

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

---

**IN THE MATTER OF THE  
APPLICATION OF DEUEL HARVEST  
WIND ENERGY LLC FOR A PERMIT  
OF A WIND ENERGY FACILITY AND  
A 345-KV TRANSMISSION LINE IN  
DEUEL COUNTY**

**APPLICANT’S RESPONSE TO  
INTERVENOR CHRISTINA  
KILBY’S MOTION TO COMPEL  
DEUEL HARVEST’S RESPONSES AND  
PRODUCTION OF DOCUMENTS**

**EL18-053**

---

\*

**INTRODUCTION**

Deuel Harvest Wind Energy LLC (“Deuel Harvest”) submits this Response to Intervenor Christina Kilby’s Motion to Compel Deuel Harvest’s Responses and Production of Documents (“Motion”). Since the filing of the motion on April 3, 2019, Deuel Harvest and Ms. Kilby have resolved the majority of the requests subject to Ms. Kilby’s Motion. Only six data requests remain in dispute. Deuel Harvest addresses each of the requests below. Deuel Harvest’s initial responses to Ms. Kilby’s requests are shown with a gray background.

**LEGAL STANDARD**

SDCL 15-6-26(b) sets for the scope of discovery:

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

- (1) In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in § 15-6-26(a) shall be limited by the court if it determines that:

(A)(i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(iii) discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy limitations on the party's resources, and the importance of the issues at stake in the litigation.

\* \* \*

## RESPONSE TO MOTION

**1-7) Produce all written communications, electronic or otherwise, between Deuel Harvest, its affiliates, agents or sub-contractors and any Deuel County official or employee in the last 12 years.**

Lisa Agrimonti: Deuel Harvest objects to this request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, overly broad, and unduly burdensome. In addition, Ms. Kilby has access to electronic communications Deuel Harvest had with Deuel County through her role as *pro hac vice* co-counsel in the Deuel County circuit court appeal, Docket No. 19CIV18-000019.

Deuel Harvest's Response: Deuel Harvest maintains its objections. As noted in the Data Request response, Ms. Kilby has access to communications between Deuel Harvest and Deuel County relating to the Special Exception Permit Application as part of the Circuit Court Appeal—they were provided by the County in the Return to Writ. Considering that securing other required permits and complying with any associated laws and rules is a typical condition of the Commission's orders, Ms. Kilby's claim of relevance based on a broad statement of Deuel Harvest's obligation to comply with all applicable laws and rules does not support her request, particularly considering the breadth of the request.

**1-8) Explain John Knight’s role with the Project, including but not limited to any payment, commission, gift arrangement he has with Deuel Harvest or any of Deuel Harvest’s affiliates, employees, agents, or contractors.**

Lisa Agrimonti: Deuel Harvest objects to this request as not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, Deuel Harvest has not made any payment, gift, or commission to Mr. Knight.

Deuel Harvest’s Response: Deuel Harvest answered this request and does not understand what further information is sought.

**1-45) Did Invenergy disclose the flammable chemicals or flammable materials contained in the wind turbines to the Deuel County Board of Adjustment at the time of Invenergy’s special exception permit application? Provide evidence.**

Lisa Agrimonti: Deuel Harvest objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. *See* response to Request No. 1-44.

Deuel Harvest’s Response: Deuel Harvest maintains its prior objection and response to this Request. What Deuel Harvest included in a prior Special Exception Permit Application in Deuel County is not relevant to this proceeding. Moreover, Deuel Harvest has agreed to supplement Response to Request No. 1-44, which asks “What flammable materials are used in or contained in the turbines”, and Ms. Kilby has access to the prior Special Exception Permit Application. Therefore, Ms. Kilby can discern for herself whether the information was included.

**1-54) Provide all complaints regarding noise, flicker, health complaints, sleep disturbance, or infrasound that has been submitted to Invenergy or any affiliate, or to any employee or agent of Invenergy or any affiliate in the last 12 years.**

Lisa Agrimonti: Deuel Harvest objects to this request as ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Deuel Harvest’s Response: Deuel Harvest maintains its prior objection and response to this Request. The request is ambiguous, overly broad and unduly burdensome. No

definition of “complaint” is provided, and the request seeks information from affiliates, employees, and agents for 12 years. Notwithstanding these objections, Deuel Harvest will provide a list of lawsuits asserting nuisance claims filed against Invenergy entities in the past 10 years.

**1-55) Identify the number of complaints submitted to Invenergy regarding ice being thrown or falling from a turbine. Produce any documents, reports, communications, studies, complaints, or the like related to any such complaint.**

Lisa Agrimonti: Deuel Harvest objects to this request as ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Jacob Baker: Subject to and without waiving those objections, I am aware of one landowner notifying Invenergy of ice throw from a turbine at a Michigan facility.

Deuel Harvest’s Response: Deuel Harvest maintains its objections and response to this Request. No definition of “complaint” is provided, and “or the like” is vague and ambiguous. Deuel Harvest provided a response to this Request from its witness, Mr. Jacob Baker, who has been employed with Invenergy for more than 10 years in operations roles in the Midwest.

**1-58) How many complaints have been made regarding noise caused by any wind energy facility Invenergy or any of Invenergy’s affiliates have ever owned, operated, or otherwise been involved with?**

Lisa Agrimonti: *See* response to Request No. 54.

Deuel Harvest’s Response: This request is duplicative of Request No. 54. Deuel Harvest maintains its objections to Request No. 58 for the same reasons set forth above for Request No. 54 and will provide a list of lawsuits asserting nuisance claims filed against Invenergy entities in the last 10 years.

## CONCLUSION

Deuel Harvest respectfully requests that the Commission deny the Motion in its entirety.

Dated this 9<sup>th</sup> day of April, 2019.

By */s/ Lisa Agrimonti* \_\_\_\_\_

Mollie M. Smith (#4798)

Lisa M. Agrimonti (#3964)

FREDRIKSON & BYRON, P.A.

Attorneys for Applicant

200 South Sixth Street, Suite 4000

Minneapolis, MN 55402

Phone: (612) 492-7000

Fax: (612) 492-7077

66449125.2