BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Transmission Permit for the Big Stone South to Ellendale Project

EL13-028

MONTANA-DAKOTA UTILITIES CO. AND OTTER TAIL POWER COMPANY POST-HEARING REPLY BRIEF

Relying primarily on "failure of proof" arguments while ignoring the Applicants' evidence, Intervenor Gerald Pesall ("Pesall") argues the Applicants have failed their burden of proving they are entitled to the facility permit. Pesall's arguments fail, and the Commission should issue the permit subject to the terms and conditions required by the Amended Settlement Stipulation.

I. Applicants Have Proven the Demand and Need for the Project.

Pesall argues the Commission should deny the permit because the Application does not comply with SDCL 49-41B-11(9), which requires that the Application contain information regarding the "[e]stimated consumer demand and estimated future energy needs of those consumers to be directly served by the facility." (Gerald Pesall's Post-Hearing Initial Brief ("Pesall's Brief") at p.9). This argument lacks merit.

As an initial matter, the Application addressed the need for the Project in sections 4.0, 6.0, 6.1, and 6.2. (Ex. 1, at §§ 4.0, 6.0-6.2). Additionally, the Application includes extensive studies performed by MISO detailing the needs for the Project. (Ex. 1, Appendix B1-B4). Thus, Pesall's argument the Application is deficient for failure to address need is incorrect.

In an effort to marginalize the extensive studies performed by MISO,[1] Pesall argues MISO studies "provides no information about estimated consumer demand." (Pesall's Brief at p.9). This is simply wrong. For instance, the MISO studies discuss wind generation projects requesting interconnection to MISO and the need for additional transmission to serve those requests. (Ex. 1, at Appendix B-3, p.23). The MISO studies also address the wind generation capabilities of North Dakota and South Dakota, and the limitations imposed on that generation by the lack of transmission in the current transmission system. (Ex. 1, at Appendix B-2, p.48).

The MISO studies also state that the MVP portfolio, including the Project, will increase system reliability by resolving problems associated with the current transmission system. (Ex. 1, at Appendix B-1, p.6, Appendix B-4, pp.60-63). As stated in the Application, the MISO analysis confirms the need for this Project to address overloading of current transmission lines: "The MISO analysis of this Project identified several 230-kV and 115-kV transmission facilities will be loaded above the safe operating levels in the future without the Project." (Ex. 1, at § 6.2; *see also* Ex. 1, at Appendix B-1, p.30). Overloading creates reliability concerns. (Ex. 17, at p.12) ("Overloading of equipment threatens the system's ability to continue to provide adequate and reliable service to its customers."). MISO's analysis thus concluded that "[i]f the Project is not constructed as planned, the existing transmission system would be unable to continue to provide reliable service if significant new generation is interconnected." (Ex. 1, at § 6.2).

In addition to the information in the Application, Applicants presented extensive evidence of the need for the Project. Applicants answered two data requests from the Staff directly inquiring about the demand and need for the Project. (Ex. 2, at Data Request 1-1; Ex. 3,

[1] As a not-for-profit regional transmission organization, MISO is responsible for planning the transmission needs of its members. (Ex. 17, at p.6). MISO also performs planning functions regarding the transmission system including "an independent assessment and perspective of the needs of the transmission system overall." (*Id.*). Thus, MISO's needs analysis proves the need and demand for this Project.

at Data Request 2-4). Applicants also answered interrogatories from Pesall regarding the demand and need for the Project. (Ex. 4, at Interrogatories 7, 8, and 9). Applicants filed 34 pages of pre-filed testimony for Jason Weiers, whose testimony focused on the demand and need for the Project. (Ex. 17). Jason Weiers testified at the evidentiary hearing. (HT pp.104-42). As indicated by Mr. Weiers, because of the need for the Project, there are specific consequences for failing to build the Project:

> Consequences of this project not being built include not being able to realize the economic benefits that MISO has identified, the existing transmission system here within eastern South Dakota will not be able to provide reliable service to the customers within the state, and furthermore, future wind projects may not be able to be developed in this area if this project is not developed.

(HT at pp.106-07). Mr. Weiers testified that by providing "another source into the high voltage grid" the Project will make the transmission system "better able to withstand outages of existing facilities and still keep the lights on for customers in South Dakota." (HT at p.114). Mr. Weiers' testimony was unrebutted, and thus, Pesall is wrong when he argues that Applicants failed to address the demand and need for the Project.

