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THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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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  
EL18-026  
ORIGINAL  
= = = = =  
Transcript of Proceedings  
September 18, 2018  
9:30 a.m.  
= = = = =

BEFORE THE PUBLIC UTILITIES COMMISSION,  
KRISTIE FIEGEN, CHAIRWOMAN  
GARY HANSON, VICE CHAIRMAN  
CHRIS NELSON, COMMISSIONER

COMMISSION STAFF  
Adam de Hueck  
Karen Cremer  
Amanda Reiss  
Greg Rislov  
Joseph Rezac  
Brittany Mehlhaff  
Lorena Reichert  
Eric Paulson  
Patrick Steffensen  
Jon Thurber  
Katlyn Gustafson

A P P E A R A N C E S

Lisa Agrimonti,  
appearing on behalf of Prevailing Wind Park.  
Kelli Pazour,  
appearing pro se.

Reported By Cheri McComsey Wittler, RPR, CRR  
Precision Reporting, 213 S. Main, Onida, South Dakota

1                   The following transcript of proceedings was  
2 held in the above-entitled matter at the South Dakota  
3 State Capitol Building, 500 East Capitol Avenue, Pierre,  
4 South Dakota, on the 18th day of September, 2018,  
5 commencing at 9:30 a.m.

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1           CHAIRWOMAN FIEGEN:  EL18-026, In the Matter of  
2 the Application of Prevailing Wind Park, LLC for the  
3 Permit of a Wind Energy Facility in Bon Homme County,  
4 Charles Mix County, and Hutchinson County, South Dakota  
5 for the Prevailing Winds Park Project.

6           The question before the Commission is shall the  
7 Commission grant late intervention to any person that may  
8 have filed?  Or how shall the Commission proceed?

9           And we will go with the person that is asking  
10 for late intervention first.  You're up.

11          MS. PAZOUR:  Thank you, Madam Chairman.  The  
12 reason I am applying for it is I have been going to the  
13 Charles Mix County Commissioners meetings and informing  
14 them of my concerns --

15          CHAIRWOMAN FIEGEN:  Just wait one second.  We're  
16 having a hard time hearing you, and we do have a court  
17 reporter in the room so we're going to try to turn up our  
18 volume.

19          Just wait one second.  We're going to turn up  
20 our volume, and then we're going to ask you to speak  
21 slowly so the court reporter -- sometimes when she  
22 doesn't get to see your lips it's trickier.

23          So go ahead.

24          MS. PAZOUR:  I have been going to the Charles  
25 Mix County Commission meetings and informing them of my

1 concerns that I have for my daughter. They have been --  
2 they basically told me that they would protect us and do  
3 right by us. I feel because of this and what they are  
4 telling me now, that I have only one choice is to apply  
5 for party status.

6 This is the only way I feel that the PUC can  
7 hear my concerns that I have to protect my daughter's  
8 health. The PUC is the only and final hope I have for  
9 her.

10 CHAIRWOMAN FIEGEN: Thank you. We are going to  
11 go -- do you have anything else, ma'am?

12 MS. PAZOUR: No, I don't, Madam Chairman.

13 CHAIRWOMAN FIEGEN: Thank you. We're going to  
14 go to Prevailing Winds next and then Commission  
15 questions.

16 MS. AGRIMONTI: Good morning, Chair,  
17 Commissioners. Prevailing Wind Park, LLC has submitted  
18 an answer in response to the Motion for Late  
19 Intervention, and we would rely on those papers and are  
20 available for any questions from the Commission.

21 CHAIRWOMAN FIEGEN: Thank you.

22 I just have a quick question for the Intervenor  
23 that is asking for intervention. We have a short time  
24 frame, and we need to make sure we do our work in a very  
25 judicious manner. It was my understanding when I read

1 everything you were at the meeting at Avon -- I think it  
2 was in Avon that we discussed the time frame of  
3 intervention, and you're coming in quite late into the  
4 process.

5 The evidentiary hearing is only days away. Or a  
6 few weeks anyway. I don't understand why you didn't ask  
7 for intervention earlier.

8 MS. PAZOUR: Because the County Commissioners  
9 basically told us that they would protect us and do right  
10 by us. And now all of a sudden they're not. They're not  
11 talking to us. They're not talking to me. Then they're  
12 saying it's too late. I feel this is my only way.

