

February 25, 2026

Via Electronic Mail & Hand Delivery

Mr. Brian Johnson
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

In re: Otter Tail Power Company & Montana-Dakota Utilities Co.
345kV JETx Transmission Line
Siting Application - Stutsman, LaMoure, and Dickey Counties
Case No. PU-25-236
OAH File No. 20250300
Our File No. 072879-000001

Dear Mr. Johnson:

Enclosed for filing in the above-referenced matter, please find eight copies of Otter Tail Power Company and Montana-Dakota Utilities Co.'s Proposed Findings of Fact, Conclusions of Law and Order.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,


Casey A. Furey

CAF/lh

Enc.

cc:	ALJ Hope Hogan	(via email)	Otter Tail Power Co. Regulatory	(via email)
	Zachary Pelham	(via email)	Allison Waldon	(via email)
	Victor Schock	(via email)	Travis R. Jacobson	(via email)
	Robert M. Endris	(via email)	Erik Edison	(via email)

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Otter Tail Power Company/Montana-Dakota Utilities Co.
345kV JETx Transmission Line
Siting Application

Case No. PU-25-236

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

February __, 2026

Appearances

Commissioners Randy Christmann, Sheri Haugen-Hoffart, and Jill Kringstad.

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Zachary Pelham, Special Assistant Attorney General, 600 E. Boulevard Avenue, Dept. 408, Bismarck, North Dakota 58505, as counsel for the North Dakota Public Service Commission.

Casey A. Furey and Erik J. Edison, Crowley Fleck PLLP, 100 West Broadway Avenue, Suite 250, Bismarck, North Dakota 58501, as counsel on behalf of Applicants Otter Tail Power Company and Montana-Dakota Utilities Co.

Preliminary Statement

On August 8, 2025, Otter Tail Power Company (Otter Tail Power) and Montana-Dakota Utilities Co. (Montana-Dakota) (collectively, the “Applicants”), filed a Joint Consolidated Application for a Certificate of Corridor Compatibility and Route Permit (Application) concerning approximately 92 miles of double circuit capable 345-kV electric transmission facility and associated facilities in Stutsman, LaMoure, and Dickey Counties, North Dakota (Project).

On November 19, 2025, the Commission deemed the Application complete, and issued a Notice of Technical Hearings and Notice of Filing and Notice of Public Hearings (collectively, the “Notices”) scheduling five hearings on the following dates:

A first technical hearing for January 8, 2026, at 8:30 a.m. at the State Capitol, Ground Floor, 600 East Boulevard Ave, Bismarck, ND 58505;

A second technical hearing for January 9, 2026, at 8:30 a.m. at the State Capitol, Ground Floor, 600 East Boulevard Ave, Bismarck, ND 58505;

A first public hearing for January 12, 2026, at 10:00 a.m. Central Time at the American Legion Post #137, 82 Main Street, Ellendale, ND 58436;

A second public hearing for January 14, 2026, at 9:30 a.m. Central Time at the Edgeley Armory, 508 1st Avenue West, Edgeley, ND 58433; and,

A third public hearing for January 16, 2026, at 9:00 a.m. Central Time at the Baymont by Wyndham Jamestown Conference Center and Water Park, 507 25th St SW, Jamestown, ND 58401.

The Notices identified the following issues to be considered with respect to the Application:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed location minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On January 8, 9, 12, 14, and 16, 2026, the hearings were held as scheduled.

On January 8, 2026, Exhibit Nos. 1-20 were admitted.

On January 12, 14, and 16, public testimony and comments were received into the record.

Written comments received at the public hearings were marked as Exhibit Nos. 21, 22, and 23.

On February 4, 2026, Wano, Willowbank, Russell, Corwin, and Valley Townships filed a Petition to Intervene; Motion to Accept Township Filings as Late-Filed Exhibits; and, in the Alternative, Petition to Reopen for Limited Additional Evidence in the proceeding (the "Townships' Petition").

On February 20, 2026, the Applicants filed Late-Filed Exhibit 24 with the Commission.

On February 20, 2026, Applicants filed a Response in Opposition to the Townships' Petition.

Also on February 20, 2026, Commission counsel filed a Response in Opposition to the Townships' Petition.

On _____, 2026, Administrative Law Judge Hogan issued an Order [denying] the Townships' Petition.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following findings of fact:

Findings of Fact

1. Otter Tail Power is a Minnesota Corporation authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission in Case No. PU-09-677.

2. Montana-Dakota is a Delaware Corporation authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission in Case No. PU-08-710.

Size, Type, and Preferred Location of Facility

3. The Project will consist of approximately 92 miles of new, 345-kV double circuit electric transmission line and associated facilities to be located in Stutsman, LaMoure, and Dickey Counties, North Dakota. The Project will originate at Otter Tail Power's existing Jamestown 345-kV substation in Stutsman County and terminate at Montana-Dakota's existing Ellendale 345-kV substation in Dickey County. The Project includes an expansion of Otter Tail Power's Jamestown 345-kV substation and facility modifications within Montana-Dakota's Ellendale 345-kV substation to accommodate the Project's interconnection.

4. The Project will be co-owned equally by Otter Tail Power and Montana-Dakota, with the exception of the existing Jamestown 345-kV substation, which will continue to be owned and operated by Otter Tail Power, and the existing Ellendale 345-kV substation, which will continue to be owned and operated by Montana-Dakota.

