

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 Motion to Exclude Lay Testimony, to Quash Subpoenas and to Require Further Disclosures, with attachments; 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

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

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**APPLICANT’S MOTION TO
EXCLUDE LAY TESTIMONY, TO
QUASH SUBPOENAS AND TO
REQUIRE FURTHER LAY
DISCLOSURES**

EL18-026

INTRODUCTION

Prevailing Wind Park, LLC (“Prevailing Wind Park” or “Applicant”) submits this Motion to Exclude Lay Testimony, to Quash Subpoenas and to Require Further Disclosures (“Motion”).

As discussed further below, lay testimony relating to local land use decision-making processes should be excluded, and the subpoenas relating to local land use decision-making processes should be quashed to ensure the contested case proceeding focuses on admissible evidence that is probative of the material issues before the South Dakota Public Utilities Commission (“Commission”) in this docket. The testimony that should be excluded and the subpoenas to be quashed relate to the zoning “processes” in counties within the Prevailing Wind Park Project (“Project”) area. Neither the development of zoning ordinances nor any individual’s “involvement” in such processes is relevant to the criteria for a facility permit under SDCL Chapter 49-41B. Therefore, any testimony about local zoning development should be excluded as irrelevant and immaterial. The four subpoenas issued by the law firm of Davenport, Evans, Hurwitz & Smith, LLP (“Davenport law firm”), attorneys for Intervenor Gregg Hubner, Marsha Hubner, Paul Schoenfelder, and Lisa Schoenfelder (“Intervenors”), on September 7,

2018 also seek documents relating to zoning development and are therefore unreasonable and should be quashed.

Prevailing Wind Park also requests that the Commission require Intervenor to provide additional detail regarding the substance of their lay witnesses' testimony. Intervenor provided only one sentence for each witness in Intervenor's Disclosure of Lay Witnesses ("Disclosure"); this is inadequate information for Prevailing Wind Park to prepare rebuttal testimony due September 26, 2018 and cross-examination at the evidentiary hearing. Prevailing Wind Park requests that the Commission require Intervenor to provide, by no later than noon central time on September 24, 2018, a more detailed summary of the testimony each witness intends to provide at the evidentiary hearing.

Due to the limited time available to prepare rebuttal testimony in response to the requested updated lay witness disclosures, Prevailing Wind Park requests that the Commission hear this Motion on an expedited basis.

FACTUAL BACKGROUND

On September 7, 2018, the Davenport law firm served parties in this docket with copies of subpoenas *duces tecum* for Bon Homme County, Charles Mix County, Hutchinson County and Brian McGinnis, a Community Development Specialist with District III ("Subpoenas").

Attachment A. As of the date of this filing, no proof of service on the subpoenaed parties had been filed on the Commission's electronic docket. All four Subpoenas request:

1. All correspondence the County has had with Brian McGinnis, Ron Hornstra, Roland Jurgens, and any representative of Prevailing Winds, sPower, Prevailing Wind Park, LLC or any other entity involved with the proposed wind energy system currently being proposed in Charles Mix County that is the subject of the above-captioned proceeding.

The Subpoenas further request all meeting minutes and agendas relating to the Project, and documents relied upon by the counties to render any decisions they made on the Project.

The subpoena for Bon Homme County also seeks all documents relating to the county's November 3, 2015 adoption of Article 17 of the Bon Homme County Zoning Ordinance regulating wind energy systems.

On September 10, 2018, Intervenors submitted their Disclosure. The Disclosure identified 17 lay witnesses, including county commissioners from Bon Homme and Charles Mix counties.

LEGAL STANDARDS

Pursuant to SDCL § 1-26-19, “[i]rrelevant, incompetent, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied under statutory provisions and in the trial of civil cases in the circuit courts of this state, or as may be provided in statutes relating to the specific agency, shall be followed.” Evidence may also be excluded “if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” SDCL § 19-19-403.

“The commission on its own motion, or on a motion timely made, may quash a subpoena if it is unreasonable or oppressive, or the commission may require the party on whose behalf the subpoena is issued to pay in advance the reasonable cost of witness fees in accordance with SDCL 15-6-45(c) and of producing the records, books, papers, documents, or tangible things.” ARSD 20:10:01:17.01.

