

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE APPLICATION)
BY DAKOTA RANGE I, LLC AND)
DAKOTA RANGE II, LLC FOR A PERMIT)
OF A WIND ENERGY FACILITY IN)
GRANT COUNTY AND CODINGTON)
COUNTY, SOUTH DAKOTA, FOR THE)
DAKOTA RANGE WIND PROJECT)**

**MOTION TO COMPEL
DISCOVERY**

EL18-003

Comes Now Staff and hereby files this Motion to Compel requesting the Commission require Applicant to provide copies of the easements sought in discovery by Staff. In support of its Motion, Staff states the following.

1. Applicant objected to Staff’s request for the easements. See Attachment 1.
2. Applicant opened the door to the need for production of these easements when it filed testimony from two easement holders, Alice Moyer and Wade Falk.
3. The easement language is directly relevant to the permit proceeding.
4. Staff needs to evaluate the language to determine:
 - a. Whether it includes any obstacles to a decommissioning condition;
 - b. Whether it limits a landowner’s access to the Commission’s complaint process or any other legal remedy; and
 - c. To verify the fairness of the rebuttal testimony submitted by Alice Moyer and Wade Falk.

SDCL 15-6-26(b) allows for the discovery of any information “relevant to the subject matter involved in the pending action.” *Kaarup v. St. Paul Fire and Marine Ins. Co.*, 436 NW2d 17, 20 (Court holding that the proper standard for ruling on a discovery motion is whether the information sought is relevant to the subject matter involved in the pending action). The Court has stated that statute implies a broad construction of relevancy. *Id.* However, one need not take a broad interpretation of relevancy to determine that a contract detailing landowner rights and the responsibilities of the landowner and company would be relevant to a proceeding in which potential harm to inhabitants is to be addressed. Applicant erased any question of relevance by submitting the following testimony:

Q. Regarding your lease with Dakota Range, do you feel the lease adequately protects your property and your interests? A. Yes.

Falk, Page 2: 16 – 18

Moyer, Page 2:8 – 10

Moyer, Page 1:14 - 21

Q. What is the purpose of your Rebuttal Testimony? A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of Intervenors Teresa Kaaz and Kristi Mogen, who raise concerns regarding the potential impact of the Project on the community and both participating and nonparticipating landowners. Ms. Mogen also notes concerns regarding the fairness of the Project's leases with participating landowners. As a participating landowner, I want to provide my views on the Project, and to address comments regarding the fairness of my lease agreement with Dakota Range.

Falk, Page 1: 17 – 25

Q. What is the purpose of your Rebuttal Testimony? A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of Intervenors Teresa Kaaz and Kristi Mogen, who raise concerns regarding the potential impact of the Project on the community and both participating and nonparticipating landowners. Ms. Mogen also notes concerns regarding the fairness of the Project's leases with participating landowners. As a participating landowner, I want to explain the benefits I believe the Project will bring to our entire community, how the Project will bring much-needed aid to participating landowners, such as myself, and my views on the leases and interactions with Dakota Range.

It is patently unfair for Applicant to argue that its lease/easement is fair but refuse to provide, even confidentially, a copy to the party tasked with reviewing the application.

SDCL 15-6-37(a) provides the process for a motion to compel. Staff made a good-faith effort to obtain the necessary information without filing a motion to compel, but faced time

constraints, namely the fact that the refusal to provide the information was received two business days before prehearing motions were due. Knowing the schedule could be an issue, when Staff sent the discovery request, it requested any refusal to provide information be sent to Staff promptly rather than waiting for the expiration of the time to answer. Unfortunately, Applicant chose to wait to respond with its refusal until the final day. Therefore, Staff is in the position of having to file this Motion.

Staff requests Applicant be compelled to provide copies of the easements for Alice Moyer and Wade Falk. Such easements should be provided confidentially.

Dated this 11th day of June 2018.



Kristen N. Edwards
Amanda M. Reiss
Staff Attorneys
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Phone (605)773-3201
Kristen.edwards@state.sd.us