

**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 AN ENERGY FACILITY
PERMIT IN GRANT COUNTY AND
CODINGTON COUNTY, SOUTH
DAKOTA, FOR THE DAKOTA
RANGE WIND PROJECT**

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**APPLICANTS' RESPONSE TO
APPLICATIONS FOR PARTY STATUS
AND STAFF'S MOTION FOR
ADOPTION OF PROCEDURAL
SCHEDULE**

EL18-003

I. INTRODUCTION.

Dakota Range I, LLC, and Dakota Range II, LLC (“Applicants”) submit this Response to Applications for Party Status and Staff’s Motion for Adoption of Procedural Schedule (“Response”). Consistent with Staff’s Motion, Applicants respectfully request that the South Dakota Public Utilities Commission (“Commission”) issue an order governing the remainder of these proceedings so that they may proceed effectively and efficiently and result in a record that is helpful to the Commission in its consideration of the Dakota Range Wind Project (“Project”).

II. BACKGROUND.

On January 24, 2018, Applicants submitted the Facility Permit Application (“Application”) to the Commission for an Energy Facility Permit to construct and operate the Project. On January 31, 2018, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; and Notice of Opportunity to Apply for Party Status, in which it scheduled a public input hearing for March 21, 2018, and set March 26, 2018, as the deadline to apply for party status.

On March 21, 2018, on the evening of the public input hearing, 16 individuals (“Petitioners”) submitted Applications for Party Status (“Petitions”). As set forth in more detail below, Applicants take no position on the Petitions of three of these Petitioners. However, the

remaining Petitioners either do not identify any interest in this proceeding, or do not identify an interest that provides an adequate basis for party status.

III. DISCUSSION.

A. Response to Application for Party Status.

Consistent with ARSD 20:10:01:15.04, which provides that a party may submit an answer to a petition to intervene within 15 days after service of the petition, Applicants submit this Response to the Petitions.

1. Response to Applications of Teresa Kaaz, Kelly Owen, Kristi Mogen, & Wade Bauer.

In their Petitions, Petitioners Teresa Kaaz, Kelly Owen, Kristi Mogen, and Wade Bauer did not explain their interest in this proceeding or why they are seeking party status. As such, these Petitions do not comply with ARSD 20:10:01:15.03, which requires a petition to intervene to “set out clearly and concisely the facts supporting the petitioner’s alleged interest in the proceeding and, to the extent known, the position of the petitioner in the proceeding.”¹ Accordingly, Applicants respectfully request that the Commission deny these Petitions or require these Petitioners to provide additional, specific information that adequately supports their Petitions at the Commission’s April 3rd meeting where the Petitions will be considered.

2. Response to Applications of Jared Krakow, Kevin Krakow, Matt Whitney, Timothy Lindgren, Linda Lindgren, Derek Nelson, Paul Nelson, Patricia Meyer, and Vincent Meyer.

The following Petitioners identify general Project concerns, but do not appear to be landowners within or near the Project area:

¹ See also SDCL § 1-26-17.1 (“A person who is not an original party to a contested case and whose pecuniary interests would be directly and immediately affected by an agency’s order made upon the hearing may become a party to the hearing by intervention, if timely application therefor is made.”).

- Jared Krakow: Based on the address provided, Mr. Krakow lives over 12.5 miles away from the closest proposed turbine location. As such, his stated interest (i.e., “safety issues, blade and ice throw, sight for sore eyes”) does not identify an interest in the proceeding that provides an adequate basis for party status.
- Kevin Krakow: Based on the address provided, Mr. Krakow lives over 12.5 miles away from the closest proposed turbine location. As such, his stated interest (i.e., “landowner adjacent to project”) appears to be inaccurate and does not identify an interest in the proceeding that provides an adequate basis for party status.
- Matt Whitney: Based on the address provided, Mr. Whitney lives approximately 7.5 miles away from the closest proposed turbine location. As such, his stated interest (i.e., “safety concerns over blade shear, ice shear, sound”) does not identify an interest in the proceeding that provides an adequate basis for party status.
- Timothy and Linda Lindgren: Based on the address provided, the Lindgrens live over 5 miles away from the closest proposed turbine locations. As such, their stated interests (i.e., “concerned about our health and the health of our animals, crops and pets; concerned about our property values and quality of life”) do not identify an interest in the proceeding that provides an adequate basis for party status.
- Derek Nelson: Based on the address provided, Mr. Nelson lives over 16 miles away from the closest proposed turbine location. As such, his stated interest (i.e., “I am against the project as I plan on living here my entire life and do not want to experience their adverse affects”) does not identify an interest in the proceeding that provides an adequate basis for party status.
- Paul Nelson: Based on the address provided, Mr. Nelson lives almost 13 miles away from the closest proposed turbine location. As such, his stated interest (i.e., “landowner adjacent to project”) appears to be inaccurate and does not identify an interest in the proceeding that provides an adequate basis for party status.
- Patricia Meyer: Based on the address provided, Ms. Meyer lives almost 25 miles away from the closest proposed turbine location. As such, her stated interest (i.e., “concerned land owner – What does it do to the biology in the soil with the stray voltage? Does it kill them?”) does not provide an adequate basis for party status.
- Vincent Meyer: Based on the address provided, Ms. Meyer lives almost 25 miles away from the closest proposed turbine location. Further, Mr. Meyer states only that he is a “concern land owner.” Given the distance of his home from the Project, and his lack of specificity, Mr. Meyer does not identify an interest in the proceeding that provides an adequate basis for party status.