ANALYSIS

I. Motion to Exclude Testimony.

An applicant for a facility permit has a statutorily dictated burden of proof as set forth in SDCL 49-41B-22:

Applicant's burden of proof. The applicant has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

The fourth factor requires the Commission to consider the views of governing bodies of affected local units of government. In the two counties within the Project area that have zoning, i.e., Hutchinson and Bon Homme counties, these governmental entities make their view known through their review and granting of necessary zoning approvals for the Project. In Charles Mix County, which does not have zoning, the County made its views known in the acceptance of the Applicant's affidavit and its August 22, 2018 letter to the Commission. **Attachment B.**

The underlying processes that led each county to enact or not enact zoning regulations are not relevant to the Commission's decision in this docket. How the counties made their decisions regarding the Project are also immaterial to this proceeding and inquiry into their reasoning would amount to a collateral attack on the counties' determinations. The broad net of discovery and proposed layperson testimony Intervenor propose will not inform the record; instead it will detract from the central issues outlined in the factors above and complicate the proceeding with extraneous documentation and commentary.

Applicant requests that the following witnesses be excluded from the evidentiary hearing because their testimony focuses solely on local zoning processes and would therefore be irrelevant and immaterial:

- Gregg Hubner: “Gregg Hubner is expected to testify about his experience with the Bon Homme County Commissioners and Zoning Board about zoning.” (Disclosure, p. 3.)
- Paul Schoenfelder: “Paul Schoenfelder is expected to testify about his experience with Charles Mix County’s zoning efforts.” (Disclosure, p. 3.)
- Charles Mix County Commission Chair Keith Mushitz: “Keith Mushitz is expected to testify about Charles Mix County’s zoning related to wind energy systems and specifically the Project.” (Disclosure, p. 3.)
- Bon Homme County Commission Chair Michael Soukup: “Michael Soukup is expected to testify about Bon Homme County’s zoning related to wind energy systems and specifically the Project.” (Disclosure, p. 3.)
- Brian McGinnis, District III: “Brian McGinnis is expected to testify about his involvement with zoning issues related to the Project and with the pertinent counties’ adoption of zoning regulations and controls.” (Disclosure, p. 3.)

Prevailing Wind Park also requests that the Commission limit the testimony by Sherm Fuerness and Karen Jenkins by excluding any testimony relating to local zoning processes.

II. Motion to Quash Subpoenas.

The Intervenor’s Subpoenas similarly seek documents relating to the zoning processes of Charles Mix, Bon Homme and Hutchinson counties. The documents sought in the Subpoenas include correspondence between individuals and entities who are not parties to this proceeding and the counties, as well as Prevailing Wind Park, LLC.¹ For the reasons noted in above, the zoning development documents and communications requested are not relevant to this proceeding. Moreover, requiring the counties and Mr. McGinnis to respond to the Subpoenas

¹ Prevailing Wind Park, LLC and Prevailing Winds, LLC are not related entities. Prevailing Wind Park, LLC acquired the assets of Prevailing Winds, LLC. Application, p. 2-1.

would be unduly burdensome. The Subpoenas are therefore unreasonable and should be quashed.

III. Motion for Further Lay Disclosures.

When Commission Staff recommended lay witness disclosures in lieu of pre-filed testimony, Prevailing Wind Park agreed with the recommendation because it stated the disclosure would contain a “brief summary of what the witness intends to testify about” and noted the intent was “to make the process less onerous on both participating and non-participating landowners, while preserving the need for all parties to have sufficient information on others’ concerns to be able to address those concerns.” Staff’s Motion for Adoption of Procedural Schedule, p. 2.

The Disclosures that Intervenors provided do not provide the requisite information regarding the subject matter of the testimony or concerns. For example, Vickie May’s disclosure states she, a resident of Lynch, Nebraska, “is expected to testify about her experiences living 1-1/3 miles from the nearest of 200 turbines.” Disclosure, p. 1. Prevailing Wind Park can presume Ms. May will describe concerns because she is a witness for the Intervenors, but there is no information about the type of concerns she has. Similarly, Kevin Andersh’s disclosure states he “is expected to testify about his experience living close to the Beethoven Wind Farm and a registered cemetery on his property.” Disclosure, p. 3. Again, there is no information about what concerns Mr. Andersh may have about the Beethoven Wind Farm, the Project, or the cemetery.

Prevailing Wind Park requests that the Commission require Intervenors to supplement their disclosures to summarize the key points each witness intends to make and to expressly identify the issues of concern. To enable Prevailing Wind Park to respond as necessary to such

disclosures in rebuttal testimony, the Applicant requests that the Intervenor be required to make supplemental disclosures no later than noon central time on September 24, 2018.

