

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF GRANT)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

25CIV.18-70

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

PLAINTIFFS' ISSUES ON APPEAL

COMES NOW, the Plaintiffs, by and through their attorney, John C. Wiles of
Wiles & Rylance, and for their issues on appeal, state and allege the following:

1. Whether the Commission exceeded its statutory authority when it permitted Apex Clean Energy Holdings LLC a Delaware Corporation which is not registered to do business in South Dakota, to petition the Commission for a Wind Energy Systems Permit through two wholly owned subsidiaries, Dakota Range Wind I, LLC and Dakota Range Wind II, LLC.
2. Whether the Commission abused its discretion and acted arbitrarily and capriciously when it admitted inaccurate maps into evidence and relied on them to make their decision.
3. Whether the Commission acted arbitrarily and capriciously when:
 - a. It requested but never received Applicants' owner's manual, safety manual, operator's manual, or repair manual;
 - b. In lieu of such safety operations manual, it accepted an outdated, unsigned letter into evidence; and

c. It relied upon on that letter when it made its decision regarding public safety concerns.

4. Whether the Commission abused its discretion and failed to protect the public health, safety and welfare of landowners within the project area by not requiring Applicant to submit an owner's manual, safety manual, operator's manual, or repair manual requested by the Commission.

5. Whether the Commission violated Plaintiffs' constitutional right of due process when it excluded Plaintiffs and other parties from a confidential, in-camera meeting with the Applicants and their counsel.

6. Whether the Commission:

a. Violated Plaintiff Kaaz's constitutional right to privacy when it allowed a witness to testify to the substance of private property appraisals at a public hearing without the consent of the landowner(s); and

b. Acted arbitrarily and capriciously when it relied on false testimony regarding the substance of those appraisals in making its decision.

7. Whether the Commission acted arbitrarily and capriciously when it failed to consider testimony regarding trespass violations for shadow flicker and infrasound.

8. Whether the Commission violated landowner(s) constitutional right to due process when it proceeded with the hearing before all parties within one-half mile of the project were notified by service by certified mail.

9. Whether the Commission abused its discretion and acted arbitrarily and capriciously when it approved the Application without substantial evidence that the

facilities will not pose a threat of serious injury to the environment or to the social and economic condition of the inhabitants in the project area.

10. Whether the Commission abused its discretion when it approved the Application without substantial evidence by the Applicants that the facility will not substantially impair the health, safety or welfare of the inhabitants.

11. Whether the Commission failed to protect the property rights of non-participating landowners by allowing Applicants to invade their properties with infrasound and shadow flicker.

12. Whether the Commission failed to protect the public by admitting exhibits based on deliberate misstatements of fact regarding wind farm impacts on property values.

13. Whether the Commission violated the due process rights of landowners within the project who were not given notice of hearing by the Applicant.

14. Whether the Commission abused its discretion when it approved the Application without substantial evidence that the public interest will not be harmed by symptoms associated with pressure pulsations caused by blade frequency.

15. Whether the hearing examiner violated Plaintiffs' constitutional rights, including due process, when she prohibited Plaintiffs from submitting exhibits.

16. Whether the hearing examiner violated Plaintiffs' constitutional rights by prohibiting Plaintiffs from examining each other as witnesses and submitting exhibits.

17. Whether the hearing examiner failed to require Applicants to produce all of their records per Plaintiffs' and staff's data requests.

Dated this 31st day of August, 2018.

WILES & RYLANCE



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CERTIFICATE OF SERVICE

I, John C. Wiles, hereby certify that a true and correct copy of the foregoing "PLAINTIFFS' ISSUES ON APPEAL" was served upon Kristen Edwards, Attorney for the Public Utilities Commission Staff, by electronic e-file transmittal to Kristen.edwards@state.sd.us; Mollie M. Smith, Counsel for Dakota Range I, LLC and Dakota Range II, LLC, by electronic e-file transmittal to msmith@fredlaw.com, all on the 31st day of August, 2018.

And by causing the same to be deposited in the United States Mail at Watertown, South Dakota securely enclosed in a sealed envelope, with postage duly prepaid, and addressed to Patricia Van Gerpen, Executive Director of the South Dakota Public Utilities Commission, 500 E. Capitol Ave, Pierre, South Dakota 57501; Dakota Range I, LLC and Dakota Range II, LLC c/o Cogency Global Inc., 326 N. Madison Ave, Pierre, SD 57501, their Registered Service Agent; Cindy Brugman, Codington County Auditor, 14 1st Ave SE, Watertown, South Dakota 57201; Karen Layher, Grant County Auditor, 210 E 5th Ave, Milbank, South Dakota 57252; and all other potential interveners listed on the PUC Docket EL-003 Service List (see attached) by United States Mail or as otherwise provided by law, all on the 31st day of August, 2018.

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