

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DOCKET EL18-003

**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**

**DIRECT TESTIMONY OF JON THURBER
ON BEHALF OF THE COMMISSION STAFF
MAY 4, 2018**

TABLE OF CONTENTS

I.	<u>INTRODUCTION AND QUALIFICATIONS</u>	1
II.	<u>PURPOSE OF TESTIMONY</u>	2
III.	<u>REVIEW OF THE APPLICATION</u>	2
IV.	<u>TURBINE LOCATION FLEXIBILITY</u>	5
V.	<u>SHADOW FLICKER</u>	9
VI.	<u>PROPERTY VALUE REPRESENTATIONS AT THE PUBLIC INPUT HEARING</u>	10
VII.	<u>PUNISHED WOMAN'S LAKE SETBACK</u>	13
VIII.	<u>EASEMENT LANGUAGE AND PERMIT CONDITIONS</u>	15
IX.	<u>COMMISSION STAFF'S PERMIT RECOMMENDATION</u>	16

EXHIBITS

Exhibit_JT-1 Dakota Range's Responses to Commission Staff Discovery

Exhibit_JT-2 Intervenor's Responses to Commission Staff Discovery

Exhibit_JT-3 South Dakota Department of Health Letter

1 I. INTRODUCTION AND QUALIFICATIONS

2
3 **Q. Please state your name and business address.**

4 A. Jon Thurber, Public Utilities Commission, State Capitol Building, 500 East Capitol
5 Avenue, Pierre, South Dakota, 57501.
6

7 **Q. By whom are you employed and in what capacity?**

8 A. I am a utility analyst for the South Dakota Public Utilities Commission (“Commission”). I
9 am responsible for analyzing and presenting recommendations on utility dockets filed
10 with the Commission.
11

12 **Q. Please describe your educational and business background.**

13 A. I graduated summa cum laude from the University of Wisconsin – Stevens Point in
14 December of 2006, with a Bachelors of Science Degree in Managerial Accounting,
15 Computer Information Systems, Business Administration, and Mathematics. My
16 regulated utility work experience began in 2008 as a utility analyst for the Commission.
17 At the Commission, my responsibilities included analyzing and testifying on ratemaking
18 matters arising in rate proceedings involving electric and natural gas utilities. In 2013, I
19 joined Black Hills Corporation as Manager of Rates. During my time at Black Hills
20 Corporation, I held various regulatory management roles and was responsible for the
21 oversight of electric and natural gas filings in Wyoming, Montana, and South Dakota. In
22 July of 2016, I returned to the Commission as a utility analyst. In addition to cost of
23 service dockets, I work on transmission siting, energy conversion facility siting, wind
24 energy facility siting, and Southwest Power Pool transmission cost allocation issues.
25

26 In my nine years of regulatory experience, I have either reviewed or prepared over 170
27 regulatory filings. These filings include two wind energy facility and two transmission
28 facility siting dockets. I have provided written and oral testimony on the following topics:
29 the appropriate test year, rate base, revenues, expenses, taxes, cost allocation, rate
30 design, power cost adjustments, capital investment trackers, PURPA standards, avoided
31 costs, and electric generation resource decisions.
32

1 **Q. Are you familiar with Dakota Range I, LLC’s and Dakota Range II, LLC’s (“Dakota**
2 **Range” or “Company”) application for a permit of a wind energy facility, Docket**
3 **EL18-003?**

4 A. Yes. I have reviewed the Company’s prefiled testimony, appendixes, figures, and
5 responses to data requests produced by all parties as it pertains to the issues that I am
6 addressing.

7

8

II. PURPOSE OF TESTIMONY

9

10 **Q. What is the purpose of your direct testimony?**

11 A. The purpose of my direct testimony is to discuss the review performed by Commission
12 Staff of the Application, identify any issues or concerns with the representations made in
13 the Application or by the Applicant, and provide Commission Staff’s recommendation on
14 whether the permit should be granted.

