

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF BON HOMME)

IN CIRCUIT COURT

FIRST JUDICIAL CIRCUIT

GREGG AND MARSHA HUBNER,

04CIV18-000084

Appellants,
vs.

**SHERMAN FUERNISS, KELLI
PAZOUR, AND KAREN JENKINS’
STATEMENT OF ISSUES ON APPEAL**

SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION;
PREVAILING WIND PARK, LLC;
SOUTH DAKOTA PUBLIC UTILITIES
COMMISSION STAFF;
PAUL AND LISA SCHOENFELDER;
SHERMAN FUERNISS;
KELLI PAZOUR;
KAREN JENKINS; AND
CHARLES MIX COUNTY, SOUTH
DAKOTA,

Appellees.

Sherman Fuerness (“Fuerness”), Kelli Pazour (“Pazour”) and Karen Jenkins (“Jenkins”), by and through their undersigned attorney, and pursuant to SDCL 1-26-31.4, submit this Statement of Issues on Appeal. Fuerness, Pazour and Jenkins respectfully submit that their substantial rights were prejudiced for all of the reasons set forth in the Appellants’ Statement of Issues on Appeal filed on behalf of Gregg and Marsha Hubner dated January 4th, 2019.

In addition, Fuerness, Pazour and Jenkins respectfully submit that their due process rights were substantially violated because they were not permitted to view certain documents that were marked as “Confidential - Attorneys’ Eyes Only”. Specifically, Fuerness, Pazour and Jenkins were not permitted to view documents that were admitted as Exhibits A-34 and A-35 during the testimony of Mr. Scott Creech, construction manager hired by sPower to be the construction manager for Prevailing Winds Park.

Exhibits A-34 and A-35 are a Safety Manual and an Operations Manual, respectfully, from the manufacturer of the turbines that will be used for the project at issue. These documents speak

directly to some of the most relevant issues in this matter, including how the turbines to be used are controlled and operated to prohibit and/or inhibit the occurrence of dangerous conditions. Without the ability to view these documents, Fuerniss, Pazour and Jenkins were not able to adequately cross-examine Mr. Creech and their ability to make and respond to arguments during their post-hearing briefing was substantially prejudiced.

Furthermore, without the opportunity to review these documents, Fuerniss, Pazour and Jenkins cannot determine whether or not the Commissions' findings are erroneous as it relates to its finding that Applicant met its burdens under SDCL 49-41B-22 in proving the facility will comply with all applicable laws and rules, that it 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 area, that it will not substantially impair the health, safety or welfare of the inhabitants and that it 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.

Dated this 18th day of January, 2019.

/s/ Nicholas G. Moser

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CERTIFICATE OF SERVICE

This is to certify that on the 18th day of January, 2019, I filed and served, via the Odyssey system, a true and correct copy of the foregoing ***Sherman Fuerniss, Kelli Pazour and Karen Jenkins Statement of Issues on Appeal*** on the following individual:

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