

September 14, 2018

**VIA ELECTRONIC FILING**

Ms. Patricia Van Gerpen  
Executive Secretary  
South Dakota Public Utilities Commission  
500 E Capitol Ave  
Pierre, SD 57501-5070

**RE: In the Matter of the Application by Prevailing Wind Park, LLC for a Permit of a Wind Energy Facility in Bon Homme County, Charles Mix County and Hutchinson County, South Dakota, for the Prevailing Wind Park Project Docket EL18-026**

Dear Ms. Van Gerpen:

In connection with the above-referenced matter, enclosed please find the following documents:

1. Applicant's Answer to the Application for Party Status of Kelli Pazour; and
2. Certificate of Service.

If you have any questions, please let me know.

Sincerely,

*/s/ Lisa Agrimonti*

Lisa Agrimonti  
*Attorney at Law*  
**Direct Dial:** 612.492.7344  
**Email:** lagrimonti@fredlaw.com

Enclosures

cc: Certificate of Service/Service List (*via e-mail*)

Attorneys & Advisors  
main 612.492.7000  
fax 612.492.7077  
fredlaw.com

Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, Minnesota  
55402-1425

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

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

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**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.<sup>1</sup> 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.”

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<sup>1</sup> 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”),<sup>2</sup> 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.<sup>3</sup> 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.

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<sup>2</sup> 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).

<sup>3</sup> 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.<sup>4</sup> 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.

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<sup>4</sup> 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

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

**IN THE MATTER OF THE  
APPLICATION BY PREVAILING  
WIND PARK, LLC, FOR A PERMIT  
OF A WIND ENERGY FACILITY IN  
BON HOMME COUNTY, CHARLES  
MIX COUNTY AND HUTCHINSON  
COUNTY, SOUTH DAKOTA, FOR  
THE PREVAILING WIND PARK  
PROJECT**

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**CERTIFICATE OF SERVICE**

**EL18-026**

Bridget Duffus, of Fredrikson & Byron, P.A., hereby certifies that on the 14th day of September, 2018, true and correct copies of the following documents were served electronically on the persons listed below:

1. Applicant’s Answer to the Application for Party Status of Kelli Pazour; and
2. Certificate of Service.

Ms. Patricia Van Gerpen Executive Director South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 patty.vangerpen@state.sd.us	Ms. Kristen Edwards Staff Attorney South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 Kristen.edwards@state.sd.us
Ms. Amanda Reiss Staff Attorney South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 amanda.reiss@state.sd.us	Mr. Darren Kearney Staff Analyst South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 darren.kearney@state.sd.us
Mr. Jon Thurber Staff Analyst South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 jon.thurber@state.sd.us	Ms. Mollie Smith - Representing: Prevailing Wind Park, LLC Fredrikson & Byron, P.A. 200 S. 6th St., Ste. 4000 Minneapolis, MN 55402 msmith@fredlaw.com
Ms. Bridget Canty - Representing: Prevailing Wind Park, LLC Permitting Project Manager sPower 201 Mission St., Ste. 540 San Francisco, CA 94105	Ms. Lisa M. Agrimonti - Representing: Prevailing Wind Park, LLC Fredrikson & Byron, P.A. 200 South Sixth Street, Suite 4000 Minneapolis, MN 55402-1425 lagrimonti@fredlaw.com

bcanty@spower.com	
Ms. Tamara Brunken Auditor Bon Homme County PO Box 605 Tyndall, SD 57066 Tamara.Brunken@state.sd.us	Ms. Diane Murtha Auditor Hutchinson County 140 Euclid, Rm. 128 Olivet, SD 57052 auditor@gwtc.net
Ms. Sara Clayton Auditor Charles Mix County PO Box 490 Lake Andes, SD 57356 sclayton@charlesmixcounty.org	Mr. Reece M. Almond - Representing: Gregg C. Hubner, Marsha Hubner, Paul M. Schoenfelder and Lisa A. Schoenfelder Davenport, Evans, Hurwitz & Smith LLP 206 W. 14th St. PO Box 1030 Sioux Falls SD 57101-1030 <a href="mailto:ralmond@dehs.com">ralmond@dehs.com</a>
Ms. Marsha Hubner 29976 - 406th Ave. Avon, SD 57315-5446 mjhubner@gmail.com	Mr. Paul M. Schoenfelder 40228 - 296th St. Wagner, SD 57380 PAULLISA5@msn.com
Ms. Lisa A. Schoenfelder 40228 - 296th St. Wagner, SD 57380 PAULLISA5@msn.com	Mr. Keith Mushitz Chairperson Charles Mix County Commission PO Box 490 Lake Andes, SD 57356 sclayton@charlesmixcounty.org
Ms. Karen D. Jenkins 28912 - 410th Ave. Tripp, SD 57376 jenkinskd55@gmail.com	Mr. Sherman Fuerniss 40263 293rd St. Delmont, SD 57330 sol@midstatesd.net
Mr. Gregg C. Hubner 29976 - 406th Ave. Avon, SD 57315-5446 gregghubner@gmail.com	Ms. Jennifer Bell Senior Environmental Scientist Burns & McDonnell Engineering Company, Inc. 9785 Maroon Circle, Ste. 400 Centennial, CO 80112 jbell@burnsmcd.com
Ms. Kelli Pazour 29668 402nd Ave. Wagner, SD 57380 kepazour@hotmail.com	

/s/ Bridget Duffus  
Bridget Duffus