CONCLUSION

For the reasons set forth above, Prevailing Wind Park requests that the Commission exclude the proffered testimony relating to county zoning because it is irrelevant and immaterial, and that the Commission quash the Subpoenas as unreasonable. For the lay witnesses who remain as potential witnesses, Prevailing Wind Park requests that the Intervenor be required to supplement their lay disclosure no later than noon central time on September 24, 2018. Prevailing Wind Park reserves the right to make further objections to proffered testimony and witnesses prior to or at the evidentiary hearing.

Dated this 14th day of September, 2018.

By /s/ Mollie M. Smith
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

**BEFORE THE 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**

**SUBPOENA DUCES TECUM
TO BON HOMME COUNTY**

EL 18-026

THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION TO BON HOMME COUNTY,
SOUTH DAKOTA:

Pursuant to SDCL § 15-6-45, you are hereby commanded to produce at the offices of
Davenport, Evans, Hurwitz & Smith, LLP, 206 West 14th Street, Sioux Falls, South Dakota
57104, by September 28, 2018, the following documents for inspection and copying:

1. All meeting minutes and agendas related to the November 3, 2015 amendment to the Bon Homme County zoning ordinances.
2. All documents the County relied upon in adopting the November 3, 2015 amendment to the Bon Homme County zoning ordinances.
3. All correspondence involving the County related to the November 3, 2015 amendment to the Bon Homme County zoning ordinances.
4. All correspondence the County has had with Brian McGinnis, Ron Hornstra, Roland Jurgens, and any representative of Prevailing Winds, sPower, Prevailing Wind Park, LLC or any other entity involved with the proposed wind energy system currently being proposed in Bon Homme County that is the subject of the above-captioned proceeding.
5. All meeting minutes and agendas related to the wind energy system currently being proposed in Bon Homme County that is the subject of the above-captioned proceeding.

As used herein, the term “document” is used in the broadest sense and shall include all originals (and every copy of any original or copy that differs in any way from any original) and all drafts of any tangible items, writings, or recordings of any kind of description, whether handwritten, typed, drawn, printed, or recorded by any physical, mechanical, electronic or electrical means whatsoever, including, without limitation, memoranda, letter or other correspondence, travel logs, service logs, records, papers, notes, reports, appointment books,

diaries, telephone bills and toll call records, contracts, agreements, written memorials of oral communications, advertisements, specifications, blue prints, drawings, sketches, models, molds, graphics, plans, laboratory or engineering summaries, audits, inventories, work papers, profit and loss statements, cash flow statements, financial statements, registrations, licenses, permits, applications, purchase orders, invoices, receipts, photographs, photographic slides or negatives, and all retrievable information in computer or other electronic storage.

“Communication” shall mean and include any discussion, conversation, meeting, conference, correspondence, memoranda, telephone call or message, facsimile transmission, email transmission, or any other form of transmittal of information of any kind.

Alternatively, the information may be mailed or electronically transmitted to Attorney Reece M. Almond at the below address or email address so that it is received in his office by the date and time referenced above.

You are further advised that failure by any person without adequate excuse to obey a subpoena served on that person may be deemed to be in contempt of the Court from which the subpoena is issued.

Issued in the name of the South Dakota Public Utilities Commission, this 7th day of September, 2018.

Dated at Sioux Falls, South Dakota, this 7th day of September, 2018.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



Reece M. Almond

ralmond@dehs.com

206 West 14th Street, P.O. Box 1030

Sioux Falls, SD 57101-1030

Telephone (605) 336-2880

Facsimile (605) 335-3639

*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Intervenor Gregg C. Hubner, Marsha Hubner, Paul M. Schoenfelder and Lisa A. Schoenfelder, certifies that a true and correct copy of the Subpoena Duces Tecum to Bon Homme County was served on September 7, 2018, via email, upon the following persons listed on the South Dakota Public Utilities Commission's docket service list:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Bridget Canty
Permitting Project Manager
sPower
201 Mission St., Suite 540
San Francisco, CA 94105
bcanty@spower.com

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
kristen.edwards@state.sd.us

Ms. Mollie M. Smith
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
msmith@fredlaw.com

Mr. Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us

Ms. Lisa M. Agrimonti
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
lagrimonti@fredlaw.com

Mr. Jon Thurber
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
jon.thurber@state.sd.us