13 CHAIRWOMAN FIEGEN: So did the Commissioners say  
14 that they were going to apply for party status and  
15 intervention? Because I don't know, and the Staff may  
16 correct me, I didn't see that any County Commissioners  
17 are intervening in this docket.

18 MS. PAZOUR: Not that I can see.

19 CHAIRWOMAN FIEGEN: Okay. So they certainly  
20 didn't -- they don't have a voice at the evidentiary  
21 hearing anyway, but people can always make public  
22 comments.

23 Okay. That was my question.

24 Are there other questions of Commissioners?

25 Commissioner Nelson.

1           COMMISSIONER NELSON: For Ms. Pazour, you've  
2 told us that intervention is your only way to protect  
3 your daughter, and yet as I'm looking at the witness list  
4 for the other Intervenors, you're scheduled to testify as  
5 a witness about the unique issues that your daughter has  
6 in relation to this.

7           It looks to me like you're set to be heard. Is  
8 that not correct?

9           MS. PAZOUR: I'm fearful for my daughter, yes.  
10 I don't know what the wind towers could do to her. But  
11 at the same time I want to feel like I did everything I  
12 could to help her if there is an issue.

13          COMMISSIONER NELSON: Yeah. And I certainly  
14 understand that, and it appears that you are set to be a  
15 witness for the other Intervenors in that regard.

16          So thank you.

17          MS. PAZOUR: You're welcome.

18          MS. EDWARDS: This is Kristen Edwards for Staff.  
19 Might Staff be heard on this issue?

20          CHAIRWOMAN FIEGEN: Oh. I am so, so sorry.  
21 Yes.

22          MS. EDWARDS: Thank you. And I apologize. I'm  
23 on the way to Sanford with Abigail so if she starts  
24 making noise in the background, Ms. Reiss has my notes  
25 and can step in.

1           But as we alluded to in our response, Staff is  
2 not taking a position on this issue. I would just like  
3 to add that this really highlights the problem with there  
4 being a limited six months. We're all strapped for time,  
5 and potential intervenors often have only a week to  
6 decide whether they want to join. Whereas, a  
7 transmission docket where we have a year, we're probably  
8 not here having this conversation here today.

9           I spoke to attorney Reece Almond, who is unable  
10 to attend today. But he did communicate to Staff that  
11 his clients take no position. However, he also correctly  
12 pointed out to me this morning the flaw in my assumption  
13 that Ms. Pazour's rights and interests are covered by her  
14 being listed as an intervenor -- or as a witness.

15           As a witness for another party, Ms. Pazour has  
16 no control over whether or not she is actually ultimately  
17 called to testify and, if so, what questions are asked of  
18 her. Those were the only things that he communicated to  
19 me. Again, we take no position, and Staff is available  
20 for questions.

21           Thank you.

22           CHAIRWOMAN FIEGEN: Ms. Edwards, it's that old  
23 age. So just forgive me. Give me grace today. I'm  
24 sorry I didn't ask you right away.

25           Other questions?

1           Or just wait a minute. I had questions so  
2 immediately. Prevailing Winds spoke already. And so  
3 other Commission questions?

4           Commissioner Hanson.

5           COMMISSIONER HANSON: Thank you, Madam Chair.

6           Would you correct me on the pronunciation of  
7 your last name? Is it Pazour?

8           MS. PAZOUR: It is Pazour. Yes, sir.

9           COMMISSIONER HANSON: Thank you.

10          Who will you be appearing for? Who are you  
11 scheduled to appear for as a witness? Is there an  
12 attorney that you have made arrangements with to appear  
13 as a witness?

14          MS. PAZOUR: I think with Greg Hubner.

15          COMMISSIONER HANSON: Okay. So have you met  
16 with him to discuss?

17          MS. PAZOUR: A few times. Yes, sir.

18          COMMISSIONER HANSON: Excuse me.

19          MS. PAZOUR: A few times.

20          COMMISSIONER HANSON: Okay. So you are prepared  
21 to appear as a witness for -- with an attorney?

22          MS. PAZOUR: Yes, sir.

23          COMMISSIONER HANSON: What do you hope to  
24 accomplish as an intervenor that you would not as a  
25 witness?



