

# Appendix A

STATE OF SOUTH DAKOTA  
**THIRD JUDICIAL CIRCUIT COURT**  
CODINGTON COUNTY COURTHOUSE  
14 1<sup>st</sup> Avenue S.E., Watertown, SD 57201  
Fax Number (605) 882-5106

HON. ROBERT L. SPEARS  
Circuit Judge  
(605) 882-5090  
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IN RE 25CIV18-0070

October 25, 2018

**MEMORANDUM OPINION**

**INTRODUCTION**

Appellees Dakota Range I, LLC and Dakota Range II, LLC (collectively, "Dakota Range") filed their Motion to Dismiss and Memorandum in Support of said motion on September 7, 2018, seeking to dismiss, pursuant to SDCL 15-6-12(b)(1) and (4), Appellants Teresa Kaaz and Kristi Mogen's (collectively, "Appellants") appeal of a Final Decision and Order Granting Permit to Construct Wind Energy Facility entered by the South Dakota Public Utilities Commission

("PUC") on July 23, 2018, filed in PUC Docket EL18-003. On September 28, 2018, the PUC filed its Joinder of Dakota Range's Motion to Dismiss. Appellants filed their Brief in Opposition to the Motion to Dismiss on October 15, 2018.<sup>1</sup> On October 17, 2018, Dakota Range filed their Reply Brief. A hearing on the motion was held before this Court on October 19, 2018. Based on the rationale set forth below, and the law as applied to the facts presented, this Court will grant Appellees' motion to dismiss this appeal for lack of jurisdiction.

### STATEMENT OF FACTS

On July 23, 2018, the PUC issued and served on all parties its Final Decision and Order granting Dakota Range a permit to construct the Dakota Range Wind Project. Appellants filed a Notice of Appeal and Certificate of Service to initiate appeal of this decision on August 22, 2018. Appellants' Certificate of Service indicated that all parties were served with copies of the Notice of Appeal on August 22, 2018. Appellees contend, however, that Appellants failed to timely serve all adverse parties to this matter—specifically Dakota Range and PUC Staff—and thus the Court is deprived of subject matter jurisdiction. Appellants counter that, as to Dakota Range, they timely served process via first-class mail sent to the Hughes County Sheriff's Office; as to PUC Staff, Appellants argue that they were not required to serve process on PUC Staff because they were not granted "party status" by the PUC in the underlying proceeding.

For the purposes of clarification, references to Dakota Range's Memorandum in Support of Motion to Dismiss, as joined by the PUC, will be cited as "Appellees' Memo at [page number]."

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<sup>1</sup> It should be noted that, pursuant to SDCL 15-6-6(a) and (d), Appellants' Brief in Opposition was untimely filed. See SDCL 15-6-6(d) ("[O]pposing affidavits or briefs may be served not later than five days before the hearing, unless the court permits them to be served at some other time."); see also *id.* at 15-6-6(a) ("In computing any period of time prescribed or allowed by this chapter . . . the day of the act, event, or default from which the designated period of time begins to run shall not be included. . . . When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.").

Upon inquiry of both sides at the hearing held on the above date, neither side seemed overly concerned about this issue. Consequently, the Court will allow the late filing of Appellant's Brief and not dismiss the appeal for this reason.

References to Appellants' Brief in Opposition to the Motion to Dismiss will be cited as "Appellants' Brief at [page number]." References to Dakota Range's Reply Brief will be cited as "Appellees' Reply at [page number]." References to Appellants' Exhibits—as attached to Appellants' Brief and the affidavit of Attorney John C. Wiles—will be cited as "Appellants' Exh. [exhibit number] at [page number]." Finally, references to Appellees' Exhibits—as attached to the affidavit of Attorney Mollie Smith—will be cited as "Appellees' Exh. [exhibit number] at [page number]."

### RULES OF LAW

As an initial note, "[n]o right to appeal an administrative decision to circuit court exists unless the South Dakota Legislature enacts a statute creating that right." *In re PUC Docket HP 14-0001*, 2018 S.D. 44, ¶ 12, 914 N.W.2d 550, 555 (citations omitted). SDCL 49-41B-30 permits any "party to a permit issuance proceeding aggrieved by the final decision of the Public Utilities Commission on an application for a permit" to appeal the decision by filing a notice of appeal in circuit court. SDCL 49-41B-30. "The review procedures shall be the same as that for contested cases under chapter 1-26." *Id.* Moreover, "[t]he sections of Title 15 relating to practice and procedure in the circuit courts shall apply to procedure for taking and conducting appeals under [SDCL ch. 1-26] so far as the same may be consistent and applicable, and unless a different provision is specifically made by this chapter or by the statute allowing such appeal." SDCL 1-26-32.1; *see also* SDCL 15-6-81(c) ("[SDCL ch. 15-6] does not supersede the provisions of statutes relating to appeals to the circuit courts.").

Under SDCL 15-6-12(b)(4), a party may motion to dismiss a proceeding for insufficient service of process. SDCL 15-6-12(b)(4). Generally, an objection to service of process must be specific and must point out in what manner the serving party has failed to satisfy the requirements

of the service provision utilized. *Grajczyk v. Tasca*, 2006 S.D. 55, ¶ 16, 717 N.W.2d 624, 630 (quoting *Photolab Corp. v. Simplex Specialty Co.*, 806 F.2d 807, 810 (8th Cir. 1986)). Additionally, under SDCL 15-6-12(b)(1), a party may motion to dismiss a proceeding for lack of subject matter jurisdiction. SDCL 15-6-12(b)(1). “[W]hen the [L]egislature provides for appeal to circuit court from an administrative agency, the circuit court’s appellate jurisdiction depends on compliance with conditions precedent set by the [L]egislature.” *In re PUC Docket HP 14-0001*, 2018 S.D. 44, ¶ 12, 914 N.W.2d 550, 555 (alterations in original) (quoting *Schreifels v. Kottke Trucking*, 2001 S.D. 90, ¶ 9, 631 N.W.2d 186, 188). Noncompliance deprives the Court of subject matter jurisdiction. *Id.* (citing *Schreifels*, 2001 S.D. 90, ¶ 9, 631 N.W.2d at 188).

Such a condition precedent is SDCL 1-26-31, which reads, in part:

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).<sup>2</sup> “SDCL 1-26-31 clearly delineates who must be served with a notice of appeal and when and where it must be filed in order to transfer jurisdiction from the executive to the judicial branch.” *Slama v. Landmann Jungman Hosp.*, 2002 S.D. 151, ¶ 4, 654 N.W.2d 826, 827 (quoting *Schreifels*, 2001 S.D. 90, ¶ 12, 631 N.W.2d at 189). When a party ignores the plain language of the statute, the Court is deprived of subject matter jurisdiction and must dismiss the appeal. *Id.* (quoting *Schreifels*, 2001 S.D. 90, ¶ 12, 631 N.W.2d at 189).<sup>3</sup>

## ANALYSIS

<sup>2</sup> An “adverse party” is “[a] party whose interests in a transaction, dispute, or lawsuit are opposed to another party’s interests.” *Adverse party*, BLACK’S LAW DICTIONARY (10th ed. 2014).

<sup>3</sup> Moreover, the South Dakota Supreme Court has specifically held, in the context of reviewing a dismissal of an appeal to circuit court, that “the doctrine of substantial compliance cannot be substituted for jurisdictional prerequisites.” *Upell v. Dewey Cty. Comm’n*, 2016 S.D. 42, ¶ 19, 880 N.W.2d 69, 75-76 (quoting *AEG Processing Ctr. No. 58, Inc. v. S.D. Dept. of Revenue & Regulation*, 2013 S.D. 75, ¶ 23, 838 N.W.2d 843, 850).

