

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF GRANT

THIRD JUDICIAL DISTRICT

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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  
 PUC DOCKET EL18-003

Case No. 25CIV18-000070

**AFFIDAVIT OF MOLLIE M. SMITH  
 IN SUPPORT OF DAKOTA RANGE  
 I, LLC AND DAKOTA RANGE II,  
 LLC'S MOTION TO DISMISS**

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STATE OF MINNESOTA            )  
   ) SS.  
 COUNTY OF HENNEPIN            )

I, Mollie M. Smith, being first duly sworn on oath, depose and state as follows:

1. I am an attorney with the law firm of Fredrikson & Byron, P.A., which represented Dakota Range I, LLC and Dakota Range II, LLC (together, "Dakota Range") in *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* (EL 18-003) before the South Dakota Public Utilities Commission ("PUC"). I am providing this affidavit in support of Dakota Range's Motion to Dismiss the appeal in the above-captioned case.
2. On July 23, 2018, the PUC issued and served on all parties its Final Decision and Order Granting Permit to Construct Wind Energy Facility; Notice of Entry (EL 18-003) ("Final Decision"), granting an Energy Facility Permit to Dakota Range for the Dakota Range Wind Project. A true and correct copy of the Final Decision is attached hereto as **Exhibit A**.
3. On August 22, 2018, I received an email and attachment from John C. Wiles, a true and correct copy of which is attached as **Exhibit B**. As indicated in Exhibit B, the email was also sent to Kristen Edwards, an attorney for the South Dakota Public Utilities Staff. As shown in Exhibit B, the email states: "Counsel, your client's [sic] have or are being served today. jcw"
4. In the Certificate of Service accompanying the Appellants' Notice of Appeal in the above-captioned matter, Mr. Wiles purports to have served the notice of appeal on me "by electronic e-file transmittal to msmith@fredlaw.com." However, I only received a copy of the Notice of Appeal via the email referenced in paragraph 3 above.

5. As of August 22, 2018, I was not registered with the South Dakota Unified Judicial System (“UJS”) Portal, which is required in order to be served by “electronic e-file transmittal” under the South Dakota Odyssey® File & Serve Portal.
6. On August 30, 2018, I attempted to register with the UJS Portal in order to obtain eAccess to the docket for the above-captioned case. However, on August 31, 2018, I received a response indicating that my UJS Portal Access request was denied because I had not added my email as a “Service Contact on the Public List in File and Serve” and, as a result, had not registered for the Public List in File and Serve. Specifically, the email states: “A requirement for getting eAccess is that your email be added as a Service Contact on the Public List in File and Serve. Our records show that you are not registered on the Public List.” A true and correct copy of the email received from the UJS Portal is attached as **Exhibit C**.
7. As evidenced by the foregoing, I could not have been served with the Appellants’ Notice of Appeal “by electronic e-file transmittal to msmith@fredlaw.com” as I was not registered as a Service Contact on the Public List in File and Serve with the South Dakota UJS Portal as of August 22, 2018.
8. Prior to receipt of the Notice of Appeal from Mr. Wiles via email, I did not agree in writing to accept service by email from Mr. Wiles or the Appellants in the above-captioned case, nor had I served Mr. Wiles or the Appellants’ via email in the above-captioned case, one of which is required for service by electronic mail pursuant to SDCL 15-6-5(j)(2).
9. After receipt of the Notice of Appeal from Mr. Wiles via email, I did not receive a copy of the Notice of Appeal from Mr. Wiles or the Appellants via facsimile or U.S. Mail, which is required for service by electronic mail pursuant to SDCL 15-6-5(j)(4).
10. As evidenced by the foregoing, I was not properly served with the Appellants’ Notice of Appeal via electronic mail pursuant to SDCL 15-6-5(j).
11. Other than the August 22, 2018 email attached as Exhibit B, I did not receive the Appellants’ Notice of Appeal from Mr. Wiles or the Appellants by any other means.
12. Attached hereto as **Exhibit D** are true and correct copies of Admissions of Service filed by the Appellants in the above-captioned case.
13. Attached hereto as **Exhibit E** are true and correct copies of the Sheriff’s Returns of Personal Service filed by Appellants in the above-captioned case.

FURTHER AFFIANT SAYETH NOT.

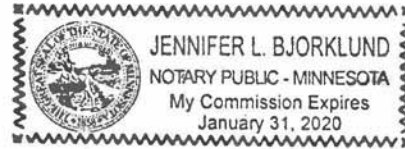
Dated this 7<sup>th</sup> day of September, 2018.

  
Mollie M. Smith

Subscribed and sworn to before me on this 7<sup>th</sup> day of September, 2018.

  
Notary Public

My Commission Expires: 1/31/2020



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