1 MS. PAZOUR: To tell my story about my daughter.

2 COMMISSIONER HANSON: Can you not accomplish  
3 that as a witness? Wouldn't this be repetitive?

4 MS. PAZOUR: I don't think so.

5 COMMISSIONER HANSON: Do you understand the  
6 responsibilities that you would have as an intervenor?

7 MS. PAZOUR: Yes.

8 COMMISSIONER HANSON: Okay. So someone has  
9 explained that to you?

10 MS. PAZOUR: Yes.

11 COMMISSIONER HANSON: This is really difficult  
12 for me from the standpoint of deciding whether you should  
13 have -- whether you should be an intervenor or not.

14 I'm struggling to see whether -- what additional  
15 options you would have and what this -- I don't want to  
16 deny you the opportunity to participate. At the same  
17 time, this seems redundant to me, and it seems like it  
18 places additional burden on you unnecessarily. So I'm  
19 struggling from that standpoint.

20 I guess if you wish to accept that burden, it's  
21 not up to me to decide whether or not you should have  
22 that right. But I just want you to know why I'm  
23 struggling with this. Do you have anything to comment on  
24 that?

25 I understand you're very, very concerned about

1 your daughter, and you want that to be a part of the  
2 process here for us to consider it. At the same time, it  
3 just seems as if you have all of that opportunity as a  
4 witness.

5 And I can't ask your relationship with the  
6 attorney, whether he's going to ask you the questions you  
7 want to or not. And you shouldn't reply to that part of  
8 my comment. So I'm just struggling with it from that  
9 standpoint.

10 Do you have any last comment for me,  
11 understanding my struggle?

12 MS. PAZOUR: No. I totally understand that.

13 The way I look at things in life is a whole  
14 different story when you have a child with health issues.  
15 You go to bat for them. You understand life is not as  
16 easy or as stepped out for you as you think it should  
17 be.

18 Our new normal is what it is. I mean, I  
19 understand where you're coming from. At the same time, I  
20 understand I have to do what I think is right.

21 COMMISSIONER HANSON: Curiosity. If your  
22 attorney asks you the questions and you go through the  
23 process and you're satisfied with your presentation with  
24 the attorney, would you still see a need to address us at  
25 that time and present additional information?

1 MS. PAZOUR: I believe so.

2 COMMISSIONER HANSON: Okay.

3 MS. PAZOUR: I mean, I can't exactly say yes or  
4 no until I'm put in that situation where I could say  
5 100 percent yes or 100 percent no. It all depends on  
6 what prevails out of it.

7 You see what I'm saying?

8 COMMISSIONER HANSON: I understand. I  
9 understand. I've been there with family and kids too.  
10 Thank you.

11 MS. PAZOUR: You're very welcome.

12 MS. AGRIMONTI: Madam Chair, may I be heard,  
13 please? This is Lisa Agrimonti.

14 CHAIRWOMAN FIEGEN: Commissioner Hanson, do you  
15 have a question of Prevailing Winds?

16 COMMISSIONER HANSON: No. However, in fair  
17 play, Ms. Agrimonti, would you like to respond to my  
18 struggles?

19 MS. AGRIMONTI: Thank you, Commissioner Hanson.  
20 I appreciate it.

21 First I'd like to offer just a couple of  
22 clarifications. Greg Hubner is not an attorney. He is  
23 an individual, and they're represented by the Davenport  
24 law firm. He's one of the Intervenors represented by  
25 that law firm. Just to clarify.

1           With respect to the County, Ms. Pazour has  
2 asserted that she's filing late because of some  
3 statements made by the County which are not in the  
4 record. And I don't believe that, you know, she was  
5 disadvantaged any more than any other person who came to  
6 the public hearing, was advised of the deadlines, and who  
7 timely intervened.

8           And Charles Mix County, the county that she has  
9 stated she has presented her concerns to, is an  
10 Intervenor in the case. They did actually file for  
11 intervention, although I believe their participation is  
12 intended to be limited.

13           I think from Prevailing Winds' perspective, if  
14 Ms. Pazour's issue was raised at the public hearing,  
15 Dr. Roberts has responded to the issues she raised with  
16 respect to her daughter and the hearing aid, and we have  
17 some pretty significant concerns about setting some  
18 reasonable standard for when there's an exception to the  
19 deadline. And in our view there hasn't been an  
20 articulated good, sound basis for why the intervention is  
21 late.

