

**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)**

**MOTION TO COMPEL
DISCOVERY**

EL18-003

Comes Now Staff and hereby files this Motion to Compel requesting the Commission require Applicant to provide copies of the easements sought in discovery by Staff. In support of its Motion, Staff states the following.

1. Applicant objected to Staff’s request for the easements. See Attachment 1.
2. Applicant opened the door to the need for production of these easements when it filed testimony from two easement holders, Alice Moyer and Wade Falk.
3. The easement language is directly relevant to the permit proceeding.
4. Staff needs to evaluate the language to determine:
 - a. Whether it includes any obstacles to a decommissioning condition;
 - b. Whether it limits a landowner’s access to the Commission’s complaint process or any other legal remedy; and
 - c. To verify the fairness of the rebuttal testimony submitted by Alice Moyer and Wade Falk.

SDCL 15-6-26(b) allows for the discovery of any information “relevant to the subject matter involved in the pending action.” *Kaarup v. St. Paul Fire and Marine Ins. Co.*, 436 NW2d 17, 20 (Court holding that the proper standard for ruling on a discovery motion is whether the information sought is relevant to the subject matter involved in the pending action). The Court has stated that statute implies a broad construction of relevancy. *Id.* However, one need not take a broad interpretation of relevancy to determine that a contract detailing landowner rights and the responsibilities of the landowner and company would be relevant to a proceeding in which potential harm to inhabitants is to be addressed. Applicant erased any question of relevance by submitting the following testimony:

Q. Regarding your lease with Dakota Range, do you feel the lease adequately protects your property and your interests? A. Yes.

Falk, Page 2: 16 – 18

Moyer, Page 2:8 – 10

Moyer, Page 1:14 - 21

Q. What is the purpose of your Rebuttal Testimony? A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of Intervenors Teresa Kaaz and Kristi Mogen, who raise concerns regarding the potential impact of the Project on the community and both participating and nonparticipating landowners. Ms. Mogen also notes concerns regarding the fairness of the Project's leases with participating landowners. As a participating landowner, I want to provide my views on the Project, and to address comments regarding the fairness of my lease agreement with Dakota Range.

Falk, Page 1: 17 – 25

Q. What is the purpose of your Rebuttal Testimony? A. The purpose of my Rebuttal Testimony is to respond to the Direct Testimony of Intervenors Teresa Kaaz and Kristi Mogen, who raise concerns regarding the potential impact of the Project on the community and both participating and nonparticipating landowners. Ms. Mogen also notes concerns regarding the fairness of the Project's leases with participating landowners. As a participating landowner, I want to explain the benefits I believe the Project will bring to our entire community, how the Project will bring much-needed aid to participating landowners, such as myself, and my views on the leases and interactions with Dakota Range.

It is patently unfair for Applicant to argue that its lease/easement is fair but refuse to provide, even confidentially, a copy to the party tasked with reviewing the application.

SDCL 15-6-37(a) provides the process for a motion to compel. Staff made a good-faith effort to obtain the necessary information without filing a motion to compel, but faced time

constraints, namely the fact that the refusal to provide the information was received two business days before prehearing motions were due. Knowing the schedule could be an issue, when Staff sent the discovery request, it requested any refusal to provide information be sent to Staff promptly rather than waiting for the expiration of the time to answer. Unfortunately, Applicant chose to wait to respond with its refusal until the final day. Therefore, Staff is in the position of having to file this Motion.

Staff requests Applicant be compelled to provide copies of the easements for Alice Moyer and Wade Falk. Such easements should be provided confidentially.

Dated this 11th day of June 2018.



Kristen N. Edwards
Amanda M. Reiss
Staff Attorneys
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Phone (605)773-3201
Kristen.edwards@state.sd.us

**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**

*
*
*
*
*
*
*
*
*

**APPLICANT’S RESPONSES TO
STAFF’S EIGHTH SET OF DATA
REQUESTS**

EL18-003

Below, please find Dakota Range I, LLC, and Dakota Range II, LLC’s (“Applicant”) Responses to Staff’s Eighth Set of Data Requests.

