showed up?

0:46:21
(Speaker Fedorchak)
Where they, yeah, that's gonna, you know, it isn't just, well, we took care of the congestion now, because we've got Applied Digital there. There's a bunch more, how many more wind farms did they model being developed in the eastern part of North Dakota that will drive congestion up again?

0:46:39
(Speaker Fedorchak)
And those were driven by, probably by Minnesota environmental goals and others. But, yeah. Yeah, that would be helpful to know what kind of generation they modeled in that area.

0:46:55
(Speaker ?) Yeah, and where. Yeah, we can get that.

0:46:59
(Speaker Haugen-Hoffart) I'm going to think separately. I mean, we're going to work with Jack as far as maybe some next steps if (inaudible) just for an understanding as far as litigation.

0:47:19
(Speaker ?)
Yeah, we have to have that discussion. I would note as well, though, after we receive all the documents, all the information that's necessary, it may be worth considering appointing advocacy staff if we need to flesh out certain issues a little better and maybe have a formal hearing on it as well.

0:47:38
(Speaker Fedorchak)
Yeah, that's a good point. I'd be open to that because I really do want to understand the company side of it and the benefits that they're seeing.

(Speaker Christmann) Anything else?

0:47:49
(Speaker Haugen-Hoffart) No, I think this was a... First of all, I want to say thanks to everyone for getting this lined up so quickly on the work session. And no, I have nothing further. I look forward to the additional information to receive to evaluate.

0:48:13
(Speaker Christmann) Okay, with that, thanks everybody. And this work session is concluded.

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https://apps.psc.nd.gov/cases/pscasedetail?getId=24&getId2=91#

EXHIBIT 8

Memorandum

To: Commissioners Christmann, Haugen-Hoffart and Fedorchak

From: Christopher C Hanson Public Utility Analyst

Date: 10/16/2024

Re: Otter Tail Power Company/Montana-Dakota Utilities Co., 345kV Transmission Line-Jamestown to Ellendale, Public Convenience & Necessity, Case No. PU-24-91

On February 29, 2024, Otter Tail Power Company (OTP) and Montana-Dakota Utilities Co. (MDU) filed a joint application for a Certificate of Public Convenience and Necessity to construct, own and operate approximately 85 miles of 345kV transmission line and expand four substations located in Stutsman, LaMoure, and Dickey Counties in North Dakota (the "Project").

A Notice of Opportunity for Hearing was issued on February 29, 2024, with a due date of May 10, 2024. No requests for hearing were received.

A memo was issued on June 26, 2024, providing the details of the cost, purpose and cost-benefit analysis of the project; the specific costs that would be allocated to North Dakota customers as a result of this project as well as the rest of MISO's tranche 1.

An informal hearing on this matter was held on July 8, 2024.

An order was proposed to approve the order for the August 14, 2024, North Dakota Public Service Commission (Commission) meeting. This order was tabled and a Work Session was then held on August 19, 2024, to discuss the outstanding issue and concerns regarding the project. There were several issues that the Commission requested be addressed:

1. What are the benefits to our North Dakota constituents?
2. How much of the reliability issues (N-1s and N-1-1s) affect North Dakota specifically and what is the impact of those issues? Does it affect pricing, lines, etc.?
3. Midcontinent Independent System Operator (MISO) should provide more specifics of the benefit metrics for zone 1 of this project and for just North Dakota (ND) if possible. Do these metrics consider the impact of Applied Digital and additional generation? Do they anticipate further generation that will continue to drive up congestion?

As a result of this session, we sent a request to MISO to explain the benefits to address the key reliability and economic benefits of the project.

In response, we received a letter from Jeremiah Doner, the Director of Cost Allocation with MISO on October 14, 2024, addressing the justification and benefits of this project. Specifically, he states that this project will remedy the N-1 and N-1-1 issues noted in the previous memo and he identifies the elements that are projected to be affected by thermal overload and voltage issues. These N-1 and N-1-1 events are *projected* based upon each company's long-term forecasts of load and generation growth. Essentially they are projected overloading of lines, transformers and substations that could result in customer outages.

Mr. Doner further notes that this not constructing this project is a critical part of the MISO LRTP Tranche 1 portfolio and that not constructing it would jeopardize the benefits of the other projects in the tranche and could lead to the development of less optimal solutions to address reliability and economic concerns.

Per Mr. Doner, this project ties together the existing Coyote-Maple River 345 kV and the Ellendale to Big Stone 345 kV lines. Further, this line, in conjunction with the Big Stone-Alexandria-Big Oaks project which will alleviate the loading issues along the North Dakota, South Dakota and Minnesota borders. In the absence of this project, those loading issues would need to be addressed by local reliability projects and borne by the local transmission pricing zones.

MISO looked at five alternatives, but all six proposals assumed the Jamestown to Ellendale line would be constructed. The only variations were related to the additional facilities to the east.

Mr. Doner identifies that these projects will provide more reliable and efficient delivery of energy from low cost, regionally sited generators. He further notes that this build-out will "allow for the continued interconnection of new generation resources in areas that offer higher capacity factors for intermittent resources, such as wind generation". In other words, it creates additional capacity for more wind to be transmitted from North Dakota eastward.

Additionally, we sent data requests to MDU & OTP requesting they identify the N-1 events used to justify this project and which of these were located within North Dakota; whether other alternatives to this project were investigated and whether MISO considered the impact of Applied Digital and the prospect of future generation in the studies that supported this project.

Otter tail responded that 88 of the 2,010 total Tranche 1, N-1 projected thermal events and 229 of the 1,728 voltage issues were located within North Dakota. This isn't apples-to-apples with the application but does illustrate that a significant portion of the N-1 and N-1-1 events are located within North Dakota.

They further stated that (as noted by MISO) there were six options evaluated, but all options included the Jamestown to Ellendale line as it serves to connect the existing 345-kV infrastructure in North Dakota. OTP also noted that MISO did NOT include Applied Digital's operation and future plans in the model used to create Tranche 1 but ARE included in the model used for Tranche 2.1. This model DID include a projection of future generation located west of Fargo including 200MW of gas generation and 800 MW of solar.

Leif Clark also conducted an analysis of the pricing (LMP) and congestion (MCC) rates in the Ellendale area in the 12 months prior to Applied Digital coming online as well as the 12 months after they were fully operational and concluded that it had reduce the MCC rates in the Ellendale vicinity by 56% and 69% and conversely increased the LMP by 46% and 12% respectively. Thus, it does appear that Applied Digital did reduce the congestion which in turn increased the prices in the Ellendale vicinity. It could therefore be anticipated that the next phase of the Applied Digital expansion would further reduce the MCC and increase the LMP in the short term.

Cc Matt Olsen-Otter Tail Power
Travis Jacobson- Montana-Dakota Utilities

EXHIBIT 9

PSC Work Session – October 17, 2024

0:00:00
(Speaker Christmann)
Good morning, everyone. This is a Public Service Commission work session, so we don't take testimony or anything. We just discuss information that we've received. I'm Randy Christmann, joined by Commissioner Sherry Haugen-Hoffart. Commissioner Haugen-Hoffart, this is, of course your portfolio. Commissioner Fedorchak is tied up on another project but I believe will be here just very momentarily. I know some, well this is certainly your portfolio, the OMS portfolio has a big impact on this and I know some of my comments have to do with some OMS things.

0:00:53
(Speaker Christmann)
So I guess I know I would rather maybe get into my thoughts and comments once she is here, but I think it'd be fine if you want to, if you want to kick it off and whatever kind of roundup of the case that you might have, either you or staff, however you want to proceed, Commissioner.

0:01:15
(5peaker Haugen-Hoffart)
OK. Thank you, Chair Christmann. Yeah, with this work session, I'm going to frame it up this way as a portfolio holder. Based on the last work session, there were inquiries that we, as commissioners, had information that we requested, both from MDU and Otter Tail, but then also MISO. So I thought it would be best, and I talked to staff, that Chris is going to summarize some of his communication that he's had with the two utilities. And then Adam, I believe I've asked you to go through some of the MISO information that we inquired. So we have the foundation of what the inquiries were. And then at any time, Randy and I, or when Commissioner Fedorchak comes, we might ask for further information. So just to let everybody know how this work session is going to go.

0:02:24
(Speaker Haugen-Hoffart) So Chris, I'll turn it over to you as far as the communication between MDU, Otter Tail, and yourself and the information that we requested.

0:02:33
(Speaker Chris Hanson)
Okay. Thank you, Commissioner. I'm Chris Hansen. I'm public utilities department staff here with the North Dakota Public Service Commission. As part of the follow up, we had some inquiries of Otter Tail and MDU, and Jason Weirs, who's here, was the one that responded on a lot of these. And I have a little bit of follow-up that wasn't in the data request that he followed up with recently that I'll add in here.

0:03:03
(Speaker Chris Hanson)
So there were basically three questions that we were asking them specifically coming out of the last work session. The first question was, what N-1 events were identified as justification for the line and which of these were in North Dakota. You know, so we were, so I talked about, I mentioned events versus elements. You know, he's talking about in the write up that there were 40 transmission elements and 97 transmission elements. Or 40 transmission elements were relieved. There were thermal issues in 97 elements during N-1 events.

0:03:43
(Speaker Chris Hanson)
It got a little conflated between elements and events and stuff like that, so Jason did some follow-up on the question, and I'm gonna work off of his follow-up as opposed to the actual response to the question because it's actually more clarifying. He said, upon our review of the MISO study results from the Tranche 1 studies, we've identified that the Jamestown-Ellendale 345 kV project, in combination with the Big Stone-Alexandria-Casey crossing, or Big Oaks 345 kV project, relieves thermal loading issues on 56 elements during N-1 events, instead of the 40 that was noted in their initial response.

0:04:32
(Speaker Chris Hanson)
Of the 56 events or 56 elements that had their thermal issues relieved with these two projects, eight of those elements were in North Dakota, so like 14 out of the 56 were in North Dakota. Based upon the evaluation of thermal issues, we've used engineering judgment to conclude that all eight of these transmission elements in North Dakota are likely a direct result of adding the JETx project to the system.

Likewise, a review of the MISO study results from the Tranche 2 studies have identified that the Jamestown-Ellendale and the Big Oaks project, you know, the Bigstone to Big Oaks project relieves voltage issues on 70 transmission elements during N-1 events instead of 97. And of the 70 transmission elements.

0:05:10
(Speaker Fedorchak) Excuse me, Chris. Sorry. One quick second. Just to bring me up to speed, what are you reading?

0:05:14
(Speaker Chris Hanson)
Well, so Commissioner Haugen-Hoffart asked that I follow up on some of the responses to the questions that we had for MDU and Otter Tail, and Jason Weirs responded to this about, and the question was, what N-1 events were identified as justification for the line of which of those were in North Dakota?

0:05:33
(Speaker Fedorchak)
So we were wondering about how much of the N-1 and the N-1-1s were related to North Dakota because the project was noting the total amount but it was a combination of North Dakota, South Dakota, Minnesota.

0:05:49
(Speaker Fedorchak) Yah, So. Is that something we can all get a copy of? Or do we have that?

0:05:51
(Speaker Chris Hanson) This is docketed.

(Speaker Fedorchak) The memo that you wrote.

0:05:54
(Speaker Chris Hansen) This one I just got this morning. So I literally was reading it before the meeting. So, Jason and I.

0:06:00
(Speaker Fedorchak)
It sounds like there's a lot of great information but it might be easier for us to follow it if we had copies of it while you wait. Can I take a second to do it? Yeah, I think. I mean, is that right, Randy?

(Speaker Christmann) Sure.

0:06:11
(Speaker ?) What's that?

0:06:13
(Speaker ?) No, you go with the MISO stuff. You're the MISO guy.

0:06:16
(Speaker Christmann) So. Sorry. I will say this, though. The previous work session was two months ago.

0:06:25
(Speaker Hanson) Yeah. Right.

0:06:27
(Speaker Christmann) And so now we're getting answers this morning.

0:06:29
(Speaker Chris Hanson)
Yep. So, while Victor's making a copy of that, just a note, too, that to clarify that when they were looking at the N-1 and N-1-1, that's two points to clarify on that is that that's based upon like 10- and 20-year projections. So, they're looking at the projected load, and they're looking at projected generation growth. And then they're looking at basically these constraints that will cause congestion. So, it's a projection of where they think the system will be and where transmission needs to be built out going forward.

0:07:17
(Speaker Chris Hanson)
And so the second point to make is when on the Ellendale to Jamestown line is that when they're looking at these issues, these N-1s and these N-1-1s, that's a combination of both the Jamestown to Ellendale line and the Big Stone to Big Oaks line. So it's not just the Jamestown to Ellendale in isolation. Sure. So, it's looking at the complete thing.

(Speaker Fedorchak) Which are both part of Tranche 1?

(Speaker Chris Hanson) Right, right. So, and I guess there's a third thing too that is pointed out, that there's currently a 345 line that runs from Coyote to, I think, Maple River that runs through Jamestown. If you think of that as leg one, and then there's currently a line that was built starting like in 2018 that goes from Ellendale to Big Stone, and you think of that as leg 3. The Jamestown to Ellendale is leg 2 of the 345 kV circuit, if you want to call it that.

0:08:11
(Speaker Chris Hanson)
And then they're extending Big Stone through Alexandria to Big Oaks, which is approximately in the St. Cloud area of Minnesota. So that's kind of like leg four of this whole thing. So we have currently leg one and three, and they're basically adding legs two and four to this 345 kV line to get power out of North Dakota and moving it to the east. I guess power can move both directions. So just a little clarification that the N-1s and the N-1-1s are forward looking. The congestion issues, the N-1s and the N-1-1s, those are a combination of both the Big Stone to Big Oaks line and the Ellendale to Jamestown.

0:08:54
(Speaker Chris Hanson)
And the third thing is that when they looked at this project, it was completing this whole like loop of lines, basically, going all the way from the Coyote up in the coal country well into Minnesota. So getting back to the N-1s and the N-1-1s, they updated their numbers, like I stated. So to reiterate for Commissioner
Fedorchak, that you know instead of... I lost my place here a little bit. Instead of 40 transmission elements that were related to thermal, there was actually 56 and they identified 8 of those were specifically in North Dakota. So that's 14 percent. So one, you know, one-seventh. And that would be likely relieved by this line. And then instead of the 97 that they previously identified, there were 70 transmission elements.

0:09:48
(Speaker Chris Hanson)
Instead of the 97 that were previously noted, and of the 70, 21 of those were in North Dakota, or about 30% of those, and those were the ones related to the voltage. So anyways, there's 14% of one and 30% of the other. So there's a representative portion of the total that we're involved.

0:10:11
(Speaker Chris Hanson)
And in the MISO response, it actually points out some of the substations, transformers, and lines that would be affected by that specifically, where they see the constraints without this being constructed. So that's kind of in response to the first question, which came out of the last working session, which was looking at this project and saying, well, how much of this was actually within North Dakota jurisdictionally? That was one of the questions we had. And the second question that we had was, sorry.

0:10:45
(Speaker Haugen-Hoffart) So, Chris, summarize that for me. I mean, they talked about the project benefits and all these voltage violations and all that. So, when we narrow it down to North Dakota, we had 17% occurrence and about 30%.

0:11:04
(Speaker Chris Hanson)
Right, of the ones they noted. So, they specifically stated that just related to North Dakota, there would have been 8 of the thermal and there would have been 21 of the voltage N-1s and N-1 you know events, or N-1 elements that would have been located in North Dakota.

0:11:27
(Speaker Christmann) Would have been or will eventually be?

0:11:32
(Speaker Chris)
Will eventually be, sorry. Yeah, I know, it gets confusing because we have current congestion, but this is a forward-looking, the N-1s and the N-1-1s are forward-looking, so I will try to state that correctly. They're projecting that those will be in North Dakota.

0:11:4B
(Speaker Haugen-Hoffart)
So wrap it up as in a benefit to North Dakota, this line, on how it addresses this. Well, I know it's forward-looking.

(Speaker Chris) Right.

(Speaker Haugen-Hoffart)
That's one of the things that this is long-term transmission planning. So, that will eliminate the would have been's, or what's the projections on the future?

(Speaker Chris Hanson)
Well, I mean, so, these are elements that they're projecting are gonna be constrained based upon Otter Tail and MDU's load growth, as well as the projected generation growth. So essentially, it's saying if we grow the generation, we grow the load, where are the constraints going to fall on the transmission side? So, if you look at the 345 kV line, a couple quick items to note on that is that based upon how that's circuited, that can relieve about 2,000 megawatts of capacity or production. It can carry about 2,000 megawatts on the line. And as I recall, and Adam can clarify on this, but MISO also builds their system to be double-circuited.

0:13:00
(Speaker Chris Hanson)
So presumably then it could carry another set of 2,000 megawatt lines. So, it presumably has about 4,000 megawatts of capacity, of potential on the line. 2000 initially and forth, I mean, if they decided down the road to double circuit it, that they have that option to do that.

0:13:20
(Speaker Chris Hanson)
So we create a significant amount of capacity. I mean, I think the analogy we always use is the interstate highway system. This would create really an enormous amount of capacity, you know, coming in and out of North Dakota. So then these points of the 115 and the 230 lines, where a lot of this is going over now, it would relieve those lines and would avoid these constraints going forward.
Does that answer your question?

(Speaker Haugen-Hoffart) Yep

(Speaker Chris Hanson) The second question was, exclusive of the need to get power out of North Dakota and defeat Ellendale, Big Stone, and the future Big Stone-Sherborn lines, what other alternatives identified would have addressed the previously identified issues for less cost? And so, when they came back, and basically the way MISO evaluated this is they had six different options, but every single one of these options included Jamestown to Ellendale.