22           We would agree that if this intervention were  
23 timely filed, that Ms. Pazour's application should have  
24 been granted, but it's really the delay that we're  
25 focused on.

1           COMMISSIONER HANSON: So I do have a question.  
2           You just stated that if it were timely -- if it  
3 were registered on a timely basis, then you would accept  
4 it as valid.

5           MS. AGRIMONTI: Yeah. I -- yes, Commissioner  
6 Hanson.

7           COMMISSIONER HANSON: Okay. Thank you.

8           MS. AGRIMONTI: I believe that she is somebody  
9 in the project area who is affected and has articulated a  
10 basis to be a party if it had been timely presented.

11          COMMISSIONER HANSON: Thank you. Thank you,  
12 Madam Chair.

13          CHAIRWOMAN FIEGEN: Thank you.

14          It certainly is a dilemma. Ms. Pazour, you want  
15 to -- you know, we want to make sure that we're public --  
16 at the Public Utilities Commission we did offer everybody  
17 an opportunity in the project area to speak to us at a  
18 public input meeting. And at that time we asked for  
19 intervention opportunities, and you could apply for party  
20 status. Yeah. We did grant those August 9.

21          We are so far along in this docket and so close  
22 to an evidentiary hearing. I struggle. It would be  
23 different if the party had a mailing issue and wasn't  
24 noticed, was out of town, and never got the notice. That  
25 would be different. That's not the case here.

1           And so I'm going to ask the Staff to clarify --  
2 I know you said you're not taking a position, but we're  
3 so close to the evidentiary hearing, and I -- I forgot  
4 that Charles Mix County actually was an intervenor so  
5 that's my mistake. But do you have anything to clarify  
6 on the discussion we've had this morning?

7           MS. REISS: Yes, Madam Chair.

8           If I might, there's been a lot of discussion  
9 about the Intervenors' attorney and Ms. Pazour being  
10 listed as a witness. And just to clarify, Mr. Almond  
11 does represent a number of the Intervenors; however, he  
12 is not an attorney for Ms. Pazour.

13           She is listed as a witness at this point;  
14 however, the Intervenors may or may not call her, based  
15 on whether they believe that it's a good position to take  
16 or whether they would like to pursue that position. So  
17 just to clarify, at this point Ms. Pazour's not  
18 represented in the case, and despite the procedural  
19 schedule, obviously, we are past discovery time but  
20 Ms. Pazour could potentially be able to participate in  
21 cross-examination as well as preserving her rights to  
22 appeal.

23           Just to put that information out there for the  
24 Commission to consider.

25           Thank you.

1           CHAIRWOMAN FIEGEN: Thank you. And she also can  
2 make any type of comments to the Public Utilities  
3 Commission in writing, in e-mail, in fax up to the day we  
4 vote. So she still has an opportunity for her input to  
5 be heard.

6           Fellow Commissioners, do you have other  
7 questions?

8           Is there a motion?

9           COMMISSIONER HANSON: Madam Chair, in Docket  
10 EL18-026 I move that the Commission grant late  
11 intervention to -- I believe, Ms. Pazour is the only  
12 person who's requested. So I move that we grant  
13 intervention to Kelli Pazour.

14          CHAIRWOMAN FIEGEN: Comments on your motion.

15          COMMISSIONER HANSON: Thank you, Madam Chair.

16          You know, I know we all struggle with this, but  
17 the fact is that this Commission has a history of being  
18 very generous. I won't say liberal, but we are extremely  
19 generous in allowing people late filings on matters where  
20 they are affected.

21          And the fact is that the Applicant has stated  
22 here today that the -- Ms. Pazour is, in fact, affected,  
23 and if it were not for the fact that it were a late  
24 filing, that they would not oppose it.

25          Now that brings us to the last legislative

1 session when the wind industry itself opposed the  
2 opportunity for us to have a one-year process or even a  
3 nine-month process instead of a six-month process. So  
4 had the wind industry not opposed that legislation, we  
5 would not be in this predicament today.

6 And I believe it is unfair to place a citizen of  
7 South Dakota who is affected in a position where they  
8 cannot participate where it is likely that they will not  
9 be able to provide us with input in an evidentiary  
10 hearing.