- 8-1) Refer to the Rebuttal Testimony of Mr. Mark Mauersberger, Page 2, lines 16 – 19, and refer to Slide 24 of the presentation from the Public Input Meeting, second bullet point. Is the statement regarding “qualified/peer-reviewed studies” in the Presentation specific to “environmental studies” as stated in Mr. Mauersberger’s Rebuttal Testimony, or did the presentation include “property” in the statement associated with peer-reviewed studies? Please explain.**

Mark Mauersberger: The reference to “property” in bullet point two on Slide 24 is referencing how Apex uses qualified/peer-reviewed studies and scientific research to design our facilities to minimize impacts to wildlife, people, and property. This bullet point was not specifically referencing property value.

- 8-2) Refer to the Rebuttal Testimony of Mr. Mark Mauersberger, Page 3, Lines 7 – 9. Please provide the specific date that Mr. Muller provided the information, with supporting documentation.**

Mark Mauersberger: Mr. Muller provided a copy of the information on May 4, 2018.

- 8-3) Refer to the Rebuttal Testimony of Mr. Mark Mauersberger, Page 4, Line 27 through Page 5, Line 6. Please provide the proposed zoning ordinance amendment referred by the Codington County Planning and Zoning to the Board of County Commissioners.**

Mark Mauersberger: Attached as Attachment DR 8-3 is a copy of what we understand to be the proposed zoning ordinance amendment referred by Codington County Planning and Zoning to the Board of County Commissioners on April 16, 2018.

8-4) Refer to the Rebuttal Testimony of Mr. Mark Mauersberger, Page 6, Lines 15 - 20.

a) Please explain what the Applicant meant with the response to Commission Staff Data Request 4-1, “The leases do obligate participating landowners to cooperate with Dakota Range to obtain and maintain permits for the Project.”

Mark Mauersberger: The response was meant to indicate that leased landowners have agreed to cooperate with Dakota Range in obtaining and maintaining permits for the Project.

b) Do the easements signed by participating landowners include a provision to waive all setback requirements? If yes, please explain why the Applicant includes that provision.

Mark Mauersberger: Dakota Range’s leases include a provision waiving setback requirements. Such a provision is a standard lease provision in the wind development industry and avoids the necessity of later requesting setback waivers on an individual basis.

8-5) Refer to the Rebuttal Testimony of Mr. Mark Mauersberger, Page 7, Lines 2 - 4. Please provide the distance from Ms. Kaaz’s property line and her residence from proposed turbines 68, 69, and A26.

Mark Mauersberger: The attached map (Dakota Range: Teresa Kaaz Turbine Proximity) shows the distance of the four turbines in closest proximity to Ms. Kaaz’s property line and her residence.

8-6) Are any non-participating residences surrounded by three proposed wind turbines of similar distances away from their residence as Ms. Kaaz (Turbines 67, 68, 69)? If yes, please provide the address of the residence, the proposed turbine numbers, and distance each turbine is away from the residence.

Brenna Gunderson: A response to this request is being provided separately.

8-7) Are any non-participating residences surrounded by four proposed wind turbines of similar distances away from their residence as Ms. Kaaz (Turbines 67, 68, 69, A26)? If yes, please provide the address of the residence(s), the proposed turbine numbers, and distance each turbine is away from the residence.

Brenna Gunderson: A response to this request is being provided separately.

- 8-8) Are any participating residences surrounded by three proposed wind turbines of similar distances away from their residence as Ms. Kaaz (Turbines 67, 68, 69)? If yes, please provide the address of the residence(s), the proposed turbine numbers, and distance each turbine is away from the residence.**

Brenna Gunderson: A response to this request is being provided separately.

- 8-9) Are any participating residences surrounded by four proposed wind turbines of similar distances away from their residence as Ms. Kaaz (Turbines 67, 68, 69, A26)? If yes, please provide the address of the residence(s), the proposed turbine numbers, and distance each turbine is away from the residence.**

Brenna Gunderson: A response to this request is being provided separately.