0:14:23
(Speaker Chris)
So there were six different ways that they tried to get the power from Big Stone into Minnesota and stuff. But as I pointed out, the way you can kind of look at this is Jamestown to Ellendale is the missing link between the Coyote to Maple River and the Ellendale to Big Stone. So, every one of these options they looked at included building this line.

0:14:50
(Speaker Chris)
So they didn't look at, they didn't have, they obviously thought this was such a critical part of the infrastructure that all of their options included this, so they didn't really, they didn't look at other options. I think this was basically something that they felt was pretty self-evident. And they did actually point out different options on like the Minnesota side about how to get the power into Minnesota and how to move it around Minnesota. But every one of the options included Jamestown to Ellendale. So, they didn't really look at, I guess you could say they didn't look at other options because I think they felt this was such a critical part of the infrastructure.

0:15:26
(Speaker Chris)
The other thing that I would note going to the MISO report, or the MISO response is that they look at these tranches as a whole, and Adam deals with MISO more than I can, but they look at these as a whole. So, they don't look at necessarily one project in isolation of the other projects. As I noted, when they evaluated this project, they evaluated it with the Big Stone to Big Oaks, both of those together and looked at the constraints, but they also kind of look at the whole Tranche 1 is kind of one big project. So, if, they point out specifically that if you take one part of the project or one of the projects out, it actually affects the whole tranche for the project. So, they don't look at these things necessarily in isolation. So, in this case, they obviously felt that Jamestown to Ellendale was a critical piece because they didn't actually have an option where it didn't include Jamestown to Ellendale.

0:16:32
(Speaker Chris)
So that was my second question. The third question was, did MISO include the impact of Applied Digital's operation in future plans, as well as the prospect of generation West of Fargo in their calculations, if not, have either of your companies attempt to do this? So, when

they did the studies for Tranche 1, they did not include Applied Digital in those, because they, and the other thing is that, so they did not include the Future 1 models, which was used for Tranche 1, was before Applied Digital got up and running.

0:17:14
(Speaker Chris)
And, but they did actually include, they did actually include the 200 megawatts of natural gas generation west of Fargo. So, we had the question specifically about whether it included that in the model. It does. They also pointed out that it includes 800 megawatts of solar generation in the mix as well. **So, they do actually take future generation plans into account on this, but Applied Digital was not included in the initial Tranche 1 analysis. They did point out, however, that when they did the LRTP Tranche 2.1 portfolio, which I think we've been having some conversations on lately, that does actually include the impacts of Applied Digital's load, and then doesn't say specifically if it's including the, let's see here, it includes Applied Digital's operation in future plans and those subsequent models in the 2.1. So, they're playing catch up.**

0:18:03
(Speaker Chris)
They didn't include it in the Tranche study, in the Future 1 model which was used for Tranche 1, but it is, as they go along, it's being updated in the future Tranches. **So, the I guess the answer to that is that Applied Digital wasn't included, future generation was included.** I would note that in my memo that one of, Lief Clark, the engineer on our staff, actually did an analysis of the 12 months prior to ramp up of the first phase of Applied Digital and then looked at the 12 months after it was ramped up, and he did actually see that it did relieve a significant amount of the congestion on the system as occurred at that time. So, what that did is reduce the congestion and raise the L&P prices.

0:19:07
(Speaker Adam) And we have the numbers right here.

0:19:09
(Speaker Chris Hanson)
So he found that it reduced the Ellendale 1 and 2, it reduced the MCC, which is the marginal congestion, by 69% and 56% from before to after. And then he showed that the L&P prices actually increased by 12% and 46%. So as you relieve congestion, it allows the power to flow more freely over and it levelizes the L&P prices. So if you look at a map, like Victor was showing me yesterday, if you look at a map in North Dakota when it's constrained, we have excess production on windy days, so the prices are sometimes zero or even maybe even negative. And that gets constrained so that it can't, and then you look east of that constraint into Minnesota and the prices are higher, so as you remove the constraint, it levelizes the prices. So that as you remove the congestion, the L&P prices should will probably, on average, come up. That's the expectation.

0:20:15
(Speaker Fedorchak) For North Dakotans?

0:20:16
(Speaker Chris Hanson) For North Dakotans, right. Um, so...

0:20:19
(Speaker Fedorchak) Another great benefit sometimes...inaudible

0:20:20
(Speaker Chris) Well, yeah, for customers. But then, yeah. So that was the 3 responses that we had from them.

0:20:29
(Speaker Christmann)
Can I ask, on that though, when those L&P prices go so low, negative, or even if it's $5 or $10 dollars, when those come up, it's because energy is flowing, meaning it's getting somewhere else and lowering there. So it's somewhat balanced out?

0:20:55
(Speaker Chris) Correct.

0:20:56
(Speaker Fedorchak) So, that's the goal.

0:20:58
(Speaker Chris Hanson)

Yeah, well, and it's pointed out, too, that for a consumer, then it means they're not getting super, uber low prices, which is what Applied Digital is saying, why they located where they're at is because they're getting this super low energy price. But the other thing it does is it levelizes prices, is that it theoretically, but I think logically would mean that it should provide a more incentive for our thermal to produce as well. It should, you know, when the prices get depressed to the point where the coal gets interrupted or the gas gets interrupted, if those prices levelize more, it should provide a better environment for them to operate on a more consistent basis as well too. So, it's a trade-off on things. So those are the basic questions that we had. We also had the MISO response. I think I'll read my summary of that so that I don't have to go through the...

0:21:51
(Speaker Haugen-Hoffart) Are you going to go through that or is Adam?

0:21:55
(Speaker Chris Hanson)
Adam. Adam preferred I do that. So, the MISO response, I'll just kind of read from the memo, and I apologize. We just got this the day before yesterday, late in the day or something like that. So this is a pretty quick turnaround on things. So, I said, as a result of the session, we sent a request to MISO to explain the benefits to address the key reliability and economic benefits of the project.

0:22:29
(Speaker Chris Hanson)
In response, we received a letter from Jeremiah Donor, the Director of Cost Allocation with MISO, on October 14th, addressing the justification and benefits of the project. He states that this project will remedy the N-1 and N-1-1 issues noted in the previous memo, and he identifies the elements that are projected to be affected by thermal overload and voltage issues. As I noted, these N-1 and N-1-1 events and elements are projected – oh the Miso Report? Sorry – Are projected based upon each company's long-term forecasts of load and generation growth.

0:23:03
(Speaker Chris)
Essentially, they're projected overloading the lines, transformers, and substations that could result in customer outages and reliability issues. Mr. Donor further notes that in not constructing that this, oh, I didn't write this right, that not constructing this project, yeah, I got a double negative here, but essentially he noted that, sorry, I apologize for that, that not constructing this project would affect the entire Tranche 1 because it's a critical element of it. Obviously, we're moving power out of North Dakota, so you could probably argue that this is one of the more critical elements of the whole Tranche 1 is the ability to move, and not have this power get constrained into North Dakota.

0:23:41
(Speaker Chris Hanson)
I also point out that he was the one that pointed out about how this is kind of basically a leg in the line of the Coyote to Maple River and the Ellendale to Big Stone line, so this connects up those lines. **I pointed out they looked at five alternatives to this, but all six, all proposals included the Jamestown to Ellendale line.** So, he does say too, Mr. Donor identifies that these projects will provide more reliable and efficient delivery of energy from low cost regionally cited generators. He further notes that this build-out will, quote, **"allow for the continued interconnection to new generation resources in areas that offer higher capacity factors for intermittent resources such as wind generation."**

0:24:40
(Speaker Chris)
So he specifically called out that they see that this is an opportunity to connect up more wind generation. In other words, it creates additional capacity for the wind to be transmitted from North Dakota eastward. I said additionally, oh no, then I got into basically the response I just talked about. **So, essentially he's saying it's critical to the Tranche 1.**

0:24:59
(Speaker Chris Hanson)
They see it as an opportunity to get more generation resources out of North Dakota, but they specifically did call out more intermittent wind resources as part of that. That was basically his response. And also in there, in the MISO letter, he talks about the specific elements that are being affected in lines, like I said, the transformers, substations and lines that are being affected by the forecasted N-1 and N-1-1s. So that's kind of the MISO letter in a nutshell.

0:25:34
(Speaker Haugen-Hoffart) Adam, do you have anything else to add?

0:25:36
(Speaker Adam) Just to say that I think we have to realize that this is we're dealing with generation futures that are projected in what, 2042? So, this was based on Future 1 each year, each Tranche prior to the LRTP process MISO updates that generation profile based on member plans and IRPs and such. So now we have Future 1-A in which MISO then reassesses what benefits come out of connecting both Tranche 1 as well as in this case, Tranche 2.1. So I would say that an advantage of what we have in terms of how the commission can influence that decision, when we look at the type of resources that are assumed in North Dakota, because it's in 2042, this commission now has the tool, which is an IRP, to influence what type of resource is preferred. So the question is then, what kind of resources hook up into this line is somewhat dependent on commission preference as well. And I would say that will become even more important for Tranche 2.1 and 2.2.

(Speaker Christmann) **Whose IRP has that 800 megawatts of solar in North Dakota that I think this was based on?**

(Speaker Adam) I'd have to take a look.

0:27:24
(Speaker Fedorchak) It wouldn't be just one IRP. Yeah. It's collective. They look at all the company plans. So, some of it might have been specific, but and they try to argue that there are sort of specific locations. But I think it's, I don't know, in our analysis, we think MISO is overstating that, how much specificity they're seeing in the IRPs and um using some judgment as to what resources they're going to end up where in their modeling.

0:28:12
(Speaker Chris) Right. So, these are placeholders and a lot of times these placeholders are a generic technology or technology that doesn't even exist. So, there's room to pivot.

0:28:23
(Speaker Christmann) So how effective is our IRP process if they don't really go by them, they go by whatever placeholders they make up?

0:28:32
(Speaker Chris) Well, the placeholder, let's say for a CT, would be somewhat, it would be dispatchable. So, they might consider that in one IRP, based on their carbon preference, they might consider it powered by hydrogen.

0:28:48
(Speaker Fedorchak)
Um, I think what Randy's getting at is a little broader. They look at the IRPs. And to the extent that the IRPs say where stuff is going to be and when, they use that. The problem is a lot of IRPs aren't that specific. It might be a more general goal. And so, they then have to use judgment as to where they think those are going to end up. And so that's step number one. And step number two, we don't have them yet. So they haven't been able to use any direction from what we've said, because we don't have it.

0:29:23
(Speaker Christmann) But the companies have them?

0:29:25
(Speaker Fedorchak) The companies, they use the company plans. Yep. And anything they've announced from the company.

0:29:27
(Speaker Christmann) And so that's why I was wondering so who's company's IRP would have contained that?

0:29:32
(Speaker Fedorchak) Well, Otter Tail has solar, so does Xcel. It has quite a lot of solar.

0:29:38
(Speaker Christmann) In North Dakota?

0:29:40
(Speaker Fedorchak) Well, wherever. It may or may not be in North Dakota.

0:29:45
(Speaker Haugen-Hoffart) So just for clarification, everyone that's in the MISO, all the companies have submitted an IRP to MISO?

(Speaker Fedorchak) No!

(Speaker Haugen-Hoffart) So then how do they base it on? Is it load growth?

0:29:58
(Speaker Fedorchak)
They base it on whatever IRPs are available. OK? Because not every state does them. There's a broad difference between states. Some states have them, some states don't have them, some companies use them, provide them to us like they have over years, and we've just kind of received them.
So whatever IRPs they have, they use. And then they look at, it's not like a one set plan. You have to get over this idea that there's like one formula for this. It's a bunch of information that they're collecting to try to build this vision of the future as close as they can imagine it to be. So they pull in the IRPs, they pull in any announcements that the companies have made. Like Xcel has said, we're shutting down the Sherco units. That's an announcement, they consider that to be firm, they use that, they put that into their model. And any other company announcement that they have, they plug those in. And then they look at state directives. Minnesota has a law.

0:31:01
(Speaker Fedorchak)
So they assume that the companies in Minnesota have to meet that law. And they bake that into their plans. But maybe the companies haven't said how they're going to do it yet. So that's where they use some of these placement resources to make a judgment for, well, Minnesota has to have, you know, all the companies have to have 30 percent, whatever, 30 percent solar by whatever date, or and so they plug that into their models. And then the models have to pick in the cases where there aren't specific locations identified yet, the models pick where they think those are going to be. And so there's a ton of judgment going into these futures. But at the same time, transmission planning takes a long time and you can't, you, there's no planning for it if you don't do that because it takes so long to develop it and site it and build it that you're always gonna be making it based on what you think the future is going to be.

0:32:02
(Speaker Fedorchak)
So this is the models that they've used for their futures. And then they have, you hear them talk about low end, like the Future 1, Future 2, Future 3. Future 1 is the most conservative. So that looks at like as closely to the state laws, the existing plans of the companies, and their IRPs as much as like they know to be happening, as close to that as they can predict. So it's the most conservative. The least amount of judgment. Future 3 is the most amount of judgment. It looks at trends.

It looks at, like OK, the maximum amount of decarbonization. The maximum amount, or you know a not maximum, but a larger amount of decarbonization, of EV adaption, higher demand growth, all of those sorts of things. That's Future 3.
And then Future 2 is kind of right in the middle. And so there's all this discussion on which future you're using for which tranches. And they're constantly looking at, OK, when we started Future 1, it was like, how many years ago, Adam, did we start with Future 1?

0:33:14
(Speaker Adam) For three, four years.

0:33:15
(Speaker Fedorchak)
Yeah, now we've got actuals to plug in to see like how are we how are we trending? Are we close to Future 1? They're seeing actually that it's trending closer to some of the more aggressive futures. So that's why you see them adopting more aggressive plans for the transmission system. And that might pivot back because you know with demand growth and the reality of the system and the excessive retirements, you might see, I hope we see, companies pulling back and slowing down. And so you might see it going the other way in the next couple of years. So it's a very iterative approach, but also recognizing that, you know, you've got to pull the trigger on some things along the way, and you can't just constantly plan. So...

When I look at this memo from MISO, the one piece that I think is worth pulling out, there's a few kind of conclusions that I reach, but one piece that I think is worth pointing to is on the bottom of page two of the Jeremiah Donor letter, which is the second one back. I don't know if I have the same. Is this a copy that everybody got?

0:34:44
(Speaker Fedorchak)
OK, so page two. **Under reliability benefits, and Randy, I see you've highlighted it. With the second to last paragraph, the last sentence, without the JETx project, these reliability issues would still be present on the local area transmission systems in the future and will need to be mitigated by local reliability projects with a cost borne by the local transmission pricing zones. That's a fancy way of saying one of the benefits of this project is it takes care of these local issues that if we don't have this bigger project cost allocated to the entire MISO-North footprint, we'll be paying for it ourselves.**

0:35:26
(Speaker Fedorchak)
These fixes. Now, they might be smaller. It's not going to be as big of a project. But there still wouldn't be any cost share on those sorts of things. And I think that that's an important consideration for these. **That and the fact that as we see the shrinking capacity availability of dispatchable capacity in the entire MISO footprint right now and the increased demand, are the capacity that North Dakota has is extremely valuable. And this is an outlet for that capacity to places that are going to need it. So it's a highway for it.**

0:36:15
(Speaker Christmann)
And so I'm so frustrated. I don't know what to do with this case, because it's like two things merged and there's never a right place to start to draw a line on something. My frustration is with the allocation of costs. We go through these things and whether it was from way back the Otter Tail and MDU filings that talked about benefits, inclnding distribution of renewable energy, reduced carbon emissions and landowner payments. Or what MISO just got into, which benefits is basically getting more renewables on the system. So it's just not going quite as far. The benefits is largely to the developers, not to North Dakota ratepayers.

0:37:54
(Speaker Christmann)
And to challenge MISO's allocatiou once we've already approved the CPCN seems backwards and so I sort of feel like almost that in one effort this should be denied and we should be initiating a FERC case or something I don't know how how you really fight that allocation, because there's this, over $10 billion, and then the second tranche, and the third tranche, and the fourth tranche. This is almost, **this tranche is almost $6 a month for those Otter Tail customers.** And I don't know what their customer in Garrison or in Fessenden gets out of this. And I don't know what MDU's customer in Williston or Bismarck gets out of this.

0:38:25
(Speaker Christmann)
Theirs is lesser. It's what, a little over $3, I think. But a FERC case is really expensive, too. I really feel like what MISO is doing here, and I kind of relate back to my old co-op board days, and I know the big difference between co-ops and IOUs. But if somebody wanted to build a house 10 miles from any of our old facilities, except for some old copper line that hadn't been used in 40 years, there would have been some aid to construction. Now, when our team came in over the winter and said, OK, here's the area where we're having problems, we would plan for construction for that summer and maybe rebuild that area because it was having problems. But when we ask for what the reliability issues here are, it's not like they're saying, oh, well, down there in Enderlin, there's just these frequently, frequent voltage issues and things like that. Or over at Valley City, we've had power shortages time and time again. **We had one in Jamestown that the way we often work through our evaluations of reliability would probably just fall as major event days.** I spilt on some lines.

0:40:09
(Speaker Christmann)
I don't know if this would have helped that either. **But this isn't really solving any problems that exist.** It's solving problems that some developers want to add to the system and that will exist once they add their developments to the system. **And I really view this as MISO eliminating the interconnection charges.** We will build this way in advance, just like my example of the guy that wants to build way out on the old copper line, and then our construction group come in and say, we can't afford to do that.