1. *Whether Appellants timely served a copy of the notice of appeal upon all adverse parties.*

Here, Appellees contend that this Court is deprived of subject matter jurisdiction over this appeal because Appellants failed to sufficiently serve process on all adverse parties, namely Dakota Range and PUC Staff. (Appellees' Memo at 3). The following analysis will examine the sufficiency of process, if any, to each of the aforementioned parties.

a. Dakota Range

Appellees argue that Appellants did not timely serve process on Dakota Range, its counsel, Mollie Smith, nor its registered agent, Cogency Global Inc. ("Cogency"). (Appellees' Memo at 3). While Appellants concede that they did not serve process on Ms. Smith,<sup>4</sup> Appellants contend that they timely served process on Cogency by mailing a letter and attached copies of the Notice of Appeal via first-class mail to the Hughes County Sheriff's Office on August 22, 2018. Appellants' Brief at 3-4; Appellants' Exh. 6. Here, while Appellants point to the pertinent part of SDCL 15-6-5(b) indicating that service of process by mail is complete upon mailing, Appellants ignore that such service "shall be made by . . . mailing it to [the party] at his last known address or, if no address is known, by leaving it with the clerk of the court." SDCL 15-6-5(b) (emphasis added). In this case, Appellants did not mail service of process directly to Dakota Range or to Cogency—but rather to the Hughes County Sheriff's Office. *See Madsen v. Preferred Painting Contractors*, 233 N.W.2d 575, 577 (S.D. 1975) ("[W]here a statute authorizes service of notice by registered mail, service is effective when the notice is properly addressed, registered, and mailed.").

<sup>4</sup> Regarding the copy of the Notice of Appeal emailed by Appellants to Ms. Smith, Appellants concede that they did not serve process on Ms. Smith but rather sent the email as a courtesy. Appellants' Brief at 4-5; *see also Johnson v. Lebert Const., Inc.*, 2007 S.D. 74, ¶ 2, 736 N.W.2d 878, 879 n.1 ("The current version of SDCL 15-6-5(b) does not allow for service by electronic mail.").

Appellants' letter and attached Notices of Appeal is thus better considered not as service of process via first class mail but as a *request* for the sheriff to serve Cogency, which is what the sheriff ultimately and untimely did on August 28, 2018. (Appellants' Exh. 6-8). While Appellants could have simply mailed service of process directly to Cogency within the statutory deadline, Appellants chose to involve an unnecessary third party and allow for the untimely delay of service to Dakota Range. *See State v. Anders*, 2009 S.D. 15, ¶ 7, 763 N.W.2d 547, 550 (quoting *Chatterjee v. Mid Atl. Reg'l Council of Carpenters*, 946 A.2d 352, 355 (D.C. 2008)) ("Service by mail must be accomplished so as to allow delay only within the official channels of the United States mail, not through inter-office or other institutional delays."); *see also Singelman v. St. Francis Med. Ctr.*, 777 N.W.2d 540, 542-43 (Minn. Ct. App. 2010) (holding, under statute stipulating a civil action begins when "summons is delivered to the sheriff in the county where the defendant resides for service," that mailing summons and complaint to sheriff rather than personally delivering them within limitations period was insufficient). Since such an untimely delay fails to satisfy the first requirement of SDCL 1-26-31, therefore, this Court does not have subject matter jurisdiction over Appellants' appeal.

b. PUC Staff

Additionally, Appellants concede that they did not serve process on Kristen Edwards, counsel for PUC Staff, but rather provided her with a courtesy copy of the Notice of Appeal on August 22, 2018. Appellants' Brief at 4-5. Appellants argue, however, that failure to serve process on Ms. Edwards was immaterial because PUC Staff was not a party to the underlying proceedings. *Id.* at 4. While Appellants assert that the PUC's April 6, 2018, decision does not grant "party status" to PUC Staff, the relevant paragraph clearly pertains to the granting of applications for party status submitted by sixteen individuals who sought to intervene in the matter. (Appellants'

Exh. 9 at 1-2). Moreover, in its findings of fact for its July 23, 2018, final decision, the PUC found that PUC Staff “fully participated as a party in [the] matter, in accordance with SDCL 49-41B-17(1).” (Appellees’ Exh. A at 4).<sup>5</sup> Appellants also named PUC Staff as a party to the appeal in its Notice of Appeal. (Appellants’ Exh. 1 at 1). Therefore, since Appellants failed to serve process on PUC Staff or its counsel by August 22, 2018, Appellants have not satisfied the first requirement of SDCL 1-26-31 and this Court does not have subject matter jurisdiction over Appellants’ appeal.

2. *Whether Appellants timely filed the notice of appeal with proof of such service in the office of the clerk of courts.*

Appellants, by failing to serve all adverse parties (as previously discussed), also thereby failed to timely file their Notice of Appeal with proof of such service. While Appellants contend that Mr. Wiles’ Certificate of Service, filed along with the Notice of Appeal on August, 22, 2018, provides sufficient proof of service pursuant to SDCL 15-6-5(b), such a certificate of service only provides a presumption of sufficient service—which may be refuted by an opposing party’s evidence or arguments. *State v. Waters*, 472 N.W.2d 524, 525 (S.D. 1991). Here, and as discussed at length *supra*, Appellees have presented sufficient evidence that Dakota Range was not served with process until August 28, 2018; Appellants have also conceded, contrary to Mr. Wiles’ certified statements, that counsel for Dakota Range and PUC Staff were not served via “electronic e-file transmittal.” (Appellants’ Brief at 4-5; Appellants’ Exh. 1 at 3). Therefore, Appellants have not satisfied the second requirement of SDCL 1-26-31 and this Court does not have subject matter jurisdiction over Appellants’ appeal.

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<sup>5</sup> The Court disagrees with Appellants’ strict interpretation of SDCL 49-41B-17(1), which is contrary to the plain language of the statute. *See* SDCL 49-41B-17(1) (listing the “Public Utilities Commission” as a party to a proceeding under SDCL ch. 49-41B). Even if SDCL 49-41B-17(1) does not include PUC Staff, the statute does not purport to limit parties to a PUC proceeding regarding energy conversion and transmission facilities to those expressly listed. *See id.* (listing parties to such a proceeding “unless otherwise provided”). Here, the PUC clearly provided that its staff was a party to the proceeding. Appellees’ Exh. A at 4.



**CONCLUSION**

Based on the rationale discussed above, the law requires this Court to grant the Appellees' motion for an order dismissing this appeal. Appellees' counsel shall prepare an order along with findings of fact and conclusions of law, (unless waived), consistent with this Memorandum Opinion.

*Robert L. Spears*  
Robert L. Spears  
Circuit Court Judge.

**FILED**

OCT 29 2018

SOUTH DAKOTA UNIFIED JUDICIAL SYSTEM  
3RD CIRCUIT CLERK OF COURT  
By *Shirley Anderson*

# Appendix B

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

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25CIV.18-070

APPELLANTS' OBJECTIONS TO  
DAKOTA RANGE I, LLC'S AND  
DAKOTA RANGE II, LLC'S  
PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

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Appellants, Teresa Kaaz and Kristi Mogen, object to Dakota Range I, LLC's and Dakota Range II, LLC's Proposed Findings of Fact and Conclusions of Law as follows:

**FINDINGS OF FACT**

1. No objection.
2. No objection.
3. No objection.
4. Objection. Misstatement of the facts and the record. Wile's Certificate of Service was truthful and accurate.
5. Objection. Misstatement of the facts and the record. Dakota Range does not have a South Dakota address. Correspondence and copies of Appellants' Notice of Appeal were mailed on August 22, 2018, by First Class United States Mail to the Hughes County Sheriff's Office for service on Cogency Global, Inc., Registered Agent for Dakota Range.
6. Objection. Misstatement of facts and of the record. Service upon Ms. Smith was not required by statute. Service upon Ms. Edwards, if required, was completed by actual notice on August 22, 2018, and by service outlined in counsel's Certificate of Service.
7. No objection.
8. Objection. Argument, neither a finding a fact nor conclusion of law.