5. The Project will include one optical ground wire, one overhead ground wire, and a majority of the Project will initially be constructed with one 345-kV circuit. The Applicants propose to install approximately three miles of double circuit during initial construction to alleviate outage and stringing constraints associated with stringing a second circuit. The remaining portions of the Project would be double circuited at a later time.

6. The Project consists of approximately 502 transmission structures. Most structure heights will range from approximately 120 to 180 feet tall and all structures will be bolted to concrete drilled pier foundations. The minimum conductor clearance to all ground surfaces will be at least 26 feet under all operating conditions.

7. The Applicants seek a Project corridor that is generally 150 feet wide with expanded widths at the existing Jamestown and Ellendale 345-kV substations to encompass the expansion of the Jamestown Substation and the Project's interconnection at each endpoint substation as depicted in Application, Figure 1.2-2, as updated by Exhibit No. 12 ("Project Corridor").

8. The Applicants anticipate an in-service date of fourth quarter 2028 for operation of the Project.

9. The total cost of the Project is estimated to be \$406 million.

Study of Preferred Location

10. Before the Project's route was selected, environmental and land use data was collected within an approximately 14-mile by 81-mile initial Project routing area ("Initial Project Routing Area") that encompassed the Jamestown Substation and the Ellendale Substation. The Applicants considered federal, state, and local requirements, comments received at public meetings held by the Applicants, landowner preferences, and results of environmental and cultural resource data and surveys. Using this information, and applying the Commission's siting criteria, the Applicants refined the route through an iterative process that resulted in the current Project route. The Applicants engaged with landowners, local political subdivisions, state and federal agencies and other utilities throughout the routing process and have considered numerous route alternatives, as outlined in Appendix C of the Application.

11. The Project Corridor is comprised of approximately 86 percent of agricultural land used for cultivated row crops and pastureland. The remaining 14 percent includes wooded areas and tree rows, roadways (developed land), seasonal wetlands and riparian areas, and commercially developed areas around the existing substations.

12. Applicants sent coordination letters to the federal, state, and local agencies and entities designated in N.D. Admin. Code § 69-06-01-05 as well as other agencies and entities potentially implicated by the Project. Section 49-22-16(4), N.D.C.C., provides that compliance with a state agency's rules shall be presumed if the agency fails to present its position with respect to the proposed facility at least thirty days before the public hearing.

- a. Federal: Bureau of Land Management; Federal Aviation Administration; Federal Highway Administration; Grand Forks Air Force Base; U.S. Fish and Wildlife Service; Military Aviation and Installation Assurance Siting Clearinghouse; Minot Air Force Base/20th Air Force 91st Missile Wing; Natural Resources Conservation Service; U.S. Department of Defense; U.S. Department of the Interior Bureau of Reclamation; U.S. Army Corps of Engineers; U.S. Department of Agriculture Farm Service Agency; U.S. Geological Survey; and Western Area Power Administration.
- b. State: Job Service of North Dakota; North Dakota Aeronautics Commission; North Dakota Attorney General's Office; North Dakota Department of Career and Technical Education; North Dakota Department of Agriculture; North Dakota Department of Commerce; North Dakota Department of Environmental Quality; North Dakota Department of Health; North Dakota Department of Transportation; North Dakota Department of Trust Lands; North Dakota Department of Water Resources/North Dakota State Water Commission; North Dakota Energy Infrastructure & Impact Office; North Dakota Forest Service; North Dakota Game and Fish Department; North Dakota Geological Survey; North Dakota Health & Human Services; North Dakota Indian Affairs Commission; North Dakota Industrial Commission; North Dakota Labor and Human Rights; North Dakota Parks and Recreation Department; North Dakota Pipeline Authority; North Dakota Transmission Authority; State Historic Society of North Dakota/ State Historic Preservation Office; and North Dakota State Governor's Office.
- c. Local: Stutsman County; Dickey County; Dickey County Park Board; Dickey County Water Board; LaMoure County; LaMoure County Water Resource Board; Bloom Township; City of Edgeley; City of Ellendale; City of Jamestown; City of Montpelier; Homer Township; Ashland Township; Gray Township; Fried Township; Jim River Valley Township; Brimer Township; Rose Township; Buchanan Township; Sydney Township; Spiritwood Township; Midway Township; Woodbury Township; Winfield Township; Ypsilanti Township; Corwin Township; Manns Township; Severn Township; Montpelier Township; Nora Township; Wano Township; Roscoe Township; Saratoga Township; Adrian Township; Kennison Township; Glenmore Township; Russell Township; Elm Township; Porter Township; Potsdam Township; Badger Township; Golden Glen Township; Van

Meter Township; Valley Township; Hamburg Township; Keystone Township; Maple Township; Henrietta Township; Albion Township; Elden Township; Kentner Township; Ellendale Township; and Willowbank Township.

13. The Applicants have avoided, minimized, and/or mitigated impacts for all issues raised by local, state, and federal agencies and entities to the greatest extent practicable. Agency, department, and entity consultations are noted in the Application, exhibits, and testimony presented at the Project's hearings.