15

16

III. REVIEW OF THE APPLICATION

17

18 **Q. Please explain the review process performed by Commission Staff in Docket**
19 **EL18-003.**

20 A. After receiving the Application, Staff completed a review of the contents as it relates to
21 the Energy Facility Siting statutes, SDCL 49-41B, and Energy Facility Siting Rules,
22 ARSD 20:10:22. Staff then identified information required by statute or rule that was
23 either missing from the Application or unclear within the Application and requested
24 Dakota Range to provide or clarify that information. Once interested individuals were
25 granted party status, Commission Staff also issued discovery to the intervenors in order
26 to understand what concerns they had with the project. Please see Exhibit_JPT-1 for
27 Dakota Range’s responses to Commission Staff discovery, and Exhibit_JPT-2 for the
28 Intervenors’ responses to Commission Staff discovery.

29

30 In addition, Commission Staff subpoenaed experts from State Agencies to assist
31 Commission Staff with our review. Tom Kirschenmann, Deputy Director of the Wildlife
32 Division and Chief of the Terrestrial Resources Section at the Game, Fish, and Parks,
33 reviewed the potential impacts to wildlife and associated habitats. Paige Olson, Review

1 and Compliance Coordinator at the State Historic Preservation Office (SHPO), reviewed
2 the project to ensure historic properties are taken into consideration.

3
4 Further, Commission Staff hired two consultants to assist Commission Staff with our
5 review. David Hessler, Vice President at Hessler Associates, Inc., reviewed the
6 information on the noise emitted from the project. David Lawrence, real property
7 appraiser with DAL Appraisal and Land Services, reviewed the information on potential
8 value impacts to South Dakota real property.

9
10 **Q. What is the purpose of Commission Staff's expert witnesses in this proceeding?**

11 A. Commission Staff sought experts within their respective fields to assess the merits and
12 deficiencies of the Application. Commission Staff requested that the experts address
13 whether the information submitted by Dakota Range aligns with industry best practices,
14 and if they agreed with the conclusions Dakota Range made regarding the potential
15 impacts from the project.

16
17 **Q. Did Commission Staff reach out to any other State Agencies for input?**

18 A. Not for this docket. However, Commission Staff did reach out to the South Dakota
19 Department of Health to find out if they had an opinion on the potential health impacts
20 from wind turbines in Docket EL17-028.

21
22 **Q. What was the South Dakota Department of Health's response?**

23 A. The South Dakota Department of Health provided Commission Staff with a letter stating
24 that the Department of Health has not taken a formal position on the issue of wind
25 turbines and human health. Further, they referenced the Massachusetts Department of
26 Public Health and Minnesota Department of Health studies and identified those studies
27 generally conclude that there is insufficient evidence to establish significant risk to
28 human health. I included the Department of Health's letter as Exhibit_JT-3.

29
30 **Q. Did Commission Staff receive responses to discovery from all sixteen individuals
31 granted party status?**

32 A. No. Commission Staff received responses to discovery from two individuals granted
33 party status, Teresa Kaaz and Kristi Mogen, on April 27, 2018. Due to the timing of
34 when the responses were provided, Commission Staff did not have time to consider the

1 issues raised by the Intervenor through discovery in our direct testimony. Commission
2 Staff will be available to answer questions regarding the issues raised by the Intervenor
3 at the evidentiary hearing.
4

5 **Q. Was Dakota Range's Application considered complete at the time of filing?**

6 A. At the time of the filing, the application was generally complete. However, as identified
7 above, Commission Staff requested further information, or clarification, from Dakota
8 Range which Commission Staff believed was necessary in order to satisfy the
9 requirements of SDCL 49-41B and ARSD 20:10:22. Dakota Range's responses to
10 Commission Staff's information requests received to date are attached as Exhibit_JT-1.
11 Finally, I would also note that an applicant supplementing its original application with
12 additional information as requested by Commission Staff is not unusual for siting
13 dockets.
14

15 **Q. Based on your review of the Application, responses to Commission Staff's data
16 requests and Dakota Range's testimony, do you find the Application to be
17 complete?**

