

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

IN THE MATTER OF THE	*	APPLICANT’S ANSWER TO THE
APPLICATION BY PREVAILING WIND	*	APPLICATION FOR PARTY
PARK, LLC FOR A PERMIT FOR A	*	STATUS OF KELLI PAZOUR
WIND ENERGY FACILITY IN	*	
BON HOMME, CHARLES MIX, AND	*	
HUTCHINSON COUNTIES,	*	
SOUTH DAKOTA, FOR PREVAILING	*	EL18-026
WIND PARK ENERGY FACILITY	*	

INTRODUCTION

Prevailing Wind Park, LLC (“Applicant”), submits this Answer to the Application for Party Status of Kelli Pazour. On August 28, 2018, Kelli Pazour submitted, but did not serve, an Application for Party Status.¹ The deadline for applications for party status was July 30, 2018. Ms. Pazour’s Application for Party Status is untimely. Applicant respectfully requests that the South Dakota Public Utilities Commission (“Commission”) deny Ms. Pazour’s Application for Party Status. Further, because the evidentiary hearing is scheduled to begin on October 9, 2018, Applicant respectfully requests that the Commission make a determination regarding this matter on an expeditious basis.

LEGAL STANDARD

SDCL 49-41B-17(3) provides that a person may become a full party to a proceeding “if timely application therefore is made as determined by the commission pursuant to rule.” Pursuant to ARSD 20:10:22:40, an application for party status “shall be filed within 60 days from the date the facility siting application is filed.”

¹ The intervention petition was required to be served on parties pursuant to ARSD 20:10:01:15.02. Because the petition was not served, the 15-day time period to answer set forth in ARSD 20:10:01:15.04 has not commenced.

A late filed petition to intervene may be granted “if granting the intervention will not unduly prejudice the rights of other parties to the proceeding or if denial of the petition is shown to be detrimental to the public interest.” ARSD 20:10:01:15.02 (emphasis added).

ANALYSIS

Ms. Pazour’s untimely Application for Party Status should be denied because it would unduly prejudice the rights of other parties to the proceeding and denial of the petition is not detrimental to the public interest. Applicant submitted its application for the Prevailing Wind Park Project (“Project”) on May 30, 2018. Pursuant to ARSD 20:10:22:40 and the Commission’s June 1, 2018 Notice of Application, Order for and Notice of Public Input Hearing, and Notice of Opportunity to Apply for Party Status (“June 1, 2018 Order”),² the deadline to submit applications for party status was July 30, 2018.

Ms. Pazour had notice of the deadlines set forth in the Commission’s June 1, 2018 Order, as evidenced by her oral and written comments at the public input hearing on July 12, 2018.³ Further, the Application form submitted by Ms. Pazour clearly states: “[c]onsistent with SDCL 49-41B-17 and ARSD 20:10:22:40, this application must be filed with the Public Utilities Commission within 60 days from the date the application was filed, unless the deadline is extended by the Commission.” The Commission did not extend the deadline.

Ms. Pazour submitted her Application for Party Status nearly a month after the July 30, 2018 deadline for timely intervention. Ms. Pazour provided no explanation for her untimely Application.

² In its June 1, 2018 Order, the Commission ruled that “[a]pplications for party status must be received by the Commission on or before 5:00 P.M. CDT on July 30, 2018.” (emphasis in original).

³ Public Input Hearing Comments by Kelli Pazour (July 12, 2018), <https://puc.sd.gov/commission/dockets/electric/2018/EL18-026/Pazour.pdf>; Pub. Hrg. Tr. at 65-67 (July 12, 2018).

Applicant supports public participation throughout these processes; however, the deadline for applications for party status established by Commission Rule (ARSD 20:10:22:40) and the Commission's June 1, 2018 Order must be adhered to. Failure to do so would render the Commission's Rule and June 1, 2018 Order meaningless, not only as applied to Ms. Pazour, but also to others who may seek to submit similarly untimely applications. The evidentiary hearing is scheduled to be on October 9, 2018. Granting Ms. Pazour's untimely Application for Party Status would unduly prejudice the rights of other parties to the proceeding due to the limited time available for data requests and filing rebuttal testimony. Accordingly, Ms. Pazour's untimely Application for Party Status should be denied.

Further, meaningful participation in these proceedings by interested members of the public can and does routinely occur without the necessity of formal party status. In this case, Ms. Pazour submitted oral and written comments at the public input hearing and is expected to testify at the evidentiary hearing as a lay witness for Intervenors.⁴ Therefore, denial of an untimely Application for Party Status is not detrimental to the public interest.

CONCLUSION

For the reasons set forth above, the Commission should deny Ms. Pazour's Application for Party Status. Applicant respectfully requests that the Commission make a determination regarding Ms. Pazour's untimely Application for Party Status on an expedited basis.

⁴ See Intervenors' Disclosure of Lay Witnesses.

Dated this 14th day of September, 2018.

By /s/ Lisa M. Agrimonti
Mollie M. Smith
Lisa A. Agrimonti
FREDRIKSON & BYRON, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Phone: (612) 492-7270
Fax: (612) 492-7077
Attorneys for Prevailing Wind Park, LLC

64834955