Finally, Pesall argues that the Application fails to provide the information required by SDCL 49-41B-11(9) because there is no information "as to the current or estimated demand of South Dakota consumers." (Pesall's Brief at p.9). As an initial matter, this is factually incorrect. As noted above, the Applicants presented evidence of the need for the Project to serve customers in South Dakota. Applicants also presented evidence indicating the Project will be used by future wind generation in northeastern South Dakota. (HT pp.138-39). Moreover, nothing in SDCL 49-41B-11(9) requires the demand information to be specific to South Dakota consumers. *See* SDCL 49-41B-11(9) ("Estimated consumer demand and estimated future energy needs of those consumers to be directly served by the facility."). Pesall's attempt to amend SDCL 49-

41B-11(9) to limit the needs analysis to South Dakota consumers should be rejected, and the Commission should apply the statute as written. *See In re West River Elec. Ass'n*, 2004 SD 11, ¶¶ 14-15, 675 N.W.2d 222, 226 (reviewing the Commission's statutory interpretation *de novo* and stating the first rule of statutory construction is to apply the language of the statute).

II. The Applicants Have Addressed Whether an Alternative Route Could Reduce the Use of Eminent Domain Powers.

Pesall also argues that the Application does not satisfy the requirements of ARSD 20:10:22:12(3), which requires: "An evaluation of the proposed . . . transmission site and its advantages over the other alternative sites considered by the applicant, including a discussion of the extent to which reliance upon eminent domain powers could by reduced by use of an alternative site . . . ." Again, the Application complied with this requirement by addressing the use of eminent domain: "Applicants have no reason to believe the eminent domain powers could be reduced by the use of an alternative site." (Ex. 1, at § 8.2).

Pesall argues that the Application's statement about eminent domain is an "unsupported assertion." This is not correct. The Application describes in detail the Applicants' extensive route selection process. (Ex. 1, at § 8.0). After extensive outreach, the proposed route was selected. Based on this intensive route selection process and outreach program, the Applicants rejected alternative routes. The Application also recognized that "Applicants are working with and will continue to work directly with the affected property owners to address routing issues and concerns." (Ex. 1, at § 8.2). Thus, when the Applicants stated they had no reason to believe the eminent domain powers could be reduced by an alternative site, this statement was supported by their extensive route selection process.

Further, the evidence in this case validates Applicants' statement about alternative routes and eminent domain. The evidence confirms that Applicants worked with individual landowners

to evaluate proposed route changes, and Applicants adopted several route changes requested by landowners. (Ex. 3, Data Request Response 2-7).[2] Additionally, despite being 150 to 160 miles of the Project in South Dakota, only three landowners—Pesall, Morehouse, and Schuring Farms, Inc.—participated in the evidentiary hearing as intervenors. For Pesall, Morehouse, and Schuring Farms, Inc., the Project only is crossing four parcels of their property. (Exs. 21A-C, 22A). Applicants rejected each of these intervenors requested route changes at least in part because of greater landowner opposition. (Ex. 16A, at pp.17-18; Ex. 26).[3] As of the evidentiary hearing, the Applicants obtained options for easements on approximately 60% of the total line miles of the Project. (HT at p.33). Thus, there is no credible evidence indicating that an alternative route would decrease the likelihood of using eminent domain, and Applicants have satisfied the requirements of ARSD 20:10:22:12(3).

III. The Project is Not an Energy Conversion Project, and thus, ARSD 20:10:22:33 Does Not Apply.

Pesall argues that the Application fails to provide information required by ARSD 20:10:22:33, which states:

> The applicant shall provide a plan or policy statement on action to be taken at the end of the *energy conversion facility's* on-line life. Estimates of monetary costs, site condition after decommissioning, and the amount of land irretrievably committed shall be included in this statement.

ARSD 20:10:22:33 (emphasis added). This regulation does not apply, however, because the Project is not an energy conversion facility. *See* SDCL 49-41B-2(6) (defining an energy conversion facility as "any new facility, or facility expansion, designed for or capable of generation of one hundred megawatts or more of electricity, but does not include any wind energy facilities"). The Project is a transmission facility not a generation facility. *See* SDCL

[2] Applicants have previously requested confidential treatment of Ex. 3, Data Request Response 2-7.
[3] Applicants filed a motion with the Commission dated July 18, 2014, to supplement the record with Ex. 26.

49-41B-2.1(1) (defining a transmission facility as "[a]n electric transmission line and associated facilities with a design of more than one hundred fifteen kilovolts"). As a result, Applicants are not required to provide a decommissioning plan under ARSD 20:10:22:33.