14. The Applicants conducted the following studies and surveys for the Project: Class I and Class III Cultural Resources Inventory Report; Wetlands and Waterbodies Surveys; and Natural Resources Inventory Report. Pursuant to the results of these studies and surveys, the Applicants filed the following reports in support of its Application:

- a. *Class I Literature Review and Class III Cultural Resources Inventory Report.* Applicants engaged with the North Dakota State Historic Preservation Office (NDSHPO) on the appropriate level of studies and surveys for the Project. The Class I review was completed for the Corridor. A LiDAR analysis was completed for a portion of the Class I study area to supplement the known data and help further inform where a Class III survey should be conducted. Class III surveys and corresponding reports were completed on a 500-foot wide area, 250-feet on either side of the Project route. On September 26, 2025 and November 19, 2025, the Class III Volumes 1 and 2 Reports were accepted by the NDSHPO finding that no significant sites will be affected provided the Project takes place in the manner and location as described in the documentation, and all borrow comes from an approved source, as reflected in correspondence from the NDSHPO marked as Exhibit Nos. 8 & 9.
- b. *Wetlands and Waterbodies Surveys.* The Applicants performed a desktop analysis of wetlands for the Corridor. Field surveys were also performed to delineate aquatic resources over the 150-foot-wide Corridor. In various locations along the Project, field surveys were performed on areas ranging up to 500-feet in width, 250-feet on either side of the Project route. The results of the field surveys were submitted to the United States Army Corps of Engineers (USACE). The Project received a jurisdictional determination from the USACE in January 2025. The Project is anticipated to result in approximately 0.1 acres of permanent impacts to USACE jurisdictional wetlands.

- c. *Grasslands Habitat Analysis.* A desktop analysis was performed to assess potential grassland habitats within the Corridor. Temporary and permanent impacts on unbroken grasslands have been avoided to the extent practicable. The Applicants have performed habitat surveys in consultation with the United States Fish and Wildlife Service (USFWS) and North Dakota Game and Fish Department (NDGFD) and have avoided placing permanent infrastructure within unbroken grasslands to the greatest extent practicable. Approximately 0.2 acres of permanent impacts are anticipated from structures to areas categorized as unbroken grasslands within the Corridor.
- d. *Tree and Shrub Inventory.* A tree and shrub inventory was completed within the Corridor where access has been granted by landowners.
- e. *Wildlife Studies and Surveys:*
 - i. An eagle stick nest survey was completed covering the Initial Project Routing Area in coordination with the USFWS and NDGFD and another survey will be completed in the spring prior to the start of construction. Based on the results of the completed survey, no significant impacts to eagles and other raptor species are anticipated.
 - ii. A sharp-tailed grouse lek field survey was completed within a two-mile buffer including one mile on either side of the route in coordination with the NDGFD. Additional surveys will be completed in coordination with NDGFD for each year there will be construction. Temporary and permanent impacts to grasslands suitable for sharp-tailed grouse nesting habitat are anticipated to be minimal.
 - iii. A field survey of suitable habitat for threatened and endangered species was completed in coordination with the USFWS over a 500-foot buffer including 250-feet on each side of the Project route. There is no federally designated critical habitat within the Corridor. Six species were identified through the USFWS IPaC tool that could potentially exist within the Corridor: northern long-eared bat, Dakota skipper, monarch butterfly, piping plover, rufa red knot, and crane. No impacts to threatened and endangered species nor their designated critical habitat are anticipated. The Corridor largely lacks habitat to be utilized by northern long-eared bat, piping plover, and rufa red knot. Based on field surveys, there are approximately 4.1 acres of field-verified suitable reproductive habitat for

the Dakota skipper in the Corridor. Project infrastructure has been sited to avoid permanent impacts to identified habitat.

15. The Applicants conducted a desktop review of geologic resources. The Applicants also performed subsurface soil exploration and a geotechnical engineering study for the Project Corridor and reviewed historic landslide data from the North Dakota Geologic Survey. No areas of geologic instability were identified within the Project Corridor.

Siting Criteria

16. The Commission has established criteria pursuant to N.D.C.C. § 49-22-05.1 to guide the Commission in evaluating the suitability of granting a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in N.D. Admin. Code § 69-06-08-02, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

17. The Applicants evaluated the Project with respect to the Commission's Exclusion, Avoidance, Selection, and Policy Criteria.

18. An Exclusion Area is a geographic area that must be excluded in the consideration of a route for an electric transmission facility. An Exclusion Area may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

19. The Applicants' studies and surveys identified Exclusion Areas within the Project Corridor consisting of Archaeological and Cultural Heritage sites. The Project has been routed to avoid impacts to these sites. The Applicants have coordinated appropriate buffers and avoidance measures with NDSHPO. No additional Exclusion Areas are located within the Project Corridor.

20. An Avoidance Area is a geographic area that may not be considered in the routing of a transmission facility unless the applicant demonstrates that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative routes.

21. The Applicants' studies and surveys identified Avoidance Areas within the Project Corridor consisting of Historical Resources. These resources will be avoided by the Project. The NDSHPO has agreed with the Applicants' proposed buffers and avoidance measures to avoid impacts.

22. There is one occupied residence located within 500-feet of the Project Route. A waiver from this landowner has been obtained and is located in Appendix B of the Application. No additional Avoidance Areas are located within the Project Corridor.