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### CONCLUSIONS OF LAW

1. No objection. Legal cite is accurate.
2. No objection. Legal cite is accurate.
3. No objection. Statutory cite is accurate.
4. No objection. Statutory cite and legal cite are accurate.
5. No objection. Statutory cite is accurate.
6. No objection. Statutory cite and legal cite are accurate.
7. No objection. Statutory cite is accurate.
8. No objection. Statutory cite and legal cite are accurate.
9. No objection.
10. Objection. Argument, neither finding of fact nor a conclusion of law. If either, statements made are not supported by the record.
11. Objection. Argument, neither a finding of fact nor a conclusion of law. If either, statements made are not supported by the record.
12. Objection. Argument, neither a finding of fact nor a conclusion of law. If either, statements made are not supported by the record.
13. Objection. Argument, neither a finding of fact nor a conclusion of law. If either, statements made are not supported by the record.
14. Objection. Service was not required on PUC Staff (Ms. Edwards), and if required, service was completed by actual notice on August 22, 2018, and by counsel's Certificate of Service.
15. Objection. Argument, neither a finding of fact nor a conclusion of law. If either, statements made are not supported by the record.
16. Objection. Argument, neither a finding of fact nor a conclusion of law. If either, statements made are not supported by the record. SDCL 49-41B-17(1) specifically names the Public Utilities Commission, not the Public Utilities Commission Staff.
17. Objection. Argument, neither a finding of fact nor a conclusion of law. If either, statements made are not supported by the record. The Public Utilities Commission staff would not be an adverse party affected by a decision favoring the Appellants.

18. Objection. Argument, neither a finding of fact nor a conclusion of law. If either, statements made are not supported by the record.
19. No objection.

Dated this 5<sup>th</sup> day of November, 2018.

WILES & RYLAND



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John C. Wiles  
Attorneys for Appellants  
3 East Kemp, Suite 200  
P.O. Box 227  
Watertown, SD 57201

# Appendix C

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

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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:

Denied: 11/09/2018

/s/ Robert L. Spears

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HONORABLE ROBERT L. SPEARS  
CIRCUIT COURT JUDGE

Filed on: 11/09/2018 GRANT County, South Dakota 25CIV18-000070

# Appendix D

STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF GRANT

THIRD JUDICIAL DISTRICT

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

**DAKOTA RANGE I, LLC, AND  
DAKOTA RANGE II, LLC'S  
PROPOSED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER**

This matter came to be heard on October 19, 2018, before the Honorable Robert L. Spears on the Motion to Dismiss ("Motion") the administrative appeal brought by Dakota Range I, LLC ("Dakota Range I"), and Dakota Range II, LLC ("Dakota Range II" and, together with Dakota Range I, "Dakota Range"). Dakota Range appeared by its attorneys of record, Mollie Smith, of Fredrikson & Byron, P.A, and Joe Erickson, Schoenbeck Law, PC. The South Dakota Public Utilities Commission ("PUC") appeared by its attorney of record, Karen Cremer. Kristi Mogen and Teresa Kaaz (together, "Appellants") appeared by their attorneys of record, John C. Wiles and Lindsay Martin of Wiles & Rylance. The Court heard the argument and admissions of the parties, considered the affidavits offered, and considered all the written and oral arguments of the parties and counsel.

Based upon the record in its entirety, and good cause appearing therefore, the Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. On July 23, 2018, the PUC issued and served on all parties its Final Decision and Order Granting Dakota Range a permit to construct the Dakota Range Wind Project.
2. On behalf of Appellants, John C. Wiles filed a Notice of Appeal and Certificate of Service to initiate the above-captioned case on August 22, 2018.
3. The Certificate of Service asserts that the Notice of Appeal was:

served upon ... Kristen Edwards, Attorney for the Public Utilities Commission Staff, by electronic e-file transmittal to [Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us); Dakota Range I, LLC and Dakota Range II, LLC by service of Hughes County Sheriff upon Cogency Global Inc., 326 N. Madison Ave, Pierre, SD 57501, their Registered Service Agent; Mollie M. Smith, Counsel for Dakota Range I, LLC and Dakota Range II, LLC, by electronic e-file

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transmittal to [msmith@fredlaw.com](mailto:msmith@fredlaw.com), Cindy Brugman, Codington County Auditor, by Admission of Service; Karen Layher, Grant County Auditor, by Admission of Service; and all other potential interveners listed on the PUC Docket EL-003 Service List ... by Admission of Service or as otherwise provided by law, all on the 22nd day of August, 2018.

4. Service of the Notice of Appeal was not accomplished as represented by Mr. Wiles in his Certificate of Service.
5. Dakota Range's Registered Agent, Cogency Global Inc. ("Cogency"), was not served with the Notice of Appeal until August 28, 2018.
6. The Notice of Appeal was not served on either Ms. Smith or Ms. Edwards.
7. On September 7, 2018, Dakota Range filed and served a Motion to Dismiss for Lack of Jurisdiction. On September 28, 2018, the PUC filed a Joinder of Dakota Range's Motion to Dismiss. On October 15, 2018, Appellants filed their Brief in Opposition to the Motion to Dismiss.<sup>1</sup> On October 17, 2018, Dakota Range filed their Reply Brief.
8. Based on the above, the Notice of Appeal was not timely served on Dakota Range or its counsel, nor was it properly or timely served on South Dakota Public Utilities Commission Staff ("PUC Staff"), who was a party to the underlying PUC proceeding. In addition, Appellants also failed to file the requisite proof of service by the statutory appeal deadline.

#### CONCLUSIONS OF LAW

1. "No right to appeal an administrative decision to circuit court exists unless the South Dakota Legislature enacts a statute creating that right." *In re PUC Docket HP 14-0001*, 2018 S.D. 44, ¶ 12, 914 N.W.2d 550, 555 (citations omitted).
2. SDCL 49-41B-30 permits any "party to a permit issuance proceeding aggrieved by the final decision of the Public Utilities Commission on an application for a permit," to appeal the decision by filing a notice of appeal in circuit court. SDCL 49-41B-30. "The review procedures shall be the same as that for contested cases under chapter 1-26." SDCL 49-41B-30.

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<sup>1</sup> Pursuant to SDCL 15-6-6(a) and (d), Appellants' Brief in Opposition was untimely filed. *See* SDCL 15-6-6(d) ("[O]pposing affidavits or briefs may be served not later than five days before the hearing, unless the court permits them to be served at some other time."); *see also id.* at 15-6-6(a) ("In computing any period of time prescribed or allowed by this chapter ... the day of the act, event, or default from which the designated period of time begins to run shall not be included. ... When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."). Upon inquiry of both sides at the hearing held on the above date, neither side seemed overly concerned about this issue. Consequently, the Court will allow the late filing of Appellants' Brief and not dismiss the appeal for this reason.

3. “The sections of Title 15 relating to practice and procedure in the circuit courts shall apply to procedure for taking and conducting appeals under [SDCL ch. 1-26] so far as the same may be consistent and applicable, and unless a different provision is specifically made by this chapter or by the statute allowing such appeal.” SDCL 1-26-32.1; *see also* SDCL 15-6-81(c) (“[SDCL ch. 15-6] does not supersede the provisions of statutes relating to appeals to the circuit courts.”).
4. A party may file a motion to dismiss a proceeding for insufficient service of process. SDCL 15-6-12(b)(4). Generally, an objection to service of process must be specific and must point out in what manner the serving party has failed to satisfy the requirements of the service provision utilized. *Grajczyk v. Tasca*, 2006 S.D. 55, ¶ 16, 717 N.W.2d 624, 630 (quoting *Photolab Corp. v. Simplex Specialty Co.*, 806 F.2d 807, 810 (8th Cir. 1986)).
5. A party may file a motion to dismiss a proceeding for lack of subject matter jurisdiction. SDCL 15-6-12(b)(1).
6. “[W]hen the [L]egislature provides for appeal to circuit court from an administrative agency, the circuit court’s appellate jurisdiction depends on compliance with conditions precedent set by the [L]egislature.” *In re PUC Docket HP 14-0001*, 2018 S.D. 44, ¶ 12, 914 N.W.2d 550, 555 (alterations in original) (quoting *Schreifels v. Kottke Trucking*, 2001 S.D. 90, ¶ 9, 631 N.W.2d 186, 188). Noncompliance deprives the Court of subject matter jurisdiction. *Id.* (citing *Schreifels*, 2001 S.D. 90, ¶ 9, 631 N.W.2d at 188).
7. A condition precedent to an appeal from a final agency decision is SDCL 1-26-31, which reads, in part:

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).<sup>2</sup>

8. “SDCL 1-26-31 clearly delineates who must be served with a notice of appeal and when and where it must be filed in order to transfer jurisdiction from the executive to the judicial branch.” *Slama v. Landmann Jungman Hosp.*, 2002 S.D. 151, ¶ 4, 654 N.W.2d 826, 827 (quoting *Schreifels*, 2001 S.D. 90, ¶ 12, 631 N.W.2d at 189). When a party ignores the plain language of the statute, the Court is deprived of subject matter

<sup>2</sup> An “adverse party” is “[a] party whose interests in a transaction, dispute, or lawsuit are opposed to another party’s interests.” *Adverse Party*, BLACK’S LAW DICTIONARY (10th ed. 2014).

jurisdiction and must dismiss the appeal. *Id.* (quoting *Schreifels*, 2001 S.D. 90, ¶ 12, 631 N.W.2d at 189).<sup>3</sup>

9. Since the PUC served its Final Decision on July 23, 2018, the statutory deadline for Appellants to serve the Notice of Appeal upon adverse parties and file the Notice of Appeal with proof of such service was August 22, 2018.
10. Appellants failed to satisfy either requirement. With respect to service, Appellants: (1) failed to properly and timely serve Dakota Range I and Dakota Range II; and (2) failed to properly and timely serve the PUC Staff. With respect to the filing requirement, Appellants failed to file with their Notice of Appeal the requisite proof of service upon the adverse parties by the August 22, 2018 deadline. Accordingly, this Court lacks jurisdiction to hear this matter, and dismissal is required.

**Appellants Failed to Properly Serve Dakota Range By the Statutory Appeal Deadline:**

11. While Appellants concede that they did not serve process on Ms. Smith,<sup>4</sup> Appellants contend that they timely served process on Cogency by mailing a letter and attached copies of the Notice of Appeal via first-class mail to the Hughes County Sheriff's Office on August 22, 2018. Appellants' Brief in Opposition to the Motion to Dismiss at 3-4 (hereinafter "Appellants' Brief"); Appellants' Brief and the affidavit of Attorney John C. Wiles, Exhibit (hereinafter "Appellants' Exh.") 6.
12. While Appellants point to the pertinent part of SDCL 15-6-5(b) indicating that service of process by mail is complete upon mailing, Appellants ignore that such service "shall be made by ... mailing it to [the party] at his last known address or, if no address is known, by leaving it with the clerk of the court." SDCL 15-6-5(b) (emphasis added). Appellants did not mail service of process directly to Dakota Range or to Cogency – but rather to the Hughes County Sheriff's Office. See *Madsen v. Preferred Painting Contractors*, 233 N.W.2d 575, 577 (S.D. 1975) ("[W]here a statute authorizes service of notice by registered mail, service is effective when the notice is properly addressed, registered, and mailed."). Appellants' letter and attached Notices of Appeal is thus better considered not as service of process via first class mail but as a *request* for the sheriff to serve Cogency, which is what the sheriff ultimately and untimely did on August 28, 2018. Appellants' Exhs. 6-8.
13. While Appellants could have simply mailed service of process directly to Cogency within the statutory deadline, Appellants chose to involve an unnecessary third party and allow

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<sup>3</sup> The South Dakota Supreme Court has specifically held, in the context of reviewing a dismissal of an appeal to circuit court, that "the doctrine of substantial compliance cannot be substituted for jurisdictional prerequisites." *Upell v. Dewey Cty. Comm'n*, 2016 S.D. 42, ¶ 19, 880 N.W.2d 69, 75-76 (quoting *AEI Processing Ctr. No. 58, Inc. v. S. D. Dept. of Revenue & Regulation*, 2013 S.D. 75, ¶ 23, 838 N.W.2d 843, 850).

<sup>4</sup> Regarding the copy of the Notice of Appeal emailed to Ms. Smith, Appellants concede that they did not serve process on Ms. Smith but rather sent the email with a copy of the Notice of Appeal and Mr. Wiles' Certificate of Service as a courtesy. Appellants' Brief at 4-5.

for the untimely delay of service to Dakota Range. See *State v. Anders*, 2009 S.D. 15, ¶ 7, 763 N.W.2d 547, 550 (quoting *Chatterjee v. Mid Atl. Reg'l Council of Carpenters*, 946 A.2d 352, 355 (D.C. 2008)) (“Service by mail must be accomplished so as to allow delay only within the official channels of the United States mail, not through inter-office or other institutional delays”); see also *Singelman v. St. Francis Med. Ctr.*, 777 N.W.2d 540, 542-43 (Minn. Ct. App. 2010) (holding, under statute stipulating a civil action begins when “summons is delivered to the sheriff in the county where the defendant resides for service,” that mailing summons and complaint to sheriff rather than personally delivering them within limitations period was insufficient). Since such an untimely delay fails to satisfy the first requirement of SDCL 1-26-31, therefore, this Court does not have subject matter jurisdiction over Appellants’ appeal.

**Appellants’ Failed to Properly Serve the PUC Staff By the Statutory Appeal Deadline:**

14. Appellants failed to properly serve the PUC Staff within thirty days after the PUC served notice of its Final Decision.
15. Appellants concede that they did not serve process on Kristen Edwards, PUC Staff, but rather provided her with a courtesy copy of the Notice of Appeal on August 22, 2018. Appellants’ Brief at 4-5. Appellants argue that failure to serve process on Ms. Edwards was immaterial because PUC Staff was not a party to the underlying proceedings. *Id.* at 4.
16. While Appellants argue that the PUC’s April 6, 2018, decision does not grant “party status” to PUC Staff, the relevant paragraph clearly pertains to the granting of applications for party status submitted by sixteen individuals who sought to intervene in the matter. Appellants’ Exh. 9 at 1-2. Moreover, in its findings of fact for its July 23, 2018, final decision, the PUC found that PUC Staff “fully participated as a party in [the] matter, in accordance with SDCL 49-41B-17(1).” Appellees’ Exh. A at 4.<sup>5</sup> Appellants also named PUC Staff as a party to the appeal in its Notice of Appeal. Appellants’ Exh. 1 at 1. Therefore, since Appellants failed to service process on PUC Staff or its counsel by August 22, 2018, Appellants have not satisfied the first requirement of SDCL 1-26-31 and this Court does not have subject matter jurisdiction over Appellants’ appeal.

**Appellants Failed to Timely File the Requisite Proof of Service by the Statutory Appeal Deadline:**

17. Appellants, by failing to serve all adverse parties, also thereby failed to timely file their Notice of Appeal with proof of such service.

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<sup>5</sup> Appellants’ strict interpretation of SDCL 49-41B-17(1) is contrary to the plain language of the statute. See SDCL 49-41B-17(1) (listing the “Public Utilities Commission” as a party to a proceeding under SDCL ch. 49-41B). Even if SDCL 49-41B-17(1) does not include PUC Staff, the statute does not purport to limit parties to a PUC proceeding regarding energy conversion and transmission facilities to those expressly listed. See *id.* (listing parties to such a proceeding “unless otherwise provided”). Here, the PUC clearly provided that its staff was a party to the proceeding. Affidavit of Mollie M. Smith, Exhibit A (hereinafter, “Appellees’ Exh. A”) at 4.



18. While Appellants contend that Mr. Wiles' Certificate of Service, filed along with the Notice of Appeal on August 22, 2018, provides sufficient proof of service pursuant to SDCL 15-6-5(b), such a certificate of service only provides a presumption of sufficient service which may be rebutted by an opposing party's evidence or arguments. *State v. Waters*, 472 N.W.2d 524, 525 (S.D. 1991). Here, Appellees have presented sufficient evidence that Dakota Range was not served with process until August 28, 2018; Appellants have also conceded, contrary to Mr. Wiles' certified statement, that counsel for Dakota Range and PUC Staff were not served via "electronic e-file transmittal." Appellants' Brief at 4-5; Appellants' Exh. 1 at 3. Therefore, Appellants have not satisfied the second requirement of SDCL 1-26-31 and this Court does not have subject matter jurisdiction over Appellants' appeal.
19. In the event any Finding of Fact above should properly be a Conclusion of Law, or a Conclusion of Law should properly be a Finding of Fact, each shall be treated as such irrespective of its improper classification.

**ORDER**

1. Based on the foregoing Findings of Fact and Conclusions of Law, the Court GRANTS Dakota Range's Motion to Dismiss the above-captioned appeal.