Ms. Jennifer Bell
Senior Environmental Scientist
Burns & McDonnell Engineering Co., Inc.
9785 Maroon Circle, Ste. 400
Centennial, CO 80112
jbell@burnsmcd.com

Ms. Tamara Brunken
Bon Homme County Auditor
PO Box 605
Tyndall, SD 57066
tamara.brunken@state.sd.us

Ms. Diane Murtha
Hutchinson County Auditor
140 Euclid, Rm. 128
Olivet, SD 57052
auditor@gwtc.net

<p>Ms. Sara Clayton Charles Mix County Auditor PO Box 490 Lake Andes, SD 57356 sclayton@charlesmixcounty.org</p>	<p>Mr. Keith Mushitz, Chairperson Charles Mix County Commission PO Box 490 Lake Andes, SD 57356 sclayton@charlesmixcounty.org</p>
<p>Mr. Sherman Fuerniss 40263 293rd Street Delmont, SD 57330 sol@midstatesd.net</p>	<p>Ms. Karen D. Jenkins 28912 – 410th Street Tripp, SD 57356 jenkinskd55@gmail.com</p>
<p>Mr. Gregg C. Hubner 29976 – 406th Avenue Avon, SD 57315-5446 gregghubner@gmail.com</p>	<p>Ms. Marsha Hubner 29976 – 406th Avenue Avon, SD 57315-5446 mjhubner@gmail.com</p>
<p>Mr. Paul M. Schoenfelder 40228 – 296th Street Wagner, SD 57380 paullisa5@msn.com</p>	<p>Ms. Lisa A. Schoenfelder 40228 – 296th Street Wagner, SD 57380 paullisa5@msn.com</p>

Dated this 7th day of September, 2018.

Reece M. Almond

*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

**BEFORE THE 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**

**SUBPOENA DUCES TECUM
TO CHARLES MIX COUNTY**

EL 18-026

THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION TO CHARLES MIX COUNTY,
SOUTH DAKOTA:

Pursuant to SDCL § 15-6-45, you are hereby commanded to produce at the offices of Davenport, Evans, Hurwitz & Smith, LLP, 206 West 14th Street, Sioux Falls, South Dakota 57104, by September 28, 2018, the following documents for inspection and copying:

1. All correspondence the County has had with Brian McGinnis, Ron Hornstra, Roland Jurgens, and any representative of Prevailing Winds, sPower, Prevailing Wind Park, LLC or any other entity involved with the proposed wind energy system currently being proposed in Charles Mix County that is the subject of the above-captioned proceeding.
2. All meeting minutes and agendas related to the wind energy system currently being proposed in Charles Mix County that is the subject of the above-captioned proceeding.
3. All documents the County has relied upon in any decision it has made related to the wind energy system currently being proposed in Charles Mix County that is the subject of the above-captioned proceeding.

As used herein, the term “document” is used in the broadest sense and shall include all originals (and every copy of any original or copy that differs in any way from any original) and all drafts of any tangible items, writings, or recordings of any kind of description, whether handwritten, typed, drawn, printed, or recorded by any physical, mechanical, electronic or electrical means whatsoever, including, without limitation, memoranda, letter or other correspondence, travel logs, service logs, records, papers, notes, reports, appointment books, diaries, telephone bills and toll call records, contracts, agreements, written memorials of oral communications, advertisements, specifications, blue prints, drawings, sketches, models, molds, graphics, plans, laboratory or engineering summaries, audits, inventories, work papers, profit and loss statements, cash flow statements, financial statements, registrations, licenses, permits,

applications, purchase orders, invoices, receipts, photographs, photographic slides or negatives, and all retrievable information in computer or other electronic storage.

“Communication” shall mean and include any discussion, conversation, meeting, conference, correspondence, memoranda, telephone call or message, facsimile transmission, email transmission, or any other form of transmittal of information of any kind.

Alternatively, the information may be mailed or electronically transmitted to Attorney Reece M. Almond at the below address or email address so that it is received in his office by the date and time referenced above.

You are further advised that failure by any person without adequate excuse to obey a subpoena served on that person may be deemed to be in contempt of the Court from which the subpoena is issued.

Issued in the name of the South Dakota Public Utilities Commission, this 7th day of September, 2018.