23. In accordance with the Commission's Selection Criteria, as provided under N.D. Admin. Code § 69-06-08-02(3), a site may be approved in an area only if it is demonstrated that any significant adverse effects resulting from the location, construction, and operation of the facility will be at an acceptable minimum, or that the effects will be managed and maintained at an acceptable minimum. No significant adverse impacts to the Commission's Selection Criteria are anticipated. An evaluation of the Commission's Selection Criteria is located in Section 3.4 of the Application.

24. In accordance with the Commission's Policy Criteria, as provided under N.D. Admin. Code § 69-06-08-02(4), the Commission may give preference to an applicant that will maximize benefits that result from the adoption of identified policies and practices in § 69-06-08-02(4). The Applicants have maximized the benefits set forth in the Commission's Policy Criteria to the greatest extent possible. An evaluation of the Commission's Policy Criteria is located in Section 3.5 of the Application.

25. Application Section 6.16 discusses potential Project impacts and minimization and mitigation measures. In view of this information, and the Applicants' testimony and filings in this proceeding, the Commission finds the Applicants have routed and designed the Project to produce minimal adverse impacts on the Commission's siting criteria and the factors to be considered by the Commission in evaluating applications and designating corridors and routes.

Additional Measures to Mitigate/Minimize Impacts

26. The Applicants have agreed to take certain steps to mitigate the impact of the Project as indicated in the Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications, which is filed with the Commission as Exhibit 2, and incorporated by reference and attached to this Order.

27. The Project has been designed and will be constructed according to several different applicable codes, standards and specifications, such as the American Society of Civil Engineers (ASCE), American Concrete Institute (ACI), American Welding Society (AWS), International Council on Large Electric Systems (CIGRE), International Electrotechnical Commission (IEC), National Electric Manufacturers Association (NEMA), United States Department of Agriculture Rural Utility Services (USDA RUS) and the National Electric Safety Code (NESC).

28. To comply with applicable reliability standards of the North American Electric Reliability Corporation and ensure the safe and reliable operation of the Project, tree and shrub clearing will exceed the 50-foot-wide tree and shrub clearance limitation in the Commission's Tree and Shrub Mitigation Specifications in various areas along the Project's route. As a result, the Applicants request a modification of the 50-foot clearance limitation.

29. Winter construction may be necessary in areas where frozen ground will minimize impacts to wetlands, sensitive soils, and vegetation. The Applicants request approval to conduct topsoil removal in winter, if necessary. To minimize impacts from winter construction, the Applicants have developed a Winter Construction Guideline that includes a variety of best management practices to minimize impacts from winter construction. An updated version of the plan has been filed with the Commission as Late-Filed Exhibit 24.

30. Following construction, disturbed areas will be reclaimed, fertilized, and reseeded according to Natural Resources Conservation Service recommendations, unless otherwise specified by the specific landowner and approved by the Commission. Post-construction reclamation activities will also include employing appropriate erosion controls, and reseeded or otherwise stabilizing areas disturbed by construction, as applicable.

31. Applicants have developed a Vegetation Management Plan to identify and establish procedures to limit the introduction and spread of noxious and invasive weeds during construction and ongoing operations which is included within Appendix F of the Application. Applicants have coordinated with the Stutsman, LaMoure, and Dickey County Weed Boards and provided each Board with a copy of the Project's Vegetation Management Plan.

32. The Applicants are preparing a Stormwater Pollution Prevention Plan for the Project. The Applicants will coordinate with the North Dakota Department of Environmental Quality to obtain applicable stormwater permits.

33. Prior to any tree removal, a final inventory will be completed. Trees and shrubs will be replaced in accordance with the Commission's Tree and Shrub Mitigation Specifications.

34. There are approximately 3.8 acres within the Corridor the Applicants need to field survey to assess whether it is potentially suitable Dakota skipper reproductive habitat. If field surveys of the remaining 3.8 acres identify potentially suitable habitat, the Applicants will coordinate with the USFWS to minimize impacts to the greatest extent practicable.

35. The Applicants will complete additional eagle stick nest surveys in the spring prior to the start of each construction season. If an active nest is identified, the Applicants will coordinate with USFWS to minimize impacts to the greatest extent practicable.

36. The Applicants will complete additional sharp-tailed grouse lek surveys for each year of construction in coordination with NDGFD. If an active lek is identified, the Applicants will coordinate with NDGFD to minimize impacts to the greatest extent practicable.

37. The Applicants have coordinated with the USFWS for the development of a line marking plan to reduce collision risk for whooping cranes and other migratory birds following Avian Power Line Interaction Committee suggested practices. The final plan will be shared with the USFWS.

38. Within the Project Corridor, approximately 10.5 miles remain to be culturally surveyed as depicted in Exhibit No. 11. Prior to construction occurring on those properties, cultural field surveys will be completed by the Applicants, and an Addendum to the Class III Report will be filed with the NDSHPO for review. A copy of the Addendum and the determination from NDSHPO will be filed with the Commission for the remaining areas of the Project Corridor once it is available.

39. The Applicants have voluntarily engaged with Tribes to seek input on Tribal cultural resources. In letters sent in 2023, the Applicants reached out to 15 Tribes who may have historical interests in North Dakota. Of the 15 Tribes, the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota, has expressed interest in the Project. The Applicants' cultural resource consultant and Tribal Cultural Specialists from the Sisseton-Wahpeton Oyate Tribe jointly conducted the Class III cultural resource surveys of the Project in 2024. Additionally, the Sisseton-Wahpeton Oyate Tribe will be invited to participate in the remaining field surveys.