18 A. Yes. Staff found that Dakota Range provided information that addressed the information
19 required by ARSD Chapter 20:10:22 and SDCL 49-41B. However, at the time of writing
20 this testimony, it is my opinion that Dakota Range should provide additional information
21 to more-thoroughly address certain rules or to better understand the project's potential
22 impacts. This opinion is based on Commission Staff's interpretation of the
23 Commission's rules and the testimony submitted by Commission Staff.
24

25 **Q. What issues and concerns does Commission Staff have with the Dakota Range
26 wind energy facility?**

27 A. I will address the following issues on behalf of Commission Staff:

- 28
- 29 • Turbine Location Flexibility
- 30 • Voluntary Shadow Flicker Commitment
- 31 • Property Value Representations at the Public Input Hearing
- 32 • Punished Woman's Lake Setback
- 33 • Easement Language and Permit Conditions
- 34

1 Each Commission Staff expert witness identified issues or conditions that need to be
2 addressed by the Applicant in their respective areas of noise, cultural resources,
3 property value, and wildlife and associated habitats.
4

5 **IV. TURBINE LOCATION FLEXIBILITY**
6

7 **Q. Did the Company request turbine location flexibility?**

8 A. Yes. On Page 9-2 of the Application, the Applicant makes the following statements:
9

10 "As a result of final micrositing, minor shifts in the turbine locations may be
11 necessary to avoid newly identified cultural resources (cultural resource studies
12 in coordination with the SWO are ongoing), or due to geotechnical evaluations of
13 the wind turbine locations, landowner input, or other factors. Therefore, the
14 Applicant requests that the permit allow turbines to be shifted within 500 feet of
15 their current proposed location, so long as specified noise and shadow flicker
16 thresholds are not exceeded, cultural resource impacts are avoided or minimized
17 per the CRMMP, environmental setbacks are adhered to as agreed upon with
18 USFWS and SDGFP, and wetland impacts are avoided to the extent practicable.
19 If turbine shifts are greater than 500 feet, exceed the noted thresholds, or do not
20 meet the other limitations specified, the Applicant would either use an alternate
21 turbine location or obtain Commission approval of the proposed turbine change
22 ...In all cases, the final turbine locations constructed will adhere to all applicable
23 local, State, and Federal regulations and requirements."
24

25 **Q. Did the Applicant provide justification for using 500 feet as the appropriate
26 distance threshold to necessitate a Commission filing for a material deviation?**

27 A. In response to Staff Data Request 3-4(a), the Company stated "Apex believes a 500 foot
28 move is reasonable, as the turbine will continue to meet all setback and sound
29 requirements and will remain on the same parcel of land."
30

31 **Q. What process does the Applicant envision to obtain Commission approval of a
32 proposed turbine location change?**

33 A. In response to Staff Data Request 3-4(c), the Company proposed the following process
34 to obtain approval of a proposed turbine location change that exceeds 500 feet:
35

- 36 • Dakota Range would file with the Commission a request for approval of the
37 change that includes:
 - 38 ○ An affidavit describing the proposed change, the reason for the
39 change, the reason the change does not comply with one or more
40 turbine flexibility proposal limitations set forth in the Application, and
41 the documentation referenced below;

- 1 ○ A map showing both the approved location and the proposed change
- 2 (in different colors);
- 3 ○ Documentation demonstrating compliance with local zoning
- 4 requirements including setbacks from existing off-site residences,
- 5 businesses, governmental buildings, and non-participating property
- 6 lines, and the noise requirement at existing off-site residences; and
- 7 ○ Documentation demonstrating compliance with voluntary
- 8 commitments regarding cultural resources, wetlands, and sensitive
- 9 species habitat; and
- 10 ○ Documentation of compliance with or landowner waiver of voluntary
- 11 setback commitments.
- 12 • Once received, the information would be reviewed by Commission Staff, and
- 13 a recommendation regarding the request provided to the Commission.
- 14 • The Commission would then issue a decision regarding Dakota Range's
- 15 request at its next regularly scheduled Commission meeting.
- 16

17 **Q. Are turbine location shifts that are not filed and approved by the Commission**
18 **allowed by South Dakota administrative rules?**

19 A. ARSD 20:10:22:33.02 (1) requires the applicant to provide a configuration of the wind
20 turbines. In Docket EL17-028, In the Matter of the Application by Crocker Wind Farm,
21 LLC for a Permit of a Wind Energy Facility and a 345 kV Transmission Line in Clark
22 County, South Dakota for Crocker Wind Farm, the Commission found that the
23 Application failed generally in form and content because multiple wind turbine
24 configurations were included instead of a singular configuration. Based on consultation
25 with my attorney, it is unclear whether a turbine location shift that does not receive
26 Commission approval would constitute a new configuration and not comply with a
27 singular configuration as required by ARSD 20:10:22:33.01(1).