Dated at Sioux Falls, South Dakota, this 7th day of September, 2018.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



Reece M. Almond

ralmond@dehs.com

206 West 14th Street, P.O. Box 1030

Sioux Falls, SD 57101-1030

Telephone (605) 336-2880

Facsimile (605) 335-3639

*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Intervenor Gregg C. Hubner, Marsha Hubner, Paul M. Schoenfelder and Lisa A. Schoenfelder, certifies that a true and correct copy of the Subpoena Duces Tecum to Charles Mix County was served on September 7, 2018, via email, upon the following persons listed on the South Dakota Public Utilities Commission's docket service list:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Bridget Canty
Permitting Project Manager
sPower
201 Mission St., Suite 540
San Francisco, CA 94105
bcanty@spower.com

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
kristen.edwards@state.sd.us

Ms. Mollie M. Smith
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
msmith@fredlaw.com

Mr. Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us

Ms. Lisa M. Agrimonti
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
lagrimonti@fredlaw.com

Mr. Jon Thurber
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
jon.thurber@state.sd.us

Ms. Jennifer Bell
Senior Environmental Scientist
Burns & McDonnell Engineering Co., Inc.
9785 Maroon Circle, Ste. 400
Centennial, CO 80112
jbelle@burnsmcd.com

Ms. Tamara Brunken
Bon Homme County Auditor
PO Box 605
Tyndall, SD 57066
tamara.brunken@state.sd.us

Ms. Diane Murtha
Hutchinson County Auditor
140 Euclid, Rm. 128
Olivet, SD 57052
auditor@gwtc.net

Ms. Sara Clayton
Charles Mix County Auditor
PO Box 490
Lake Andes, SD 57356
sclayton@charlesmixcounty.org

Mr. Keith Mushitz, Chairperson
Charles Mix County Commission
PO Box 490
Lake Andes, SD 57356
sclayton@charlesmixcounty.org

Mr. Sherman Fuerniss
40263 293rd Street
Delmont, SD 57330
sol@midstatesd.net

Ms. Karen D. Jenkins
28912 – 410th Street
Tripp, SD 57356
jenkinskd55@gmail.com

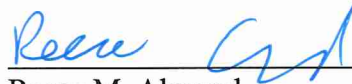
Mr. Gregg C. Hubner
29976 – 406th Avenue
Avon, SD 57315-5446
gregghubner@gmail.com

Ms. Marsha Hubner
29976 – 406th Avenue
Avon, SD 57315-5446
mjhubner@gmail.com

Mr. Paul M. Schoenfelder
40228 – 296th Street
Wagner, SD 57380
paullisa5@msn.com

Ms. Lisa A. Schoenfelder
40228 – 296th Street
Wagner, SD 57380
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Dated this 7th day of September, 2018.



Reece M. Almond

*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

**BEFORE THE PUBLIC UTILITIES COMMISSION
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**SUBPOENA DUCES TECUM
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EL 18-026

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1. All correspondence the County has had with Brian McGinnis, Ron Hornstra, Roland Jurgens, and any representative of Prevailing Winds, sPower, Prevailing Wind Park, LLC or any other entity involved with the proposed wind energy system currently being proposed in Hutchinson County that is the subject of the above-captioned proceeding.
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applications, purchase orders, invoices, receipts, photographs, photographic slides or negatives, and all retrievable information in computer or other electronic storage.

“Communication” shall mean and include any discussion, conversation, meeting, conference, correspondence, memoranda, telephone call or message, facsimile transmission, email transmission, or any other form of transmittal of information of any kind.

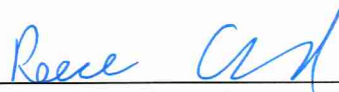
Alternatively, the information may be mailed or electronically transmitted to Attorney Reece M. Almond at the below address or email address so that it is received in his office by the date and time referenced above.

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Dated at Sioux Falls, South Dakota, this 7th day of September, 2018.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



Reece M. Almond

ralmond@dehs.com

206 West 14th Street, P.O. Box 1030

Sioux Falls, SD 57101-1030

Telephone (605) 336-2880

Facsimile (605) 335-3639

*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Intervenor Gregg C. Hubner, Marsha Hubner, Paul M. Schoenfelder and Lisa A. Schoenfelder, certifies that a true and correct copy of the Subpoena Duces Tecum to Hutchinson County was served on September 7, 2018, via email, upon the following persons listed on the South Dakota Public Utilities Commission's docket service list:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Bridget Canty
Permitting Project Manager
sPower
201 Mission St., Suite 540
San Francisco, CA 94105
bcanty@spower.com