- 8-10) Refer to the Rebuttal Testimony of Mr. Mark Mauersberger, Page 7, Lines 2 - 12. The Applicant provided the distance from the closest proposed wind turbine to Ms. Kaaz's residence and Ms. Mogen's address.**

- a) Please provide the estimated distance from the closest proposed wind turbine to the Mr. Falk's address identified in his Rebuttal Testimony of 47175 155th Street, Stockholm, SD 57264.**

Brenna Gunderson: Mr. Falk's address is approximately 13 miles away from Turbine A21, and his leased property within the Project Area is approximately 9,892 feet away from Turbine A12.

- b) Please provide the estimated distance from the closest proposed wind turbine to the Ms. Moyer's address identified in her Rebuttal Testimony of 2020 13th Avenue Circle, Watertown, South Dakota.**

Brenna Gunderson: Ms. Moyer's address is approximately 8.5 miles away from Turbine 70 and her leased property within the Project Area is approximately 4,766 feet away from Turbine A22.

- 8-11) Refer to the Rebuttal Testimony of Mr. Falk, Page 2, Lines 9 – 14. Please identify the name and job title of the Dakota Range representatives Mr. Falk has worked with to answer his questions? Which Dakota Range representative(s), including**

name and job title, did Mr. Falk work with to answer his questions regarding his easement?

Wade Falk/Brenna Gunderson: David Lau, Land Agent for Dakota Range.

8-12) Refer to the Rebuttal Testimony of Mr. Falk, Page 2, Lines 16 – 18.

a) Provide a copy of the lease agreement mentioned by Mr. Falk.

Mollie Smith: The lease agreement is, by its terms, confidential and contains the Applicants' proprietary information.

b) Does the lease agreement mentioned by Mr. Falk differ in any material way from the standard agreement used by Dakota Range? If yes, explain.

Mollie Smith: See response to 8-12(a).

c) What specific provisions in the easement did Mr. Falk feel as though protect his property and interests? Please explain.

Wade Falk: I reviewed the entire easement and believe it adequately addresses all issues, including removal of facilities should the Project be decommissioned.

8-13) Did Mr. Falk hire an attorney to review Dakota Range's easement before signing? If so, which attorney did Mr. Falk retain?

Mollie Smith: This request seeks information that is irrelevant and/or outside the scope of this proceeding. It also seeks information potentially protected by attorney-client privilege.

8-14) Refer to the Rebuttal Testimony of Mr. Falk, Page 2, Lines 20 – 22. What were the specific concerns Mr. Falk had about the project, and how were they addressed?

Wade Falk: My primary concern was what would happen with the facilities if the wind farm stopped operating and those concerns were addressed in the easement.

8-15) Refer to the Rebuttal Testimony of Mr. Falk, Page 2, Lines 24 – 29. Mr. Falk states, "To my family, the Project means stability and an additional, stable source of income." How many turbines will Mr. Falk host on his property? Please identify each turbine number in the response.

Mark Mauersberger: Mr. Falk's property is not currently hosting turbines. However, Dakota Range employs a community benefit compensation model. As a result, landowners are paid primarily by the amount of acres they have in the Project, rather than the number of turbines they host.

- 8-16) Refer to the Rebuttal Testimony of Ms. Moyer, Page 2, Lines 4 – 6. Please identify the name and job title of the Dakota Range representatives Ms. Moyer has worked with? Which Dakota Range representative(s), including name and job title, did Ms. Moyer work with to answer her questions regarding her easement?**

Alice Moyer: My primary contacts were Pat Adams and David Lau, both land agents for the Project. They answered my questions about the Project and the easement. I have also talked with Mark Mauersberger about the Project after I granted an easement.

- 8-17) Refer to the Rebuttal Testimony of Ms. Moyer, Page 2, Lines 8 – 10.**

- a) Provide a copy of the lease agreement mentioned by Ms. Moyer.**

Mollie Smith: The lease agreement is, by its terms, confidential and contains the Applicants' proprietary information.

- b) Does the lease agreement mentioned by Ms. Moyer differ in any material way from the standard agreement used by Dakota Range? If yes, explain.**

Mollie Smith: See response to 8-17(a).

- c) What specific provisions in the easement did Ms. Moyer feel as though protect her property and interests?**

Alice Moyer: I believe the easement agreement overall is a fair agreement. In particular, I believe the compensation provisions are fair and overall the easement ensures that my property would be restored if there were any construction activities on my property.