Dated this \_\_\_\_\_ date of \_\_\_\_\_, 2018.

BY THE COURT:

Signed: 11/7/2018 5:46:36 PM

  
\_\_\_\_\_  
HONORABLE ROBERT L. SPEARS  
CIRCUIT COURT JUDGE

65123326.2

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# Appendix E

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 )	25CIV. 18-000070
FOR A PERMIT OF A WIND ENERGY )	NOTICE OF ENTRY OF FINDINGS OF
FACILITY IN GRANT COUNTY AND )	FACT, CONCLUSIONS OF LAW AND
CODINGTON COUNTY, SOUTH )	ORDER GRANTING
DAKOTA, FOR THE DAKOTA RANGE )	DAKOTA RANGE I, LLC
WIND PROJECT PUC DOCKET EL 18- )	AND DAKOTA RANGE II, LLC'S
0003 )	MOTION TO DISMISS
)	

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TO: PARTIES OF RECORD INVOLVED IN THE ABOVE-NAMED ACTION, AND  
THEIR ATTORNEYS

NOTICE IS HEREBY GIVEN that attached hereto is a copy of the Findings of Fact, Conclusions of Law and Order Granting Dakota Range's Motion to Dismiss in the above-entitled action, originally filed as Dakota Range I, LLC and Dakota Range II, LLC's Proposed Findings of Fact, Conclusions of Law and Order on October 29, 2018, and signed by the Honorable Robert L. Spears on the 7<sup>th</sup> day of November, 2018, and filed in the office of the Clerk of the Circuit Court of Grant County, at Milbank, South Dakota.

DATED: November 13, 2018

SCHOENBECK LAW, PC

By: /s/ Joe Erickson  
Lee Schoenbeck  
Joe Erickson  
*Co-Counsel for Dakota Range I, LLC  
and Dakota Range II, LLC*  
P.O. Box 1325  
Watertown, SD 57201  
(605) 886-0010

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have served a true and correct copy of the foregoing *Notice of Entry of Findings of Fact, Conclusions of Law and Order Granting Dakota Range I, LLC and Dakota Range II, LLC's Motion to Dismiss* on the following via electronic service through the Odyssey File and Serve system:

Ms. Karen E. Cremer  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57501  
(605) 773-3201  
*Attorney for SD Public Utilities Commission*

Mr. John C. Wiles and Ms. Lindsay Martin  
Wiles & Rylance  
3 East Kemp, Suite 200  
P.O. Box 227  
Watertown, SD 57201  
(605) 886-5881  
*Attorneys for Intervenors Teresa Kaaz and Kristi Mogen*

Ms. Mollie M. Smith and Ms. Lisa M. Agrimonti  
Fredrikson & Byron, P.A.  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425  
(612) 492-7000  
*Co-counsel for Dakota Range I, LLC and Dakota Range II, LLC*

and on the following, via First Class mail, postage prepaid:

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57101

Ms. Kristen Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 East Capitol Avenue  
Pierre, SD 57101

Mr. Vincent E. Meyer  
15452 - 486<sup>th</sup> Avenue  
Milbank, SD 57252

000023

Ms. Diane Redlin  
305 West Lakefront Drive  
South Shore, SD 57263

Mr. Jared Krakow  
16460 - 470<sup>th</sup> Avenue  
Strandburg, SD 57265

Mr. Kevin Krakow  
16462 - 470<sup>th</sup> Avenue  
Strandburg, SD 57265

Mr. Matt Whitney  
16450 - 462<sup>nd</sup> Avenue  
Watertown, SD 57201

Mr. Timothy J. Lindgren  
16050 - 464<sup>th</sup> Avenue  
South Shore, SD 57263

Ms. Linda M. Lindgren  
16050 - 464<sup>th</sup> Avenue  
South Shore, SD 57263

Mr. Kelly Owen  
15629 - 468<sup>th</sup> Avenue  
Stockholm, SD 57264

Mr. Wade Bauer  
15371 - 459<sup>th</sup> Avenue  
South Shore, SD 57263

Ms. Patricia Meyer  
15452 - 486<sup>th</sup> Avenue  
Milbank, SD 57252

Ms. Karen Layher  
Grant County Auditor  
210 East Fifth Avenue  
Milbank, SD 57252

Ms. Cindy Brugman  
Codington County Auditor  
14 First Avenue SE  
Watertown, SD 57201

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this 13<sup>th</sup> day of November, 2018.

/s/ Joe Erickson  
JOE ERICKSON

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STATE OF SOUTH DAKOTA

IN CIRCUIT COURT

COUNTY OF GRANT

THIRD JUDICIAL DISTRICT

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

**DAKOTA RANGE I, LLC, AND  
DAKOTA RANGE II, LLC'S  
PROPOSED  
FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER**

This matter came to be heard on October 19, 2018, before the Honorable Robert L. Spears on the Motion to Dismiss ("Motion") the administrative appeal brought by Dakota Range I, LLC ("Dakota Range I"), and Dakota Range II, LLC ("Dakota Range II" and, together with Dakota Range I, "Dakota Range"). Dakota Range appeared by its attorneys of record, Mollie Smith, of Fredrikson & Byron, P.A, and Joe Erickson, Schoenbeck Law, PC. The South Dakota Public Utilities Commission ("PUC") appeared by its attorney of record, Karen Cremer. Kristi Mogen and Teresa Kaaz (together, "Appellants") appeared by their attorneys of record, John C. Wiles and Lindsay Martin of Wiles & Rylance. The Court heard the argument and admissions of the parties, considered the affidavits offered, and considered all the written and oral arguments of the parties and counsel.

Based upon the record in its entirety, and good cause appearing therefore, the Court makes the following Findings of Fact and Conclusions of Law:

**FINDINGS OF FACT**

1. On July 23, 2018, the PUC issued and served on all parties its Final Decision and Order Granting Dakota Range a permit to construct the Dakota Range Wind Project.
2. On behalf of Appellants, John C. Wiles filed a Notice of Appeal and Certificate of Service to initiate the above-captioned case on August 22, 2018.
3. The Certificate of Service asserts that the Notice of Appeal was:

served upon ... Kristen Edwards, Attorney for the Public Utilities Commission Staff, by electronic e-file transmittal to [Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us); Dakota Range I, LLC and Dakota Range II, LLC by service of Hughes County Sheriff upon Cogency Global Inc., 326 N. Madison Ave, Pierre, SD 57501, their Registered Service Agent; Mollie M. Smith, Counsel for Dakota Range I, LLC and Dakota Range II, LLC, by electronic e-file

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transmittal to [msmith@fredlaw.com](mailto:msmith@fredlaw.com), Cindy Brugman, Codington County Auditor, by Admission of Service; Karen Layher, Grant County Auditor, by Admission of Service; and all other potential interveners listed on the PUC Docket EL-003 Service List ... by Admission of Service or as otherwise provided by law, all on the 22nd day of August, 2018.

4. Service of the Notice of Appeal was not accomplished as represented by Mr. Wiles in his Certificate of Service.
5. Dakota Range's Registered Agent, Cogency Global Inc. ("Cogency"), was not served with the Notice of Appeal until August 28, 2018.
6. The Notice of Appeal was not served on either Ms. Smith or Ms. Edwards.
7. On September 7, 2018, Dakota Range filed and served a Motion to Dismiss for Lack of Jurisdiction. On September 28, 2018, the PUC filed a Joinder of Dakota Range's Motion to Dismiss. On October 15, 2018, Appellants filed their Brief in Opposition to the Motion to Dismiss.<sup>1</sup> On October 17, 2018, Dakota Range filed their Reply Brief.
8. Based on the above, the Notice of Appeal was not timely served on Dakota Range or its counsel, nor was it properly or timely served on South Dakota Public Utilities Commission Staff ("PUC Staff"), who was a party to the underlying PUC proceeding. In addition, Appellants also failed to file the requisite proof of service by the statutory appeal deadline.