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
kristen.edwards@state.sd.us

Ms. Mollie M. Smith
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
msmith@fredlaw.com

Mr. Darren Kearney
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
darren.kearney@state.sd.us

Ms. Lisa M. Agrimonti
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
lagrimonti@fredlaw.com

Mr. Jon Thurber
Staff Analyst
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
jon.thurber@state.sd.us

Ms. Jennifer Bell
Senior Environmental Scientist
Burns & McDonnell Engineering Co., Inc.
9785 Maroon Circle, Ste. 400
Centennial, CO 80112
jbelle@burnsmcd.com

Ms. Tamara Brunken
Bon Homme County Auditor
PO Box 605
Tyndall, SD 57066
tamara.brunken@state.sd.us

Ms. Diane Murtha
Hutchinson County Auditor
140 Euclid, Rm. 128
Olivet, SD 57052
auditor@gwtc.net

Ms. Sara Clayton Charles Mix County Auditor PO Box 490 Lake Andes, SD 57356 sclayton@charlesmixcounty.org	Mr. Keith Mushitz, Chairperson Charles Mix County Commission PO Box 490 Lake Andes, SD 57356 sclayton@charlesmixcounty.org
Mr. Sherman Fuerniss 40263 293rd Street Delmont, SD 57330 sol@midstatesd.net	Ms. Karen D. Jenkins 28912 – 410th Street Tripp, SD 57356 jenkinskd55@gmail.com
Mr. Gregg C. Hubner 29976 – 406th Avenue Avon, SD 57315-5446 gregghubner@gmail.com	Ms. Marsha Hubner 29976 – 406th Avenue Avon, SD 57315-5446 mjhubner@gmail.com
Mr. Paul M. Schoenfelder 40228 – 296th Street Wagner, SD 57380 paullisa5@msn.com	Ms. Lisa A. Schoenfelder 40228 – 296th Street Wagner, SD 57380 paullisa5@msn.com

Dated this 7th day of September, 2018.



Reece M. Almond

*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

**BEFORE THE 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**

**SUBPOENA DUCES TECUM
TO BRIAN McGINNIS**

EL 18-026

THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION TO: Brian McGinnis
Planning & Development/
District III
P.O. Box 687
Yankton, SD 57078

Pursuant to SDCL § 15-6-45, you are hereby commanded to produce at the offices of Davenport, Evans, Hurwitz & Smith, LLP, 206 West 14th Street, Sioux Falls, South Dakota 57104, by September 28, 2018, the following documents for inspection and copying:

All communications and correspondence you have had with Bon Homme County, Hutchinson County, Charles Mix County, Ron Hornstra, Roland Jurgens, and any representative of Prevailing Winds, sPower, Prevailing Wind Park, LLC or any other entity involved with the proposed wind energy system being proposed in Bon Homme, Hutchinson, and Charles Mix Counties, that is the subject of the above-captioned proceeding.

As used herein, the term “document” is used in the broadest sense and shall include all originals (and every copy of any original or copy that differs in any way from any original) and all drafts of any tangible items, writings, or recordings of any kind of description, whether handwritten, typed, drawn, printed, or recorded by any physical, mechanical, electronic or electrical means whatsoever, including, without limitation, memoranda, letter or other correspondence, travel logs, service logs, records, papers, notes, reports, appointment books, diaries, telephone bills and toll call records, contracts, agreements, written memorials of oral communications, advertisements, specifications, blue prints, drawings, sketches, models, molds, graphics, plans, laboratory or engineering summaries, audits, inventories, work papers, profit and loss statements, cash flow statements, financial statements, registrations, licenses, permits, applications, purchase orders, invoices, receipts, photographs, photographic slides or negatives, and all retrievable information in computer or other electronic storage.

“Communication” shall mean and include any discussion, conversation, meeting, conference, correspondence, memoranda, telephone call or message, facsimile transmission, email transmission, or any other form of transmittal of information of any kind.

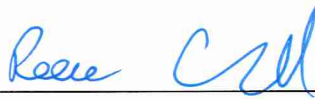
Alternatively, the information may be mailed or electronically transmitted to Attorney Reece M. Almond at the below address or email address so that it is received in his office by the date and time referenced above.

You are further advised that failure by any person without adequate excuse to obey a subpoena served on that person may be deemed to be in contempt of the Court from which the subpoena is issued.

Issued in the name of the South Dakota Public Utilities Commission, this 7th day of September, 2018.