- 8-18) Did Ms. Moyer hire an attorney to review Dakota Range's easement before signing? If so, which attorney did Ms. Moyer retain?**

Mollie Smith: This request seeks information that is irrelevant and/or outside the scope of this proceeding. It also seeks information potentially protected by attorney-client privilege.

- 8-19) Refer to the Rebuttal Testimony of Ms. Moyer, Page 2, Lines 16 – 18. Ms. Moyer states, “For my family, the Project provides additional income and support and means progress toward a better future.” How many turbines will Ms. Moyer host on her property? Please identify each turbine number in the response.**

Mark Mauersberger: Ms. Moyer’s property is not currently hosting turbines. However, Dakota Range employs a community benefit compensation model. As a result, landowners are paid primarily by the amount of acres they have in the Project, rather than the number of turbines they host.

- 8-20) Refer to Docket EL17-055, Pre-filed Exhibits filed by Crocker Wind Farm, LLC, Exhibit A15-7. Please provide a similar constraints map for the Dakota Range Wind Project.**

Brenna Gunderson: The map is being finalized and will be provided as a hearing exhibit.

- 8-21) Referring to Dakota Range’s response to Commission Staff Data Request 2-9, please provide any follow-up communication Dakota Range had with WAPA and identify if the Project was able to address WAPA’s concerns.**

Mark Mauersberger: Dakota Range has reached out to WAPA by e-mail and phone, but to-date, has not received a response from WAPA.

- 8-22) Should the Commission require financial assurance to be provided for decommissioning prior to construction, please provide:**
a) The financial assurance options available;

Brenna Gunderson: Please see Dakota Range’s proposed decommissioning condition.

- b) Dakota Range’s preferred option and justification for that option;**

Brenna Gunderson: Please see Dakota Range’s proposed decommissioning condition.

- c) The amount Dakota Range believes the financial assurance should be set at to cover decommissioning costs, with a supporting work paper to show how Dakota Range derived that amount; and**

Brenna Gunderson: Please see Dakota Range’s proposed decommissioning condition and Appendix I to the PUC Application.

d) The estimated cost of each of the options provided in subpart a based on the amount derived in subpart c.

Brenna Gunderson: The following table identifies the annual cost for carrying a letter of credit for the estimated decommissioning cost of the Project (\$40,000 per turbine x 72 turbines) for the first ten years of Project operations:

Op Year	Security	LC Fees
1	\$2,880,000	\$51,000
2	\$2,880,000	\$51,000
3	\$2,880,000	\$51,000
4	\$2,880,000	\$51,000
5	\$2,880,000	\$58,000
6	\$2,880,000	\$58,000
7	\$2,880,000	\$58,000
8	\$2,880,000	\$59,000
9	\$2,880,000	\$66,000
10	\$2,880,000	\$66,000

8-23) Please provide all applicable sections of Dakota Range’s easement with participating landowners that include decommissioning, abandonment, and restoration obligations.

Brenna Gunderson: Below are the applicable decommissioning/abandonment/restoration provisions:

Effect of Termination. Upon termination of this Agreement, whether as to the entire Property or only as to part, Lessee shall (i) upon written request by Landowner, execute and record a quitclaim deed to Landowner of all of Lessee’s right, title and interest in and to the Property, or to that part thereof as to which this Agreement has been terminated, and (ii) no later than eighteen (18) months thereafter, remove all above-ground Windpower Facilities from the Property or portion as to which this Agreement was terminated in compliance with all applicable governmental permitting and decommissioning requirements exclusive of any continuing right established pursuant to this Agreement to survive the term of this Agreement, and restore the soil surface to a condition reasonably similar to its original condition; provided, however, that unless

otherwise required by applicable law, roads will not be removed unless Landowner delivers written notice to Lessee within thirty (30) days following termination of this Agreement that Landowner wishes for such roads to be removed, which notice shall be in recordable form. If Lessee fails to remove such Windpower Facilities within eighteen (18) months of termination of this Agreement, Landowner may do so, in which case Lessee shall reimburse Landowner for reasonable and actual costs of removal incurred by Landowner, less any salvage value received by Landowner, within thirty (30) days after receipt of an invoice from Landowner.