#### CONCLUSIONS OF LAW

1. "No right to appeal an administrative decision to circuit court exists unless the South Dakota Legislature enacts a statute creating that right." *In re PUC Docket HP 14-0001*, 2018 S.D. 44, ¶ 12, 914 N.W.2d 550, 555 (citations omitted).
2. SDCL 49-41B-30 permits any "party to a permit issuance proceeding aggrieved by the final decision of the Public Utilities Commission on an application for a permit," to appeal the decision by filing a notice of appeal in circuit court. SDCL 49-41B-30. "The review procedures shall be the same as that for contested cases under chapter 1-26." SDCL 49-41B-30.

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<sup>1</sup> Pursuant to SDCL 15-6-6(a) and (d), Appellants' Brief in Opposition was untimely filed. *See* SDCL 15-6-6(d) ("[O]pposing affidavits or briefs may be served not later than five days before the hearing, unless the court permits them to be served at some other time."); *see also id.* at 15-6-6(a) ("In computing any period of time prescribed or allowed by this chapter ... the day of the act, event, or default from which the designated period of time begins to run shall not be included. ... When the period of time prescribed or allowed is less than eleven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation."). Upon inquiry of both sides at the hearing held on the above date, neither side seemed overly concerned about this issue. Consequently, the Court will allow the late filing of Appellants' Brief and not dismiss the appeal for this reason.

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3. “The sections of Title 15 relating to practice and procedure in the circuit courts shall apply to procedure for taking and conducting appeals under [SDCL ch. 1-26] so far as the same may be consistent and applicable, and unless a different provision is specifically made by this chapter or by the statute allowing such appeal.” SDCL 1-26-32.1; *see also* SDCL 15-6-81(c) (“[SDCL ch. 15-6] does not supersede the provisions of statutes relating to appeals to the circuit courts.”).
4. A party may file a motion to dismiss a proceeding for insufficient service of process. SDCL 15-6-12(b)(4). Generally, an objection to service of process must be specific and must point out in what manner the serving party has failed to satisfy the requirements of the service provision utilized. *Grajczyk v. Tasca*, 2006 S.D. 55, ¶ 16, 717 N.W.2d 624, 630 (quoting *Photolab Corp. v. Simplex Specialty Co.*, 806 F.2d 807, 810 (8th Cir. 1986)).
5. A party may file a motion to dismiss a proceeding for lack of subject matter jurisdiction. SDCL 15-6-12(b)(1).
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SDCL 1-26-31 (emphasis added).<sup>2</sup>

8. “SDCL 1-26-31 clearly delineates who must be served with a notice of appeal and when and where it must be filed in order to transfer jurisdiction from the executive to the judicial branch.” *Slama v. Landmann Jungman Hosp.*, 2002 S.D. 151, ¶ 4, 654 N.W.2d 826, 827 (quoting *Schreifels*, 2001 S.D. 90, ¶ 12, 631 N.W.2d at 189). When a party ignores the plain language of the statute, the Court is deprived of subject matter

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jurisdiction and must dismiss the appeal. *Id.* (quoting *Schreifels*, 2001 S.D. 90, ¶ 12, 631 N.W.2d at 189).<sup>3</sup>

9. Since the PUC served its Final Decision on July 23, 2018, the statutory deadline for Appellants to serve the Notice of Appeal upon adverse parties and file the Notice of Appeal with proof of such service was August 22, 2018.
10. Appellants failed to satisfy either requirement. With respect to service, Appellants: (1) failed to properly and timely serve Dakota Range I and Dakota Range II; and (2) failed to properly and timely serve the PUC Staff. With respect to the filing requirement, Appellants failed to file with their Notice of Appeal the requisite proof of service upon the adverse parties by the August 22, 2018 deadline. Accordingly, this Court lacks jurisdiction to hear this matter, and dismissal is required.

**Appellants Failed to Properly Serve Dakota Range By the Statutory Appeal Deadline:**

11. While Appellants concede that they did not serve process on Ms. Smith,<sup>4</sup> Appellants contend that they timely served process on Cogency by mailing a letter and attached copies of the Notice of Appeal via first-class mail to the Hughes County Sheriff's Office on August 22, 2018. Appellants' Brief in Opposition to the Motion to Dismiss at 3-4 (hereinafter "Appellants' Brief"); Appellants' Brief and the affidavit of Attorney John C. Wiles, Exhibit (hereinafter "Appellants' Exh.") 6.
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for the untimely delay of service to Dakota Range. See *State v. Anders*, 2009 S.D. 15, ¶ 7, 763 N.W.2d 547, 550 (quoting *Chatterjee v. Mid Atl. Reg'l Council of Carpenters*, 946 A.2d 352, 355 (D.C. 2008)) (“Service by mail must be accomplished so as to allow delay only within the official channels of the United States mail, not through inter-office or other institutional delays”); see also *Singelman v. St. Francis Med. Ctr.*, 777 N.W.2d 540, 542-43 (Minn. Ct. App. 2010) (holding, under statute stipulating a civil action begins when “summons is delivered to the sheriff in the county where the defendant resides for service,” that mailing summons and complaint to sheriff rather than personally delivering them within limitations period was insufficient). Since such an untimely delay fails to satisfy the first requirement of SDCL 1-26-31, therefore, this Court does not have subject matter jurisdiction over Appellants’ appeal.

**Appellants’ Failed to Properly Serve the PUC Staff By the Statutory Appeal Deadline:**

14. Appellants failed to properly serve the PUC Staff within thirty days after the PUC served notice of its Final Decision.
15. Appellants concede that they did not serve process on Kristen Edwards, PUC Staff, but rather provided her with a courtesy copy of the Notice of Appeal on August 22, 2018. Appellants’ Brief at 4-5. Appellants argue that failure to serve process on Ms. Edwards was immaterial because PUC Staff was not a party to the underlying proceedings. *Id.* at 4.
16. While Appellants argue that the PUC’s April 6, 2018, decision does not grant “party status” to PUC Staff, the relevant paragraph clearly pertains to the granting of applications for party status submitted by sixteen individuals who sought to intervene in the matter. Appellants’ Exh. 9 at 1-2. Moreover, in its findings of fact for its July 23, 2018, final decision, the PUC found that PUC Staff “fully participated as a party in [the] matter, in accordance with SDCL 49-41B-17(1).” Appellees’ Exh. A at 4.<sup>5</sup> Appellants also named PUC Staff as a party to the appeal in its Notice of Appeal. Appellants’ Exh. 1 at 1. Therefore, since Appellants failed to service process on PUC Staff or its counsel by August 22, 2018, Appellants have not satisfied the first requirement of SDCL 1-26-31 and this Court does not have subject matter jurisdiction over Appellants’ appeal.

**Appellants Failed to Timely File the Requisite Proof of Service by the Statutory Appeal Deadline:**

17. Appellants, by failing to serve all adverse parties, also thereby failed to timely file their Notice of Appeal with proof of such service.

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<sup>5</sup> Appellants’ strict interpretation of SDCL 49-41B-17(1) is contrary to the plain language of the statute. See SDCL 49-41B-17(1) (listing the “Public Utilities Commission” as a party to a proceeding under SDCL ch. 49-41B). Even if SDCL 49-41B-17(1) does not include PUC Staff, the statute does not purport to limit parties to a PUC proceeding regarding energy conversion and transmission facilities to those expressly listed. See *id.* (listing parties to such a proceeding “unless otherwise provided”). Here, the PUC clearly provided that its staff was a party to the proceeding. Affidavit of Mollie M. Smith, Exhibit A (hereinafter, “Appellees’ Exh. A”) at 4.

18. While Appellants contend that Mr. Wiles' Certificate of Service, filed along with the Notice of Appeal on August 22, 2018, provides sufficient proof of service pursuant to SDCL 15-6-5(b), such a certificate of service only provides a presumption of sufficient service which may be rebutted by an opposing party's evidence or arguments. *State v. Waters*, 472 N.W.2d 524, 525 (S.D. 1991). Here, Appellees have presented sufficient evidence that Dakota Range was not served with process until August 28, 2018; Appellants have also conceded, contrary to Mr. Wiles' certified statement, that counsel for Dakota Range and PUC Staff were not served via "electronic e-file transmittal." Appellants' Brief at 4-5; Appellants' Exh. 1 at 3. Therefore, Appellants have not satisfied the second requirement of SDCL 1-26-31 and this Court does not have subject matter jurisdiction over Appellants' appeal.
19. In the event any Finding of Fact above should properly be a Conclusion of Law, or a Conclusion of Law should properly be a Finding of Fact, each shall be treated as such irrespective of its improper classification.