40. The Project crosses the James River, a USACE navigable waterbody. The James River crossing will require a combined Section 404 and Section 10 permit from the USACE and a North Dakota Sovereign Lands Permit from the North Dakota Department of Water Resources. The James River crossing is the only mapped Federal Emergency Management Agency floodplain within the Corridor and will require a local floodplain permit from the Stutsman County Floodplain Administrator. The Applicants will obtain all applicable federal, state, and local permits for crossing the James River prior to construction commencing in that area of the Project Corridor.

41. During construction, environmental inspectors will conduct periodic inspections to monitor construction activities and ensure compliance with the conditions of the siting certificates and other permits. Construction staff will undergo training prior to starting work, such as how to interpret constraint maps, how to recognize certain species like whooping cranes and eagles, and communication protocol if a nest is found.

Issues Raised by Public Comments

42. The Commission received public comments during the public hearings. The public comments expressed concerns regarding the Project primarily related to impacts to farming operations, alternative routing, eminent domain, the terms and provisions of private easements and land use agreements, potential future infrastructure and project development of varying types by entities other than the Applicants, the underlying need for the Project, potential impacts to local roads, and setback distances.

43. Having considered the public comments, the issues of eminent domain, the terms and provisions of private easements and land use agreements, and the underlying need for the Project previously assessed by the Commission in the Project's Certificate of Public Convenience and Necessity proceeding in Case No. PU-24-091 are determined to be outside the jurisdiction and consideration of the Commission in this proceeding.

44. No state, local government, or private entities testified to or provided evidence of their existing plans for other developments at or in the vicinity of the proposed corridor or route that would be impacted by the Project. Thus, the Commission finds that the Project's selected route adequately minimizes adverse effects in light of this factor.

45. Several members of the public expressed concerns with impacts to their agricultural operations and taking farmland out of production. The Applicants have stated in their Application (Section 6.1.2.2) that they have minimized impacts on farming operations within the Corridor by aligning the Route along existing rights-of-way, roads and section and field lines to the extent practicable. Based on the Project's filings and Applicants' testimony, the Commission finds the Project will not have significant adverse impacts to agricultural production.

46. Several members of the public raised concerns regarding the Project's routing and general location. The Applicants evaluated an Initial Project Routing Area (a 14 mile by 81 mile area) which was refined to the proposed Project route based on the Commission's siting criteria, discussions and feedback from relevant agencies, and input from landowners. Appendix C contains alternative routing options considered by the Applicants. Public comments regarding Project routing did not identify specific and viable routing alternatives. The Commission finds routing alternatives were sufficiently considered and evaluated by the Applicants.

47. Several members of the public raised concerns about the Project's impact on local roads. Under N.D.C.C. § 49-22-16(2)(c), the Commission's authority to require compliance with the road use agreements of implicated political subdivisions is limited to regulations or ordinances governing road use agreements. No political subdivision filed ordinances or regulations with the Commission that govern specific requirements for road use agreements. The Applicants will

coordinate with the applicable road authorities and take steps to minimize impacts to local roads. Furthermore, the Applicants have executed the Commission's Certification Relating to Order Provisions which provides that "all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition." In light of the above, the Commission finds that the Project will have minimal adverse impacts on local roads.

48. With respect to setback distances, commenters asserted greater setback distances should be applied to the Project. North Dakota Century Code Section 49-22-05.1 provides that areas within 500 feet of an inhabited rural residence must be designated as an Avoidance Area for electric transmission facilities unless waived in writing by the owner of the inhabited rural residence. Applicants met this requirement through routing or obtaining a waiver. Setbacks are discussed further below.

Local Land Use and Zoning Regulations

49. As part of the Application, Applicants requested the Commission order that all local land use and zoning regulations, ordinances, restrictions, and corresponding permitting requirements of political subdivisions are expressly and automatically superseded and preempted upon the Commission's issuance of siting approval under N.D.C.C. § 49-22-16. Applicants state that the express preemption of local land use and zoning regulations and ordinances by this statute is self-executing upon issuance of this Order and corresponding permit by the Commission, such that there is no need for the Commission to make any findings or exercise its own discretion in order for preemption to occur. Nevertheless, Applicants request that the Commission recognize the legal effect of Section 49-22-16 in this Order.

50. In addition to the automatic preemption provided by N.D.C.C. § 49-22-16, the Applicants also requested the Commission enter an additional finding in the alternative that, to the extent that such a finding is necessary, certain local land use regulations, zoning ordinances, and associated zoning actions and determinations of Willowbank, Wano, Russell, Corwin, and Homer Townships, are unreasonably restrictive in view of existing technology, factors of cost or economics, and needs of consumers regardless of location. Applicants request a finding by the Commission that the land use and zoning regulations, ordinances, and actions of the following townships are unreasonably restrictive:

- a. *Willowbank Township*. On April 9, 2025, Willowbank Township denied a Conditional Use Permit (CUP) application submitted by Applicants for the Project. On June 11, 2025, Willowbank Township adopted a moratorium on the Project.

Also on June 11, 2025, Willowbank Township adopted a 2,640-foot setback from electric transmission lines over 120-kV to residences. On October 8, 2025, Willowbank Township adopted another moratorium on all new high-voltage transmission lines. On October 22, 2025, Willowbank Township filed copies of its zoning ordinances and other documents related to the above actions with the Commission. Docket No. 22.