0:40:51
(Speaker Christmann)
The construction would be too much. We'll build the fiber out there. And then when he comes, it won't cost so much for him to hook up. Well, but it costs everybody else. **And to me, that's all we're doing here with this Tranche 1 is eliminating interconnection charge to developers.** And like I say, we approve this, I don't know how we fight this allocation at MISO, because that is really the problem. If the developers were paying for this, I don't think I'd have any objection. But it's a big battle to initiate a case of FERC. And so, some thoughts.

0:41:50
(Speaker Fedorchak)
Well, I certainly understand your frustration and share a lot of it. Maybe I've been beat down because I've been at this longer on this particular Tranche. So I have two thoughts. First of all, I think we should, I would like to talk with our counsel about and get a more clear advice and discussion of options for our legal paths kind of moving forward. Because I think you raise a good point about what we do here and how it affects future issues. My real concerns are with Tranche 2. I think that there's more legitimate benefits to which I just talked about. This project and everything in Tranche 1, which is much more focused on future, on the Future 1 growth scenario, change scenario, which is pretty realistic, I think. So I'm more comfortable with Tranche 1. I'm not, I don't love it and I still would have liked to

generate a PACE?? component in the cost allocation. But that would have, again, not given them 100% of the cost, but a higher share going to the people who are demanding it.

0:43:27
(Speaker Fedorchak)
But that didn't happen. So that said, I think there's much more benefits on this project, in these two projects, or this project, and the whole Tranche 1 for North Dakota. So I separate them a little bit, but
would like to have a discussion with Jack and Brian, and probably our FERC?, um, advisors on our what our paths forward are. Because I think we're seeing more and more concerns on Tranche 2 and want to do whatever we can to preserve maximum rights for um fighting that one. So that's where I'm at.

0:44:27
(Speaker Christmann)
I just want to add one more thing that I forgot. I'm like, tired. It also bothers me on this planning. The modeling, man, we can see way out into the future all this stuff. Within two months, although right to the hour. We can recalculate and come up with even more N-1 and N-1-1 benefits involved here. We can do all that. We can envision 800 megawatts of solar in North Dakota, most of which has never been applied for. We can envision 200 megawatts of natural gas, the company for which has an incentive in place, and they're trying to get out of it. So I'm not saying that is real, real likely at the moment, any time soon. But it's just too much of a burden to calculate in what already exists. **A big user down at Ellendale, I mean, that's only been there a year, it would be overwhelming to try and calculate that in.**

0:45:49
(Speaker Fedorchak) Well, I mean, in their defense, those models, that modeling was occurring probably three or four years before that came online. And those models are, they are massive.

0:46:00
(Speaker Christmann) But this morning we had adjustments to the M&A.

0:46:02
(Speaker Fedorchak) Well, but those were already done. Those models were, those had already been run and they were just pulling from stuff. I'm assuming, I don't know, but.

0:46:10
(Speaker Adam) **But I think they did note that the 2.1, on the current tranche that they actually had taken into account the current Ellendale and the projected plans from Ellendale, into the 2.1, so.**

0:46:21
(Speaker Fedorchak) Yeah.

0:46:22
(Speaker) So they do update them, but as we've noted before, they don't go retroactive on these. They don't go back to Tranche 1 and say, re-look at it.

0:46:30
(Speaker Fedorchak) So, yeah.

0:46:31
(Speaker) And you also have to realize that those contracts can be renegotiated after five years.
(Speaker Fedorchak) True.

0:46:36
(Speaker Christmann) Good point.

0:46:37
(Speaker Haugen-Hoffart) So, Adam or Julie, have you talked within MISO that looking at Tranche 1, if one of the legs is not approved, what that means?

0:46:57
(Speaker Fedorchak) Mm-mm (no)

0:46:59
(Speaker) I haven't.

0:47:00
(Speaker Haugen-Hoffart) It's a package.

0:47:01
(Speaker) Yeah.

0:47:02
(Speaker Fedorchak) Okay. They put it through as a package, and that's the risk of all of these, you know, projects, is they go to the states then, and the states where they're being built. Now we won't have any say on any of the other correct?? ones. But this one is in our territory and with our utilities. So yeah. But it's happened before it happened. There's a line in what's the first? I've lost the acronym for the first build out. What was it?

0:47:28
(Speaker) The MVP?

0:47:29
(Speaker Fedorchak) MVPs. Giggling.
(Speaker) Yeah.

0:47:31
(Speaker Fedorchak) MVP, the first one. I don't, anyway, one of those MVP lines is still in court in Wisconsin. So it's not unprecedented that these projects get tangled up.

0:47:45
(Speaker Haugen-Hoffart) OK. Did we receive the information that was requested from MDU?

0:47:50
(Speaker) Otter Tail responded for both Otter Tail and MDU on the questions.

0:48:03
(Speaker Haugen-Hoffart) Okay, thank you. Anybody have anything else? Our legal counsel has been prepped for the questions that have been asked, so... I know that with certainty. So...

0:48:12
(Speaker Fedorchak) So in terms of next steps, maybe we can look at getting, well, we can, I'll do what I need to do and talk to you guys about my thoughts on next steps. And then we can all do the same, and you guys can decide what the next steps are, I guess. Giggling. I do think we should try to get this moving, though, and not dilly-dally too much longer. So I will try to do my part to make that happen.

(Speaker Christmann) Anything else?

0:49:00
(Speaker Haugen-Hoffart) No, I think I've already directed staff. And I've talked to legal counsel. So we're moving forward.

0:49:17
(Speaker Christmann) Anything else from staff? Okay, this work session is closed. Thanks everyone.

https://apps.psc.nd.gov/cases/pscasedetail?getId=24&getId2=91#

Transcribed with Cockatoo

EXHIBIT 10

OTTER TAIL POWER COMPANY
Case No: PU-24-091

Response to: ND Public Service Commission
Analyst: Christopher C. Hanson
Date Received: August 23, 2024
Date Due: September 13, 2024
Date of Response: September 13, 2024
Responding Witness: Jason Weiers, Manager, Transmission Project Development - (218) 739-8311

Data Request:
What N-1 events were identified as justification for the line and which of these were in ND?

Attachments: 0

Response:

MISO has identified that the Jamestown – Ellendale 345 kV Project, in combination with the Big Stone South – Alexandria – Cassie's Crossing (Big Oaks) 345 kV Project, relieves thermal (i.e. loading) issues on 40 transmission elements and relieves voltage issues on 97 transmission elements during N-1 events.[1]

MISO has provided the study results from Tranche 1 of the Long Range Transmission Plan to the Applicants. The Applicants have carefully reviewed this information and have quantified that there are 2,010 N-1 events in the pre-LRTP Tranche 1 portfolio models that resulted in thermal issues and 1,728 N-1 events in the pre-LRTP Tranche 1 portfolio models that resulted in voltage issues.

Of the 2,010 N-1 events that resulted in thermal issues, 88 N-1 events were located in North Dakota. Likewise, of the 1,728 N-1 events that resulted in voltage issues, 229 N-1 events were located in North Dakota. The specific N-1 events have not been identified by the Applicants due to their sensitive nature as Critical Energy Infrastructure Information (CEII) but can be obtained from MISO once the applicable arrangements are in place for receiving CEII.

[1] See Tables 6-1 and 6-2 on page 43 of the MTEP21 Addendum available on the MISO website at: https://cdn.misoenergy.org/MTEP21%20LRTP%20Tranche%201%20Portfolio626133.zip

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Responding Witness: Jason Weiers, Manager, Transmission Project Development - (218) 739-8311

Data Request:
Exclusive of the need to get power out of ND and to feed the Ellendale-Big Stone & the future Big Stone-Sherburne lines, were there other alternatives identified that would have addressed the previously identified issues for less cost?

Attachments: 0

Response:

No. MISO evaluated the following alternatives and concluded that these other alternatives did not address the previously identified issues as effectively as the preferred projects. Therefore, cost estimates were not developed for these alternatives.

Alternative #	Project #1	Project #2	MISO's Conclusions[1]
---	Jamestown – Ellendale 345 kV Line	Big Stone South – Alexandria – Cassie's Crossing (Big Oaks) 345 kV Line	Preferred projects.
1	Jamestown – Ellendale 345 kV Line	Big Stone South – Alexandria 345 kV Line	Without double circuit to Cassie's Crossing (Big Oaks), there are new N-1 issues around Alexandria.
2	Jamestown – Ellendale 345 kV Line	Big Stone South – Hankinson – Fergus Falls 345 kV Line	Creates new issues on the 230 kV and 115 kV system around Fergus Falls.
3	Jamestown – Ellendale 345 kV Line	Big Stone South – Hazel Creek – Blue Lake 345 kV Line	Reduces nearly all overloads of concern, but not to the extent of the preferred project.
4	Jamestown – Ellendale 345 kV Line	Big Stone South – Alexandria 345 kV Line + Big Stone South – Hazel Creek – Blue Lake 345 kV Line	As a combination of alternatives (1 + 3), the south circuit to Blue Lake does not add enough value over the preferred project.
5	Jamestown – Ellendale 345 kV Line	Big Stone South – Breckenridge-Barnesville 345 kV Line	There are still a few key overloads on the key 230 kV system around Wahpeton which are not solved by this alternative.

[1] See pages 41-43 of the MTEP21 Addendum available on the MISO website at: https://cdn.misoenergy.org/MTEP21%20LRTP%20Tranche%201%20Portfolio626133.zip

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Responding Witness: Jason Weiers, Manager, Transmission Project Development - (218) 739-8311

Data Request:
Did MISO include the impact of Applied Digital's operation and future plans as well as the prospect of generation west of Fargo into their calculations? If not, have either of your companies attempted to assess this impact?

Attachments: 0

Response:

MISO did not include Applied Digital's operation and future plans in the Future 1 models that were used to identify the Tranche 1 portfolio. The Future 1 models were finalized prior to Applied Digital's commitment to construct new facilities at Jamestown and Ellendale. Neither Otter Tail nor Montana-Dakota have attempted to assess the impact of Applied Digital because neither company has the production cost modeling software tool, PROMOD, to do so. However, Otter Tail and Montana-Dakota have included Applied Digital's operation and future plans in subsequent MISO models once they committed to moving forward with their projects starting in 2022. As such, Applied Digital's load at Jamestown and Ellendale are included in the Future 2A models being evaluated as part of the LRTP Tranche 2.1 portfolio.

Through the model building process for the Tranche 1 portfolio, MISO performed a resource expansion across their footprint based on information gathered from the integrated resource plans of its members. In addition, MISO also added future generation to the models to balance load and generation in a 10-year and 20-year horizon. As part of this resource expansion, the Future 1 models did include the prospect of generation west of Fargo.[1] More specifically, the Applicants' identified that 200 MW of natural gas generation was assumed to have been added near Hankinson and approximately 800 MW of solar generation was assumed to have been added northwest of Fargo near Buffalo, Pickert, and Mapleton.

[1] Series 1 MISO Futures Resource Forecast Siting Locations are found on the MISO website at: https://cdn.misoenergy.org/20211110%20PAC%20Item%2003b%20MISO%20Futures%20Resource%20Siting%20-%20Corrected%20F2%20and%20F3602575.xlsx

EXHIBIT 11

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VIA E-MAIL DELIVERY (PAPER COPIES TO FOLLOW)

October 14, 2024

Mr. Steve Kahl
Director of Administration / Executive Secretary
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck, North Dakota 58505-0480

Re: ***In the Matter of Otter Tail Power Company's and Montana-Dakota Utilities Co.'s Joint Application for a Certificate of Public Convenience and Necessity for a 345 kV Transmission Line from Jamestown, North Dakota to Ellendale, North Dakota*;**
Comments by the Midcontinent Independent System Operator, Inc.;
Case No. PU-24-091

Dear Mr. Kahl:

Enclosed regarding the above-captioned case, the Midcontinent Independent System Operator, Inc. ("MISO") provides comments concerning a transmission project that was identified as part of MISO's Long-Range Transmission Planning Tranche 1 portfolio. MISO is the Planning Coordinator for the MISO region, and the portfolio is part of a MISO Transmission Expansion Plan.

MISO respectfully requests that these comments be accepted by the North Dakota Public Service Commission for its consideration of the proposed Jamestown-Ellendale Transmission Project. The comments were prepared by MISO's Director for Cost Allocation and Competitive Transmission within MISO's Transmission Planning Department, and explain how the proposed facilities would provide substantial benefits to North Dakota.

An electronic copy of MISO's comments is being transmitted to you at skahl@nd.gov as well as to NDPSC@nd.gov. Paper copies will be sent to you by mail.

19 PU-24-91 Filed 10/14/2024 Pages: 9
Comments by the Midcontinent Independent System Operator, Inc. (MISO)
Midcontinent Independent System Operator, Inc. (MISO)
Max W. Meyer, MISO - Eagan MN Offices

Sincerely,

/s/ Max W. Meyer
Max W. Meyer
MISO – Eagan MN Offices
2985 Ames Crossing Road
Eagan, Minnesota 55121
mmeyer@misoenergy.org

Attached MISO Comments (paper copies to follow)

cc: molsen@otpco.com
travis.jacobson@mdu.com
rendris@otpco.com
allison.waldon@mduresources.com

CERTIFICATE OF SERVICE

A true and correct copy of the Comments by the Midcontinent Independent System Operator, Inc., on this 14th day of October, 2024, has been transmitted to the North Dakota Public Service Commission via email (paper copies to follow). The Comments have also been served on the Service List on file with the North Dakota Public Service Commission.

/s/Adriana Rodriguez
Adriana Rodriguez
MISO
720 City Center Drive
Carmel, Indiana 46032
arodriguez@misoenergy.org

Jeremiah Doner
Director, Cost Allocation and
Competitive Transmission
(317) 249-5400
E-mail: jdoner@misoenergy.org

VIA ELECTRONIC DELIVERY

October 14, 2024

Mr. Steve Kahl
Director of Administration / Executive Secretary
North Dakota Public Service Commission
State Capitol Building
600 East Boulevard
Bismarck, North Dakota 58505-0480

Re: Comments by the Midcontinent Independent System Operator, Inc. in the Matter of Otter Tail Power Company's and Montana-Dakota Utilities Co.'s Joint Application for a Certificate of Public Convenience and Necessity for a 345 kV Transmission Line from Jamestown, North Dakota to Ellendale, North Dakota (Case No. PU-24-091)

Dear Mr. Kahl:

I provide these comments to the North Dakota Public Service Commission on behalf of the Midcontinent Independent System Operator, Inc. ("MISO") in connection with Otter Tail Power Company's and Montana-Dakota Utilities Co.'s Joint Application for a Certificate of Public Convenience and Necessity for a 345 kV Transmission Line from Jamestown, North Dakota, to Ellendale, North Dakota (Case No. PU-24-091). I am the Director for Cost Allocation and Competitive Transmission within MISO's Transmission Planning Department, responsible for directing the teams focused on transmission planning across the MISO region. My comments address the justification and benefits of the proposed Jamestown – Ellendale 345 kV Transmission Project (the "Project" or "JETx Project"). While the JETx Project is a Multi-Value Project that provides multiple benefits, I have directed my comments on the key reliability and economic benefits of the JETx Project and the Long Range Transmission Planning ("LRTP") Tranche 1 portfolio.

The JETx Project will help ensure that the transmission system in North Dakota is able to continue operating reliably and economically well into the future. The MISO analyses of the existing transmission system during the 2021 MISO Transmission Expansion Plan ("MTEP21") identified numerous transmission facilities that will be loaded above safe operating levels and operate outside of acceptable voltage levels without the JETx Project. Additionally, the JETx Project will help realize the economic benefits of the entire LRTP Tranche 1 portfolio that was approved by MISO as part of MTEP21. As a result, customers in North Dakota and other states

in the MISO Midwest Subregion (Missouri and north extending to Canada and bounded by Michigan and eastern Montana) will not receive the multitude of benefits that are provided by the LRTP Tranche 1 portfolio without the JETx Project.

Reliability Benefits

The 230 kV transmission system in Eastern North Dakota and South Dakota is comprised of a network of 230 kV transmission lines owned by Otter Tail Power Company and Montana-Dakota Utilities Co. between Ellendale – Oakes – Forman – Hankinson – Wahpeton and between Big Stone – Browns Valley – New Effington – Hankinson. This 230 kV system extends into Western/Central Minnesota (Fergus Falls) and is heavily constrained for many different seasons throughout the year as it delivers energy across a large geographical area from generation that is usually transported out of North Dakota and South Dakota and into Minnesota. Transmission planning studies have shown that this existing 230 kV system is at capacity with many reliability concerns, not only for N-1 outages[1] but also for system intact situations. The JETx Project provides additional outlet capability for North Dakota and South Dakota by tying two existing 345 kV systems together (the existing Coyote – Center – Jamestown – Buffalo – Maple River 345 kV line and the Ellendale – Big Stone South 345 kV line). The addition of the JETx Project and the better utilization of these existing 345 kV lines have been shown to unload the existing 230 kV system of concern and improve reliability across the greater area of Eastern North Dakota, South Dakota, and Western/Central Minnesota.

The JETx Project, in conjunction with the Big Stone South – Alexandria – Big Oaks project (another LRTP Tranche 1 project described in the MTEP21 Report Addendum), addresses many thermal and voltage issues for Eastern North Dakota and South Dakota as well as Western/Central Minnesota. MISO studies show that facilities in this area experience heavy loading, and voltage depressions, for a wide geographical area along the North Dakota, South Dakota, and Minnesota borders (the Red River Valley Area). These two LRTP Tranche 1 projects provide significant reinforcements to the transmission system to improve thermal and voltage issues. Most notable, the 230 kV system owned by Montana-Dakota Utilities Co. and Otter Tail Power Company from Ellendale, North Dakota, to Fergus Falls, Minnesota, and from Big Stone, South Dakota to Hankinson, North Dakota is relieved of thermal overloads for numerous N-1 and N-1-1 outages. Without the JETx Project, these reliability issues will still be present on the local area transmission systems in the future and will need to be mitigated by local reliability projects with the costs borne by the local transmission pricing zones.

