

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION
BY PREVAILING WIND PARK, LLC
FOR A PERMIT OF A WIND ENERGY
FACILITY IN BON HOMME COUNTY,
CHARLES MIX COUNTY AND
HUTCHINSON COUNTY, SOUTH
DAKOTA, FOR THE PREVAILING WIND
PARK,LLC PROJECT

Sherman Fuerniss, Intervenor
Post-Hearing Brief
EL-18-026

I, Sherman Fuerniss, Intervenor, hereby submit this post-evidentiary hearing brief concerning the application of Prevailing Wind Park, LLC for a permit to construct a Wind Energy Conversion Facility in Bon Homme County, Charles Mix County and Hutchinson County of South Dakota.

INTRODUCTION

SDCL 49-41B-22 provides that Prevailing Wind Park, LLC (Applicant) has the burden of proof to establish that:

- 1) The proposed facility will comply with all applicable laws and rules;
- 2) The facility 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;
- 3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- 4) The facility 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.

FINDINGS

1) Figure 9 of Appendix A of the Application for Permit indicates that the land directly across the road from Mr. Jerome Powers is "Land used primarily for row or non-row crops in rotation". Mr. Powers testified that the land is in fact pristine native grasslands. How does Applicant intend to protect native prairie remnants to the extent practicable if it has not properly identified them all?

2) The annual taxes paid to local county governments and school districts listed in Section 20.1.2.1 of the Application amount to pennies on the acre.

3) Section 20.1.2.2 of the Application states "The Applicant anticipates that there would not be sufficient trained local labor to fill the number of jobs available." and "The Project would have a less than significant impact on overall population and occupation distribution."

- 4) Apart from the numbers presented in Table 8.3 of Section 8.2 of the Application, there is no evidence that residents of the project area or the general public comprehend the enormity of the physical size of the turbines proposed for the project, nor their size or power output relative to the existing wind turbines in the area.
- 5) At the time of the evidentiary hearing not all environmental assessments and impact studies were complete.
- 6) A question answered by Dr. Roberts indicates that there are negative peer reviews of peer-reviewed literature used as exhibits by him.
- 7) Literature reviewed by Dr. Roberts suggested that further study should be conducted on the relationship between wind turbine noise and human health.
- 8) There was no evidence that habituation to the annoyance caused by the nature of the sound produced by wind turbines will occur as opposed to the sensitization that is occurring as testified to by multiple witnesses.
- 9) Mr. Howell admitted that the ISO 9613-2 model for sound projections is not validated for heights above 30 meters, so extrapolation is used on top of calculations to determine projections for taller sound sources and ISO 9613-2 remains "the industry standard" despite newer and more accurate models being available.
- 10) A ground effect factor of .5 was used in the ISO 9613-2 calculations. Mr James testified that a factor of 0 was needed to accurately reflect the louder conditions occurring over frozen and ice covered winter time ground.
- 11) There were no Applicant witnesses who have experience working, living and sleeping 24/7/365 at distances of less than 2 miles from an operating wind power facility.
- 12) Mr. Hessler testified that the Cooper study had convinced him that inaudible sound levels are affecting some people living near wind energy facilities
- 13) Mr. Hessler suggested that this project could meet a 40 dBA limit.
- 14) Mr. Hessler testified that a study gauging community response to the noise impact of a project should be part of a sound study.
- 15) Mr. James testified that sound pressure levels of 45 dBA are especially annoying in rural areas where there is an expectation of quiet.
- 16) Mr. James testified to the measurability of infrasound.
- 17) Dr. Punch recognized that the World Health Organization was reviewing noise standards especially in regards to wind turbines as the hearing was underway.
- 18) Mr. Powers testified that at least one local business will be affected by loss of leases of land in the project area.
- 19) Testimony was presented that local government officials have insufficient background, knowledge and unbiased information to make difficult decisions regarding regulations concerning wind energy facilities.

20) Testimony was presented that some local governments are unable to regulate development within their jurisdiction because of social and inter-governmental body issues.

21) Multiple witnesses testified to the fragmentation of the social fabric of the project area that is taking place.

22) Residents and landowners who were not contacted by Applicant prior to the application being filed were expected to take the initiative and approach Applicant representatives at county meetings after the filing in hopes of receiving information about their concerns.

23) The project is proposed for an area with a history of icing issues.

24) Multiple witnesses testified to the adverse effects they experience working, living and sleeping 24/7/365 within distances of .75 to 2 miles of operating wind energy facilities.

25) There was no evidence or rationale presented for subjecting unwilling residents of the project to any level of shadow flicker trespass on their own property.

26) There was no evidence or rationale presented for the establishment of the "industry standard" of 30 minutes per day and 30 hours per year of shadow flicker trespass.

27) There was no evidence or rationale presented for subjecting unwilling residents to the noise trespass on their own property of increasing the ambient sound pressure levels by 10 to 15 dBA or more.

CONCLUSIONS

The burden of proof remains with the Applicant not with Staff or Intervenors. Someone may surely have the right and power to erect a structure on their property that causes noise or shadow flicker trespass on another's property but they certainly do not have the authority to do so. There is definitely a threat of serious injury to the economic condition of some inhabitants of the area. Serious injury has already occurred to the social condition of some of the inhabitants of the area. Persons residing within 2 miles of similar projects have had their welfare substantially impaired and some will be further afflicted by this project. Action in defense of the public welfare does not require certainty, therefore,

I respectfully recommend that the Public Utilities Commission deny the permit for the Prevailing Wind Park, LLC project.

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