- b. *Wano Township*. On April 2, 2025, Wano Township denied a CUP application submitted by Applicants for the Project. On July 29, 2025, Wano Township adopted a moratorium on high voltage transmission lines. On October 8, 2025, Wano Township filed copies of its zoning ordinances and other documents related to the above actions with the Commission. Docket No. 20.
- c. *Russell Township*. On October 24, 2024, Russell Township approved a CUP application submitted by the Applicants for the Project. On June 17, 2025, Russell Township revoked the Project's previously approved CUP and adopted a moratorium on high-voltage transmission lines. On October 14, 2025, Russell Township filed a copy of its zoning ordinances and other documents related to the above actions with the Commission. Docket No. 21.
- d. *Corwin Township*. In October 2024, Corwin Township adopted a 2,640-foot setback from electric transmission lines rated over 115-kV to residences. Docket No. 34. The 2,640-foot setback does not apply to below ground electric transmission facilities. On June 10, 2025, Corwin Township denied a CUP application and variance request from the 2,640-foot setback submitted by the Applicants for the Project. Exhibit No. 1, pg. JETx 02326. On December 22, 2025, Corwin Township filed a copy of its zoning ordinances with the Commission. Docket No. 34.
- e. *Homer Township*. On November 22, 2024, Homer Township adopted a 2,640-foot setback from electric transmission lines rated over 115-kV to residences. Docket No. 23. The 2,640-foot setback does not apply to below ground electric transmission facilities. On June 17, 2025, Homer Township denied a CUP application and variance request from the 2,640-foot setback submitted by the Applicants for the Project. Exhibit No. 1, pg. JETx 02330. On October 27, 2025, Homer Township filed a copy of its zoning ordinances with the Commission. Docket No. 23.

The above-referenced setbacks, moratoriums, and CUP denials of Willowbank, Wano, Russell, Corwin, and Homer Townships are herein collectively referred to as "Local Zoning Actions".

51. In support of the preemption request contained in the Application, the Applicants submitted a Memorandum in Support (Docket No. 33, also marked as Exhibit No. 18)¹ and provided additional testimony during the Project's hearings.

52. The Applicants presented credible evidence that Willowbank, Homer, and Corwin Townships' 2,640-foot setbacks from electric transmission lines to residences are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of location and complying with these setbacks will result in a longer line, higher costs, and more land and landowners impacted by the Project.

- a. The Homer and Corwin 2,640-foot setbacks provide for an exemption for underground transmission lines. The Applicants testified underground installation is not feasible for the Project. Based on the Applicants' estimates, the initial construction cost for undergrounding high voltage transmission lines are estimated to be between five to ten times higher than overhead transmission lines. In addition, underground transmission results in greater environmental and land use impacts than overhead transmission during construction due to the need to excavate significantly more earth along the route to install the underground cable.
- b. Due to the infeasibility of achieving a 2,640-foot setback from occupied residences in both Homer and Corwin Townships, the Applicants attempted to obtain waivers from landowners but were unsuccessful. In addition, the Applicants requested variances from Corwin and Homer Townships' setback requirement, but the variance requests were denied by both Townships.
- c. Figure 2 of Exhibit 18, the preemption memorandum, shows the setback requirement from occupied residences within Homer Township. Homer Township's setback prevents the Project from crossing the Township from North to South or East to West. The Homer Township setback effectively amounts to a ban on the development of high voltage transmission lines within the Township.

¹ Applicants testified at the January 8, 2026, technical hearing they are not seeking an unreasonably restrictive finding from the Commission regarding the Stutsman County 1,000-foot setback from electric transmission lines to residences as it is applied to this Project, which is referenced and discussed in the Applicants' Memorandum in Support of Preemption Request, Exhibit No. 18. The 1000-foot setback is only applicable to Montpelier Township and the Project happens to meet the Stutsman County setback in Montpelier Township.

- d. Figures 3 and 4 of Exhibit 18 show the 2,640-foot setbacks from occupied residences in Corwin and Willowbank Townships. The 2,640-foot setbacks significantly reduce the areas where transmission infrastructure can be sited and significantly constrain routing options through these Townships. The impacts of the setbacks are compounded by the additional siting constraints imposed by the exclusion areas, avoidance areas, selection criteria, and policy criteria set forth in state law and the Commission's administrative rules. When the Commission's additional siting criteria and the 2,640-foot setbacks are applied, it is nearly impossible for the Project to establish a linear route across Corwin and Willowbank Townships.

53. The Applicants presented credible evidence that the CUP denials issued by Willowbank, Wano, Homer, and Corwin Townships and the CUP revocation issued by Russell Township are unreasonably restrictive applications of the Townships' land use and zoning ordinances and regulations. These CUP denials are largely based on issues unrelated to zoning, and any zoning-related concerns could have been addressed by imposing reasonable conditions on the Project's CUPs. These CUP denials result in a project-level moratorium prohibiting the Project's development within the Townships. To reroute around Willowbank, Wano, Homer, Corwin, and Russell Townships, and into adjacent townships, it would increase impacts by adding approximately 12 additional miles to the Project's route and result in an incremental cost increase of approximately \$24 million more than the cost of the Project's proposed route. This alternative assumes there are no additional routing constraints or unreasonably restrictive land use and zoning ordinances and regulations imposed by adjacent local political subdivisions which would impose additional burdens on the Project.

