

---

**From:** PUC

**Sent:** Thursday, September 5, 2019 10:37 AM

**To:** [REDACTED] [REDACTED]

**Subject:** EL19-027

Mr. Hubner,

I hope this letter finds you well. This is a frank letter in response to your latest letter to the commission; however, I want to start out by saying that I respect you and empathize with your position. This letter is written by me and may not reflect the opinions of the commission or other commissioners.

You and I simply do not agree on several of the various items you continually bring up concerning renewable energy and the commission's wind siting process, including the accusations in your latest comments regarding Crowned Ridge II, EL19-027. I respect your right to your views. I empathize with you on having a project located on land bordering your land that you do not want to see, and I understand your disdain for the subsidies that are

■

provided to the wind industry. However, that does not mean that all wind energy is bad or that commissioners should ignore their responsibilities to abide by the laws of South Dakota.

The following are a few points regarding the random accusations in your letter; more points will follow:

- I am aware that applicants often pay for projects and donate funds in the area where they intend to propose a project. This activity is most likely intended to influence local folks; however, it is not illegal. The commission has no jurisdiction over this activity nor should it. I am not favorably influenced by these contributions.
- The exact height of turbines is required to be filed by statute as a part of the application. Yes, this should be provided towards the beginning of the process.
- The commission does not have any influence on federal subsidies.
- A circuit court considered a matter regarding the conflict of interest of which you refer. The court required persons to step down and for the county commission to have different persons temporarily appointed to make the decision regarding the wind applicant's county permit. Yes, there are likely additional conflicts of interest that have not been pursued. In small town rural America most persons will have some relationship with other community members.

I have argued repeatedly, on record, for the commission to reconsider and to reject government actions when there is a conflict of interest. I believe that is a legal responsibility that we must follow. State statute places a responsibility on the PUC. It requires that the project "will not unduly interfere with the orderly development of the region with due consideration given to the views of governing bodies of affected local units of government." This tasks the PUC with ensuring to the best of its ability that the project "will not unduly interfere with the orderly development of the region..." That burden is not lifted by the remainder of the sentence, "...with due consideration given to the views of governing bodies of affected local units of government." The statute states the commission should "...give due consideration..." It does not state that the commission should give complete deference to the local government's decisions. The commission still has the responsibility to provide that the project "will not unduly interfere with the orderly development of the region." It is my opinion that the commission should not accept a permit knowing that it was obtained through an unlawful or conflicted manner. In fact, the very first requirement is that the applicant must "comply with all applicable laws and rules." I take this very seriously, as you must know from my statements on the record.

I am taking the liberty of extended written loquaciousness because I do not understand your apparent hatred towards commissioners, the wind industry, and towards some landowners who

support wind energy. I understand your frustration and dislike for many of the effects that wind turbines bring, but I do not understand your contempt and anger towards everyone who does not completely agree with you. When I have attempted to speak with you regarding these issues, you have continually interrupted me and raised your voice over my attempts to explain. I understand your frustration and even to some extent, your anger. However, those emotions are inhibiting our ability to have a civil discussion, which is something I would greatly appreciate and believe could benefit us both.

My fellow commissioners and I are required to process and rule on all siting permit applications filed with the commission and each of us takes these duties seriously. Despite your accusations, I do not have preconceived notions or a predetermined vote on these or other dockets filed. This is evidenced by the numerous conditions the commissioners discuss, argue, vote to oppose or support, and place as requirements on the wind applicant. These conditions are supported by the evidence gathered during a docket's analysis and evidentiary hearings. Wind dockets create a great deal of work for all involved at the commission, and this is work everyone at the PUC takes very seriously, despite your accusations.

If we were to reject the laws that govern the commission, we would not follow the very oaths we, as commissioners, took when elected to statewide office. The commission must focus on facts and evidence just as a court of law would. Commission decisions must be supported by facts presented as evidence in the docket or at an evidentiary hearing, otherwise the decision would be overturned in a circuit court or by the Supreme Court.

The meeting you refer to in your latest letter was a public input meeting. It was not an evidentiary hearing. The discussions and presentations do not qualify as evidence. The commissioners may use some of the statements by the public to ask questions during the docket's review and at the evidentiary hearing, and may create some evidence as a result of the answers to questions. I explained that at both the beginning and end of the input meeting.

There are rules of law that the commission must follow such as:

- Clippings from newspapers or magazines cannot be used as evidence unless the creator of the information can be presented to testify before the commission and answer questions from the opposing side. An example of this would be if an article stated that Mr. Scientist found that infrasound causes harm to humans. That article could not just be entered into the record. Mr. Scientist or another expert would have to appear to testify to that.
- The news clipping may not be used because it is hearsay.
- Mr. Reporter's testimony as to Ms. Professor's statements and Ms. Researcher's study would be hearsay.
- Ms. Professor's testimony might be hearsay or admissible depending upon her background and expertise in the subject matter.
- Ms. Researcher's testimony would be admissible because she actually conducted the research.

Generally speaking, lay persons (non-experts) may not testify as to what others have said in order to support their own position because it is considered hearsay.

When the commission receives conflicting evidence, the commission must weigh that evidence and base the final decision on the strongest and most reliable evidence in the record. Commissioners are not legislators and cannot base decisions on personal feelings.

We all know some folks will welcome a siting project with open arms, and some will see the same project as their greatest enemy. However, as commissioners, we must keep our focus on the laws that govern the commission, as enacted by the South Dakota Legislature. If you believe that those laws are improper, then you should focus on changing them through the state legislature. You and I might even find ourselves on the same page on that issue one day.

My hope is that you and I will be able to sit together and have a respectful and civil discourse in the future. However, that cannot happen when a person, overcome with anger, is shouting down, calling names, making false statements or refusing to listen to the other person.

Your comments and my response will be posted in the Crowned Ridge II docket.

Chairman Gary Hanson  
South Dakota Public Utilities Commission  
[www.puc.sd.gov](http://www.puc.sd.gov)