**ORDER**

1. Based on the foregoing Findings of Fact and Conclusions of Law, the Court GRANTS Dakota Range's Motion to Dismiss the above-captioned appeal.

Dated this \_\_\_\_ date of \_\_\_\_\_, 2018.

BY THE COURT:

Signed: 11/7/2018 5:46:36 PM

*Robert L. Spears*

HONORABLE ROBERT L. SPEARS  
CIRCUIT COURT JUDGE

65123326.2

000031

# Appendix F

STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF GRANT )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*

25CIV.18-070

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 \*

NOTICE OF APPEAL

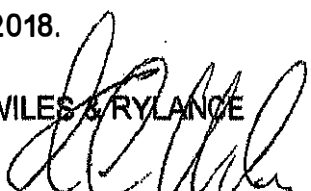
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TO: THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, ITS COUNSEL;  
DAKOTA RANGE I, LLC AND DAKOTA RANGE II, LLC AND THEIR RESPECTIVE  
COUNSEL; CINDY BRUGMAN, CODINGTON COUNTY, SOUTH DAKOTA AUDITOR,  
KAREN LAYHER, GRANT COUNTY, SOUTH DAKOTA AUDITOR, AND INTERVENERS  
OF RECORD:

PLEASE TAKE NOTICE that the Appellant, Teresa Kaaz by and through her attorneys of  
record, appeals to the Supreme Court of South Dakota from the final judgment which was  
filed and served in this action on the 13<sup>th</sup> day of November, 2018.

Dated this 10<sup>th</sup> day of December, 2018.

WILES & RYLAND

  
\_\_\_\_\_  
John C. Wiles  
Attorneys for Appellant  
3 East Kemp, Suite 200  
P. O. Box 227  
Watertown, SD 57201-0227  
(605) 886-5881

  
\_\_\_\_\_  
Lindsay A. Martin  
Attorneys for Appellant  
3 East Kemp, Suite 200  
P. O. Box 227  
Watertown, SD 57201-0227  
(605) 886-5881

000032

**CERTIFICATE OF SERVICE**

We, John C. Wiles and Lindsay A. Martin, hereby certify that true and correct copies of the foregoing "NOTICE OF APPEAL" were served electronically and by First Class United States Mail to all Parties listed below on the 10<sup>th</sup> day of December, 2018:

Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities  
Commission  
500 E. Capitol Ave  
Pierre, South Dakota 57501  
patty.vangerpen@state.sd.us

Mollie M. Smith  
Attorney  
Fredrikson & Byron, P.A.  
200 South Sixth St., Ste. 40000  
Minneapolis, MN 55402  
msmith@fredlaw.com

Kristen Edwards  
Staff Attorney  
South Dakota Public Utilities  
Commission  
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Commission  
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Karen E. Cremer  
Special Assistant Attorney General  
South Dakota Public Utilities  
Commission  
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jaredkrakow@hotmail.com

Kevin Krakow  
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Strandburg, SD 57265  
kcjmkraow@sstel.net

Matt Whitney  
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timlindgren009@yahoo.com


Linda M. Lindgren  
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lpedersen.pace@gmail.com

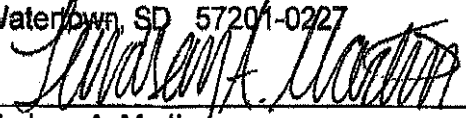
Kelly Owen  
15629 468th Ave  
Stockholm, SD 57264  
kocattle@gmail.com

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

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

WILES & RYLANCE

  
\_\_\_\_\_  
John C. Wiles  
Attorneys for Appellant  
3 East Kemp, Suite 200  
P. O. Box 227  
Watertown, SD 57201-0227

  
\_\_\_\_\_  
Lindsay A. Martin  
Attorneys for Appellant  
3 East Kemp, Suite 200  
P. O. Box 227  
Watertown, SD 57201-0227

000034



# Appendix G

STATE OF SOUTH DAKOTA )  
 : SS  
COUNTY OF GRANT )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

25CIV18-000070  
25CIV.18-

\*\*\*\*\*  
\*  
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  
\*  
\*

NOTICE OF APPEAL PUC DOCKET  
EL18-003

\*\*\*\*\*

TO: THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION, ITS COUNSEL;  
DAKOTA RANGE I, LLC AND DAKOTA RANGE II, LLC AND THEIR RESPECTIVE  
COUNSEL; CINDY BRUGMAN, CODINGTON COUNTY, SOUTH DAKOTA AUDITOR,  
KAREN LAYHER, GRANT COUNTY, SOUTH DAKOTA AUDITOR, AND INTERVENERS  
OF RECORD:

COMES NOW, Teresa Kaaz and Kristi Mogen, interveners in PUC Docket EL-003,  
by and through their attorney, John C. Wiles, Wiles & Rylance, 3 East Kemp #200,  
Watertown, South Dakota, and appeal the decision of the South Dakota Public Utilities  
Commission dated July 23, 2018. This appeal is venued in Grant County, South Dakota.

Pursuant to SDCL 1-26-31.4, Petitioners' Statement of Issues on Appeal will be filed  
with the Court ten days post-filing of this Notice.

The parties to this appeal are:


1. Dakota Range I, LLC, Petitioner
2. Dakota Range II, LLC, Petitioner
3. South Dakota Public Utilities Commission
4. South Dakota Public Utilities Commission Staff
5. Codington County, Intervener
6. Grant County, Intervener
7. Mollie M. Smith, Counsel for Dakota Range I, LLC and Dakota Range II, LLC
8. Vincent E. Meyer, Intervener
9. Diane Redlin, Intervener
10. Jared Krakow, Intervener
11. Kevin Krakow, Intervener

000035

12. Matt Whitney, Intervener
13. Timothy J. Lindgren, Intervener
14. Linda M. Lindgren, Intervener
15. Kelly Owen, Intervener
16. Wade Bauer, Intervener
17. Patricia Meyer, Intervener

Dated this 22<sup>nd</sup> day of August, 2018.

WILES & RYLANCE



---

John C. Wiles  
Attorneys for Plaintiff  
3 East Kemp, Suite 200  
P. O. Box 227  
Watertown, SD 57201-0227  
(605) 886-5881

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**CERTIFICATE OF SERVICE**

I, John C. Wiles, hereby certify that a true and correct copy of the foregoing "NOTICE OF APPEAL PUC DOCKET EL-003" was served upon Patricia Van Gerpen, Executive Director of the South Dakota Public Utilities Commission, by Admission of Service, 500 E. Capitol Ave, Pierre, South Dakota 57501; Kristen Edwards, Attorney for the Public Utilities Commission Staff, by electronic e-file transmittal to Kristen.edwards@state.sd.us; Dakota Range I, LLC and Dakota Range II, LLC by service of Hughes County Sheriff upon Cogency Global Inc., 326 N. Madison Ave, Pierre, SD 57501, their Registered Service Agent; Mollie M. Smith, Counsel for Dakota Range I, LLC and Dakota Range II, LLC, by electronic e-file transmittal to msmith@fredlaw.com, Cindy Brugman, Codington County Auditor, by Admission of Service; Karen Layher, Grant County Auditor, by Admission of Service; and all other potential interveners listed on the PUC Docket EL-003 Service List (see attached) by Admission of Service or as otherwise provided by law, all on the 22<sup>nd</sup> day of August, 2018.

WILES & RYLAND



John C. Wiles  
Attorney for Defendants/Appellants  
3 East Kemp, Suite 200  
P. O. Box 227  
Watertown, SD 57201-0227  
SD Bar #1838

000037

PUC Docket EL-003 Service List

Vincent E. Meyer  
15452 486th Ave  
Milbank, SD 57252

Diane Redlin  
305 W. Lakefront Drive  
South Shore, SD 57263

Jared Krakow  
16460 470th Ave  
Strandburg, SD 57265

Kevin Krakow  
16462 470th Ave  
Strandburg, SD 57265

Matt Whitney  
16450 462nd Ave  
Watertown, SD 57201

Timothy J. Lindgren  
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Linda M. Lindgren  
16050 464th Ave  
South Shore, SD 57263

Kelly Owen  
15629 468th Ave  
Stockholm, SD 57264

Wade Bauer  
15371 459th Ave  
South Shore, SD 57263

Patricia Meyer  
15452 486th Ave  
Milbank, SD 57252

000038

# Appendix H

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                  \*

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Pierre, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

South Dakota Public Utilities  
Commission

By:   
Patricia Van Gerpen, Executive  
Director

000039

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                  \*

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Milbank, South Dakota, this 23<sup>rd</sup> day of August, 2018.