54. Moratoriums on electric transmission lines of similar scale to the Project are unreasonably restrictive because they completely prohibit development and impede the orderly development of infrastructure. The moratoriums adopted by Wano, Russell, and Willowbank Townships are unreasonably restrictive on their face because they completely prohibit development of the Project or any other high voltage electric transmission infrastructure within Wano, Russell, and Willowbank Townships.

Conclusions of Law

1. The Commission has jurisdiction over the Applicants and the subject matter of the Application under N.D.C.C. ch. 49-22.
2. The Applicants are utilities as defined in N.D.C.C. § 49-22-03(16).

3. The Project proposed by the Applicants is an electric transmission facility as defined in N.D.C.C. § 49-22-03(7).

4. The Commission concludes that pursuant to N.D.C.C. § 49-22-16(2)(b), the issuance of a permit hereunder automatically supersedes and preempts any local land use or zoning regulations purporting to govern the electric transmission facility, other than regulations or ordinances governing road use agreements addressed in N.D.C.C. § 49-22-16(2)(c). None of the Local Zoning Actions govern road use agreements. The Commission therefore concludes the Local Zoning Actions are automatically superseded and preempted upon the issuance of the Project's permit, such that no additional Project-specific findings are required for preemption to occur. Likewise, any other CUP requirements, setback requirements, moratoriums, or similar land use or zoning regulations that have been or may be adopted by any other county, township, or other local government unit are automatically superseded and preempted insofar as they relate to the Project, upon the issuance of the Project's permit.

5. While preemption of the Local Zoning Actions under N.D.C.C. § 49-22-16 is express and automatic, Applicants have requested an alternative finding that the Local Zoning Actions are unreasonably restrictive, to promote regulatory certainty in the event it should later be argued that such a finding is necessary. After reviewing the evidence in the record, the Commission finds, in the alternative, that the Local Zoning Actions are unreasonably restrictive for the reasons discussed in the Findings of Fact in view of the factors listed in N.D.C.C. § 49-22-16(2)(c): existing technology, factors of cost or economics, and needs of consumers regardless of location.

- a. The Commission finds the moratoriums, 2,640-foot setbacks, and CUP denials of Willowbank, Wano, Homer, Corwin, and Russell Townships are unreasonably restrictive in view of factors of existing technology and costs and economics. To accommodate Homer and Corwin's 2,640-foot setback specifically, the Applicants would have to underground portions of the line resulting in cost increases of five to ten times higher than the Project's cost to construct an overhead line in this area, and undergrounding would increase disturbances as discussed above. To accommodate the Local Zoning Actions in their entirety, including Homer, Corwin, and Willowbank Townships' 2,640-foot setbacks, the moratoriums of Willowbank, Wano, and Russell Townships, and the CUP denials of Homer, Corwin, Russell, Wano, and Willowbank Townships, the Applicants would be required to reroute the Project into adjacent townships, increase impacts by adding approximately 12 additional miles to the Project's route, and result in an incremental increase cost of approximately \$24 million more than the cost of the Project's proposed route. Moreover, this alternative assumes neighboring political subdivisions do not adopt their own

additional restrictions on Project routing which would impose an even greater burden on the Project.

- b. Additionally, the Commission finds the moratoriums on electric transmission lines adopted by Wano, Russell, and Willowbank Townships are unreasonably restrictive on their face because they completely prohibit development of the Project, or any high voltage transmission line, within Wano, Russell, and Willowbank Townships.
- c. The Local Zoning Actions are unreasonably restrictive in view of factors of existing technology and factors of cost and economics. As such, the Local Zoning Actions are preempted on these grounds. Although public need for a project is not a siting factor and is not to be considered in the Commission's siting analysis, the needs of consumers regardless of location is one of several factors that may be considered when determining whether an "unreasonably restrictive" preemption finding is appropriate under N.D.C.C. § 49-22-16(2)(c). The Commission previously determined that a need exists for the Project in the Project's Certificate of Public Convenience and Necessity proceeding, Case No. PU-24-091. The Local Zoning Actions restricting the Project's development are also unreasonably restrictive in view of this factor. Thus, the Commission need not make an independent determination in this proceeding regarding needs of consumers as it relates to Commission preemption.

6. Under N.D.C.C. § 49-22-16(2)(c), the Commission's authority to require compliance with the road use agreements of implicated political subdivisions is limited to political subdivisions' "regulations or ordinances" governing road use agreements. The Commission lacks jurisdiction over contractual provisions in private agreements. North Dakota Century Code Section 49-22-16(2)(d) requires political subdivisions to file regulations and ordinances governing road use agreements with the Commission at least ten days before the hearing or the requirements are superseded and preempted. None of the local regulations or ordinances filed with the Commission to date govern requirements specific to road use agreements. Thus, any unfiled local regulations and ordinances governing road use agreement requirements are superseded and preempted pursuant to N.D.C.C. § 49-22-16(2)(d). Notwithstanding the foregoing, Applicants must comply with Certification Provision No. 18 governing county and township road restoration. Nothing in this Order otherwise preempts or absolves Applicants' obligation to comply with other laws of the State of North Dakota related to road use.