11 The comments that are sent via e-mail,  
12 et cetera, are certainly considered by us from the  
13 standpoint of being able to ask questions during a  
14 hearing, but they are not evidence. And so from that  
15 perspective, it only seems fair that a South Dakota  
16 citizen should not be excluded from the process when it  
17 is not necessarily their fault.

18 In any other docket she would have been allowed  
19 to participate. So I just can only come to the  
20 conclusion that she's not going to be able to provide her  
21 evidence unless we allow her at this time.

22 I know it's a challenge for the industry as a  
23 result of the timing, but at the same time they are the  
24 ones -- the wind industry is the one that placed us in  
25 this predicament.



1           CHAIRWOMAN FIEGEN: Other comments on the  
2 motion.

3           COMMISSIONER NELSON: I'm going to oppose the  
4 motion.

5           Commissioner Hanson made a lot of statements  
6 that are very true. First, we've got a very long track  
7 record of being very open with interventions. And,  
8 secondly, he makes an absolutely accurate case that the  
9 wind industry in this last session worked very, very hard  
10 to make sure that the six-month time frame remained in  
11 place, which makes it more difficult for citizens to  
12 participate, absolutely.

13           But, by the same token, Ms. Pazour had every  
14 opportunity, just like every other citizen, to comply  
15 with the deadline. She was aware of the deadline and  
16 chose not to file for intervention by that deadline. And  
17 so I can't place the burden simply on the wind industry.  
18 I think it's to be shared.

19           And given the short time frame that we've got  
20 and how late we are in the process, I don't think it's  
21 appropriate to allow this late intervention.

22           CHAIRWOMAN FIEGEN: This is certainly a  
23 difficult situation because I'm very frustrated that we  
24 only have a year to do discovery, evidentiary hearing, a  
25 public input hearing, all of that. Or six months.

1 Sorry. Six months. And we don't have a year. So that's  
2 frustrating.

3 I do believe Prevailing Winds -- it's difficult  
4 because she would have been given intervention if she  
5 would have asked earlier. In testifying could she get  
6 all her information out? Maybe.

7 It appears to me Prevailing Winds has addressed  
8 this matter and has somebody to address it, and so I  
9 don't know if they will be overly harmed if they allow  
10 this in.

11 The difficulty is we need a year to do an  
12 evidentiary hearing and public input and testimony and  
13 briefs, and the industry doesn't believe that. And this  
14 is a great example of how it becomes very difficult.

15 Other discussion on the motion.

16 All in favor say aye. Opposed, nay.

17 Commissioner Nelson.

18 COMMISSIONER NELSON: Nay.

19 CHAIRWOMAN FIEGEN: Commissioner Hanson.

20 COMMISSIONER HANSON: Aye.

21 CHAIRWOMAN FIEGEN: Commissioner Fiegen votes  
22 aye. Motion carries.

23 (The proceeding is concluded at 10:28 a.m.)

24

25

1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY )

4

5 I, CHERI MCCOMSEY WITTLER, a Registered  
6 Professional Reporter, Certified Realtime Reporter and  
7 Notary Public in and for the State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed  
9 shorthand reporter, I took in shorthand the proceedings  
10 had in the above-entitled matter on the 18th day of  
11 September, 2018, and that the attached is a true and  
12 correct transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 1st day of  
14 October, 2018.

15

16

17

18 /s/ Cheri McComsey Wittler  
19 Cheri McComsey Wittler,  
20 Notary Public and  
21 Registered Professional Reporter  
22 Certified Realtime Reporter

21

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<b>/</b>	<b>allow</b> [3] - 16:21, 17:21, 18:9	<b>behalf</b> [1] - 1:21	<b>clients</b> [1] - 7:11	<b>court</b> [2] - 3:16, 3:21
<b>/s</b> [1] - 19:17	<b>allowed</b> [1] - 16:18	<b>BON</b> [1] - 1:5	<b>close</b> [2] - 13:21, 14:3	<b>covered</b> [1] - 7:13
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<b>2</b>	<b>anyway</b> [2] - 5:6, 5:21	<b>BY</b> [1] - 1:4	<b>Commissioner</b> [9] - 5:25, 8:4, 11:14, 11:19, 13:5, 17:5, 18:17, 18:19, 18:21	<b>DAKOTA</b> [3] - 1:2, 1:6, 19:1
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