28
29 **Q. Since the Commission's decision in Docket EL17-028 referenced above, have**
30 **Applicants requested turbine location flexibility without Commission filings for**
31 **approval?**

32 A. Yes, I am aware of two instances where the Applicant has requested to define what
33 would constitute a material deviation for a turbine location change. One request was
34 included in a motion for reconsideration that was not decided, and one request is
35 pending. In Docket EL17-028, Crocker Wind Farm, LLC requested a condition that
36 would allow non-material shifts in turbine locations of less than 325 feet without further
37 Commission action in its motion to reconsider. Ultimately, the Commission did not hear
38 evidence on this request as the motion was denied. Lastly, in Docket EL17-055,

1 Crocker Wind Farm, LLC has a pending request that the permit allow turbines to be
2 shifted within 1,000 feet of the proposed location.

3
4 **Q. The Applicant suggested that 500 feet is a reasonable distance to shift a turbine**
5 **before a Commission filing is required because the turbine will remain on the**
6 **same parcel of land if it is shifted 500 feet or less. Is this adequate support for**
7 **using 500 feet as the appropriate distance?**

8 A. No, it is not. The project impacts may be different than what the Commission reviewed
9 through the Application process even though turbines remain on the same parcel of
10 land. While this 500-foot proposal may be based on the professional experience of the
11 Applicant, the Company has not adequately explained and justified this request.
12 Commission Staff submitted Staff Data Request 7-5 to ascertain how many turbine shifts
13 have occurred at other wind energy facilities constructed by the Company, and the
14 Company responded that this information is not readily available.

15
16 **Q. Do you have any concerns with process proposed by the Applicant to obtain**
17 **approval of a turbine location change that exceeds 500 feet?**

18 A. Yes. The process proposed by the Applicant does not allow an opportunity for
19 individuals that were granted party status to make recommendations or object.
20 Intervenors should have the opportunity to participate in all aspects of the docket,
21 including requests for turbine location changes.

22
23 **Q. To ensure compliance with ARSD 20:10:22:33.02(1), how would Staff propose to**
24 **handle turbine shifts that occur?**

25 A. To allow for a review of the final turbine configuration, I recommend the following filing
26 prior to starting construction:

- 27
28 1) a list of turbine sites that changed;
29 2) a map showing the new turbine location;
30 3) justification for each turbine change; and
31 4) an analysis on any impacts that occur because of that change.

32
33 I further recommend that Commission allow 30 days for Staff, the intervenors, and the
34 Commission to review any shifts in turbine locations and be afforded the opportunity to

1 raise concerns. If no concerns are raised by the parties or the Commission within 30
2 days, then the turbine changes would be automatically approved. However, if a party (or
3 the Commission) raises a concern with a turbine shift, then that turbine shift would be
4 brought before the Commission for consideration and approval.
5

6 **Q. Has an Applicant filed a request for a location deviation before the Commission in**
7 **other siting dockets?**

8 A. Yes. The most recent material deviation requests were filed by Black Hills Power, Inc. to
9 the Teckla-Osage-Rapid City transmission line in Docket EL14-061. The requests were
10 for material deviations from the project centerline that was previously approved by the
11 Commission, and were approved approximately 20 days after the filings were received.
12 The Commission is familiar with a material deviation process, and the agency has
13 expeditiously processed these filings if the appropriate support is included.
14

15 I am also aware of three other siting dockets where the Applicant made filings before the
16 Commission for facility location deviations:

- 17 • Docket EL13-028 - In the Matter of the Application of Montana-Dakota Utilities
18 Co. and Otter Tail Power Company for a Permit to Construct the Big Stone South
19 to Ellendale 345 kV Transmission Line;
- 20 • Docket EL12-063 – In the Matter of the Petition of Otter Tail Power Company for
21 Order Accepting Certification of Permit Issued in Docket EL06-002 to Construct
22 Big Stone Transmission Line and Substations in Grant and Deuel Counties; and
- 23 • Docket HP07-001 - In the Matter of the Application by TransCanada Keystone
24 Pipeline, LP for a Permit under the South Dakota Energy Conversion and
25 Transmission Facility Act to Construct the Keystone Pipeline Project.
26

27 **Q. Should location deviations for wind energy facilities be treated differently than**
28 **location deviations for transmission facilities and crude oil pipelines?**

29 A. The Applicant has not provided any justification for the different treatment of wind energy
30 facilities.
31
32
33

1 **Q. In Docket EL17-055, the Applicant has a pending request for turbine location**
2 **flexibility. What is the status of that docket?**

3 A. Commission Staff does not agree with Crocker Wind Farm, LLC's request that the permit
4 allow turbines to be shifted within 1,000 feet of the proposed location, and the issue is
5 being litigated. Docket EL17-055 is scheduled for hearing beginning on May 9, 2018.
6 The outcome of the turbine location flexibility request in Docket EL17-055 may impact
7 Commission Staff's position in this docket. I will update my testimony, if necessary.

8

9

V. SHADOW FLICKER

10

11 **Q. Did Dakota Range make a voluntary commitment regarding shadow flicker?**

12 A. Yes. On Page 10-3 of the Application, Dakota Range made a voluntary commitment
13 that "facility will not exceed a maximum of 30 hours of shadow flicker per year at any
14 existing non-participating residence, business, or building owned and/or maintained by a
15 governmental entity, unless otherwise agreed to by the landowner."

16

17 **Q. Did Dakota Range make this voluntary shadow flicker commitment for**
18 **participating residences?**

19 A. No, the commitment is only for non-participating landowners.

20

21 **Q. Did the shadow flicker modeling identify any participating residences exceed 30**
22 **hours per year?**

23 A. Yes. On Page 16-11 of the Application, the Applicant states, "While the modeling
24 indicates that 11 participating residences could experience annual shadow flicker levels
25 above 30 hours per year, since the modeling treated homes as "greenhouses" and
26 assumed no vegetation or other existing structures, the "expected" levels are likely
27 higher than actual levels will be. Dakota Range plans to discuss the results with
28 participating landowners and, if concerns are raised, will conduct modeling using site-
29 specific data to further refine results. Additionally, mitigation measures, such as
30 vegetative screening or darkening shades, can be implemented to address shadow
31 flicker concerns should they arise after the Project is operational."

32

1 **Q. Is Dakota Range willing to agree to a permit condition that requires the**
2 **owner/operator of the wind project to mitigate for shadow flicker concerns if they**
3 **arise during project operation?**

4 A. Yes. In response to Staff Data Request 2-16, Dakota Range “would agree to a permit
5 condition that requires Dakota Range to take reasonable steps to mitigate shadow flicker
6 concerns at the 11 residences that could experience shadow flicker levels above 30
7 hours per year.”

8
9 **Q. Do you have a response to Dakota Range’s proposed condition?**

10 A. While Dakota Range narrowed the condition to the 11 participating residences that could
11 experience shadow flicker levels above 30 hours per year based on their modeling,
12 Commission Staff prefers to have the condition applicable to any residences that
13 experiences shadow flicker that exceeds 30 hours per year based on actual operation.
14 Also, I am unsure what Dakota Range deems to be “reasonable steps.” Based on the
15 Application, I would assume reasonable steps includes vegetative screening or
16 darkening shades. Commission Staff is interested in putting greater definition around
17 reasonable steps by the Company providing other acceptable mitigation measures for
18 shadow flicker.