The JETx Project, along with the Big Stone South – Alexandria – Big Oaks 345 kV project, alleviates excessive thermal loading on 40 existing lines and transformers, as well as mitigating 100 voltage issues resulting from N-1 contingency events. These two projects also relieve thermal

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[1] An "N-1" event includes NERC TPL Category P1, P2, P4, P5 and P7 contingencies and means that the grid experiences the outage of a single transmission line, cable, transformer, or generator. A "N-1-1" event includes NERC TPL Category P3 and P6 contingencies and means that a sequence takes place consisting of an initial loss followed by another loss of a single line, cable, transformer, or generator.

overloads on 80 existing lines and transformers and mitigates 99 voltage issues caused by N-1-1 contingencies.[2]

The highest N-1 thermal overloads located in North Dakota that are addressed by these two LRTP Tranche 1 projects were as follows:

- Wahpeton 230/115 kV Transformer,
- Forman 230/115 kV Transformer, and
- Forman 115kV Substation bus tie.

The highest N-1-1 thermal overloads located in North Dakota that are addressed by these two LRTP Tranche 1 projects were as follows:

- Forman 230/115 kV transformer,
- Forman 115 kV bus tie,
- Mandan – Napoleon 230 kV line,
- Wahpeton 230/115 kV transformer,
- East Bismarck – Linton 115 kV line,
- Ellendale 230/115 kV transformer, and
- Hankinson – Wahpeton 230 kV line.

MISO examined five alternative sets of transmission projects to the approved JETx Project and the Big Stone South – Alexandria – Big Oaks 345 kV project to understand if any alternative set of transmission projects performed more effectively. The conclusion from this evaluation was that the JETx Project, in combination with the Big Stone South – Alexandria – Big Oaks 345 kV project, provides the best performance at the lowest cost to resolve the reliability issues in the area. The evaluation of these alternatives are discussed in more detail in the MTEP21 Report Addendum.[3]

Economic Benefits

The LRTP Tranche 1 portfolio will enable a more reliable and efficient delivery of energy from low cost, regionally sited generators than the existing transmission system. For example, the LRTP Tranche 1 portfolio results in an increase of transmission capacity that alleviates congestion for a more efficient dispatch of the energy market. In addition, the LRTP Tranche 1 portfolio provides for a more cost-effective regional build-out of generation resources that will not only better utilize the existing generation resources, but also allow for the continued interconnection of new generation resources in areas that offer higher capacity factors for intermittent resources, such as wind generation in North Dakota. MISO's analysis also included additional economic value from the LRTP Tranche 1 portfolio due to the ability to: (1) avoid future transmission investment

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2 The different values for the number of thermal and voltage violations in these comments from the description contained in the MTEP21 Report Addendum results from further review and validation after the MTEP21 Report Addendum was posted.

3 *See* MTEP21 Report Addendum, pg. 25.

that would have been needed without the LRTP Tranche 1 portfolio, (2) reduce resource adequacy requirements that defers capital investment in new generation resources, and (3) avoid load shedding that may arise due to severe winter weather events.

When the economic benefits of the LRTP Tranche 1 portfolio are compared to the present value of the revenue requirements, the portfolio produces total benefits between 2.6 to 3.8 times greater than the costs across the MISO Midwest Subregion on a present value basis over 20 years.[4] On a more granular level, the benefit to cost ratio for Zone 1[5] was between 2.8 to 4.0 times greater than the present value of the LRTP Tranche 1 portfolio costs.[6]

Consequences of Delay or Cancellation

The objective of the extensive planning functions of MISO is to derive the most cost-effective transmission expansion plan that will meet local and regional needs for reliability, optimize access to economic generation resources, and deliver other important economic values that benefit customers. The LRTP Tranche 1 portfolio was designed with these considerations in mind. The inability to construct just one project within the entire LRTP Tranche 1 portfolio, which was approved by the MISO Board of Directors for its reliability, economic, and other benefits, could result in a reduction of the effectiveness of the portfolio or worse yet, could lead to the development of less optimal solutions that would be needed to address reliability and economic concerns.

Not constructing the JETx Project will jeopardize the ability of the transmission system in North Dakota and the MISO Midwest Subregion to continue operating reliably and economically into the future. As described within these comments, the MISO analyses have shown that the JETx Project will alleviate excessive thermal loading on numerous existing lines and transformers, as well as mitigate several voltage issues resulting from N-1 and N-1-1 contingency events. In addition, customers in North Dakota and the other states in the MISO Midwest Subregion will not receive the multitude of benefits, provided by the LRTP Tranche 1 portfolio without the JETx Project. To the extent that the timeline for the in-service date of the JETx Project is delayed past

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4 *Id.*, Executive Summary, pg. 4.

5 Zone 1 is comprised of MISO member companies within Minnesota, eastern Montana, North Dakota, South Dakota, and western Wisconsin.

6 *Id.* The LRTP Tranche 1: Detailed Business Case Analysis located at: https://www.misoenergy.org/planning/long-range-transmission-planning/ (> under "Tranche 1 – Approved July 2022" and > "LRTP Tranche 1: Detailed Business Case Analysis"), its "Waterfall" tab, provides the reader with the ability to identify the contribution of each benefit metric to the overall benefits of the Tranche 1 portfolio. For example, excluding the decarbonization benefit metric for Zone 1 results in a benefit to cost ratio of between 2.6 and 3.0 and doing the same for the MISO Midwest Subregion results in total benefits of between 2.4 and 2.9 times the Tranche 1 portfolio costs. As another example, excluding decarbonization as well as the congestion and fuel savings benefit metrics for Zone 1 results in a benefit to cost ratio between 1.4 and 1.9.

2028, the realization of these benefits that are provided by the LRTP Tranche 1 portfolio could be delayed or diminished.

Conclusion

The JETx Project proposed by Otter Tail Power Company and Montana-Dakota Utilities Co. will provide substantial benefits to North Dakota and is necessary to alleviate excessive thermal loadings, mitigate voltage issues, minimize the risk of load shedding due to severe winter weather events, reduce congestion for a more efficient dispatch of generation, and avoid future transmission investment. This Project is a critical component of the larger MISO regional transmission plan for the continued development of a reliable and economic regional transmission system. This development will allow the LRTP Tranche 1 portfolio to deliver sizable net benefits across the MISO Midwest Subregion.

Sincerely,

/s/ Jeremiah Doner

Jeremiah Doner
Director, Cost Allocation and Competitive Transmission
MISO Transmission Planning
720 City Center Drive
Carmel, Indiana 46032
jdoner@misoenergy.org

CERTIFICATE OF SERVICE

A true and correct copy of the Comments by the Midcontinent Independent System Operator, Inc., on this 14th day of October, 2024, has been transmitted to the North Dakota Public Service Commission via email (paper copies to follow). The Comments have also been served on the Service List on file with the North Dakota Public Service Commission.

/s/Adriana Rodriguez
Adriana Rodriguez
MISO
720 City Center Drive
Carmel, Indiana 46032
arodriguez@misoenergy.org

EXHIBIT 12

inmates, according to a news release.

NORTH DAKOTA Ellendale: Australia's Macquarie agreed to take a 15% stake in Applied Digital's high-performance computing business and invest up to $5 billion in the company's artificial intelligence data centers amid booming AI demand. Macquarie's asset management arm has agreed to invest up to $900 million in a data center campus that Applied Digital is developing in North Dakota.

OHIO Fayette County: As part of an initiative that will revamp Ohio's

EXHIBIT 13

SPECIAL MESSAGE TO PROPERTY OWNERS:

This is an important agreement our lawyers have drafted that will bind you and your land for up to fifty (50) years. We will give you enough time to study and thoroughly understand it. We strongly encourage you to hire a lawyer to explain this agreement to you. You may want to talk with your neighbors about the wind project to find out if they also received a proposed contract. You and your neighbors may choose to hire the same attorney to review the agreement and negotiate changes on your behalf.

Execution of Document:

North Dakota law requires that this document may not be executed by the parties until at least **10 business days** after it has been delivered to the property owner. The property owner acknowledges that the document was delivered, and if applicable executed, on the dates set forth below.

	Date/Days	Lessor Initials
Date Lease delivered to Lessor	_____, 20__	
Date Lease executed by Lessor	_____, 20__	
Number of **business days** between delivery and execution **(excluding holidays and weekends)**		

Project: [Dickey County]

WIND FARM LEASE

THIS WIND FARM LEASE (hereinafter "**Lease**") is entered into as of the Effective Date, by and between EDF Renewables Development, Inc., a Delaware corporation, ("**Lessee**") and _____ ("**Lessor**"). Lessor and Lessee are also each hereinafter referred to individually as a "**Party**" or, collectively, the "**Parties**".

1. **Definitions**. The following terms shall have the following meanings when capitalized in this Lease:

1.1.	Access Easement Payment	As defined in Section 4.3.
1.2.	Anniversary Year	Each yearly anniversary date commencing with the Effective Date (defined below).
1.3.	Business Day	All days other than Saturdays, Sundays and federal holidays.
1.4.	Calendar Quarter	January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.
1.5.	Calendar Year	January 1 through December 31.
1.6.	Claims	As defined in Section 11.1.
1.7.	Collection Easement Payment	As defined in Section 4.3.
1.8.	County	Dickey County, State of North Dakota.
1.9.	Credits	As defined in Section 4.10.
1.10.	Effective Date	Last date of full execution of this Lease.
1.11.	Extension Option Notice	As defined in Section 3.2.
1.12.	Force Majeure	As defined in Section 23.
1.13.	Form W-9	As defined in Section 4.13.
1.14.	Hazardous Materials	As defined in Section 6.4.
1.15.	Lender	As defined in Section 14.1

1.16.	Lessee's Address	15445 Innovation Drive San Diego, California 92128 Attn: Corporate Real Estate Telephone: (858) 521-3300
1.17.	Lessee Parties	As defined in Section 11.1.
1.18.	Lessee Party	As defined in Section 11.1.
1.19.	Lessor's Address	_____ _____ Telephone: _____
1.20.	Lessor Parties	As defined in Section 11.1.
1.21.	Lessor Party	As defined in Section 11.1.
1.22.	Memorandum of Lease	As defined in Section 6.3.
1.23.	Met Tower	A meteorological tower.
1.24.	Obligor	As defined in Section 14.1.
1.25.	Pre-Operating Period	A period commencing on the Effective Date and continuing until the earlier of (i) the Wind Farm Operations Date or (ii) the earlier termination of this Lease as set forth herein.
1.26.	Pre-Operating Period Payments	Years 1 through 7*: $10.00 per acre per year. *or until the Wind Farm Operations Date.
1.27.	Project	As defined in Section 2.2.
1.28.	Property	APN: _____ That certain land located in the County, described in Exhibit A hereto and incorporated herein by this reference, containing approximately _____ acres (as such acreage may be adjusted in accordance with the terms of this Lease). Such acreage shall be used to determine the Pre-Operating Period Payments and Quarterly Operating Payments.

1.29.	Quarterly Operating Payments	The following payments shall be paid in quarterly installments as further provided in Section 4.2: (i) Fifteen Thousand Dollars ($15,000.00) per year per installed WTGs on the Property; or (ii) Thirty-Five Dollars per acre per year for Property without a WTG installed on the Property. Commencing on the first anniversary of the Wind Farm Operations Date and continuing through the end of the Term, the annual payment of Quarterly Operating Payments shall increase at the rate of two percent (2%) per annum.
1.30.	Regulated Utility	An electrical corporation or an electricity service provider who sells power to retail customers and is regulated by the state utility commission or its equivalent.
1.31.	Restoration	As defined in Section 5.3.
1.32.	Restoration Costs	As defined in Section 5.3.
1.33.	Restoration Period	As defined in Section 5.3.
1.34.	Storage Facility	As defined in Section 2.3.
1.35.	Substation	As defined in Section 4.9.
1.36.	Term	As defined in Section 3.
1.37.	Transmission Easement Payment	As defined in Section 4.3.
1.38.	Transmission Facilities	As defined in Section 2.4.
1.39.	Wind Farm	As defined in Section 2.2.
1.40.	Wind Farm Operations	As defined in Section 2.2.
1.41.	Wind Farm Operations Date	As defined in Section 4.5.
1.42.	WTG	As defined in Section 2.1.
1.43.	WTG Related Improvements	As defined in Section 2.1.

2. **Agreement to Lease**. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, for the Term, the Property for the following rights and purposes:

2.1 The exclusive right to the free and unobstructed flow of wind to and across the Property, together with the exclusive right to use the Property for the following purposes: (a) wind resource evaluation, using, converting, maintaining and capturing the wind, wind energy development, energy collection, and related wind energy development uses, including, but not limited to, the development, erection, installation, construction, improvement, reconstruction, enlargement, removal, relocation, replacement and repowering, and the use, maintenance, repair and operation, of the following, as Lessee determines: (i) anemometers; (ii) meteorological towers and other wind and weather measurement, monitoring and recording equipment and facilities; and (iii) wind turbine generators and their associated towers and foundations (each such wind turbine generator being referred to herein as a "**WTG**"); and (b) the development, erection, installation, construction, improvement, reconstruction, enlargement, removal, relocation, replacement and repowering, and the use, maintenance, repair and operation of power generation facilities to be operated in conjunction with the WTG installations (all of the foregoing in clauses (a) and (b) of this Section 2.1, whether located on the Property or located on nearby lands as part of a single integrated project, collectively, the "**WTG Related Improvements**");

2.2 The non-exclusive right to install, construct, remove, relocate, replace, use, maintain, repair and operate: (i) roads, bridges, culverts and erosion control facilities; (ii) staging and laydown areas; (iii) signs; (iv) fences to surround the WTGs and/or transformers; (v) gates; (vi) other safety and protection facilities; and (vii) any other improvements, fixtures, facilities, appliances, machinery and equipment, whether temporary or permanent, that are related thereto or associated therewith (all of the foregoing, whether located on the Property or located on nearby lands as part of a single integrated project, collectively with the WTG Related Improvements, a "**Wind Farm**" or "**Wind Farm Operations**" or "**Project**");

2.3 An exclusive right for the construction, operation, maintenance, repair, replacement, relocation within the Property and removal of a battery energy storage system that will store electricity along with related equipment, fixtures, appliances, appurtenances and improvements related thereto (collectively, the "**Storage Facility**") on, under, over and across a portion of the Property;

2.4 An exclusive right for the development, erection, installation, construction, improvement, interconnection, reconstruction, enlargement, removal, relocation, replacement and repowering, and the use, maintenance, repair and operation of, facilities for the storage, collection, distribution, step-up, step-down, wheeling, transmission and sale of electricity and for communications in connection with the WTGs, including, without limitation, the following, at such locations as Lessee shall determine, that are developed, constructed and/or operated on the Property and/or on property to be acquired by leasehold or by fee purchase, by or on behalf of Lessee: (i) underground and/or overhead distribution, collection and transmission lines; (ii) underground and/or overhead control, communications and radio relay systems and telecommunications equipment; (iii) energy storage facilities; (iv) interconnection and/or switching facilities, circuit breakers and transformers; (v) cables, wires, fiber, conduit, footings, foundations, towers, poles, crossarms, guy lines and anchors; and (vi) any related or associated improvements, fixtures, facilities, appliances, machinery and equipment to grant access to third parties for transmission access (together with the Storage Facility, collectively, the "**Transmission Facilities**");

2.5 A non-exclusive easement for vehicular and pedestrian access, ingress and egress to, from and over the Property twenty-four (24) hours a day, seven (7) days a week, without prior notice to Lessor, at such locations as Lessee shall determine, for the benefit of and all purposes related to or associated with the Wind Farm, the Storage Facility and/or the Transmission Facilities installed or to be installed on the Property, or for promotional or marketing purposes and a non-exclusive easement on adjacent property or elsewhere; which, without limiting the generality of the foregoing, shall entitle Lessee to use and improve any existing and future roads and access routes (a) from time to time located on or providing access to the Property, (b) across any other property owned by Lessor and (c) across any roads, access routes or rights-of-way over which Lessor has the right to travel;

2.6 A non-exclusive right to enter the Property from time to time with personnel, vehicles, materials and equipment twenty-four (24) hours a day, seven (7) days a week for the purposes permitted hereunder, and to excavate and/or fill areas on the Property, all to such extent as Lessee deems reasonably necessary; together with the right to use construction staging and laydown areas and operate cranes and other heavy-duty equipment in locations on the Property at all times as shall be reasonably necessary for installing, using, maintaining, repairing, replacing, improving, removing, repowering and relocating the Wind Farm, the Storage Facility and/or the Transmission Facilities on the Property;

2.7 A non-exclusive right to extract soil samples, perform geotechnical tests, and conduct such other tests, studies, inspections and analysis of or on the Property as Lessee deems necessary, useful or appropriate; and

2.8 undertaking any other lawful activities, whether accomplished by Lessee or a third party authorized by Lessee, that Lessee determines are necessary, helpful, appropriate or convenient in connection with, incidental to or to accomplish any of the foregoing purposes.

3. **Term**.

