

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

**IN THE MATTER OF THE
APPLICATION BY DAKOTA RANGE
I, LLC AND DAKOTA RANGE II, LLC
FOR A PERMIT OF A WIND ENERGY
FACILITY IN GRANT COUNTY AND
CODINGTON COUNTY, SOUTH
DAKOTA, FOR THE DAKOTA RANGE
WIND PROJECT**

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**STAFF’S OBJECTION TO
CONFIDENTIAL TREATMENT**

EL18-003

COMES NOW Commission Staff by and through its attorneys of record and hereby files this Objection to Confidential Treatment in the above-captioned siting proceeding. On July 2, 2018, Applicant filed along with its post-hearing brief Recommended Condition 40 and Proposed Finding of Fact 65 Confidential. If a permit is granted and the proposed condition included, the condition and Finding of Fact 65 should not be confidential. The law and public policy do not support confidential treatment in this circumstance. Because of the current status, portions of this filing will be made confidential.

A. Legal Authority

Applicant cited no authority in its brief for why the proffered condition should be confidential or upon what grounds it would be legal to do so.

SDCL 15-6-26(c)(7) and ARSD 20:10:01:39 are the bases for confidential treatment of a filing before the Commission. SDCL 15-6-26(c)(7) provides protections to “trade secret or other confidential research, development, or commercial information”. ARSD 20:10:01:42 places the burden on the filing party to prove that disclosure of the information would result in material damage to its financial or competitive position, reveal trade secret, or impair the public interest.

In order to establish good cause, Applicant must show that disclosure will result in a clearly defined and serious injury. *Bertelsen v. Allstate Ins. Co.*, 2011 SD 13, ¶57, 796 NW2d 685. A broad assertion that injury will result is not sufficient. *Id.*

Even if Applicant were to provide sufficient justification for confidential treatment of its filing, Applicant has provided no authority for the Commission's order being confidential.

B. Argument

[Begin Confidential]

[REDACTED]

[End Confidential]

C. Conclusion

Staff objects to the confidential treatment of these conditions and findings. Staff also notes that the footnote in Applicant's filing alleging that Staff was in agreement with all proposed conditions is in error in that Staff did not agree to Applicant's proposed Conditions 40

¹ EH 428:6-7

and 41. As Stated in our July 2 filing, Staff takes no position on the confidential condition and defers to the landowners on proposed Condition 41.

Dated this 5th day of July 2018.

A handwritten signature in blue ink that reads "Kristen Edwards". The signature is written in a cursive style and is positioned above a solid black horizontal line.

Kristen N. Edwards

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