Indemnity. Lessee will defend, indemnify and hold harmless Landowner against liability for physical damage to property and for physical injuries or death to Landowner, Landowner's property or the public, to the extent caused by Lessee's negligence or willful misconduct during the construction, operation or removal of Windpower Facilities on the Property, except to the extent such damages, injuries or death are caused or contributed to by the negligence or willful misconduct of Landowner or Landowner's tenants, invitees or permittees. The reference to property damage in the preceding sentence does not include any damages to crops (which are governed solely by the provisions of Section 8.7 below) or any losses of rent, business opportunities, profits and the like that may result from Landowner's loss of use of any portions of the Property occupied by, or otherwise attributable to the installation of, Windpower Facilities pursuant to this Agreement. Landowner authorizes Lessee, at Lessee's sole expense, to take reasonable safety and security measures to reduce the risk of damage to the Windpower Facilities or the risk that the Windpower Facilities will cause damage, injury or death to people, livestock, other animals and property, including without limitation, fencing around the perimeter of the Windpower Facilities as Lessee may deem necessary or appropriate to secure or enclose the same, without unduly burdening Landowner's use of the Property.

8-24) How can Dakota Range guarantee the resources necessary for decommissioning and restoration will be available? Please demonstrate.

Brenna Gunderson: Please see Dakota Range's proposed decommissioning condition. Dakota Range has entered into a Purchase and Sale Agreement with Xcel Energy to purchase Dakota Range, and Xcel Energy is an established, financially stable public utility. In the event an entity other than a public utility were to own Dakota Range, Dakota Range has proposed providing financial security for decommissioning prior to commencing operation of the Project, in accordance with its proposed decommissioning condition.

- 8-25) Please explain why Dakota Range has not developed and provided a Bird and Bat Conservation Strategy.**

Dave Phillips: A draft Bird and Bat Conservation Strategy has been developed for the Project. It continues to be revised in coordination with Xcel Energy. Because it is in draft form, Dakota Range has not filed the document in this docket.

- 8-26) Please provide a copy of the USFWS' comments that were attached to an email dated Monday, August 24, 2015 sent from Natalie Gates to Dave Phillips and found in Appendix B.**

Dave Phillips: See Attachment DR 8-26.

- 8-27) Referring to Dakota Range's response to Commission Staff Data Request 5-2, please provide documentation from the USFWS and SD GF&P that they agreed with the setbacks identified in the response if available.**

Dave Phillips: USFWS and SD GF&P both agreed that the environmental setbacks presented during the September 25, 2017, meeting were appropriate to reduce risk to species of concern, as outlined in the meeting summary dated September 29, 2017. Both agencies acknowledged receipt of the meeting summary on October 2, 2017, at which time they provided no additional comments. The acknowledgements were via email on October 2, 2017, from Natalie Gates (USFWS) and Silka Kempema (SD GF&P), both of which are included in the application.

- 8-28) Refer to the Rebuttal Testimony of Brenna Gunderson, Page 1, Line 30 through Page 2, Line 10. What is the Applicant's definition of the current proposed location of a turbine? Is the "current proposed location" defined as the edge of the proposed turbine foundation or center of the proposed turbine foundation? Please define current proposed location so all parties understand the location which 500 feet will be based upon.**

Brenna Gunderson: The "current proposed location" is based on the center of the turbine foundation.

- 8-29) Refer to the Rebuttal Testimony of Brenna Gunderson, Page 2, Line 12 through Page 3, Line 4. Please provide a list of any wind generation projects completed by Apex Clean Energy Holding, LLC, or an associated subsidiary, where turbines were moved during the final micro-siting process. For each project identified, provide how many turbines were moved, how many feet each turbine was shifted, and the**

reason for each shift. Also, provide a list of all wind generation projects completed by Apex Clean Energy Holding, LLC, or an associated subsidiary, where no turbines were shifted during the final micro-siting process.

Brenna Gunderson: See response to DR 7-5. I do not recall any projects on which I have worked where turbines were not shifted during final micro-siting.