IV. Applicants Have Borne Their Burden of Proof Under SDCL 49-41B-22, and the Commission Should Issue the Permit With the Terms and Conditions Imposed by the Settlement Stipulation.

Pesall agrees that SDCL 49-41B-22 defines the Applicants' burden of proof. (Pesall's Brief at p.11). Regarding SDCL 49-41B-22(1), Pesall argues that the Applicants failed to prove the Project will comply will all laws and rules. Pesall also argues the Applicants have failed to prove the requirements of SDCL 49-41B-22 (2), (3), and (4) because of: the Project's effect on the spread of soybean cyst nematode ("SCN"); the Project's interference with farming activities; and the Project's devaluation of land. None of Pesall's arguments are supported by the evidence, and Applicants have proved each of the elements required by SDCL 49-41B-22 preponderance of the evidence.[4] *See Irvine v. City of Sioux Falls*, 2006 SD 20, ¶ 10, 711 N.W.2d 610-11 ("Generally, the burden of proof for administrative hearings is preponderance of the evidence.").

A. <u>The Project Will Comply with All Laws and Rules.</u>

SDCL 49-41B-22(1) requires the Applicants to prove "[t]he proposed facility will comply with all applicable laws and rules." Applicants presented expert testimony indicating the Project will comply with this requirement. (Ex. 16A, at p.21; Ex. 18, at p.9). Pesall offered no evidence disputing this expert testimony. Indeed, Pesall acknowledges none of the parties have raised issues relating to most of the state and federal legal requirements of the Project. (Pesall's Brief at p.11).

[4] Pesall agrees that the preponderance of the evidence standard applies. (Pesall's Brief at p.8).

Instead, Pesall claims the issue is "whether the proposed facility will comply with the conditions of the permit in the future if one is granted." (*Id.* at p.12). Pesall claims that because the Amended Settlement Stipulation provides that if the Commission imposes material changes to the stipulation, then both Applicants and the Staff have a right to withdraw from the Stipulation. Based on this statement, Pesall argues the Project may not comply with the conditions of the Project. (Pesall's Brief at p.12).

Pesall's argument misunderstands the purpose of the Amended Settlement Stipulation. The Amended Settlement Stipulation formalizes an agreement between Applicants **and the Commission Staff.** It does not bind the Commission, and if the Commission imposes additional different conditions, then the Applicants must comply with those conditions if it builds the Project. Thus, there is no evidence indicating the Project will not comply with all laws and regulations, and Applicants have satisfied the requirements of SDCL 49-41B-22(1).

Pesall also argues that the conditions contained in the Amended Settlement Stipulation are too vague or ambiguous.[5] (Pesall's Brief at pp.11-12). Pesall never explains how this argument prevents the Project from complying with all laws and regulations. The Applicants have proven they will comply with all laws and regulations, and thus, SDCL 49-41B-22(1) is satisfied.

B. The Potential Spread of SCN Will Not Pose a Threat of Serious Injury to the Environment or the Social and Economic Condition of the Inhabitants.

Pesall argues that the Project will pose a threat of serious injury to the environment as well as the social and economic condition of the inhabitants. (Pesall's Brief at pp.13-14). The evidence does not support this assertion.

[5] Interestingly, Pesall points to paragraph 17 of the Amended Settlement Stipulation, which addresses the SCN mitigation plan, as the impermissibly vague condition. (Pesall's Brief at p.12). Pesall never proposed, however, a different mitigation plan.

Pesall argues that soybeans are a significant portion of economy in the region, that SCN negatively affects soybean yields, and that SCN is present in the counties through which the transmission line will travel. Pesall thus argues that the construction will spread SCN and pose a threat of serious injury to the environment. (Pesall's Brief at pp.13-14). Pesall's claim the construction will spread of SCN is speculation. Although SCN has been discovered in Brown, Day, and Grant Counties, there is no evidence indicating which specific parcels within those counties contain SCN.[6] Pesall's expert Dr. Tylka admitted he does not know which, if any, of the parcels on the Project route contain SCN. (HT p.243). Pesall did not even present evidence indicating whether he has SCN on his property. Without evidence indicating whether the parcels on the Project route are infected with SCN, any argument that the construction will spread SCN is speculative because no one knows whether the parcels on which the construction is occurring are infected with SCN.