Consistent with ARSD 20:10:01:15.03 and SDCL § 1-26-17.1, Applicants respectfully request that the Commission deny these Petitions or require these Petitioners to provide

additional, specific information that adequately supports their Petitions at the Commission's April 3rd meeting where the Petitions will be considered.

3. Response to Applications of Diane Redlin, Daniel Seurer, and Christian Reimche.

Applicants take no position on the Petitions of Diane Redlin, Daniel Seurer, and Christian Reimche.

B. Response to Staff's Motion for Adoption of Procedural Schedule.

Applicants support Staff's Motion and respectfully request that the Commission adopt the procedural schedule identified by Staff, with the understanding that a deadline to submit post-hearing briefs and proposed findings will be set at a later date. In addition, Dakota Range has one expert witness who would be available to testify on June 12, 2018, but is unable to be present on the proposed evidentiary hearing dates, and we request the opportunity to have that witness testify on June 12, 2018, following the pre-hearing conference.

Further, to provide for an efficient process that results in a well-developed record within statutory timeframes, Applicants respectfully request that the Commission include in its procedural order that the following requirements and/or guidelines apply to all parties, including Applicants and any Petitioners granted party status:

- Discovery: All discovery requests shall comply with the South Dakota Rules of Civil Procedure's requirement that discovery be relevant and not unduly burdensome or cumulative. *See* SDCL § 15-6-26(b); ARSD 20:10:01:01.02. Information, documents, or other materials provided in this proceeding may be used only for this proceeding; materials provided in discovery during this proceeding may not be posted publicly to the Commission's docket; and once the proceeding concludes, or to the extent a party withdraws before the conclusion of this proceeding, such materials must be destroyed or returned to the providing party. Responses to discovery are due within 10 business days.

- Testimony & Conduct of Hearing:
 - Each party may submit pre-filed testimony on behalf of that party's witnesses. The submission of pre-filed testimony is a pre-requisite to giving live testimony at the hearing.² However, each party may have persons who have not submitted pre-filed testimony available to testify at the hearing in the event issues not addressed in pre-filed testimony are raised by the Commission.
 - All pre-filed and live testimony will be under oath and subject to typical rules of evidence regarding relevance, privilege, hearsay, etc. *See* SDCL § 1-26-19(1). Thus, lay witnesses will testify regarding matters within their personal knowledge and expert witnesses should be retained to present expert testimony.
 - Each party will have one opportunity to cross-examine witnesses. Parties may choose to waive cross-examination.
- Post-Hearing: The parties may submit one post-hearing brief and one set of proposed findings for the Commission's consideration.

Since the prospective intervenors appear to be unrepresented, it is particularly important for them to understand their role as official parties in this proceeding, as a lack of understanding may result in compliance issues, or requests to withdraw as parties, later in the proceeding.³ Further, it is important to understand that, to the extent parties have or later retain counsel to represent them in this proceeding, the requirements identified above shall be conducted through or by counsel.

² *See* Order for and Notice of Evidentiary Hearing, *In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order Accepting Certification of Permit Issued in Docket No. HP09-001 to Construct the Keystone XL Pipeline*, Docket No. HP14-001 (Apr. 17, 2015).

³ *See, e.g.*, Withdrawal of Party Status for Specified Intervenors, *In the Matter of the Application by Crocker Wind Farm, LLC for a Permit of a Wind Energy Facility and a 345 kV Transmission Line in Clark County, South Dakota, for Crocker Wind Farm*, Docket No. EL17-055 (Mar. 21, 2018).

IV. CONCLUSION.

As discussed above, some of the Petitions do not identify any interest in this proceeding, and others do not identify an interest in the proceeding that provides an adequate basis for party status. Applicants request that such Petitions be denied, or that an adequate basis for party status be required to be provided at the Commission's meeting on April 3rd.

Further, Applicants believe that the incorporation of the procedural requirements and the schedule discussed herein will aid in ensuring an efficient proceeding that will deliver a comprehensive record to the Commission for its decision. Accordingly, Applicants respectfully request that the Commission grant Staff's Motion for Adoption of Procedural Schedule, with the addition of the procedural requirements outlined above.

Dated this 30th day of March, 2018.

Respectfully submitted,

By /s/ Mollie M. Smith
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CERTIFICATE OF SERVICE

Mollie M. Smith, of Fredrikson & Byron, P.A., hereby certifies that on the 30th day of March, 2018, a true and correct copy of Applicants' Response to Applications for Party Status and Staff's Motion for Procedural Schedule and this Certificate of Service were served electronically (unless otherwise noted) on the persons listed below:

<p>Ms. Patricia Van Gerpen Executive Director South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 patty.vangerpen@state.sd.us</p>	<p>Ms. Kristen Edwards Staff Attorney South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 Kristen.edwards@state.sd.us</p>
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/s/ Mollie M. Smith _____
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