8-30) Refer to the Rebuttal Testimony of Brenna Gunderson, Page 3, Lines 12 – 17. For each turbine that needs to be shifted, please provide:

a) The turbine number;

Brenna Gunderson: THIS RESPONSE CONTAINS CONFIDENTIAL INFORMATION:

T34, A12, T63, and T60. Given that shifts of T34 and T63 are proposed to avoid tribal resources, reference to the turbine numbers should remain confidential to not disclose the location of the tribal resources.

b) The number of feet the turbine needs to be shifted; and

Brenna Gunderson: THIS RESPONSE CONTAINS CONFIDENTIAL INFORMATION:

- T34: 115.7 feet east-southeast at SWO request;
- T60: 360.4 feet south at landowner request;
- T63: 420.7 feet south-southeast at SWO request; and
- A12: 13.9 feet north from a hedge row which could be potential bat habitat.

c) The SWO's concern that is being addressed by the shift.

Brenna Gunderson: Stone features and alignments, which are probable Native American cultural sites, were discovered during the field surveys recently completed by Apex, Quality Services, Inc., and the Sisseton Wahpeton Oyate (SWO) Tribal Historic Preservation Office (THPO). By shifting two turbines, these tribal sites would not be disturbed.

Regarding the other three SWO turbine shifts referenced in my Rebuttal Testimony, one of the three turbines was eliminated from the configuration in order to avoid a tribal resource. The other two turbine sites were initially identified as potentially requiring shifts; however, subsequent to my submittal of Rebuttal Testimony, field surveys for tribal resources were completed by the SWO THPO and were determined to be clear of tribal resources.

Two additional non-SWO-related shifts have also been identified, which are discussed in response to 8-30(b).

- 8-31) Did Mr. MaRous provide written and oral testimony in Docket EL17-055, In the Matter of the Application by Crocker Wind Farm, LLC for a Permit of a Wind Energy Facility and a 345 kV Transmission Line in Clark County, South Dakota, for Crocker Wind Farm? If yes, does Attachment “Attachment DR 8-31 – EL17-055 May 11 Transcript.pdf” provide a transcript of Mr. MaRous’ oral testimony on May 11, 2018? If no, please explain.**

Mike MaRous: Yes.

- 8-32) Referring to the Rebuttal Testimony of Mr. Phillips, Page 2, Lines 6-14, please explain how the Commission can fully understand the project’s impacts on landmarks and cultural resources of historic, religious, archaeological, scenic, natural, or cultural significance without being provided the information and recommendations resulting from the work with SWO?**

Dave Phillips: The Project provided a Level III Archeological Inventory Report and an Architectural Survey Report to the PUC and SHPO, which indicated the location of resources warranting protection, all of which are being addressed by Project design. Additionally, the SWO and the Project’s cultural resource contractor (QSI) have completed field surveys to specifically evaluate resources of concern to the tribes. The locations of all sites where avoidance has been requested by the SWO have been provided to the Project, and project facilities are currently being microsited in accordance with the SWO’s input to ensure no impact to these resources. The SWO has indicated that no sites warrant the 75’ setback as described in the CRMMP, but that all identified/agreed upon sites do indeed warrant avoidance of direct disturbance, which is being carefully managed via siting, marking during construction, and ongoing coordination with the SWO.

As specified in previous testimony and consistent with PUC Guideline 8(c), the Project is respecting the confidentiality of these sites and is working closely with the SWO to protect these resources by avoiding disruption. It is the Project’s understanding that both the site forms and report will be provided to the State Archeology Office (SAO) and SHPO once complete.

8-33) Refer to the Rebuttal Testimony of Mr. MaRous, Page 6. Mr. MaRous states, “However, our further research found that \$169,500 is the accurate figure.” Please submit documentation of Mr. MaRous’ further research that shows \$169,500.

Mike MaRous: See Attachment DR8-33.

8-34) Refer to the Rebuttal Testimony of Mr. MaRous, Page 6. Mr. MaRous states, “Again, while Mr. Lawrence accurately reports what is in the public records, my research indicates that the Rathum Loop property has a crawl space.” Please provide documentation of your research that shows Rathum Loop property has only a crawl space.