3.1 Generally. The term of this Lease (the "**Term**") begins on the Effective Date and terminates upon the earlier of: (a) forty (40) years after the Effective Date or (b) the date this Lease is terminated as permitted herein or by operation of law. This Lease shall not terminate solely because of abandonment or nonuse except as provided herein.

3.2 Renewal Terms. Lessee may extend the Term of this Lease by up to two (2) additional consecutive five (5) year terms commencing on the last day of the initial forty (40) year term or the first extended term, as the case may be, by giving Lessor written notice of such extension (each, an "**Extension Option Notice**") on or prior to expiration of the then-current term. The terms and conditions set forth in this Lease shall continue and remain in effect during each extension term. Notwithstanding the foregoing, in no event shall the term of this Lease be longer than the longest period permitted by applicable law. Although the giving of an Extension Option Notice shall by itself (without the requirement of any other writing) conclusively cause the applicable extended Lease term to become effective on the specified commencement date, if Lessee so requests, the Parties shall promptly execute and Lessee shall be entitled to record a memorandum evidencing such extension, which memorandum shall be reasonably satisfactory in form and substance to Lessee, but which shall not alter the terms and conditions of this Lease unless the Parties agree to do so.

3.3 Early Termination by Lessee. This Lease shall not terminate solely because of abandonment or nonuse except as provided herein. Lessor may terminate this Lease pursuant to N.D.C.C. §17-04-06(1)(h) only if the Project has not operated for a period of three (3) years after the Wind Farm Operation Date and Lessor has not received the payments set forth in Section 4.5 of this Agreement during such period of non-operation.

4. **Payments to Lessor**.

4.1 Pre-Operating Period Payments. As consideration for this Lease, Lessee shall pay to Lessor within sixty (60) days after the Effective Date, the Pre-Operating Period Payment for the first full year of the Pre-Operating Period, and thereafter (with respect to the Pre-Operating Period), Lessee shall divide the amount of the applicable Pre-Operating Period Payments for the applicable Anniversary Year into four (4) equal quarterly installments to be paid to Lessor within sixty (60) days after the end of each Calendar Quarter to which such Pre-Operating Period Payment pertains, and continuing until the Wind Farm Operations Date or the earlier termination of this Lease as set forth herein. If, on the date any Pre-Operating Period Payment would be due, there exist any liens for which subordination agreements to be obtained pursuant to Section 6.2 have not been obtained, Lessee may withhold such Pre-Operating

Period Payment until all such subordination agreements have been obtained and delivered to Lessee whereupon such Pre-Operating Period Payment shall promptly be paid to Lessor without interest.

4.2 Quarterly Operating Payments. Commencing on the Wind Farm Operations Date, Lessee shall make Quarterly Operating Payments to Lessor. Quarterly Operating Payments shall be paid in arrears sixty (60) days after the end of each Calendar Quarter during which Wind Farm Operations are conducted following the Wind Farm Operations Date.

4.3 Easement Payments. In the event Lessee installs any of the following easements on the Property, within thirty (30) days after the Wind Farm Operations Date, Lessee shall pay Lessor a one-time payment as follows:

(a) Access Easement Payment. One Dollar ($1.00) per linear foot of permanent roads installed on the Property (the "**Access Easement Payment**').

(b) Collection Easement Payment. Fifty Cents ($0.50) per linear foot of collection facilities installed on the Property that does not contain any installed WTGs on the Property (the "**Collection Easement Payment**").

(c) Transmission Easement Payment. Sixty Thousand Dollars ($60,000.00) per mile of overhead transmission lines installed on the Property (the "**Transmission Easement Payment**").

4.4 Audit. At its option, Lessor may conduct, at Lessor's sole cost and expense and with reasonable diligence, at any reasonable time during Lessee's normal business hours, but to occur no more than once per year, upon ten (10) Business Days advance written notice, an audit of Lessee's business records relating to the Quarterly Operating Payments paid to Lessor for the immediately preceding Calendar Year. Lessor must elect to conduct its audit within twelve (12) months following Lessor's receipt of the applicable Quarterly Operating Payment being audited. Lessor must utilize its own qualified employees or employ a qualified accountant or professional to conduct the audit (and Lessor may not have a contingent fee arrangement with the person or firm engaged to perform the audit). The audit shall be conducted at an office designated by Lessee. Lessor and Lessor's auditors shall be required to execute a confidentiality letter in form reasonably satisfactory to Lessor and Lessee, the effect of which will require Lessor and Lessor's auditors to refrain from divulging the contents and results of the audit to any third person, except and to the extent that disclosure is required to potential lenders, partners or assignees of Lessor, governmental agencies or in the event of litigation, subpoena or governmental compliance. If Lessor disputes the Quarterly Operating Payment, then Lessor shall provide Lessee with a complete copy of the audit report. Upon Lessee's verification of and agreement with Lessor's audit, (i) if such audit discloses an overpayment by Lessee to Lessor, then within thirty (30) days Lessor shall pay Lessee the amount of any such overpayment, and (ii) if such audit discloses an underpayment by Lessee to Lessor, then within thirty (30) days Lessee shall pay Lessor the amount of any such underpayment. If Lessee disagrees with Lessor's audit, Lessor shall have the right to cause another review of that portion of Lessor's audit to be made by Lessee's accountant, at Lessee's sole cost and expense. In the event of a disagreement between Lessee's and Lessor's accountants, the review of Lessor's accountant shall be deemed to be correct and shall be conclusively binding on both Lessor and Lessee; provided, however, that Lessor's accountant is a member of a firm of independent certified public accountants of national standing and otherwise satisfies the criteria set forth in this Section. In the event that the audit reveals that the total Quarterly Operating Payments for the period at issue have been understated by more than five percent (5%), then Lessee shall reimburse Lessor for the reasonable and actual cost of Lessor's audit within thirty (30) days.

4.5 Wind Farm Operations Date. For purposes of this Lease, the **"Wind Farm Operations Date"** shall mean the date upon which the Project achieves "**Commercial Operation**" or the "**Commercial Operation Date**" (or the substantive equivalent, however defined) under the "**Generation**

Interconnection Agreement(s)" (or the substantive equivalent, however defined) for the Project that provides for the electrical interconnection of the energy generated from the Project to the US electrical grid and electricity is regularly generated by the Project to the US electrical grid. Notwithstanding anything to the contrary in this Lease, Quarterly Operating Payments shall no longer be due and payable if Wind Farm Operations cease; provided, however, that the Minimum Annual Operating Payment shall continue to be due. This Lease shall not be construed as imposing upon Lessee any obligation to commence or continue generating any particular quantity of electricity or derive any particular amount of receipts therefrom at any time. Notwithstanding anything to the contrary in this Lease, Lessor: (i) acknowledges that Lessee shall have no obligation to construct any Wind Farm related improvements on the Property; and (ii) acknowledges that any estimates of Wind Farm related improvements that may be installed on the Property given by Lessee are for informational purposes only and shall not be relied on by Lessor in executing this Lease. OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES SET FORTH HEREIN, LESSEE HAS NEITHER MADE NOR MAKES, AND EXPRESSLY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES VERBALLY, IN ANY SUCH WRITTEN ESTIMATES OF PRODUCTION, IN THIS LEASE OR OTHERWISE CONCERNING THE LIKELIHOOD THAT LESSEE WILL INSTALL WIND FARM RELATED IMPROVEMENTS ON THE PROPERTY.

4.6 Payment Prorations. Lessee agrees that the Pre-Operating Period Payments shall not be prorated and therefore once made shall not be refundable, in whole or in part if Lessee elects not to construct or operate a Wind Farm on the Property. In the event the Wind Farm Operations Date occurs on a day other than the first day of any Calendar Year or if this Lease terminates on a day other than the last day of any Calendar Year, Quarterly Operating Payments shall be pro-rated based upon a 365-day year.

4.7 MET Tower. Lessor grants Lessee the right to install, operate and maintain a Met Tower on the Property to collect wind data. If Lessee elects to install and operate a Met Tower on the Property, Lessee shall pay Lessor, as additional rent, a fee of One Thousand Dollars ($1,000.00) per year for each year the Met Tower is in operation. If a Met Tower is installed on the Property, Lessee shall pay the first installment of additional rent in connection with the Met Tower at the same time as the next applicable Pre-Operating Period Payment or Quarterly Operating Payment, and thereafter on a yearly basis, at the same time as the first Pre-Operating Period Payment or Quarterly Operating Payment, as applicable, of the following Calendar Year until such time as Lessee ceases operating the Met Tower. Payment of additional rent for the Met Tower, if any, shall be prorated based upon a 365-day year.

4.8 Substation. Lessee shall be permitted to construct, reconstruct, operate, maintain, control, use, repair, replace, relocate and remove a substation ("**Substation**") on the Property and any and all other fixtures, appliances and appurtenances related to such substation. If a substation (a "**Substation**") is constructed on the Property, Lessor will receive a one-time payment of Twenty Thousand Dollars ($20,000.00) (for up to five (5) acres of land), within thirty (30) days of commencement of construction of the Substation. Furthermore, if a Substation is constructed and in operation on the Property, commencing on the Wind Farm Operations Date, Lessee shall pay as additional rent (at that same time as Lessee pays Lessor the applicable Quarterly Operating Payment): (x) the amount of Seven Hundred Fifty Dollars ($750.00) per Calendar Quarter (i.e., Three Thousand Dollars ($3,000.00) per year) for years one (1) through fifteen (15) that the Substation is in operation; and (y) the amount of One Thousand One Hundred Twenty-Five Dollars ($1,125.00) per Calendar Quarter (i.e., Four Thousand Five Hundred Dollars ($4,500.00) per year) for years (16) through the end of the Term during which the Substation is in operation. Payment of additional rent for the Substation, if any, shall be prorated based upon a 365-day year.

4.9 Disclaimer. It is understood by Lessor that any estimates, projections or other data regarding the megawatt capacity of a proposed Wind Farm that include the Property are not and shall not be deemed to be or include any representations or warranties of Lessee, its successors or assigns (including any representation that the Wind Farm or any part thereof will be constructed), and Lessor

acknowledges that Lessor is not relying on any such estimates, projections or other data. Nothing expressly or impliedly contained in this Lease shall be construed to require Lessee to undertake construction or installation of the Wind Farm on the Property; to continue operation of any part of the Wind Farm from time to time located on the Property or elsewhere; or to generate or sell any minimum or maximum amount of electrical energy from the Wind Farm; and the decision if, when and to what extent that construction and generation will occur shall be solely in Lessee's discretion.

4.10 Credits. Lessee shall be exclusively entitled to apply for, collect, receive, and obtain the benefit of all credits, set-offs, payments or other consideration arising out of the electrical energy generated by the Wind Farm and the sale, transportation and distribution of such energy including, without limitation, (i) federal, state and local production tax credits (including credits under Section 45 of the Internal Revenue Code), governmental subsidies, production incentive payments and other renewable energy credits, (ii) green pricing programs, green tags, renewable energy credit trading programs, or proceeds received from the sale of environmental attributes (e.g., renewable energy or carbon credits) and (iii) environmental air quality credits, emission credits, greenhouse gas reduction credits, environmental set-offs and similar benefits (collectively "**Credits**"). Lessor shall reasonably assist Lessee in applying for and receiving such Credits.

4.11 Crop Damage. If Lessee's construction, operations or maintenance activities on the Property are the direct cause of damage or destruction to crops then being grown on the Property, Lessee agrees to pay to Lessor an amount equal to the revenue that Lessor or its agricultural tenant would have received on the open market for said crops during the growing season in which such crops were damaged or destroyed; provided, however, that Lessee may request that Lessor and its agricultural tenants not grow crops within reasonable areas around existing or planned WTGs or transmission facilities (including, without limitation, the WTG Related Improvements, the Storage Facility, the Transmission Facilities, the Substation and the Met Tower; and including any laydown or staging areas), and after such request no payments shall be owed with respect to crops damaged or destroyed within such areas. Lessee shall pay such amount within sixty (60) days after Lessor provides Lessee with reasonable evidence of the cause and extent of such damage or destruction.

4.12 Grazing Rights. If Lessor has grazing animals on the Property, including, without limitation, cattle, horses and sheep, the Parties agree to cooperate and install such measures, at Lessee's expense, as reasonably necessary (such as erecting fences or other barriers on the Property) to prevent damage to the Wind Farm Operations caused by grazing animals. If Lessee's construction, operations or maintenance activities on the Property are the direct cause of damage or destruction to such animal(s) despite such measures, Lessee agrees to pay to Lessor an amount equal to the revenue that Lessor would have received on the open market for said animal(s) during the season in which such animal(s) were damaged or destroyed. Lessee may take any reasonable additional steps to mitigate future damages as a result of the grazing activities. Damage to the Wind Farm Operations caused by such animals, which result in loss of energy production, may be classified as a Force Majeure event. In the event that the governmental or regulatory authority concerning the Wind Farm shall adopt as a condition of continued operation, a restriction or prohibition regarding grazing animals, Lessee shall provide Lessor with a thirty (30) day notice of such restriction or prohibition and grazing, and thereafter Lessor shall promptly comply with such restriction or prohibition.

4.13 IRS Form W-9. Simultaneously with the execution of this Lease, Lessor shall deliver to Lessee a fully completed and executed Form W-9 (Request for Taxpayer Identification Number and Certification) (the "**Form W-9**"); provided, further, that Lessor shall deliver to Lessee fully completed and executed updates to the Form W-9 as may be reasonably requested by Lessee within fifteen (15) days following any such request (including, without limitation, in order for Lessee to process Lessor's change of address).

5. **Use of the Property and Location of Turbine Sites**.

5.1 Lessee's Rights to Use the Property. Lessee shall retain title to all buildings, improvements and equipment that comprise the Wind Farm, the Storage Facility, the Met Tower, the Substation and the Transmission Facilities, and shall have the right to remove any or all of them from the Property at any time. Lessee shall have the right to select the location for the WTGs, the WTG Related Improvements, the Storage Facility, the Met Tower, the Substation, the Transmission Facilities, service roads, and associated Wind Farm buildings and equipment on the Property; provided, however, Lessee shall, upon Lessor's specific request, consult with Lessor and attempt to incorporate any requests made by Lessor into the planning and location of facilities but Lessee shall not be obligated to incorporate Lessor's requests into Lessee's development plans if incorporating such requests would, in Lessee's sole discretion, burden the development, maintenance or operation of the Wind Farm. Lessee shall have the right to emit or cause the emission of noise, vibration, air turbulence, wake, and electromagnetic and frequency interference and to permit wind turbulence, to overhang, cast shadows, or cause flicker onto the Property and/or to impact Lessor's views of and from the Property. Nothing in this Lease shall be construed as requiring Lessee to construct or operate a Wind Farm or any other business or use on the Property or to commence or continue the operation of a Wind Farm or any portion thereof if it is so constructed.

5.2 Ingress and Egress. This Lease includes the right of ingress to and egress from the Wind Farm over, under, and along the Property by means of any existing roads and lanes thereon, and by such other route or routes as Lessee may construct on the Property from time to time, for the benefit of and for purposes incidental to the Wind Farm Operations on the Property and to the WTG Related Improvements that are developed, constructed and/or operated on the Property, and on other property to be acquired by leasehold, easement or by fee simple purchase, by or on behalf of Lessee, as a single integrated Wind Farm to generate and deliver electrical power to purchasers of such power, and for the benefit of and for purposes incidental to the Wind Farm Operations, activities and projects on lands other than the Property.

5.3 Removal and Restoration. No later than ninety (90) days prior to the expiration of the Term, Lessee shall present a decommissioning plan for the Wind Farm to Lessor. The decommissioning plan shall include the removal of all physical material related to the Wind Farm to a depth of thirty-six (36) inches and restoration of the surface of the land to substantially the same condition it was in at the Effective Date (reasonable wear and tear, condemnation, casualty damage and acts of God excepted), including returning the land to the same grade as of the Effective Date (reasonable wear and tear, condemnation, casualty damage and acts of God excepted) (all hereinafter referred to as "**Restoration**"). Lessee shall not have any obligation to remove any cables, lines or conduit which is buried thirty-six (36) inches or more below-grade. The Restoration shall be at Lessee's expense and shall be completed within nine (9) months after presentation of the decommissioning plan to Lessor (the "**Restoration Period**"). During the Restoration Period, Lessee shall continue to have rights of access to the Property and all other rights reasonable and necessary for Lessee to complete the Restoration until such Restoration has been completed in accordance with the decommissioning plan.

(a) If Lessor requires a decommissioning surety, Lessor shall give Lessee written notice no earlier than ten (10) years after the Wind Farm Operations Date that Lessor requires Lessee to provide Lessor with (or access to) a bond or letter of credit in the amount of the estimated restoration costs. Within no less than one hundred eighty (180) days after the receipt of the written notice, Lessor and Lessee shall determine the cost of the Restoration (the "**Restoration Costs**") as follows:

(i) Lessee shall obtain an estimate of the Restoration Cost (including, but not limited to, soil and water testing) from a qualified contractor licensed in the state in which the Property is located and Lessee shall notify Lessor of the name and address of the contractor which Lessee has selected. The Restoration Cost shall be the difference between the estimated cost to perform the Restoration set forth in this Section 5.3, and the salvage value of the Wind

Farm facilities to be removed from the Property. The Restoration Cost shall be established within ninety (90) days after appointment of the contractor. Lessee shall provide the estimate of the Restoration Cost to Lessor. If Lessor disagrees with Lessee's estimate, Lessor may, at Lessor's own cost and expense, obtain Lessor's own estimate within thirty (30) days of Lessee presenting Lessee's estimate to Lessor. If the two bids are within a ten percent (10%) difference of the cost of each other, Lessee shall be entitled to use the bid from Lessee's contractor as the basis for the Restoration Cost. If the bids are more than ten percent (10%) different in cost, a third contractor shall be selected by the existing two contractors. If the existing two contractors cannot agree upon such third contractor within a sixty (60) day period, the third contractor shall be selected by an Arbitrator of the American Arbitration Association for the County in which the Property is located upon application of either Party. The costs and expenses of the third contractor shall be shared equally between Lessee and Lessor. Within thirty (30) days of the appointment of the third contractor, the three contractors shall meet and exchange their estimates of the Restoration Cost and the Restoration Cost shall be the average of the estimates of the three contractors.