Dated at Sioux Falls, South Dakota, this 7th day of September, 2018.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



Reece M. Almond

ralmond@dehs.com

206 West 14th Street, P.O. Box 1030

Sioux Falls, SD 57101-1030

Telephone (605) 336-2880

Facsimile (605) 335-3639

*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Intervenor Gregg C. Hubner, Marsha Hubner, Paul M. Schoenfelder and Lisa A. Schoenfelder, certifies that a true and correct copy of the Subpoena Duces Tecum to Brian McGinnis was served on September 7, 2018, via email, upon the following persons listed on the South Dakota Public Utilities Commission's docket service list:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@state.sd.us

Ms. Bridget Canty
Permitting Project Manager
sPower
201 Mission St., Suite 540
San Francisco, CA 94105
bcanty@spower.com

Ms. Kristen Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
kristen.edwards@state.sd.us

Ms. Mollie M. Smith
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
msmith@fredlaw.com

Mr. Darren Kearney
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South Dakota Public Utilities Commission
500 E. Capitol Ave.
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200 South Sixth St., Ste. 4000
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jbelle@burnsmcd.com

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Mr. Gregg C. Hubner 29976 – 406th Avenue Avon, SD 57315-5446 gregghubner@gmail.com	Ms. Marsha Hubner 29976 – 406th Avenue Avon, SD 57315-5446 mjhubner@gmail.com
Mr. Paul M. Schoenfelder 40228 – 296th Street Wagner, SD 57380 paullisa5@msn.com	Ms. Lisa A. Schoenfelder 40228 – 296th Street Wagner, SD 57380 paullisa5@msn.com

Dated this 7th day of September, 2018.



Reece M. Almond
*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

**CHARLES MIX COUNTY
STATES ATTORNEY
PO BOX 370
LAKE ANDES, SOUTH DAKOTA 57356
605-487-7441**

August 22, 2018

South Dakota Public Utilities Commission
500 East Capital Ave.
Pierre, SD 57501

RE: APPLICATION BY PREVAILING WIN PARK, LLC FOR A PERMIT OF WIND
ENERGY FACILITY IN BON HOMME COUNTY, CHARLES MIX COUNTY AND
HUTCHINSON COUNTY, SOUTH DAKOTA FOR THE PREVAILING WIND EL 18-026

Dear SDPUC Commission:

This letter is to follow up the phone conversation we had concerning Charles Mix County, SD, and Keith Mushitz's notice of intervening party and the STATE'S FIRST SET OF DATA REQUESTS TO CHARLES MIX COUNTY

As I stated during that phone conversation, Charles Mix County by and through its Commission Chairman, Keith Mushitz, sought to be an intervening party in the above entitled action. In hind sight, I am not sure that was necessary. Applicant has met with the Charles Mix County Commission concerning its project and the concerns of that board. Charles Mix County is presently not zoned. In these meetings, the Applicant listened to the county's concerns about parameters of the project. In the end, Applicant agreed to build the project in Charles Mix County in a manner that reflects the Commission's wishes, i.e., Tower Setbacks, Tower Noise (DB level), Shadow Flickering, etc.. The Applicant signed an Affidavit and provided the Commission with that document which outlines these commitments. A copy of that Affidavit is attached hereto.

Given that, the County's request to intervene was only to provide the SDPUC with notice this agreement, to provide the SDPUC with the parameters of the agreement and to request that the SDPUC consider implementing Charles Mix County parameters in the final permit, if given, to the Applicant.

Thus, Charles Mix County does not plan to take depositions, testify or present witnesses during the application process of Applicant. In fact, Charles Mix County has no intention of attending any of the hearings unless called upon.

Thank you very much for your office's guidance in helping Charles Mix County better understand the Application process.

Sincerely,



Scott J. Podhradsky
Deputy State's Attorney
Charles Mix County

In the Matter of the Prevailing Wind Park Project in Charles Mix County, South Dakota

State of South Dakota)
) SS.
County of Charles Mix)

Affidavit of Peter Pawlowski

Peter C. Pawlowski, Vice President, Wind, Sustainable Power Group, LLC ("sPower") of the City of Salt Lake City, County of Salt Lake, State of Utah, being duly sworn on oath, deposes and states that the proposed Prevailing Wind Park will comply with the following requirements in Charles Mix County, South Dakota ("County"):