Mike MaRous: Please see response to DR 8-33, which is incorporated herein.

8-35) Refer to the Rebuttal Testimony of Mr. MaRous, Page 10. Mr. MaRous states, “In my property sales research, I used the Multiple Listing Service (“MLS”); residential online services, including Trulia and Zillow; brokerage research; and public county records. In general, I found South Dakota data to be limited.

Mr. Lawrence’s testimony directed me to Beacon, another source of property sales information for Brookings County. Beacon is a subscription service of which I was not previously aware.” (emphasis added)

- a) **Does Mr. MaRous claim that the Multiple Listing Service did not list the sale of BK1?**
- b) **Does Mr. MaRous claim that the Multiple Listing Service did not list the sale of BK2?**
- c) **Does Mr. MaRous claim that the Multiple Listing Service did not list the sale of BK2.5?**
- d) **Does Mr. MaRous claim that the Multiple Listing Service did not list the sale of BK3?**
- e) **Does Mr. MaRous claim that the Multiple Listing Service did not list the sale of BK4?**
- f) **Does Mr. MaRous claim that the Multiple Listing Service did not list the sale of BK5?**

Mike MaRous: I worked with a local broker who had access to MLS and who at my direction investigated sales from 2015 to 2017. He found no relevant MLS data for the years we surveyed.

Mr. Lawrence identified six property sales in proximity to wind turbines in Brookings, South Dakota. The most recent was in 2016. At the Crocker hearing, EL17-055, I was presented on cross-examination with several documents by PUC Staff counsel Kristen Edwards that appeared to be the MLS listings for the six sales Mr. Lawrence identified. I did not have an opportunity to review the documents in any detail at the hearing. I requested through Dakota Range's attorney Lisa Agrimonti that the documents be obtained from PUC staff counsel. Ms. Agrimonti advised that the request had been made and that Ms. Edwards stated that the documents were not retained and could not be produced.

8-36) Does Dakota Range know how many property values will be impacted (influenced) by the Dakota Range Wind Project? How many homes are in the proximity to the Dakota Range Wind Farm?

Mike MaRous: There are 73 occupied residences within the Project Area. My opinion is the values of these rural residential properties will not be adversely affected by the Project.

8-37) How many South Dakota courthouses did Mr. MaRous personally visit to perform research for the Market Impact Analysis?

Mike MaRous: I visited several courthouses while traveling through the various counties but did not personally meet with any staff. I did have phone conferences with eight South Dakota county assessors.

8-38) Did Mr. MaRous research sales in the Register of Deeds office in Aurora County, Brookings County, Charles Mix County, Day County, Hyde County, or Jerauld County for his Market Impact Analysis? If yes, please identify which counties.

Mike MaRous: I did not go to the Register of Deeds offices as part of my research.

8-39) Did Mr. MaRous research sales in the County Equalization Office in Aurora County, Brookings County, Charles Mix County, Day County, Hyde County, or Jerauld County for his Market Impact Analysis? If yes, please identify which counties.

Mike MaRous: I did not go to the County Equalization offices as part of my research.

8-40) Has Mr. MaRous identified any property sales proximate to wind turbines other than those that were provided by Mr. Lawrence in Aurora County, Brookings

County, Charles Mix County, Day County, Hyde County, or Jerauld County? If yes, please provide.

Mike MaRous: I have not identified any additional proximate sales in South Dakota.

8-41) For each of the sales listed on MaRous Rebuttal Testimony Exhibit 5 (BK1, BK2, BK3, BK4, BK5, and BK7):

a) Did Mr. MaRous personally call the buyer and seller?

Mike MaRous: No. In my experience, sellers and buyers often do not retain long-term memories of sales transactions and can provide inaccurate data. The sales were not recent, e.g. BK-7 is 8 years old and BK-2 and BK-3 occurred 7 years ago. Given the ages of these sales, I concluded that interviewing and or confirming with market participants would not be beneficial to my analysis.

b) Did Mr. MaRous physically visit the property?

Mike MaRous: No. However, I reviewed all properties using aerial imaging on Google Earth, measured distances of turbines to residences and observed the physical characteristics of each site.

c) Did Mr. MaRous research the easements on each property?