(ii) The bond/letter of credit shall remain in force until the completion of Restoration. Upon written request, no more than once in any Calendar Year, Lessor may request Lessee provide Lessor with information and documentation to confirm the existence and maintenance of such security in favor of Lessor.

(b) Notwithstanding any of the foregoing provisions, if Lessee is a Regulated Utility, no bond or other undertaking for the Restoration Costs/decommissioning costs shall be required and any existing bonds or other undertakings for said Restoration/decommissioning and reclamation costs shall be released. Furthermore, the surety amount shall be reduced by the amount of bond or other security, if any, that Lessee is required to post by applicable governmental authorities for Restoration/reclamation and decommissioning associated with the project improvements on the Property.

5.4 Lessor's Rights to Use the Property. So long as and to the extent the same do not impair, affect or conflict with any of the rights granted to Lessee in this Lease, Lessor may use, lease, convey and encumber the Property for any lawful purpose, including, without limitation, agriculture and grazing, and Lessor and its tenants and licensees may make improvements to the Property if such improvements will not negatively impact wind generated electricity production on the Property in the sole determination of Lessee. Lessee agrees that it shall not unreasonably withhold its consent to such improvements and(or) uses by Lessor. Lessor shall not be responsible or liable to Lessee or Lessee's agents, affiliates or successors in interest for damages to the Wind Farm caused by grazing animals, including, without limitation, cattle, horses and sheep. Lessee shall be solely responsible for taking such measures, such as erecting fences or other barriers on the Property, as Lessee may deem reasonably necessary to prevent damage to the Wind Farm caused by grazing animals, including, but not limited to, cattle, horses and sheep. Subject to Section 4.12, Lessee shall not be responsible for any injuries to grazing animals resulting from Lessee taking any such measures. The right of Lessor to graze animals shall also be subject to the provisions of Section 4.12 above.

5.5 Soil Erosion and Weed Control. During the construction of any road or Wind Farm on the Property by Lessee and so long as such road is used by Lessee or such Wind Farm remains on the Property, Lessee shall, at its expense, take such measures as may be reasonably necessary to prevent its road or Wind Farm from increasing the erosion of soil on the Property and shall have the right, at its expense, to take such measures as may be deemed necessary or desirable by Lessee to prevent or control any weeds growing within ten (10) feet of any of its WTGs. If Lessor believes Lessee is not complying with any requirements to control erosion of soil on the Property Lessor shall give Lessee written notice thereof which identifies such failure and the related locations with sufficient detail to enable Lessee to cure the same. If Lessee does not commence such cure within thirty (30) days after such written notice is given and continues to pursue the same thereafter with due diligence, Lessor may, as its sole remedy for any alleged breach of the terms of this Section by Lessee, take such actions as may

reasonably be required to perform such obligations and all of the undisputed reasonable costs and expenses paid by Lessor to unrelated third parties in doing so shall be reimbursed to Lessor by Lessee within thirty (30) days after receiving Lessor's written demand and a copy of the related invoice or other appropriate evidence of payment.

5.6 Other Existing Uses. Lessor agrees to provide Lessee with current information concerning the status and location of all other land uses occurring on the Property (including, without limitation, agricultural use, industrial use and oil and gas exploration and production activities). Any new leases or renewals and or extensions of existing leases, options to lease, seismic operations, or any other agreement made by Lessor with a third party regarding the Property (including any of the foregoing related to water, oil, gas or other minerals) shall contain language that states that such third party shall not disturb, interfere with, preclude, or destroy Lessee's rights hereunder.

5.7 No Interference. Lessor shall not interfere with and shall not allow any other party to interfere with, the free, unobstructed and natural wind flow, wind speed or wind direction over and across the Property. This restriction shall extend to any improvements or obstructions that may reduce, reflect or divert wind in any location within the boundaries of the Property; provided, however, that trees, structures and improvements located on the Property as of the Effective Date shall be allowed to remain, and they may be maintained, repaired or replaced so long as they do not exceed the size or materially deviate from their location as of the Effective Date. Lessor shall not conduct any activity, nor grant any rights to any third party, whether on the Property or elsewhere, that would interfere in any way with Lessee's use of the Property or the rights granted under this Lease.

6. **Representations and Warranties.**

6.1 Authority and Execution. Each person executing this Lease on behalf of Lessor represents and warrants that such person is duly and validly authorized to do so and that Lessor has the full right and authority to enter into this Lease, perform all of its obligations hereunder and grant the interests herein granted.

6.2 Covenants of Title. Without limiting the obligations set forth in Section 7, Lessor represents and warrants to Lessee that Lessor owns the Property in fee simple, including the subsurface estate thereof, subject to no liens or encumbrances except as disclosed in writing to Lessee prior to the execution of this Lease and listed on Exhibit B attached hereto and incorporated herein by this reference. Lessor shall assist and cooperate fully with Lessee with all reasonable efforts by Lessee to cure, correct or otherwise remove or mitigate defects, liens, encumbrances or other matters that may affect the title to the Property. All persons having any ownership or possessory interest in the Property (including spouses) are signing this Lease. Each spouse signing this Lease agrees that any rights of community property, homestead, dower, contribution, if applicable, and the like shall be subject and subordinate to this Lease and the easements and other rights granted hereby. Lessee may obtain a current preliminary title report for the Property at Lessee's expense showing all liens and other exceptions to title to the Property. At the request of Lessee, Lessor shall obtain executed and acknowledged instruments and such other documents as the title company or Lessee may require to confirm Lessor's ownership of the Property or to complete or evidence the full granting of the leasehold interest in the Property as intended by this Lease. Lessor shall cooperate with Lessee to obtain a subordination agreement from each lienholder (recorded or unrecorded) which provides on terms reasonably acceptable to Lessee that the lien and rights of the lienholder shall be subordinate to this Lease. Lessor will also obtain any necessary consent and/or subordination agreement in favor of Lessee and on terms reasonably acceptable to Lessee from any and all entities having a possessory interest in the Property.

6.3 Recording. Lessor shall not record this Lease. Lessee may record a memorandum of this Lease in the form attached hereto as Exhibit C (the "**Memorandum of Lease**") in the official records of the County in which the Property is located. Simultaneously with the execution of this Lease, the

Parties shall execute (in the presence of a notary) the Memorandum of Lease. In the event Lessee elects to record the Memorandum of Lease, Lessee shall cause the Memorandum of Lease to be recorded in the official records of the County in which the Property is located at Lessee's expense. If the Memorandum of Lease has been recorded, then following the expiration of or earlier termination of this Lease by Lessee, Lessee shall cause to be recorded a termination or release of the Memorandum of Lease in the official records of the County in which the Property is located at Lessee's expense.

6.4 Hazardous or Toxic Substances or Materials.

(a) Lessor represents and warrants to Lessee that no Hazardous Materials exist on the Property. Furthermore, Lessor covenants and agrees that (i) Lessor shall not use, store, dispose of or release any Hazardous Materials on the Property, and (ii) Lessor shall not cause or permit to exist or be used, stored, disposed of or released on the Property any Hazardous Materials except in such quantities as may be required in Lessor's agricultural use of the Property and only if such use is not harmful to Lessee or Lessee's employees and is in full compliance with all applicable laws. "**Hazardous Materials**" is defined as a "hazardous substance", "hazardous material", "toxic substance" or "solid waste" in any federal, state or local law, statute, regulation or ordinance. Should any claim or action be brought against Lessor or in connection with the Property with respect to any of the foregoing, Lessor shall immediately notify Lessee and shall indemnify, defend, protect and hold the Lessee Parties harmless from and against all Claims resulting or associated therefrom.

(b) Lessee covenants and agrees that it shall not (i) use, store, dispose of or release on the Property or (ii) cause or permit to exist or be used, stored, disposed of or released on the Property as a result of Lessee's Wind Farm Operations, any Hazardous Materials, except in such quantities as may be required in its normal business Wind Farm Operations and only if such use is not harmful to Lessor or Lessor's employees and is in full compliance with all applicable laws. Should any claim or action be brought against Lessee in connection with its Wind Farm Operations with respect to any of the foregoing, Lessee shall immediately notify Lessor and shall indemnify the Lessor Parties from all Claims resulting or associated therefrom. No liability shall arise in Lessee from the mere discovery of facts or conditions existing or pertaining to the Property.

6.5 No Litigation. Lessor is not a party to any, and there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Lessor: (i) challenging the validity or propriety of this Lease, and/or the transactions contemplated in this Lease; or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein.

6.6 Compliance. Lessee shall comply in all material respects with all federal, state and local laws and regulations applicable to the development and operation of the Project and Transmission Facilities, but shall have the right, in its sole discretion and at its sole expense, in its name or in Lessor's name, to contest the validity or applicability of any law, ordinance, order, rule or regulation of any governmental agency or entity. Lessee shall control any such contest and Lessor shall reasonably cooperate with Lessee in such contest, at no out-of-pocket expense to Lessor.

7. **Further Assurances; Cooperation**.

7.1 Lessor shall fully support and cooperate with Lessee in connection with the conduct of Lessee's operations and the exercise of Lessee's rights under this Lease (including, without limitation, with Lessee's efforts to (a) obtain from any governmental authority or any other person or entity any environmental impact review, permit (including, without limitation, building permits, development permits, construction permits, subdivision and platting permits), entitlement, approval, authorization or other rights or (b) sell any portion of the Wind Farm, assign or otherwise transfer all or any part of or interest under this Lease or obtain any financing), and Lessor shall perform all such acts (including executing

and delivering maps, instruments and documents within ten (10) days after receipt of a written request made from time to time by Lessee) as Lessee may reasonably specify to fully effectuate each and all of the purposes and intent of this Lease. Without limiting the generality of the foregoing, within ten (10) days after receipt of a written request made from time to time by Lessee, Lessor shall: (i) enter into any reasonable amendment hereto to correct an error in this Lease or to amend the legal description attached hereto, including replacing said legal description with a revised description prepared or provided by Lessee's surveyor or title company; (ii) execute and deliver to Lessee any owner's affidavit or estoppel reasonably requested by any title company or attorney reviewing title to the Property; (iii) enter into any reasonable consent and subordination and nondisturbance agreement with any Lender, as defined in Section 14.1, stating that Lessor shall recognize the rights of the Lender and not disturb the Lender's possession of the Property so long as the Lender is not in default under this Lease, and stating such other things as such Lender may reasonably request; (iv) join with Lessee in the signing of any protest, petition, appeal or pleading that Lessee may deem advisable to file or in requesting any and all zoning changes or any waivers, variances, land use permits and/or approvals, in each case as Lessee may deem necessary or desirable for Lessee's development and use of the Property as contemplated by this Lease; and (v) if because of the nature of this Lease Lessee is unable to qualify for any tax credit or similar benefit associated with the Wind Farm or in connection with Lessee's operations, amend this Lease to assist Lessee in receiving such credits and benefits (but only if such amendment does not materially adversely affect Lessor). Without limiting the generality of the foregoing, Lessor shall not oppose, in any way, whether directly or indirectly, any application by Lessee for any permit, approval or entitlement at any administrative, judicial, legislative or other level.

7.2 Lessor hereby authorizes Lessee, or Lessee's successors and assigns, to act as Lessor's agent and on Lessor's behalf in applying to (including for any necessary consents) any public agency for land use entitlements or permits necessary or convenient for the construction, operation and maintenance of wind energy producing facilities on the Property, including, but not limited to, general plan amendments, specific plans, zone changes, tentative and final maps, conditional use permits, variances, rights of way, or any kind of environmental permit, as well as well permits, grading permits, foundation permits, building permits, storm water drainage permits, driveway entrance permits or similar construction permits. Furthermore, Lessor hereby agrees to cooperate with Lessee and Lessee's successors and assigns in connection with all Lessee's and Lessee's successors and assigns applications in furtherance of the Wind Farm whether or not such applications are expressly specified herein.

7.3 Lessor further consents to a zero (0) set back requirement for turbines installed on the Property and/or placed on parcels adjacent to all or any portion of the Property in connection with the development of a wind energy project on the Property by Lessee or Lessee's successor(s) or assignee(s).

7.4 Lessor further authorizes the County, and the County's agents, consultants and employees to enter the Property for the purpose of making inspections necessary or convenient to the issuance of land use entitlements or permits for the construction, operation, and maintenance of wind energy producing facilities on the Property. The rights and agreements set forth in this paragraph shall automatically expire upon the expiration or sooner termination of this Lease.

8. **Requirements of Governmental Agencies.** Lessee shall comply in all material respects with all valid laws applicable to the Wind Farm, but shall have the right, in Lessee's sole discretion and at Lessee's sole expense, in Lessee's name or in Lessor's name, to contest the validity or applicability of any law, ordinance, order, rule or regulation of any governmental agency or entity. Lessee shall control any such contest and Lessor shall cooperate with Lessee in every reasonable way in such contest, at no out-of-pocket expense to Lessor.

9. **Liens.** Lessor and Lessee shall keep the other's interest in the Property free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies and equipment

furnished in connection with Lessor's or Lessee's (as applicable) use of the Property, subject to Lessor's and Lessee's (as applicable) right to contest such liens and claims. If Lessor or Lessee (as applicable) wishes to contest any such liens or claims, such Party shall, within sixty (60) days after it receives notice thereof, provide a bond or other security as the other Party may reasonably request, or remove any such liens from the Property pursuant to applicable law.

10. **Confidentiality**. Lessor and Lessee shall maintain in the strictest confidence, for their mutual benefit all information pertaining to the terms and conditions of this Lease, including, without limitation, the financial terms, Lessee's site design and product design, methods of operation and methods of construction and power production of the Wind Farm, except to the extent as may be required by subpoena or court order, provided that applicable Party provides, to the extent reasonably possible, the other Party a reasonable opportunity to review the disclosure before it is made and to impose such Party's own objection to the disclosure. Without first obtaining written permission from Lessee, Lessor shall not issue any statements or press releases or respond to any inquiries from the news media regarding such matters. Nothing in this Section shall prohibit any Party from sharing or disclosing information with such Party's counsel, accountants, or current or prospective investors, purchasers or lenders with a bona fide need to know such confidential information provided that the Party sharing or disclosing such confidential information requires the recipient to maintain the confidentiality of such disclosed information. This Section shall survive the termination or expiration of this Lease.

11. **Indemnity**.

11.1 Indemnity by Lessee. Lessee shall defend, indemnify, protect and hold harmless Lessor, and Lessor's affiliates, agents, partners, directors, members, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Lessor (each, including Lessor, a "**Lessor Party**" and collectively, including Lessor, the "**Lessor Parties**") from and against all claims, demands, liabilities, losses, damages, costs (including, without limitation, reasonable attorneys' fees) and expenses (collectively, "**Claims**") suffered or incurred by any of the Lessor Parties as a result of or arising out of: (a) any acts, omissions, negligence or default of Lessee, Lessee's affiliates, agents, partners, directors, members, shareholders, employees, representatives, successors, assigns, contractors or anyone claiming under Lessee (each, including Lessee, a "**Lessee Party**" and collectively, including Lessee, the "**Lessee Parties**") in connection with Lessee Parties' uses of or operations on the Property, except to the extent any such Claim is caused by the negligence or willful misconduct of a Lessor Party; or (b) a breach of this Lease by Lessee that remains uncured after any applicable notice and cure period. Notwithstanding the foregoing, Lessor Parties hereby waive any Claims against the Lessee Parties for damage or injury suffered by the Lessor Parties arising as a result of any audible or electromagnetic noise, vibration, alleged nuisance, electrical interference and radio frequency interference attributable to the Lessee Parties' operations on the Property or any other property, provided that nothing herein shall be deemed to release Lessee from its obligation to defend, indemnify, protect and hold harmless the Lessor Parties from third party claims under the first sentence of this Section 11.1. The Lessee Parties shall not be liable for losses of rent, business opportunities, profits or any other special, incidental, exemplary, indirect or consequential damages that may result from the conduct of Lessee Parties' activities on the Property or otherwise as a result of any exercise by Lessee of its rights under this Lease.

11.2 Indemnity by Lessor. Lessor shall defend, indemnify, protect and hold harmless the Lessee Parties from and against any and all Claims suffered or incurred by any of the Lessee Parties as a result of or arising out of: (a) any acts, omissions, negligence or default of any of the Lessor Parties in connection with Lessor Parties' uses of or operations on the Property, except to the extent any such Claim is caused by the negligence or willful misconduct of a Lessee Party; (b) the condition of the Property, except to the extent any such Claim is caused by the negligence or willful misconduct of a Lessee Party; or (c) a breach of this Lease by Lessor that remains uncured after any applicable notice and cure period.

12. **Lessee's Insurance**. At all times during which Lessee is conducting any activities on the Property, and at all times during the Term, Lessee shall, at its own cost and expense, obtain and maintain in effect (1) Commercial General Liability insurance, including bodily injury and property damage coverage with minimum limits of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) aggregate and (2) Umbrella Liability Insurance with minimum limits of Five Million Dollars ($5,000,000) per occurrence and Five Million Dollars ($5,000,000) aggregate. Lessee shall upon reasonable written request from Lessor provide to Lessor a certificate evidencing such coverage. In the event Lessee is a Regulated Utility, any or all insurance required of Lessee by this provision may be provided by self-insurance or through a program of self-insurance.