Even if SCN exists on the parcels crossed by the Project, the construction will not substantially increase the spread of SCN compared to other methods of spreading SCN. There are no scientific studies indicating that construction increases the spread of SCN. (HT p.246). According to Pesall's own expert, SCN can be spread by wind, water erosion, and bird droppings. (HT pp.244-45, 271). SCN can be transmitted through standard farm practices such as tilling fields. (HT pp.244-46). Commercial sprayers who travel from field to field make no effort to avoid spreading SCN. (HT pp.260-61). Once SCN infects a field, there is no way to determine how that field was infected. (HT pp.256-57). Thus, any argument that construction will increase the spread of SCN is speculative.

[6] Pesall argues that a route through Roberts and Marshall Counties would pose less risk of spreading SCN. (Pesall's Brief at p.5). There is no evidence to support this statement. Without knowledge of the specific parcels infected with SCN, no one knows whether one route would be less likely to spread SCN than a different route.

Furthermore, even if construction would increase the spread of SCN, the risk of spreading SCN does not pose a threat of serious injury to the environment. The Applicants have proposed a mitigation plan regarding the spread of SCN. (Ex. 23). The Applicants' mitigation efforts will minimize the spread of SCN and prevent the Project from posing a threat of serious injury to the environment.[7]

Pesall criticizes the SCN plan as being too vague. (Pesall's Brief at p.14). As testified to by Henry Ford, however, the SCN plan is intentionally vague to provide flexibility for the Applicants to adopt the most appropriate mitigation strategy. (HT pp. 34-35, 84-85). As part of the mitigation plan, Applicants agree to test every cultivated field for the presence of SCN. (Ex. 23; HT pp.34-35). Depending on what the testing indicates regarding the density of infected fields, Applicants will then choose from several mitigation techniques used to minimize the spread of SCN. (*Id.*). Until the density of infected fields is known, however, the most appropriate mitigation technique cannot be selected. (HT pp.84-85).

Notably, neither Pesall nor his expert Dr. Tylka proposed a mitigation plan. Nevertheless, Dr. Tylka's direct, prefiled testimony confirms the validity of Applicants' mitigation plan. In paragraph 16 of his direct prefiled testimony, Dr. Tylka talks about methods for avoiding spread of SCN during the construction. (Ex. 102, at p.5). Dr. Tylka provides two proposed options to avoiding spread of SCN: (1) testing fields in advance before moving equipment to determine which fields are infected; and (2) cleaning the equipment before it is moved from field to field. (*Id.*). Applicants' mitigation plan incorporates both of these options. First, every cultivated field along the route will be tested for presence of SCN. (Ex. 23; HT p.34). Then, depending on the results of the testing, Applicants will devise appropriate

[7] In evaluating the impact of spreading SCN, it is important to recognize that farmers can employ mitigation efforts to minimize the impact of SCN on infected fields, such as crop rotations and planting SCN resistant soybean varieties. (HT p.248).

mitigation plan to minimize the spread of SCN. (*Id.*). Various mitigation techniques, including cleaning equipment, may be used depending on the concentration of infected fields. (HT pp.34-35).

Ultimately, despite Applicant's prior experience building and maintaining 5,700 miles of transmission lines in the region, and despite consulting with over 500 landowners in open houses for this Project, Applicants were not aware of possible spread of SCN as an issue before Pesall raised the issue. (Ex. 5, at Interrogatory No. 9; HT p.153). After Pesall raised the issue, Applicants performed some research, consulted with South Dakota State University, and developed a mitigation plan. (HT pp.33-35). This mitigation plan, along with the conditions in the Amended Settlement Stipulation, prevent the possible spread of SCN from posing a serious injury to the environment or the social or economic interests of the inhabitants.

C. The Project's Alleged Interference with Farming Activities Does Not Pose a Serious Threat to Health, Safety, and Welfare of the Residents Or Unduly Interfere with the Orderly Development of the Region.

Besides SCN, Pesall argues that the Project will interfere with farming the following ways: (1) increasing landowner liability due to collisions involving structures and farm equipment; (2) reducing the capability for aerial spraying; (3) increasing the risk of injury and reducing productivity due to limitations regarding fueling of equipment; (4) reducing crop insurance payments from average field production; and (5) increasing overhead and time lost accommodating the presence of lines. (Pesall's Brief at p.15). Pesall argues that in aggregate these issues result in the Project posing a serious injury to social and economic conditions and substantially impair the health, safety, and welfare of the inhabitants. (*Id.*). Pesall's argument is not supported by the weight of the evidence.