Mike MaRous: No.

d) Did Mr. MaRous research the deed and the certificate of real estate value for each property?

Mike MaRous: No. Beacon researches the deed and certificate of real estate value, and I relied on Beacon's information.

8-42) Please identify the distance from Mr. Falk's address listed in his Rebuttal Testimony to the closest turbine hosted on his property.

Brenna Gunderson: See response to DR 8-10.

8-43) Please identify the distance from Ms. Moyer's address listed in her Rebuttal Testimony to the closest turbine hosted on her property.

Brenna Gunderson: See response to DR 8-10.

Dated this 7th day of June 2018.

By /s/ Mollie M. Smith
Mollie M. Smith
Lisa A. Agrimonti
FREDRIKSON & BYRON, P.A.
Attorneys for Applicants
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402
Phone: (612) 492-7270
Fax: (612) 492-7077

**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)**

CERTIFICATE OF SERVICE

EL18-003

I hereby certify that true and correct copies of Staff's Motion to Compel Discovery and Certificate of Service were served electronically to the Parties listed below, on the 11th day of June 2018, addressed to:

Ms. Patricia Van Gerpen
Executive Director
South Dakota Public Utilities Commission
500 E. Capitol Ave.
Pierre, SD 57501
patty.vangerpen@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. Teresa Kaaz
15610 459th Ave.
South Shore, SD 57263
teresakaaz@yahoo.com

Ms. Diane Redlin
305 W. Lakefront Dr.
South Shore, SD 57263
jdredlin@sstelinet

Mr. Vincent E. Meyer
15452 486th Ave.
Milbank, SD 57252
vpmeyerfarms@yahoo.com

Mr. Jared Krakow
16460 470th Ave.
Strandburg, SD 57265
jaredkrakow@hotmail.com

Mr. Kevin Krakow
16462 470th Ave.
Strandburg, SD 57265
kcjmkrakow@sstel.net

Mr. Matt Whitney
16450 462nd Ave.
Watertown, SD 57201
whitneywelding@hotmail.com

Mr. Timothy J. Lindgren
16050 464th Ave.
South Shore, SD 57263
timlindgren009@yahoo.com

Ms. Linda M. Lindgren
16050 464th Ave.
South Shore, SD 57263
lpedersen.pace@gmail.com

Mr. Kelly Owen
15629 468th Ave.
Stockholm, SD 57264
kocattle@gmail.com

Ms. Kristi Mogen
15160 471st Ave
Twin Brooks, SD 57269
mogensmark@mogensmark.com

Mr. Wade Bauer
15371 459th Ave.
South Shore, SD 57263
bauwade88er@gmail.com

Ms. Patricia Meyer
15452 486th Ave.
Milbank, SD 57252
vpmeyerfarms@yahoo.com

Mr. Mark Mauersberger
Senior Development Manager
Apex Clean Energy Holdings, LLC
8665 Hudson Blvd. N, Ste. 110
Lake Elmo, MN 55402
mark.mauersberger@apexcleanenergy.com

Mr. Scott Koziar
Vice President of Development, West
Apex Clean Energy Holdings, LLC
8665 Hudson Blvd. N, Ste. 110
Lake Elmo, MN 55402
scott.koziar@apexcleanenergy.com

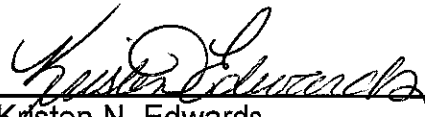
Ms. Mollie M. Smith
Attorney
Fredrikson & Byron, P.A.
200 South Sixth St., Ste. 4000
Minneapolis, MN 55402
msmith@fredlaw.com

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

Ms. Lisa M. Agrimonti
Attorney
Fredrickson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, MN 55402-1425
lagrimonti@fredlaw.com

Ms. Karen Layher
Auditor
Grant County
210 E. Fifth Ave.
Milbank, SD 57252
karen.layher@state.sd.us

Ms. Cindy Brugman
Auditor
Codington County
14 First Ave., SE
Watertown, SD 57201
cbrugman@codington.org



Kristen N. Edwards
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol
Pierre, SD 57501