19

20 **VI. PROPERTY VALUE REPRESENTATIONS AT THE PUBLIC INPUT HEARING**

21

22 **Q. Did the Commission hold a public input hearing in this proceeding?**

23 A. Yes. The Commission held a public input hearing on the Application on March 21, 2018,
24 in Waverly, SD. The purpose of the public hearing was to hear public comments
25 regarding the Application and the project. Dakota Range presented a brief description of
26 the project, followed by comments from interested persons. The hearing lasted over
27 three hours, with comments made by approximately fifty interested persons.

28

29 **Q. Did the Applicant make any representations at the Public Input Hearing regarding**
30 **property values as part of their description of the project?**

31 A. Yes. Mr. Mark Mauersberger, Senior Development Manager with Apex Clean Energy,
32 Inc., made the following statements:

33

1 *"In addition to the aforementioned, Codington County representative actually*
2 *reached out to their neighboring county's equalization office to discuss property*
3 *values since Buffalo Ridge Wind Farm was built more than ten years ago. Brookings*
4 *County told Codington County that they had just completed such an analysis on 243*
5 *home sites that were in and around the Buffalo Ridge Wind Farm.*

6
7 *Their conclusion? Over the past decade, 242 of the 243 homes around this nearby*
8 *wind farm increased in value by an average of fifty eight percent. Now I understand*
9 *that project opponents love to cite a flawed real estate study done in Canada.*
10 *However, I would rely on South Dakota analysis done on an established wind farm in*
11 *a nearby county as a better comparable."*
12

13 **Q. Did Dakota Range submit the property value analysis performed by Brookings**
14 **County to support their Application on January 24, 2018?**

15 A. No, Dakota Range did not submit this analysis as support when they filed their
16 Application.
17

18 **Q. The Applicant submitted supplemental direct testimony on property value impacts**
19 **on Friday, April 6, over two weeks after the Public Input Hearing. Did Dakota**
20 **Range submit the property value analysis performed by Brookings County as part**
21 **of their supplemental direct testimony?**

22 A. No. Mr. Mike MaRous did not include this analysis as an exhibit, nor did Mr. MaRous
23 mention this analysis in his direct testimony.
24

25 **Q. Did Commission Staff request the property value analysis performed by Brookings**
26 **County through discovery?**

27 A. Yes. On April 6, 2018, Commission Staff requested the analysis through Staff Data
28 Request 2-19. On April 20, 2018, Mr. Mark Mauersberger responded with the following:
29

30 *"At a recent Codington County Planning and Zoning meeting, Luke Muller, the*
31 *Zoning Officer for Codington County and a First District Association of Local*
32 *Governments' Staff Member, stated that he had contacted the Brookings County*
33 *Equalization Office to ask about wind turbines and property values. According to Mr.*
34 *Muller, the Brookings County Equalization Office said that they had compared*
35 *property values before and after installation of the Buffalo Ridge wind projects, and*
36 *property values in the area had increased by an average of 58 percent. We have*
37 *requested additional specifics from Luke Muller."*
38

1 **Q. As of May 3, 2018, has Dakota Range supplemented its response to Staff Data**
2 **Request 2-19 with the “additional specifics from Luke Muller”?**

3 A. No, Dakota Range has not.
4

5 **Q. Has Commission Staff asked further discovery related to Mr. Mauersberger**
6 **property value claims at the Public Input Hearing?**

7 A. Yes, Commission Staff asked for more information from Dakota Range in Staff Data
8 Request 6-7. On April 30, 2018, the Applicant responded and generally referred
9 Commission Staff to its response to Staff Data Request 2-19, which does not answer our
10 questions. Commission Staff would appreciate an answer to Staff Data Requests 2-19
11 and 6-7, including all subparts.
12

13 **Q. What is your concern regarding the representation Mr. Mauersberger made**
14 **regarding property value at the Public Input Hearing?**

15 A. I am concerned that the Applicant asked interested persons at the Public Input Hearing
16 to rely on an analysis that is not submitted into this record and available for examination
17 through this proceeding. An Applicant should not reference an analysis at a Public Input
18 Hearing to support its Application if it is unwilling to make it part of the evidentiary record.
19 The credibility of the Commission’s siting process is compromised if the Applicant does
20 not adhere to an evidence-based approach.
21