As an initial matter, Applicants have taken considerable steps to mitigate the effect of the Project on farmers. These mitigation efforts are described in detail in 19.2 of the Application, the conditions in the Amended Settlement Stipulation, and Applicants' Proposed Finding of Fact No. 76. These mitigation efforts prevent the impact of the Project on farming practices from posing a serious injury to the social and economic conditions of the inhabitants and from substantially impairing the health, safety, and welfare of the inhabitants.

Regarding Pesall's specific allegations of interference with farming, several of his objections are speculative. As it relates to liability arising from collisions with farm equipment, it is speculative whether: (1) any such collision will occur; and (2) even if the collision occurs, whether the landowner (who has no involvement in designing or placing the transmission line) would have any liability whatsoever. Other than Pesall's purported "concerns" about liability, there is no evidence that this will in fact expose farmers to liability.[8]

Similarly, regarding aerial spraying, there is no evidence of the effect of the Project on any landowner other than Pesall's claim it would prevent spraying on his land. Conversely, Applicants have presented evidence that the Project will not prevent aerial spraying. (Ex. 3, at Data Request 2-27).

The alleged loss of crop insurance premiums is similarly speculative. There is no expert testimony about the effect of lost acreage on crop insurance policies. The subsequent filing of the insurance policies by Pesall and Randy Schuring confirm the complexity of these insurance policies. Nor is there any evidence indicating the amount, if any, that the insurance payments would decrease. Finally, even assuming that a reduction in acreage or yield would decrease the possible insurance payments, is it speculative regarding whether any loss would occur that would

[8] Applicants responded to a data request from the Commission Staff about increased liability and explained why the proposed facility will not increase liability. (Ex. 3, at Data Request 2-21).

trigger a payment. Thus, the crop insurance issue is mere speculation, and it does not warrant denying the application.

Furthermore, even if damaged crops during the construction will decrease yields and in turn diminish future crop insurance payments, landowners are being compensated for this crop damage. In calculating the crop damage payment, Applicants will multiply the yield lost per acre times the number of acres damaged times the price per bushel/ton. Applicants then pay landowners double the damage amount determined based on the this formula. (Ex. 5, at Interrogatory No. 6). These payments further mitigate the alleged decrease in future crop insurance payments.

Regarding the handling of fuel, it is recommended that landowners not refuel equipment within **100 feet** of the line due to risk of a fire. (HT p.195). The risk is similar to the recommendation at a gas station that persons do not get in and out of a vehicle when refueling. (*Id.*). Regarding any safety risk from refueling vehicles, Applicants have mitigated the safety risk because the Amended Settlement Stipulation requires the Applicants to provide detailed safety information to each landowner on whose property the transmission line is located. (Ex. 301A, at ¶ 4(b)). Pesall argues that limitations on refueling vehicles decrease productivity. (Pesall's Brief at p.15). Requiring landowners to be more than 100 feet away from the transmission line when fueling their equipment or vehicles is not, however, a significant burden. This limited burden will not cause a **serious** injury to the economic condition of the inhabitants. *See* SDCL 49-41B-22(2). Nor will it **substantially impair** the health, safety, or welfare of the inhabitants. *See* SDCL 49-41B-22(3).

Finally, Pesall contends that accommodating the presence of the transmission line will increase overhead and time lost. (Pesall's Brief at p.15). As an initial matter, if this

"inconvenience" was sufficient to deny the permit, no project would be able to be built. Additionally, other than a conclusory allegation of increased overhead and lost time, there is no explanation in Pesall's brief on the magnitude of the effect of this accommodation. If Pesall is referring to the need to "farm around" the transmission line, the Project has designed the line to minimize the impact for farmers. (*See* Applicants' Proposed Finding of Fact No. 76.) Again, this minor impact does not cause a serious injury to the economic condition of the inhabitants or substantially impair their health, safety, or welfare.

Despite claiming that the alleged interference with farming warrants denial of the permit, Pesall presented no evidence regarding the economic impact of the alleged interference. Conversely, the Project has presented economic benefits of constructing and maintaining the Project. As testified to by Angela Piner, there is information regarding the socioeconomic impact of the Project in sections 4, 19.1, and 20 of the Application, as well as Responses to the Staff's Data Requests, paragraphs 5 and 8. (HT pp.152-53; Ex. 1, at §§ 4, 19.1, and 20; Ex. 2, at Data Requests 1-5, 1-8). The Project is expected to generate between $1.75 and $2.25 million annually in property taxes once completed. (Ex. 1, at § 4.0). Applicants also estimate that the construction will generate sales/use and contractor excise taxes during the construction of between $5.5 million and $9 million. (Ex. 2, at Data Request 1-5). During the construction, Applicants estimate that the construction crews will spend between $3 million and $7 million in the local economies near the Project on items such as fuel, hotel rooms, food, supplies, and similar expenditures. (Ex. 16, at p.11; Ex. 2, at Data Request 1-8). Furthermore, the Project also will facility further wind generation by creating additional transmission capacity, including wind generation projects in northeastern South Dakota.[9] (HT pp.138-39). The evidence of these