13. **Successors and Assigns; Lessor's Transfer Rights; No Severance of Wind Rights; Division of Lease**.

13.1 This Lease shall inure to the benefit of, and be binding upon, Lessor and Lessee, and their respective heirs, successors and assigns. Lessee may freely sell, assign, sublet, or otherwise transfer or encumber all or any portion of its interests under this Lease, and may sell, assign, sublet, or transfer or encumber all or any portion of its interest in the improvements (including, without limitation, WTGs, WTG Related Improvements, Transmission Facilities, the Storage Facility, the Met Tower and the Substation) that Lessee may install on the Property, without obtaining the consent of Lessor.

13.2 In the event of an assignment of Lessee's entire interest in this Lease, Lessee (including a successor Lessee by assignment) shall be released of all further liability under this Lease, provided that the assignee shall assume all of Lessee's obligations under this Lease.

13.3 If Lessee shall have assigned an interest with respect to all or a portion of the Property or the Wind Farm, and the terms of such assignment require the assignee to make payments at least equal to the payments required pursuant to this Lease and to otherwise comply with the terms of this Lease, no such assignment shall be affected by a cancellation or termination of this Lease, and Lessor shall recognize the rights of the assignee hereunder, provided only that such assignee attorn to Lessor upon Lessor's request. Lessor shall enter into a nondisturbance and attornment agreement, in form and substance reasonably acceptable to Lessor, Lessee and such assignee, upon the request of the assignee under any assignment.

13.4 Lessee also shall have the right to grant subleases, licenses, easements or similar rights (however denominated) to one or more persons or entities with respect to any portion of its interests under this Lease, without obtaining the consent of Lessor.

13.5 Lessor's Transfer Rights. Lessor may sell, mortgage, transfer or lease the Property to others; provided, however, any such sale, mortgage, transfer or lease by Lessor shall be subject to this Lease and any modifications or amendments thereof granted to Lessee prior to or after such sale, mortgage, transfer or lease. Lessor shall be obligated to inform any heirs, successors, transferees and assigns (of all or any portion of its interest in the Property) of the existence of this Lease. Further, any transfer of any portion of the surface rights of the Property shall automatically transfer with it the right to receive payments under this Lease in direct proportion to the fraction of the surface rights to the Property that have been transferred (without regard to the presence or lack of Wind Farm improvements); it being expressly understood and agreed by the Parties however, that Lessee shall have no obligation to make any payments hereunder to any person or entity other than Lessor unless and until Lessee receives written notice from Lessor of the transfer of all or any portion of Lessor's interest in the Property and the right to receive payments under this Lease in proportion thereto. This Lease shall burden the Property as the servient tenement and shall run with the Property.

13.6 No Severance of Wind Rights. Lessor shall not assign or otherwise transfer the surface rights separate and apart from the wind rights. Furthermore, Lessor shall not separately sell, assign, transfer or convey the rights to receive payments from Lessee pursuant to this Lease separate and apart

from the fee title to the Property. Any attempted transfer or assignment by Lessor of this Lease or the payment rights, separate and apart from the Property, or any attempted transfer of the wind rights or severance of the wind rights from the surface rights by Lessor is strictly prohibited and such transfer or assignment shall be void and shall have no effect.

13.7 Division into Separate Leases. Lessee may divide the Property into two (2) or more separate wind energy projects or phases of development if such division becomes necessary to further the development of the Wind Farm. If Lessee elects to divide the Property into two (2) or more wind energy projects or phases of development, then Lessor shall, within twenty (20) days after written request from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee new stand-alone leases (as many as are necessary for each division) (which shall supersede and replace this Lease) that provide Lessee with separate leasehold estates in different portions of the Property, as designated by Lessee. Each of such new leases shall: (i) specify the portion(s) of the Property to be covered thereby (and the term "Property", as used therein, shall refer only to such portion(s)); (ii) contain the same terms and conditions as this Lease (except for any requirements that have been fulfilled by Lessee, any successor or assign of Lessee, or any other person or entity prior to the execution of such new leases, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such new leases do not exceed their respective obligations under this Lease) and be in a form reasonably acceptable to Lessee and Lessor; (iii) be for a term equal to the then-remaining Term of this Lease; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Property as Lessee may designate (but only to the extent permitted in this Lease); (v) require payment to Lessor of only an acreage-proportionate part of the amounts hereof; and (vi) to the extent permitted by law, enjoy the same priority as this Lease over any lien, encumbrance or other interest against the Property. If Lessee elects to divide the wind energy projects or phases, then Lessee shall reimburse Lessor for Lessor's actual reasonable attorney's fees incurred for the review of each new lease by an attorney of Lessor's choosing.

14. Leasehold Financing.

14.1 Right to Encumber. Lessee, any successor or assignee of Lessee, or any holder of a sublease or license (each hereinafter sometimes referred to as an **"Obligor"**) may at any time mortgage, pledge, or encumber to any entity (herein, a "**Lender**") all or any portion of the Obligor's rights and interests under this Lease or such sublease or license, in each case without the consent of Lessor. For purposes of this Lease, each entity which now or hereafter is the recipient or beneficiary of any such mortgage, pledge, or encumbrance and whose lien or encumbrance is now or hereafter recorded in the official records of the County in which the Property is located, shall constitute a "**Lender**" for purposes of this Lease.

14.2 Covenants for Lenders' Benefit. Lessee and Lessor expressly agree between themselves and for the benefit of any Lenders, that if an Obligor mortgages, pledges, or encumbers any of its rights and interests as provided in Section 14.1 above, then notwithstanding any other provision of this Lease to the contrary:

(a) Lessor and Lessee will not terminate, suspend, amend or modify, or take any action causing, consenting to, acquiescing in, or accepting the termination, suspension, amendment or modification of this Lease, if such amendment or modification would reduce the rights or remedies of any Lender hereunder or impair or reduce the security for any lien held by such Lender, without such Lender's consent.

(b) Each Lender shall have the right, at its discretion, to take, or cause to be taken, any action required to be performed under this Lease by the Obligor that is party to such Lender's mortgage, pledge or encumbrance, and any such action performed by such Lender shall be as effective

to prevent or cure a default under this Lease and/or a forfeiture of any of such Obligor's rights under this Lease as if done by such Obligor itself. Lessor expressly consents to the foregoing actions, if any, by Lender, and authorizes Lender (or Lender's employees, agents, representatives or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of Lessee or any assignee of Lessee.

(c) The right of a Lender to receive notices and to cure Obligor's defaults pursuant to the provisions of this Section 14.2 shall be available to those Lenders: (i) which shall have notified Lessor in writing of their name and address; (ii) which Lessee has notified Lessor of (including Lender's name and address); or (iii) whose lien is recorded in the official records of the County in which the Property is located, regardless of whether the specific provision in question expressly so states. Notwithstanding anything to the contrary in this Lease, no default which requires the giving of notice to Obligor shall be effective unless a like notice is given to all Lenders. If Lessor shall become entitled to terminate this Lease due to an uncured default by Obligor, Lessor will not terminate this Lease unless it has first given written notice of such uncured default and of its intent to terminate this Lease to each Lender and has given each Lender at least thirty (30) days after the expiration of the cure period which this Lease provides to Obligor for curing such default, to cure the default to prevent such termination of this Lease. Furthermore, if within such thirty (30) day period a Lender notifies Lessor that it must foreclose on Obligor's interest or otherwise take possession of Obligor's interest under this Lease in order to cure the default, Lessor shall not terminate this Lease and shall permit such Lender a sufficient period of time as may be necessary for such Lender, with the exercise of due diligence, to foreclose or acquire Obligor's interest under this Lease and to perform or cause to be performed all of the covenants and agreements to be performed and observed by Obligor. In the event a Lender shall elect to exercise its rights hereunder, such Lender shall have no personal liability to Lessor and the sole recourse of Lessor in seeking enforcement of its obligations under this Lease or any new lease entered into pursuant to Section 14.2(d) below shall be to such Lender's interest in this Lease and the Property. Upon the sale or other transfer by any Lender of its interest in this Lease or the Property, such Lender shall have no further duties or obligations hereunder.

(d) In case of the termination or rejection of this Lease by Lessor as a result of any default hereunder or the bankruptcy, insolvency or appointment of a receiver in bankruptcy, Lessor shall provide prompt notice thereof to the Lenders. Upon written request of the Lender that is the beneficiary of the first priority security interest in Lessee's interest under this Lease, made within forty (40) days after notice to such Lender of any such rejection or termination of this Lease by any party, Lessor shall enter into a new lease agreement with such Lender, or (at Lender's option) Lender's designee or assignee, within twenty (20) days after the receipt of such request (and if the new lease agreement is executed, at Lender's option, by Lender's designee or assignee, Lender shall not be required to assume the burdens and obligations of the new lease agreement). Such new lease agreement shall be effective as of the date of the termination or rejection of this Lease, upon the same terms, covenants, conditions and agreements as contained in this Lease for the remaining term of the original Lease before giving effect to such termination or rejection. Lessor shall have no rights to terminate such new lease based upon defaults occurring prior to the execution of the new lease. Lessor hereby agrees with and for the benefit of the Lenders that the provisions of this Subsection shall survive termination, rejection or disaffirmation of this Lease, whether by default or as a result of the bankruptcy, insolvency or appointment of a receiver in bankruptcy and shall continue in full force and effect thereafter to the same extent as if this Subsection were a separate and independent instrument. It is the intent of the parties hereto that any such new lease shall have the same priority as this Lease.

(e) There shall be no merger of this Lease, or of the leasehold estate created by this Lease, with the fee estate in the Property by reason of the fact that this Lease or the leasehold estate or any interest therein may be held, directly or indirectly, by or for the account of any person or persons who shall own the fee estate or any interest therein, and no such merger shall occur unless and until all persons at the time having an interest in the fee estate in the Property and all persons (including

the Lenders) having an interest in this Lease or in the estate of Lessor and Lessee shall join in a written instrument effecting such merger and shall duly record the same.

(f) Lessor shall, at Lessee's or a Lender's request, provide to Lessee and such Lender (i) if it is the case, confirmation that such Lender is a "**Lender**" for purposes of this Lease, (ii) a consent and estoppel acknowledging the Lender's mortgage or other lien or encumbrance, confirming the continuing effectiveness of this Lease, identifying any modifications hereto and any breaches or defaults hereunder known to Lessor, and containing such other information as Lessee or such Lender may reasonably request, and (iii) such other certificates or affidavits as Lessee, such Lender or any title company selected by either Lessee or such Lender may reasonably request. Lessor shall duly execute and return same to Lessee and/or Lender within ten (10) Business Days of Lessee's or Lender's request therefor. Should Lessor fail to timely execute and deliver the consent and estoppel, then Lessee and/or Lender may rely on the contents thereof and the consent and estoppel shall be conclusively binding upon Lessor.

(g) Each Lender is and shall be an express third party beneficiary of the provisions of this Section, and shall be entitled to compel the performance of the obligations of Lessor under this Lease.

15. **Taxes**. Lessee shall pay any personal property taxes on WTGs and(or) for any such taxes that are directly attributable to wind energy conversion equipment installed by Lessee on the Property, and Lessor shall pay all real property taxes and assessments levied against the Property. Notwithstanding the foregoing, Lessee shall pay any increase in real property taxes for the Property attributable to the value of improvements on the Property owned by, or under the control of Lessee, which improvements may include the Wind Farm, the Storage Facility, the Substation, the Met Tower or the Transmission Facilities and any other equipment owned by Lessee and located on the Property; provided that such increase in the real property taxes attributable to Lessee's improvements are assessed for the period from and after the Effective Date until the end of the Term and only to the extent such increase is caused solely by the Wind Farm Operations. The foregoing obligation shall not include any recaptured taxes attributable to any period prior to the Effective Date or any interest or penalties thereon or to any increases in taxes due to reassessment upon a transfer of the fee interest in the Property by Lessor, and Lessee shall have the right, at its own expense, to appeal or contest any real property tax assessments or levies applicable to the Property and/or the Wind Farm (including any increases thereof) and to compromise and settle the same and Lessor shall execute such petitions and agreements and otherwise cooperate with Lessee to the extent reasonably necessary in connection therewith. Lessor shall pay when due any taxes attributable to: (i) improvements or facilities installed by Lessor or others (excluding Lessee) on the Property; (ii) the underlying value of the Property; and (iii) any and all other taxes and assessments pending or levied against the Property.

16. **Cure Rights**. If Lessor fails to pay the taxes or any other monetary obligations for which it is responsible hereunder, or otherwise defaults under this Lease, then, in addition to its other rights and remedies, Lessee shall have the right to pay such taxes and other obligations, and/or remedy any such default, by any appropriate means; and the cost thereof shall be reimbursed to Lessee by Lessor within thirty (30) days. Lessee may offset such cost against any amounts owed to Lessor under this Lease.

17. **Tax Credits**. If under applicable law Lessee is ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee's option, Lessor shall cooperate with Lessee in securing such benefits, and if necessary, Lessor and Lessee shall amend this Lease or replace it with a different instrument so as to convert Lessee's interest in the Property to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive.

18. **Defaults and Remedies**.

18.1 Event of Default. In the event of any alleged default or failure to perform any obligation under this Lease, the non-defaulting Party shall give the alleged defaulting Party written notice thereof, which notice shall include the acts required to cure the same with reasonable specificity. The Party failing to make any monetary payment when due shall have a period of thirty (30) days after such notice is given within which to cure such default. In the event of any other default, the defaulting Party shall have a period of thirty (30) days after such notice within which to cure such default, which period shall be extended to the extent reasonably necessary to complete such cure so long as the cure was commenced within thirty (30) days after such notice is given and thereafter prosecuted with due diligence.

18.2 Interest. Delinquent payments shall bear interest from their respective due dates until paid at the rate of the lesser of (i) of ten percent (10%) per annum, or (ii) the maximum rate permitted by law.

18.3 Remedies. Each Party shall have the right to recover its actual damages as a result of any default under this Lease which is not cured within the applicable cure period. Any prohibited conduct under this Lease may be enjoined and this Lease shall be specifically enforceable, but Lessor's remedies shall not include the right to terminate or cancel this Lease or evict Lessee from the Property in the event of a default by Lessee. Each Party waives its right to recover special, incidental, exemplary, indirect or consequential damages as a result of any default under this Lease.

19. **Termination by Lessee**. Lessee may elect to terminate this Lease at any time, for any reason or no reason, for all or part of the Property by delivering three (3) months' advance written notice to Lessor. The portion of the Property remaining after any partial termination of this Lease shall thereafter be the "**Property**" for purposes of this Lease and all payment amounts based on acreage shall be adjusted accordingly.

20. **Attorneys' Fees**. The prevailing Party in any mediation, arbitration or litigation undertaken in connection with any default under this Lease shall be entitled to be paid its reasonable costs and attorneys' fees incurred in connection therewith by the losing Party, including such costs and fees as may be incurred on appeal, in any probate or bankruptcy proceeding, and in any petition for review, and including costs and fees as are incurred in connection with adjudication of any issues that are particular to such types of proceedings.

21. **Notices**. All notices to a Party pursuant to this Lease must be in writing and shall be sent only by (i) United States Mail (first-class, certified, return-receipt requested); (ii) personal delivery; or (iii) an overnight courier service which keeps records of deliveries. For purposes of giving notice hereunder, the addresses of the Parties are as set forth in Section 1 above. A Party may change its address at any time by giving written notice of such change to the other Party in the manner provided herein. Notices sent by certified mail shall be deemed given on the date of delivery or attempted delivery as shown on the return-receipt. Notices sent by personal delivery or courier service shall be deemed given on the date of delivery or refusal to accept delivery.

22. **Interpretation**. Each Party has reviewed this Lease and has been given an opportunity to obtain the assistance of counsel, and any rule of construction holding that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Lease. The headings and captions of this Lease are for convenience and reference only, and shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Lease. A waiver of a breach of any of the provisions of this Lease shall not be deemed to be a waiver of any succeeding breach of the same or any other provision of this Lease. Any determination of invalidity or unenforceability of any particular clause or provision of this Lease shall not affect the validity or enforceability of the remainder of this Lease.

23. **Force Majeure**. If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure, the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference. The affected Party shall use its reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance as soon as such causes are removed. "**Force Majeure**" means: fire, earthquake, flood, tornado, storm, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God and natural disasters; strikes or labor disputes; inability to procure labor, materials, or reasonable substitutes therefor; war, civil strife, enemy or hostile government action, sabotage, vandalism or other violence; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency; epidemic, pandemic, disease outbreak, or public health crisis; or any other act or condition beyond the reasonable control of a Party.

24. **Condemnation**. Should title or possession of all of the Property be taken in condemnation proceedings by a government agency, governmental body or private party under the exercise of the right of eminent domain, or should a partial taking render the remaining portion of the Property wholly unsuitable for Lessee's use (in Lessee's reasonable discretion), then this Lease shall terminate upon such vesting of title or taking of possession. All payments made on account of any taking by eminent domain shall be made to Lessor, except that Lessee, at its sole discretion, shall be entitled to seek a separate award for any damages allowable by law, including, but not limited to, those damages for: (i) the removal and relocation of Lessee's business and its personal property, equipment, and trade fixtures, (ii) the loss of goodwill, (iii) lost profits, (iv) the loss and/or damage to any property that Lessee elects or is required not to remove, and (v) the loss of use of the Property by Lessee; and Lessor shall have no right, title or interest in or to any separate award made therefore. It is agreed that Lessee shall have the right to participate in any settlement proceedings and that Lessor shall not enter into any binding settlement agreement without the prior written consent of Lessee, which consent shall not be unreasonably withheld.