22 **Q. What resolution is Commission Staff seeking regarding the Applicant’s property**
23 **value representations at the Public Input Hearing?**

24 A. Since the Applicant has not produced the Brookings County property value analysis
25 requested and is in violation of the procedural schedule,¹ I do not believe this information
26 will be produced as evidence in this proceeding.
27

28 Commission Staff will defer to the Commission to determine the appropriate actions to
29 restore the credibility of the Public Input Hearing process.
30
31
32

¹ Order Granting Party Status and Establishing Procedural Schedule, “The responses to discovery are due ten business days after receipt.”

1 **VII. PUNISHED WOMAN'S LAKE SETBACK**

2
3 **Q. Did Dakota Range make a commitment regarding a setback from Punished**
4 **Woman's Lake?**

5 A. Yes. On Page 10-3 of the Application, Dakota Range made a voluntary commitment
6 that "the turbines will be set back 2 miles from the shoreline of Punished Woman's
7 Lake."

8
9 **Q. Why did Dakota Range agree to this voluntary setback?**

10 A. According to Mr. Mark Mauersberger direct testimony, Page 6, lines 17 through 22,
11 "Dakota Range met with the Punished Woman's Lake Association to discuss the Project
12 and address concerns related to potential viewshed impacts at Punished Woman's Lake.
13 To address the concern raised, as well as avoid areas of potential tribal resources near
14 the lake and be a good neighbor to the nearby town of South Shore, Dakota Range
15 agreed to a turbine setback of two miles from the shoreline of Punished Woman's Lake."
16

17 **Q. What was Dakota Range's basis for adopting this voluntary setback?**

18 A. In response to Staff Data Request 3-6(a), the Company stated it "applied a rationale that
19 was consistent with the lake setbacks imposed by Deuel County, South Dakota, during
20 its recent zoning ordinance amendment process." Please see Exhibit_JPT-1 for the
21 Company's full response explaining its rationale. In summary, Deuel County established
22 a 3-mile setback from Lake Cochrane, a 2-mile setback from Lake Alice, and a 1-mile
23 setback from Bullhead Lake (referred to as a "lesser lake" at Deuel County meetings).
24

25 **Q. How did Dakota Range determine two miles to be the appropriate setback for**
26 **Punished Woman's Lake?**

27 A. In response to Staff Data Request 3-6(b), the Company stated, "Punished Woman's
28 Lake falls between Lake Alice and a "lesser lake," and is not comparable to Lake
29 Cochrane. In Apex's opinion, a 1-mile setback is probably the appropriate setback from
30 Punished Woman's Lake; however, in the interest of being a good neighbor, Apex
31 voluntarily imposed a 2-mile setback."
32
33

1 **Q. Does Dakota Range’s project boundary area border Punished Woman’s Lake**
2 **shoreline?**

3 A. No, it does not. Based on Figure 2 and Figure 5 of the Application, it is unclear how
4 much of Dakota Range’s project area is actually within 2 miles of the shoreline of
5 Punished Woman’s Lake.

6

7 Commission Staff will submit discovery to Dakota Range to determine:

- 8 1. How much of the Project Area under lease is impacted by the voluntary 2-mile
9 setback?
- 10 2. How many turbines needed to be moved or removed from previous layouts in order
11 to accommodate the Punished Woman Lake setback; and
- 12 3. How much Buildable Area, as defined in Figure 5, was eliminated as a result of the
13 Punished Woman Lake voluntary setback.

14

15 I will update my testimony regarding this information.

16

17 **Q. Is the land surrounding Punished Woman’s Lake under easement by another wind**
18 **developer?**

19 A. Based on Exhibit DM-1 – Transmission Lines and Interconnection Map attached to the
20 direct testimony of Daniel Mayer in Docket EL17-050, it appears that Crowned Ridge
21 Wind, LLC has land under easement in between Dakota Range’s Project Area and parts
22 of the Punished Woman’s Lake shoreline. I do not know whether Crowned Ridge Wind,
23 LLC has agreed to a larger setback from the Punished Woman’s Lake shoreline than the
24 1-mile setback required by Codington County.