7. Considerations related to the terms and provisions of private easements, land use agreements, and contractual arrangements are outside the siting criteria that the Commission is to consider in siting this project under N.D.C.C. ch. 49-22.

8. Public need is not a factor to be considered by the Commission in rendering a decision on a siting application under N.D.C.C. ch. 49-22. *Matter of Nebraska Pub. Power Dist.*, 330 N.W.2d 143, 148–49 (N.D. 1983) (Finding, “the PSC does not have the authority or duty to determine need” under the Siting Act.). *Brady Wind, LLC 150 MW Wind Energy Ctr. - Stark Cnty. Siting Application Brady Wind, LLC 230 kV Transmission Line - Stark Cnty. Siting Application*, N.D. P.S.C. Case No. PU-15-690, 2016 WL 1638879, at **4–5 (Apr. 20, 2016) (“[N]eed is not a criterion for determination by this Commission in deciding whether to approve or deny” an application under the Siting Act.). The issue of public need for the Project was assessed by the Commission under N.D.C.C. ch. 49-03 in the Project’s Certificate of Public Convenience and Necessity proceeding in Case No. PU-24-091.

9. The construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

10. The Project is compatible with the environmental preservation and the efficient use of resources.

11. The Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

From the Findings of Fact and Conclusions of Law, the Commission makes the following order:

Order

The Commission orders:

1. The Applicants’ Joint Consolidated Application for a Certificate of Corridor Compatibility and Route Permit is granted.

2. Certificate of Corridor Compatibility No. ___ is issued to Otter Tail Power Company designating a corridor for the construction, operation, and maintenance of approximately 92 miles of 345-kV double circuit electric transmission line and associated facilities in Stutsman, LaMoure, and Dickey Counties, North Dakota, including a widened corridor to accommodate the expansion and facility improvements at Otter Tail Power’s existing Jamestown 345-kV substation. For purposes of the Certificate, the Corridor is as depicted in Application, Figure 1.2-2, as updated by Exhibit No. 12.

3. Certificate of Corridor Compatibility No. ___ is issued to Montana-Dakota Utilities Co. designating a corridor for the construction, operation, and maintenance of approximately 92 miles of 345-kV double circuit electric transmission line and associated facilities in Stutsman, LaMoure, and Dickey Counties, North Dakota, including a widened corridor to accommodate facility improvements within Montana Dakota's existing Ellendale 345-kV substation. For purposes of the Certificate, the Corridor is as depicted in Application, Figure 1.2-2, as updated by Exhibit No. 12.

4. Route Permit No. ___ is issued to Otter Tail Power Company designating a route for the construction, operation, and maintenance of approximately 92 miles of 345-kV double circuit electric transmission line and associated facilities in Stutsman, LaMoure, and Dickey Counties, North Dakota. For purposes of the Permit, the designated Route is the proposed route as depicted in Application, Figure 1.2-2, as updated by Exhibit No. 12.

5. Route Permit No. ___ is issued to Montana-Dakota Utilities Co. designating a route for the construction, operation, and maintenance of approximately 92 miles of 345-kV double circuit electric transmission line and associated facilities in Stutsman, LaMoure, and Dickey Counties, North Dakota. For purposes of the Permit, the designated Route is the proposed route as depicted in Application Figure 1.2-2, as updated by Exhibit No. 12.

6. The December 18, 2025, Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications, is incorporated by reference and attached to this Order.

7. To the extent that there are any conflicts or inconsistencies between the Applicants' Application in this proceeding and the Certification, the Certification provisions control.

8. The Applicants are authorized to commence winter topsoil removal for the Project, if applicable, consistent with the mitigation measures identified in Late-Filed Exhibit 24.

9. The Applicants are authorized to clear trees in areas greater than 50 feet in width across the Corridor to maintain necessary clearance distance for the safe and reliable operation of the Project.

10. The land use and zoning regulations and ordinances of all political subdivisions crossed by the Project are expressly preempted and superseded insofar as they relate to the Project, upon the issuance of this Order pursuant to N.D.C.C. § 49-22-16(2).

11. For the reasons set forth in the Findings of Fact and Conclusions of Law, the Local Zoning Actions discussed in this Order are unreasonably restrictive in view of the factors listed in N.D.C.C. § 49-22-16(2)(c) and are hereby preempted by the Commission.

12. For the reasons set forth in the Findings of Fact and Conclusions of Law, because no regulations or ordinances governing road use agreement requirements were filed with the Commission, any regulations or ordinances governing road use agreement requirements for the Project are superseded and preempted under N.D.C.C. § 49-22-16(2). Notwithstanding the foregoing, Applicants must comply with Certification Provision No. 18 governing county and township road restoration. Nothing in this Order otherwise preempts or absolves Applicants' obligation to comply with other laws of the State of North Dakota related to road use.

13. The Applicants shall conduct a Class III cultural resource inventory and file with the Commission documentation from NDSHPO indicating concurrence that no historic properties or sites will be affected prior to beginning construction on any portion of the Project where a Class III cultural resource inventory remains outstanding and NDSHPO concurrence has not yet been received.

14. Applicants shall obtain and file with the Commission all necessary permits for construction of a portion of the Project prior to beginning construction on said portion for which said permit is required.

PUBLIC SERVICE COMMISSION

Sheri Haugen-Hoffart
Commissioner

Randy Christmann
Chairman

Jill Kringstad
Commissioner