25. **Limitation of Liability**. Notwithstanding anything contained in this Lease to the contrary, the obligations of Lessee under this Lease (including any actual or alleged breach or default by Lessee) do not constitute personal obligations of the individual partners, directors, officers, members or shareholders of Lessee or Lessee's partners, and Lessor shall not seek recourse against the individual partners, directors, officers, members or shareholders of Lessee or against Lessee's partners or any other persons or entities having any interest in Lessee, or any of their personal assets for satisfaction of any liability with respect to this Lease.

26. **No Partnership**. Nothing contained in this Lease shall be deemed or construed by the Parties or by any third person to create the relationship of principal and agent, partnership, joint venture, co-tenants or any other association between Lessor and Lessee, other than the relationship of landlord and tenant. Lessee is not acting as an agent, partner or joint venturer of EDF Renewables, Inc., a Delaware corporation, and EDF Renewables, Inc., a Delaware corporation, shall not have any liability under this Lease.

27. **Brokerage Commissions**. Lessor and Lessee warrant and represent to each other that there are no brokers' commissions, finders' fees or any other charges due to any broker, finder, agent or other party in connection with the negotiation or execution of this Lease, or on behalf of either of them. Lessor and Lessee agree to defend, indemnify, protect and hold each other harmless against all claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and other costs of defense) arising out of a breach of these representations. This Section shall survive the termination of this Lease.

28. **Controlling Law**. This Lease shall be governed and construed in accordance with the laws of the State in which the Property is located.

29. **Time for Performance**. If the time for performance of any obligation or taking any action under this Lease expires on a Saturday, Sunday or legal holiday, the time for such performance or taking such action shall be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday. If the day on which rent or any other payment due hereunder is payable falls on a Saturday, Sunday or on a legal holiday, it shall be payable on the next succeeding day which is not a Saturday, Sunday or legal holiday.

30. **Severability; Partial Invalidity**. In the event any provision of this Lease is held to be unenforceable by a court of competent jurisdiction, then such provision shall be deemed to be severed from this Lease and the remainder of this Lease will be deemed to continue in full force and effect. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Lease as a whole.

31. **Waiver**. Lessor acknowledges and agrees that Lessor will at no time have any ownership interest in or to all or any portion of the Project, the Improvements, the Storage Facility, the Wind Farm, or any other improvements that Lessee may install on the Property pursuant to this Lease; and Lessor hereby waives and releases any and all lien rights arising hereunder or under applicable law or in equity with respect to the Project, the Improvements, the Storage Facility, the Wind Farm, and any other improvements that Lessee may install on the Property pursuant to this Lease.

32. **Waiver of Jury Trial.** EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS LEASE.

33. **Entire Agreement**. This Lease and the attached exhibits constitute the entire agreement between the Parties and shall supersede all other agreements, whether written or oral, respecting the subject matter of this Lease. No addition or modification of any term or provision of this Lease shall be effective unless set forth in writing and signed by an authorized representative of the Parties.

34. **Joint and Several Liability**. The obligations under this Lease imposed upon Lessor shall be joint and several obligations of the individuals or entities comprising Lessor.

35. **Quiet Enjoyment**. Lessor agrees that Lessee shall quietly and peaceably hold, possess and enjoy the Property pursuant to the terms of this Lease, and for the Term of this Lease, and any extension thereof, without any hindrance or interference caused by Lessor or any party claiming by, through or under Lessor. Lessor shall defend title to the Property, and the use and occupancy of the same, against the claims of all others, except those claiming by or through Lessee. Lessor shall not enter into or modify any documents, including any declarations, easements, restrictions or other similar instruments, which may materially affect the Property, or the rights and/or obligations of Lessee hereunder, without first obtaining the prior written consent of Lessee, which consent shall not be unreasonably withheld.

36. **Emergencies**. If Lessor becomes aware of any circumstances relating to the Wind Farm Operations or the Property which creates an imminent risk of damage or injury to any person or any person's property, Lessor will immediately notify Lessee of such threat. If the threat relates to the Property and not to the Wind Farm Operations, Lessor shall promptly take such action as is necessary or appropriate to prevent such damage or injury.

37. **Notice of Damage**. Lessor will promptly notify Lessee of any physical conditions or other circumstances Lessor becomes aware of that indicate there has been or might be damage to or loss of the use of the Wind Farm Operations or that could reasonably be expected to adversely affect the Wind Farm Operations.

38. **Mortgage Payment; Superiority of Lien**. Lessor agrees to promptly provide Lessee with a copy of any default notices that Lessor receives from any of its lenders or other party holding a mortgage or security interest in the Property. If Lessor fails to pay any of its obligations secured by a mortgage or other security interest on the Property when due, Lessee may, at its option, pay such amount and deduct it from the amount owed to Lessor under this Lease. In addition, Lessor expressly acknowledges and agrees that any contractual, statutory or common law lien rights in favor of Lessor or any mortgage granted by Lessor subsequent to the date of this Lease are and shall be expressly made subordinate and inferior to Lessee's right, title and interest in this Lease, any sublease permitted hereunder and/or the easements granted by this Lease and to any liens and security interests granted by Lessee in favor of any Lender.

39. **Execution in Counterparts**. This Lease may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same contract. Electronic signatures of this Lease shall be binding and effective for all purposes and treated in the same manner as physical signatures.

[Remainder of Page Intentionally Left Blank;

Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Lease as of the Effective Date, which is the last date of full execution of this Lease.

LESSOR:

Dated:_____

By:_____
Printed Name:_____
Title:_____

Dated:_____

By:_____
Printed Name:_____
Title:_____

LESSEE:

EDF Renewables Development, Inc.,
a Delaware corporation

Dated:_____

By:_____
Printed Name:_____
Title:_____

EXHIBIT A

[Legal Description of the Property]

Assessor's Parcel Number - _____

EXHIBIT B

[List of Liens and/or Encumbrances]

EXHIBIT C

[Form of Memorandum of Wind Farm Lease]

Follows this page.

SPACE ABOVE FOR RECORDER'S USE ONLY

THIS INSTRUMENT IS DRAFTED BY AND WHEN RECORDED RETURN TO:

EDF Renewables Development, Inc.
15445 Innovation Drive
San Diego, CA 92128
Attn: Corporate Real Estate
Project: Dickey County

MEMORANDUM OF WIND FARM LEASE

THIS MEMORANDUM OF WIND FARM LEASE (this "**Memorandum**") is made and entered into as of _____, 20___ (the "**Effective Date**"), by and between _____ ("**Lessor**"), and EDF Renewables Development, Inc., a Delaware corporation ("**Lessee**"). The Term of the Lease is less than thirty-five (35) years.

By this Memorandum, and on the terms and conditions set forth in that certain Wind Farm Lease dated as of the Effective Date (the "**Lease**"), with respect to certain real property located in Dickey County, North Dakota and more particularly described on Exhibit A attached hereto (the "**Property**"), all of the terms and conditions of which Lease are hereby made a part hereof as fully and completely as if herein specifically set out in full, Lessor has granted and hereby grants to Lessee:

(a) an exclusive right on, over, under and across the Property for the term hereof for wind resource evaluation, wind energy development, the installation, construction, maintenance, repair, replacement and removal of wind turbine generators and other wind energy producing facilities and related wind energy uses, all as described in the Lease;

(b) an exclusive right on, over, under and across the Property for above-ground and/or underground electrical transmission lines, conduit and related equipment, collection and transmission grid, power conditioning equipment, transformers, telecommunications equipment and other related facilities, equipment and improvements; and

(c) a non-exclusive easement on, over and across any and all access routes to and from the Property for purposes of ingress and egress to and from the Property including road access and the right to install, maintain and repair roads and roadways on the Property.

1. Term. The term of the Lease (the "**Term**") begins on the Effective Date and terminates upon the earlier of: (a) forty (40) years after the Effective Date or (b) the date the Lease is terminated as permitted in the Lease or by operation of law. The Lease shall not terminate solely because of abandonment or nonuse except as provided in the Lease. Lessee may extend the Term of the Lease by up to two (2) additional consecutive ten (10) year terms commencing on the last day of the initial forty (40) year term or the first extended term, as the case may be.

2. No Separate Assignment. Lessor shall not assign or otherwise transfer the right to receive any payments under the Lease to any third party separate and apart from an assignment of the Lease and a transfer of the underlying fee interest in the surface of the Property. Any attempted transfer or assignment by Lessor of the Lease (or payment rights from the Lease), separate and apart from the surface of the Property is strictly prohibited and such transfer or assignment shall be void and shall have no effect.

3. Addresses for Notices:

Lessor: Name:_____
Street or Box:_____
City, State, Zip:_____

Lessee: EDF Renewables Development, Inc.
15445 Innovation Drive
San Diego, CA 92128
Attn: Corporate Real Estate
Phone: 858-521-3300

4. Capitalized Terms. Capitalized terms used in this Memorandum and not otherwise defined shall have the meanings ascribed to them in the Lease.

5. Counterparts. This Memorandum may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

6. Record Notice. This Memorandum is executed and recorded for the purpose of providing record notice of the execution, delivery and existence of the Lease. This Memorandum shall not supersede or in any way modify the terms or conditions of the Lease. In the event of any conflict between any term or provision of the Lease and this Memorandum, the applicable term or provision of the Lease shall control.

[Remainder of Page Intentionally Left Blank;

Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum as of the date first set forth above.

LESSOR:

By:_____
Printed Name:_____
Title:_____

By:_____
Printed Name:_____
Title:_____

LESSEE:

EDF Renewables Development, Inc., a Delaware corporation

By:_____
Printed Name:_____
Title:_____

[INSERT APPROPRIATE NOTARY]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20___, before me, _____, a Notary Public, personally appeared_____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

_____
Notary's Signature

[Notarial Seal]

INDIVIDUAL:

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me personally appeared _____, known to me (or proved to me on oath of _____) to be the person who is described in and who executed the within instrument, and acknowledged to me that that person (or they) executed the same.

_____
Notary's Signature

[Notarial Seal]

CORPORATION

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the officer), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other officer or person) of the corporation that is described in and that executed the within instrument, and acknowledged to me that such corporation executed the same.

_____
Notary's Signature
[Notarial Seal]

LIMITED LIABILITY COMPANY

STATE OF NORTH DAKOTA)
County of _____)

On this _____ day of _____, in the year _____ before me (here insert the name and quality of the manager), personally appeared _____, known to me (or proved to me on oath of _____) to be the president (or other manager or person) of the limited liability company that is described in and that executed the within instrument, and acknowledged to me that such limited liability company executed the same.

_____
Notary's Signature

[Notarial Seal]

EXHIBIT A TO MEMORANDUM

[Legal Description of the Property]

Assessor's Parcel Number - _____

EXHIBIT 14

FIRST MILE DEVELOPMENT

Wallflower Wind Farm

Dickey and LaMoure Counties, ND

Non-Binding Summary of Terms

STAGES and TERMS

1. Option Period (development)
    - **Term: Usually 5-6 years**, may extend up to 10
    - Term Rent: $15/acre years 1-5, $20 yrs 6-7, $25 yrs 8-10, Yr 1 pmt: **$26,573.10**
2. Construction
    - Term: **Usually 2-3 years**, may extend up to 5 years
    - Construction rent: $20/acre
    - One-time Installation Revenue:
        - Tower: $8,000 per tower
        - $5,000 per lease, for leases with roads or cables, but no towers
    - Crop damage reimbursement, fence, irrigation and drain tile repair
3. Operating Period
    - Term: 30 years plus two 10-year extensions
    - Annual Lease Payments - rate for year 1 $5,000 per MW of installed capacity – expected $22,500 for 4.5 MW turbines
    - $1/linear foot for access roads, $1/linear foot for buried cables (collection cables)
    - $2,500 – per meteorological tower
    - PLUS $20/acre
    - Rates increase annually at 2%

Other Lease Highlights

- All landowners receive the same financial terms for installed equipment
- Property taxes on turbines are paid by wind farms
- Wind farm owners are required to carry liability insurance
- Restoration at the end of the project to return land to usefulness, including topsoil, is guaranteed with the Department of Agriculture and county permits by an approved form of financial security

FIRST MILE
DEVELOPMENT

Matt Peterson
Senior Developer
(612) 202-5235
mpeterson@firstmiledevelopment.com

Other Project Information

- Project Size: 650 MW
- Turbine Info: Modeled with 144– Vestas V163-4.5 MW wind turbines
- Interconnection: Jamestown to Ellendale 345kV

Project Area

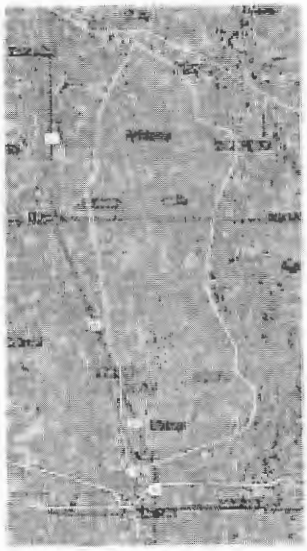

EXHIBIT 15

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota Utilities Co. Case No. PU-24-91
345kV Transmission Line-Jamestown to Ellendale
Public Convenience & Necessity

DECLARATION OF BRANDON SCHWEIGERT

1. I am a directly affected landowner and one of the petitioners requesting to intervene and reopen this proceeding.

2. What I've witnessed from the cab of my John Deere tractor while farming some cropland in Dickey County is based on my opinions and only from my point of view.

3. My wife and I rent land amongst a windfarm in Dickey County, North Dakota. The land is situated on the Coteau Hills Ridge, home to good rich soil types for demanding crops we raise. It's also home to a complex abundant wildlife community; whitetail deer, jackrabbits, great horned owls, coyotes, badgers, upland game, sightings of antelope and various migrating waterfowl.

4. What I've witnessed in the last 10 years of farming that location has become rather disheartening. Twice a year, during bird migration, the area becomes a slaughter zone. Mallard ducks, Canadian geese, snow and blue geese are frequently struck by turbine blades, dying either on impact or later after being injured, often finished

off by coyotes. We've even found dead bald eagles. It's never a good day planting through a field strewn with dead geese and a pair of bald eagles. Perhaps there's no perfect place for a wind farm, but common sense tells me not to place one in the largest migratory bird flyway in the United States.

5. I declare under penalty of perjury that everything stated in this document is true.

Signed on the 1st day of May, 2025, in LaMoure County, State of North Dakota.

Respectfully submitted,

By: /s/ Brandon Schweigert
Brandon Schweigert

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota Utilities Co. 345kV Transmission Line-Jamestown to Ellendale Public Convenience & Necessity

Case No. PU-24-91

DECLARATION OF SERVICE

[1] I, Douglas J. Nill, declare that I am of legal age and not a party to this action, and that I served the following documents:

1. Petition To Rescind The November 20, 2024 Order Approving A 345kV Transmission Line And To Reopen The Proceedings For Failure To Ensure Due Process, Complete The Record, And Protect The Public Interest;
2. Declaration of Douglas J. Nill with Exhibits 1-15;
3. Motion for Admission Pro Hac Vice with Exhibit 1 (Affidavit of Douglas J. Nill In Support Of Pro Hac Vice Admission) and Exhibit 2 (Certificate of Good Standing).

[2] On May 21, 2025, by sending a true and correct copy thereof by electronic means only to the following email addresses:

skahl@nd.gov

NDPSC@nd.gov

brljohnson@nd.gov

molsen@otpco.com

rendris@otpc.com

travis.jacobson@mdu.com

Allison.Waldon@mduresources.com

steve@bismarck-attorneys.com

[3] And by sending the originals and seven (7) copies of said documents via First Class Mail, at Minneapolis, MN, with postage prepaid, to the following:

Steve Kahl
Executive Director
North Dakota Public Service Commission
State Capitol Building
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

[4] And by sending copies of said documents via First Class Mail, at Minneapolis, MN, with postage prepaid, to the following:

Brian Lee Johnson
Special Assistant Attorney General
North Dakota Public Service Commission
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

Matthew Olsen
Mgr. Regulatory Strategy & Compliance
Otter Tail Power Company
215 South Cascade Street
P.O. Box 496
Fergus Falls, MN 56538-0496

Robert Endris
Associate General Counsel
Otter Tail Power Company
P. O. Box 496
Fergus Falls, MN 56538-0496

Travis Jacobson
Director Regulatory Affairs
Montana-Dakota Utilities Co.
400 North 4th Street
Bismarck, ND 58501

Allison Waldon
Senior Attorney
MDU Resources Group, Inc.
1200 W Century Ave.
Bismarck, ND 58503

Steven J. Leibel
Knoll Leibel LLP
P.O. Box 858
1915 N. Kavaney Drive, Ste. 3
Bismarck, ND 58501

[5] The addresses of each party served are the last reasonably ascertainable email address and post office address of such party.

[6] I declare, under penalty of perjury under the law of North Dakota, that the foregoing is true and correct.

Signed on the 21st day of May, 2025, at Minneapolis, Minnesota.

Respectfully submitted,

By: /s/ Douglas J. Nill

Douglas J. Nill (MN #194876)
DOUGLAS J. NILL, PLLC
d/b/a FARMLAW
1850 Fifth Street Towers
150 South Fifth Street
Minneapolis, MN 55402
(612) 573-3669
dnill@farmlaw.com