

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF BON HOMME)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

<p>GREGG AND MARSHA HUBNER, Appellants, vs. SOUTH DAKOTA PUBLIC UTILITIES COMMISSION; PREVAILING WIND PARK, LLC; SOUTH DAKOTA PUBLIC UTILITIES COMMISSION STAFF; PAUL AND LISA SCHOENFELDER; SHERMAN FUERNISS; KELLI PAZOUR; KAREN JENKINS; AND CHARLES MIX COUNTY, SOUTH DAKOTA; Appellees.</p>	<p>04CIV18-000084 APPELLANTS’ STATEMENT OF ISSUES ON APPEAL</p>
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COMES NOW Gregg and Marsha Hubner (together, “Hubners”), by and through counsel, and pursuant to SDCL 1-26-31.4, submit this Statement of Issues on Appeal. Hubners respectfully submit that their substantial rights were prejudiced because the administrative findings, inferences, conclusions, and/or decisions of the Hearing Examiner and Public Utilities Commission (“Commission”) were in violation of constitutional or statutory provisions; made upon unlawful procedure; affected by error of law; clearly erroneous in light of the entire evidence in the record; and arbitrary, capricious, and an abuse of discretion. These errors occurred specifically with respect to the Hearing Examiner’s and/or Commission’s rulings or failures to rule with respect to the following issues:

1. The striking of expert testimony of Richard James.
2. The striking of expert testimony of Jerry Punch.

3. The Hearing Examiner's evidentiary rulings regarding out-of-court statements made by Roland Jurgens.

4. The Commission's failure/refusal to establish and/or enlarge setbacks from residences.

5. The Commission's failure/refusal to establish and/or enlarge setbacks from property lines and rights-of-way.

6. The Commission's finding that the Applicant met its burdens under SDCL 49-41B-22, namely in proving the facility will comply with all applicable laws and rules; will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area; will not substantially impair the health, safety or welfare of the inhabitants; and will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

7. ~~SDCL 49-41B-25's six-month deadline by which the Commission must complete findings, which resulted in the Commission's procedural schedule, violated Hubners' due process rights.~~

Dated this 4th day of January, 2019.

DAVENPORT, EVANS, HURWITZ &
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CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Appellants, hereby certifies that a true and correct copy of Appellants' Statement of Issues on Appeal was filed and served through the Odyssey File & Serve system, and/or by First Class Mail on the following parties:

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Dated at Sioux Falls, South Dakota, this 4th day of January, 2019.



Reece M. Almond