

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF GRANT            )

IN CIRCUIT COURT  
  
THIRD JUDICIAL CIRCUIT

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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

25CIV.18-070

APPELLANTS' PROPOSED  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

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This matter came to be heard on October 19, 2018, before the Honorable Robert L. Spears on Dakota Range I, LLC and Dakota Range II, LLC's (hereinafter jointly referred to as "Dakota Range") Motion to Dismiss. Kristi Mogen and Teresa Kaaz (hereinafter jointly referred to as "Appellants") appeared by their attorneys of record, John C. Wiles and Lindsay A. Martin, of Wiles & Rylance. Dakota Range appeared by its attorneys of record, Mollie Smith, of Fredrikson & Byron, P.A., and Joe Erickson, of Schoenbeck Law, P.C. The South Dakota Public Utilities Commission (hereinafter referred to as "PUC") appeared by its attorney of record, Karen Cremer. The Court having heard arguments and admissions of the parties, considered the affidavits offered, and considered all the written and oral arguments of counsel, and for good cause shown, makes and enters the following:

#### FINDINGS OF FACT

1. On July 23, 2018, the PUC issued and served on all parties its Final Decision and Order Granting Permit to Construct Wind Energy Facility (Docket EL18-003).
2. The PUC's July 23, 2018 Order granted Dakota Range a permit to construct the Dakota Range Wind Project.
3. Attorney for Appellants, John C. Wiles, filed a Notice of Appeal and Certificate of Service in the office of the Grant County Clerk of Courts on August 22, 2018.
4. The Notice of Appeal was served upon the agency (PUC), all adverse parties,

and all other potential adverse parties listed in the PUC Order Granting Party Status, dated April 6, 2018.

5. The PUC Commission Staff is not an adverse party that would be affected by the PUC Commission's Order.
6. Dakota Range has no mailing address listed in South Dakota, and Apex Clean Energy is a foreign corporation which is not domesticated and authorized to do business in South Dakota. Rather, at their election, they chose to have Cogency Global, Inc., located in Pierre, SD to be their Registered Service Agent.
7. Notice of Appellants' Appeal was mailed by First Class United States Mail for service of process on Cogency Global, Inc., the Registered Service Agent for Dakota Range, to the Hughes County Sheriff's Office by correspondence dated August 22, 2018.
8. On August 22, 2018, the Public Utilities Commission was served via Admission of Service signed by Patricia Van Gerpen, the executive director of the PUC.
9. On August 22, 2018, Karen Layher, auditor of Grant County, and Cindy Brugman, auditor of Codington County, were each served with an Admission of Service.
10. All other named intervenors were served by an Admission of Service on August 22, 2018.
11. Proof of Service on all adverse parties was filed within the statutory deadline either through the Appellants' Certificate of Service, by Admission of Service or by Service of Process.
12. The Notice of Appeal was timely filed and served upon all adverse parties required by statute.

### **CONCLUSIONS OF LAW**

1. "An appeal shall be allowed in the circuit court to any party in a contested case from a final decision, ruling, or action of an agency." SDCL 1-26-30.2.
2. The procedural rules of the circuit court, found in SDCL 15-6, apply to the taking and conducting of appeals under SDCL 1-26. SDCL 1-26-32.1 and SDCL 15-6-1.
3. "An appeal shall be taken by serving a copy of a notice of appeal upon the

*adverse party, upon the agency, and upon the hearing examiner, if any, who rendered the decision, and by filing the original with proof of such service in the office of the clerk of courts of the county in which the venue of the appeal is set, within thirty days after the agency served notice of the final decision...*” SDCL 1-26-31 (emphasis added).

4. “Service by mail shall be by first class mail and is complete upon mailing...An attorney’s certificate of service, the written admission of service by the party or his attorney or an affidavit shall be sufficient proof of service.” SDCL 15-6-5(b). *State v. Waters*, 472 N.W.2d 524 (S.D. 1991).
5. Appellants’ Notice of Appeal was not required to be served upon counsel for Dakota Range or the PUC pursuant to SDCL 1-26-31.
6. The PUC was timely served when the executive director, Patricia Van Gerpen, signed an admission of service. This satisfied the statutory requirement of service upon the agency and hearing examiner under SDCL 1-26-31.
7. PUC Staff is not an adverse party which required service under SDCL 49-41B-17.
8. Except Dakota Range, all adverse parties were served and signed Admissions of Service, satisfying SDCL 1-26-31.
9. Parties to a proceeding for a permit to operate an energy conversion or transmission facilities are delineated in SDCL 49-41B-17 which provides: “The parties to a proceeding under this chapter unless otherwise provided include: (1) The Public Utilities Commission and applicant; (2) Each municipality, county and governmental agency in the area where the facility is proposed to be sited...; (3) Any person residing in the area where the facility is proposed to be sited...” All parties listed in SDCL 49-41B-17 were served with a Notice of Appeal on August 22, 2018.
10. Reference to PUC staff being a “party” in the PUC Order dated July 23, 2018, was not supported by a reasonable interpretation of SDCL 49-41B-17 or case law.
11. The PUC Staff were not a party that was required to be served under SDCL 1-26-31 or a party under SDCL 49-41B-17. PUC staff were also not granted party

status on April 6, 2018, and therefore were not required to be served.

12. Dakota Range does not have a South Dakota address.
13. Dakota Range was timely served when a letter addressed to the Hughes County Sheriff was mailed by First Class Mail on August 22, 2018, for service upon Dakota Range's Registered Agent.
14. Proof of Service was timely filed when Appellant's counsel filed a Certificate of Service with the Notice of Appeal on August 22, 2018.
15. In the event any Finding of Fact is improperly listed as a Conclusion of Law, or a Conclusion of Law improperly listed as a Finding of Fact, each shall be treated as such, regardless of its improper classification.

Dated this \_\_\_\_ day of November, 2018.

BY THE COURT:

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HONORABLE ROBERT L. SPEARS  
CIRCUIT COURT JUDGE