[9] Pesall argues that other than increased taxes, the only benefit shown by Applicants is that the Project "may reduce competition for existing lines and make it easier for MISO member companies to meet renewable portfolio

economic benefits was unrebutted, and these quantified economic benefits outweigh the unquantified lost productivity for farmers caused by the Project.

When considering the impact of the Project on farmers, it is also important to recognize that the Project will be acquiring easements from the landowners. Landowners will be compensated for that acquisition, which offset, at least in part, the alleged burden of the Project on the farmer.

Finally, Pesall argues that the Project's alleged interference with farming will "unduly interfere with the orderly development of the region" in contravention of SDCL 49-41B-22(4). As discussed above, the impacts to farming are minor, and this is not an undue burden on the region.[10]

In short, the alleged interference with agriculture is minimal. The Applicants have borne their burden of proving all of the elements required by SDCL 49-41B-17.

D. Alleged Property Devaluation Does Not Pose a Substantial Injury to the Economic Condition of the Inhabitants

Pesall argues that the devaluation of farm land from the Project poses a risk of serious injury to the economic condition of the inhabitants in violation of SDCL 49-41B-22(2). His argument fails. Due to the small footprint of the Project, the Project is not expected to have significant short or long term impacts on land values. (Ex. 2, at Data Request 1-6).

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standards without generating new generating facilities." (Pesall's Brief at p.16). This is factually incorrect. Jason Weiers' uncontested testimony indicates that the Project will benefit future wind generation in South Dakota. (HT p.138-39). The Project also will increase the reliability of service in South Dakota. (HT p.106). Brown County, Grant County, Day County, City of Frederick, City of Twin Brooks, City of Westport, City of Groton, City of Andover, City of Butler, Big Stone City, City of Milbank. (*See* Affidavit of Service filed with Commission on 8-26-13.)

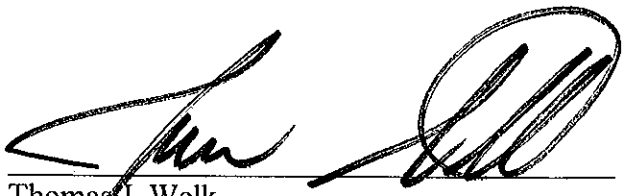
[10] Pesall notes that all local governments who provided written comments opposed the project. He is referring to comments provided from three local townships, who raised the similar agricultural concerns as Pesall. Despite being advised of the Project, none of the other following local governments communicated any opposition to the Project: Brown County, Grant County, Day County, City of Frederick, City of Twin Brooks, City of Westport, City of Groton, City of Andover, City of Butler, Big Stone City, City of Milbank.

To support his "devaluation" argument, Pesall relies on the unsubstantiated testimony of himself and Randy Schuring. (Pesall's Brief at p.7). Pesall presented no evidence, however, of the amount that the transmission line in this Project would devalue the land near the project. Conversely, the Project has performed an analysis in order to determine the proposed easement prices, which compensate for the diminution of value of the property arising from the easement. (Exhibit 3, Data Request 2-11; 5-20-14 Public Input Hearing Transcript at pp.48-49). Based on the studies, as stated at the public input hearings, Applicants are paying 80% of the fair market value for the entire right-of-way for easements with structures on a landowner's property, and one-half of that amount for those with overhang easements only. (5-20-14 Public Input Hearing Transcript at pp.48-49, 86-88). Landowners will receive these easement payments in as part of the right-of-way acquisition process. These payments more than mitigate the diminution in land values and prevent any perceived decreased land values from causing a substantial injury to the economic condition of the inhabitants.

CONCLUSION

Based on the evidence presented at the evidentiary hearing, and based on the conditions imposed by the Amended Settlement Stipulation, Applicants have met their burden of proof under SDCL 49-41B-22. Applicants thus respectfully request that the Commission grant the Application and issue the facility permit based upon the terms and conditions required in the Amended Settlement Stipulation.

Dated 1st day of August, 2014



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