

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

**IN THE MATTER OF THE APPLICATION BY DEUEL HARVEST WIND ENERGY LLC
FOR ENERGY FACILITY PERMITS OF A WIND ENERGY FACILITY AND A
345-KV TRANSMISSION LINE IN DEUEL COUNTY, SOUTH DAKOTA
FOR THE DEUEL HARVEST NORTH WIND FARM**

INTERVENOR JON HENSLIN'S POST-HEARING BRIEF

SD PUC DOCKET NO EL18-503

I, Jon Henslin, hereby submit this post-hearing brief requesting that if the Commission approves the Deuel Harvest Wind Energy, LLC's Permit it be approved with the conditions reference below.

The Commission may approve permit applications with conditions. In that case, I respectfully request the commission impose the following condition:

Provide a two-mile eagle nest buffer for all eagle nests located within and in close proximity to the project.

ARGUMENT

Included as part of the permit application for this project was Figure A-3. This figure was an "Environmental Constraints Map". The map identified two bald

eagle nests that were located in the vicinity of the Project site. The map identified a 2-mile bald eagle buffer around those nests.

Andrea Giampoli is the environmental manager who oversees the wildlife and wetlands survey work and permitting for this project. In her pre-filed direct testimony dated November 30, 2018, she responded to the question: “How has Deuel Harvest incorporated the results of the surveys and studies conducted into Project design?” Part of her response included this statement, “Turbines are also sited more than two miles from the nearest known eagle nest.”

At the January 24, 2019 PUC meeting in Clear Lake, Garry Ehlebracht from Goodwin SD presented the following:

“Invenergy’s application includes an Environmental Constraints Map (Figure A-3). The map shows a two-mile buffer around two bald eagle nests. The South Dakota Game, Fish & Parks annually conducts a bald eagle nest survey. The two nests shown on the Environmental Constraints Map are identified in the Game, Fish & Parks survey as being active the past three years. However, that survey also identifies an additional bald eagle nest. That nest is located ¼ mile north of Lake Alice to the north of 172nd Street and East of 478th Avenue. According to the survey this nest was used in 2016, 2017 and 2018. The survey results at this site recorded one fledgling in 2016, three fledglings in 2017 and two fledglings in 2018. Turbines will need to be moved to provide the two-mile bald eagle nest buffer. The three bald eagle nesting sites are the only known active sites in Deuel County. Attached you will find the 2016 thru 2018 survey reports for this additional nest.”

Invenergy’s response to the identification of an additional eagle nest located within the project area, is contained in Andrea Gaimpoli’s pre-filed supplemental direct testimony dated February 14, 2019.

The response shed a lot of light on the bald eagle issue. Siting turbines more than two-miles from bald eagle nests no longer applied. The two-mile buffer shown on the Environmental Constraints Map (Figure A-3), only “illustrated” the distance between the nests known at the time and the Project Area.

The document also noted that in February 2018, the USF&W shared with them that a landowner had brought to their attention that there may be an eagle nest

north of Lake Alice. They reviewed the SDGFP Natural Heritage Program response from 2016 as part of “due diligence”. Requesting updated information on the SDGFP Natural Heritage Program would be “due diligence”, not revisiting old data. They reviewed the results of their two years of nest surveys and considered that due diligence. However, they must not have reviewed the two years of the large bird use data that they had obtained. For that data showed the highest use corresponded accurately to where the bald eagle nest was located. Due diligence would have easily located the bald eagle nest. It is readily visible in the field from multiple directions.

The Supplemental Testimony discussed recommended disturbance setbacks. The Supplemental Testimony stated: “The National Bald Eagle Management Guidelines (USFWS – 2007) recommend that human activities visible from bald eagle nests be kept at least 201 meters (660 feet) away to minimize disturbance to nesting eagles. That recommendation is found under the section entitled “Temporary Impacts”. The recommendations are irrelevant to large wind turbines, with motion, noise and flashing lights. Large wind turbines are not Temporary Impacts. These guidelines do state: “To avoid collisions, site wind turbines, communication towers, and high voltage transmission power lines away from nests, foraging areas, and communal roost sites.”

The Supplemental Testimony also identified the South Dakota Bald Eagle Management Plan. The plan recommended a ½-mile buffer zone around active bald eagle nests during the nesting season on SDGFP managed land (February-August). The Buffers and Use Restrictions in this document were for SDGFP managed lands and are seasonal in nature. The ½-mile buffer zone would be inadequate for large wind turbines.

In the supplemental testimony Deuel Harvest stated that they would voluntarily apply a 2,625 ft. setback from the nest to the nearest turbine. A 2,625 ft. buffer contains only 6.2% of the area contained in a 2-mile buffer. The proposed setback is not adequate.

On March 11, 2019 I spoke with Natalie Gates, biologist USF&W. She was aware of the nest by Lake Alice from a conversation with Deuel Harvest. We discussed the site and locations of the turbines in relation to the nest. I told her that I felt a

2625 ft setback, when there are 18 turbines within two miles of the nest, is not adequate. She agreed.

I encourage the Commissioners require Deuel Harvest relocate wind turbines in order to provide the 2-mile eagle nest buffer that they originally committed to.

Respectfully,

Date 05/07/2019

/s/ Jon Henslin

Jon Henslin

Intervenor

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