25

26 **Q. What setback did the Punished Woman’s Lake Association request at the Public**
27 **Input Hearing?**

28 A. The President of the Punished Woman’s Lake Association requested a 3-mile setback
29 from the Punished Woman’s Lake shoreline.

30

31 **Q. What is your recommendation regarding the Punished Woman’s Lake setback?**

32 A. There is currently no evidence in the record to support a different setback than what
33 Codington County has established, or Dakota Range has volunteered for its project. I’m
34 unaware if other developers will agree to a larger setback than what Codington County

1 requires, so the 2-mile setback provided by Dakota Range may not be honored by other
2 wind developers around Punished Woman's Lake.

3
4 Based on Dakota Range's Project Area and Crowned Ridge's Project Area, it is unclear
5 how, if at all, this voluntary setback altered the development of the Dakota Range
6 project.

7
8 **VIII. EASEMENT LANGUAGE AND PERMIT CONDITIONS**

9
10 **Q. Did Commission Staff ask Dakota Range any questions regarding their wind
11 energy easements?**

12 A. Yes. Commission Staff asked Dakota Range the following in Staff Data Request 4-1:
13 "Are participating residents prohibited from filing a complaint before the South Dakota
14 Public Utilities Commission or any other governmental entity regarding noise or any
15 other concern due to language in their easement? Explain."

16
17 **Q. What was Dakota Range's response to Commission Staff Data Request 4-1?**

18 A. Ms. Mollie Smith, outside legal counsel representing Dakota Range, responded "This
19 request calls for a legal conclusion. That said, the leases do not specifically prohibit
20 landowners from complaining to the Commission, but the leases do obligate participating
21 landowners to cooperate with Dakota Range to obtain and maintain permits for the
22 Project."

23
24 **Q. Do you understand Dakota Range's response?**

25 A. The response is unclear to me. What Commission Staff thought was a simple, straight
26 forward, yes or no question is apparently more complicated. In addition, the response is
27 circular in nature because a complaint may be construed as uncooperative with Dakota
28 Range's interest in maintaining a permit. Commission Staff will ask additional discovery
29 on this issue to get a better understanding of the impact Dakota Range's wind energy
30 easement has on permit conditions.

31
32 **Q. What is Commission Staff's concern regarding this issue?**

33 A. Commission Staff wants to ensure participating landowners have access to the
34 Commission's complaint process as set forth in ARSD 20:10:01, and are not forced to

1 waive this right through signing Dakota Range’s wind energy lease. Participating
2 landowners may be in the best position to notify the Commission of any violations of the
3 permit due to proximity to the facility.
4

5 Commission Staff has included the following permit condition in past stipulations for wind
6 energy facilities:
7

8 *“Applicant agrees that the Commission’s complaint process as set forth in ARSD*
9 *20:10:01 shall be available to landowners, other persons sustaining or threatened*
10 *with damage as the result of Applicant’s failure to abide by the conditions of the*
11 *Permit or otherwise having standing to seek enforcement of the conditions of the*
12 *Permit.”*
13

14 Dakota Range should clearly and directly confirm that participating landowners have
15 access to the Commission’s complaint process in its rebuttal testimony.
16

17 **IX. COMMISSION STAFF’S PERMIT RECOMMENDATION**
18

19 **Q. Does Commission Staff recommend the Application be denied or rejected**
20 **because of Commission Staff’s issues and concerns?**

21 A. Not at this time. Because Dakota Range still has the opportunity to address outstanding
22 issues on rebuttal and, to an extent, through the evidentiary hearing, Commission Staff
23 reserves any position until such time as we have a complete record upon which to base
24 the position. I would also note that some of the outstanding issues may be addressed
25 through conditions should the Commission grant a permit.
26

27 **Q. Does this conclude your testimony?**

28 A. Yes, this concludes my written testimony. However, I will supplement my written
29 testimony with oral testimony at the hearing to respond to Intervenor testimony, Dakota
30 Range’s rebuttal testimony, and responses to discovery.
31