

RM05-001

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SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION

November 11, 2005

South Dakota State Utilities Commission  
State Capitol  
500 East Capitol  
Pierre, SD 57501-5070

SD Public Utilities Commission:

In response to the South Dakota Public Utilities Commission's Notice of Public Hearing to Adopt Rules, docketed September 28, 2005, regarding wind energy facilities, we submit the following comments for your consideration:

1. Page 2; Section 20:10:22:01 (6): The language in the definition referring to "...the area immediately adjacent to ..." should be more specific. As written, it allows broad interpretation which could pose significant potential for future litigation.  
A suggested revision:  
"Wind Energy Site," the site of the wind energy facilities and the areas directly impacted by the facilities, defined as the area within the fall distance of the highest point of any of the facility's equipment, within the boundaries of the access roads and within the right of way for the local distribution system constructed for the facility up to the point of delivery of the wind energy to the local electrical grid. (Note: Since a common spacing between wind turbines is 5 rotor diameters, an alternate definition to 'fall distance' for the immediate area at each turbine might be defined as 'within 2 1/2 rotor diameters' for any turbine.)
2. Page 4; Section 20:10:22:05. The second paragraph requires a list of all permits and notifications needed. A procedure to address the consequences of inadvertently omitting a permit or notification, despite a good faith effort by the applicant, should be included.
3. Page 4; Section 20:10:22:12 (3): Suggested edit "... proposed plant, wind project site..."
4. Page 4; Section 20:10:22:12: Second to last line: "affect" should be "effect".
5. Page 5; Section 20:10:22:15 First two paragraphs: Suggest the term "wind energy site" in lieu of "wind energy"
6. Page 7: Section 20:10:22:30: First paragraph: Presumably this section was originally intended to require applicants to explore energy resources that are more environmentally benign. Historically, wind energy has been considered an alternative energy resource. Adding wind energy in this section raises a question of what is the alternative resource to an alternative resource. Given the obvious environmental benefits of wind energy and the cost and effort required for the studies necessary to meet the requirements of this section, it is suggested that wind energy not be added to this section.

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7. Page 8: Section 20:10:22:33:01: The criteria by which applicants will be judged should be defined. For instance, an applicant with an investment grade credit rating by a nationally recognized rating agency should be assumed to be adequately capitalized
  
8. Page 8: Section 20:10:22:33:02 (4): Establishing large setback distances from property lines could severely limit the development of wind energy. As an example, some public entities have specified as much as 5 rotor diameters. If surrounding land is owned by others, such a requirement effectively limits large modern turbine to a very limited location at the center of a quarter-section. Additionally, in many cases, the center of that quarter-section may not be feasible due to topography. Large setback requirements also set up adjacent landowners in a "veto" position on most projects. In these cases, the adjacent landowner could leverage that "veto" power into inequitable sharing of wind payments. Additional study and analysis of this subject is strongly recommended. Methods of equitable sharing of wind rights among adjacent landowners need to be developed before establishing regulatory setback requirements.

Sincerely,



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Manager of Member Marketing

rrr:mev

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