1. Prevailing Wind Park, LLC ("Prevailing Wind Park") is proposing to construct a wind energy system and associated facilities in Bon Homme, Charles Mix, Hutchinson and Yankton counties, South Dakota. As noted on its website, Basin Electric Power Cooperative has contracted to purchase the 200 megawatts of energy to be generated by the Project.¹ Up to 23 of the proposed turbines and associated facilities ("Project") would be located in Charles Mix County.
2. Prevailing Wind Park has been working cooperatively with the County to address questions regarding the Project.
3. Prevailing Wind Park is a wholly-owned subsidiary of sPower. In my position as Vice President, Wind, sPower, I am authorized to make commitments on behalf of Prevailing Wind Park.
4. Prevailing Wind Park hereby commits to the County Board of Commissioners that the Project will adhere to the following requirements:

Setbacks.

- (a) Turbine tower distance from currently inhabited rural residence of a nonparticipating landowner shall be not less than three and a half (3.5) times the system height or two thousand feet (2,000) feet, whichever is greater. Turbine tower distance from the residence of the landowner on whose property the tower(s) are erected shall be not less than one thousand (1,000) feet.
- (b) Turbine tower distance from right-of-way of public roads shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater.

¹ <https://www.basinelectric.com/About-Us/Organization/At-a-Glance/>.

- (c) Turbine tower distance from any property line shall be not less than five hundred (500) feet or one point one (1.1) times the system height, whichever is greater, unless a waiver has been obtained from adjoining property owner.

Noise. Noise from the wind turbines will not exceed 43 dBA at any existing nonparticipating residences and 45 dBA at existing participating residences, unless a signed waiver is obtained from the owner of the residence.

Shadow Flicker. Shadow flicker produced by the wind turbines will not exceed 30 hours per year and/or 30 minutes per day at currently inhabited residences of non-participants.

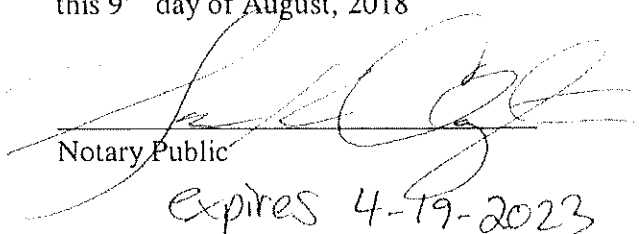
Lighting. The towers shall be lit using an Aircraft Detection Lighting System ("ADLS"), pending Federal Aviation Administration approval. The ADLS is designed to mitigate the impact of nighttime lights by deploying a radar-based system around a windfarm, turning lights on only when low-flying aircraft are detected nearby. The ADLS sends a signal to keep the light off until a plane is detected, then it stops sending the signal and the lights operate normally until the plane leaves the area and the off signal resumes.

Ice Detection. Prevailing Wind Park will use two methods to detect icing conditions on turbine blades: (1) sensors that will detect when blades become imbalanced or create vibration due to ice accumulation; and (2) meteorological data from on-site permanent meteorological towers, on-site anemometers, and other relevant meteorological sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the turbine(s) in icing conditions (per the sensors) or Prevailing Wind Park will manually shut down turbine(s) if icing conditions are identified (using meteorological data). Turbines will not return to normal operation until the control systems no longer detect an imbalance or when weather conditions either remove icing on the blades or indicate icing is no longer a concern. Prevailing Wind Park will pay for any documented damage caused by ice thrown from a turbine

5. Prevailing Wind Park further commits to submitting this affidavit in the proceeding currently pending at the South Dakota Public Utilities Commission, *In the Matter of the Application by Prevailing Wind Park, LLC for a permit of a Wind Energy Facility in Bon Homme, Hutchinson and Charles Mix Counties*, Docket EL18-026.


Peter C. Pawlowski

Subscribed and sworn to before me
this 9th day of August, 2018


Notary Public

Expires 4-19-2023

SEAL
SARA CLAYTON
Notary Public
SOUTH DAKOTA

**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 Motion to Exclude Lay Testimony, to Quash Subpoenas and to Require Further Disclosures, with attachments; 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	Ms. Lisa M. Agrimonti - Representing: Prevailing Wind Park, LLC Fredrikson & Byron, P.A. 200 South Sixth Street, Suite 4000 Minneapolis, MN 55402-1425

San Francisco, CA 94105 bcanty@spower.com	lagrimonti@fredlaw.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 ralmond@dehs.com
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

/s/ Bridget Duffus

Bridget Duffus

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