Dated this 23<sup>rd</sup> day of August, 2018.

Grant County

By: Karen Layher  
Karen Layher Auditor

000040



STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF GRANT            )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*  
\*  
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.18-70

ADMISSION OF SERVICE

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Watertown, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

Codington County  
By: Cindy Brugman  
Cindy Brugman, Auditor

**FILED**

AUG 22 2018

CODINGTON COUNTY AUDITOR

**000041**

# Appendix I

**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 )**

**ORDER GRANTING PARTY  
STATUS AND ESTABLISHING  
PROCEDURAL SCHEDULE**

**EL18-003**

On January 24, 2018, the South Dakota Public Utilities Commission (Commission) received an Application for a Facility Permit for a wind energy facility (Application) from Dakota Range I, LLC, and Dakota Range II, LLC (together Dakota Range or Applicant). Applicant proposes to construct a wind energy facility to be located in Grant County and Codington County, South Dakota, known as the Dakota Range Wind Project (Project). The Project would be situated within an approximately 44,500-acre project area, ten miles northeast of Watertown, South Dakota (Project Area). The total installed capacity of the Project would not exceed 302.4MW nameplate capacity. The proposed Project includes up to 72 wind turbine generators, access roads to turbines and associated facilities, underground 34.5-kilovolt (kV) electrical collector lines connecting the turbines to the collection substation, underground fiber-optic cable for turbine communications co-located with the collector lines, a 34.5 to 345-kV collection substation, up to five permanent meteorological towers, and an operations and maintenance facility. The Project would interconnect to the high-voltage transmission grid via the Big Stone South to Ellendale 345-kV transmission line which crosses the Project site. The Project is expected to be completed in 2021. Applicant estimates the total construction cost to be \$380 million.

On January 25, 2018, the Commission electronically transmitted notice of the filing and the intervention deadline of March 26, 2018, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv. On January 31, 2018, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status. On March 21, 2018, a public input hearing was held as scheduled and the Commission received applications for party status from sixteen individuals. On March 28, 2018, Commission Staff submitted a Motion for Adoption of Procedural Schedule. On March 30, 2018, Dakota Range filed a Response to Applications for Party Status and Staff's Motion for Adoption of Procedural Schedule.

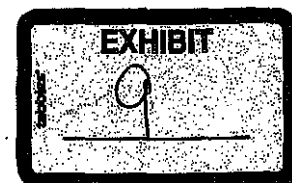
The Commission has jurisdiction over this matter pursuant to SDCL Chapter 49-41B, specifically 49-41B-17, and ARSD Chapter 20:10:22, specifically 20:10:22:40.

At its regularly scheduled meeting on April 3, 2018, the Commission considered this matter. Commission staff recommended granting party status and adopting procedural schedule. The Commission further voted unanimously to grant party status and adopt a procedural schedule. It is therefore

**ORDERED**, that the parties shall follow the procedural schedule as set forth below except as otherwise ordered by the Commission.

Applicant Supplemental Direct Testimony Due April 6, 2018

Staff and Intervenor Testimony Due May 4, 2018



001648

Applicant Rebuttal Testimony Due	May 21, 2018
Final Discovery to All Parties	May 24, 2018
Final Discovery Due	June 7, 2018
Witness and Exhibit Lists Due	June 8, 2018
Deadline for Prehearing Motions	June 11, 2018
Evidentiary Hearing	June 12-15, 2018

It is further

ORDERED, that responses to discovery are due ten business days after receipt. It is further

ORDERED, that each party may submit pre-filed testimony on behalf of that party's witnesses. The submission of pre-filed testimony is a pre-requisite to giving live testimony at the hearing. However, each party may have persons who have not submitted pre-filed testimony available to testify at the hearing in the event issues not addressed in pre-filed testimony are raised by the Commission. It is further

ORDERED, that party status is granted to Teresa Kaaz; Daniel D. Seurer; Vincent Meyer; Diane Redlin; Jared Krakow; Kevin Krakow; Matt Whitney; Timothy J. Lindgren; Linda M. Lindgren; Christian Reimche; Derek Nelson; Paul Nelson; Kelly Owen; Kristi Mogen; Wade Bauer; and Patricia Meyer.

Dated at Pierre, South Dakota, this 6<sup>th</sup> day of April 2018.

CERTIFICATE OF SERVICE	
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.	
By:	<u>Adam deHueck</u>
Date:	<u>4/6/18</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner

000043

001649

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                    \*  
  \*

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at South Shore, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

*Linda M. Lindgren*  
Linda M. Lindgren, Intervener *Intervener*

000044

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

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Strandburg, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

Kevin Krakow Intervener  
Kevin Krakow, Intervener

000045

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF GRANT            )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*

25CIV.18- 70

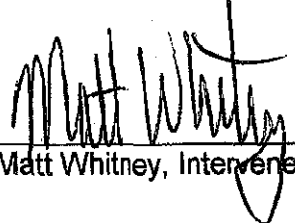
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ENERGY FACILITY IN GRANT COUNTY AND\*  
CODINGTON COUNTY, SOUTH DAKOTA,\*  
FOR THE DAKOTA RANGE WIND PROJECT\*  
PUC DOCKET EL18-003

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Watertown, South Dakota, this 29 day of August, 2018.

Dated this 29 day of August, 2018.

  
Matt Whitney, Intervener

000046

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                    \*

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Milbank, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

  
\_\_\_\_\_  
Patricia Meyer, Intervener

000047



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

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at South Shore, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

  
Timothy J. Lindgren, Intervener 

000048

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

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at South Shore, South Dakota, this 22<sup>nd</sup> day of August, 2018.

Dated this 22<sup>nd</sup> day of August, 2018.

  
Diane Redlin, Intervener

000049

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

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Strandburg, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

  
Jared Krakow, Intervener

000050

STATE OF SOUTH DAKOTA )  
 )  
 ) : SS  
COUNTY OF GRANT )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*

25CIV.18-70

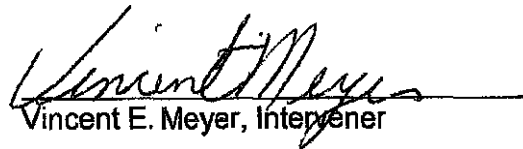
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ENERGY FACILITY IN GRANT COUNTY AND\*  
CODINGTON COUNTY, SOUTH DAKOTA,\*  
FOR THE DAKOTA RANGE WIND PROJECT\*  
PUC DOCKET EL18-003

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Milbank, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

  
Vincent E. Meyer, Intervener

000051

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                    \*  
  \*

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at South Shore, South Dakota, this 8-22 day of August, 2018.

Dated this 8-27 day of August, 2018.

Wade Bauer Intervener  
Wade Bauer, Intervener

8/27/2018

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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                     \*  
   \*

ADMISSION OF SERVICE

\*\*\*\*\*

Due and personal service of the NOTICE OF APPEAL PUC DOCKET EL-003 in  
the above-entitled matter, by receipt of true and correct copy thereof, is hereby admitted  
at Stockholm, South Dakota, this 22 day of August, 2018.

Dated this 22 day of August, 2018.

*Kelly Owen Intervener*  
\_\_\_\_\_  
Kelly Owen, Intervener

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# Appendix J

**WILES & RYLANCE**

**ATTORNEYS AT LAW**

3 East Kemp - Suite 200  
P. O. Box 227  
Watertown, South Dakota 57201-0227  
(605) 886-5881

**FACSIMILE**  
(605) 886-3934

**E-MAIL:**  
[jcw@wilesandrylance.com](mailto:jcw@wilesandrylance.com)

John C. Wiles, P.C.  
Raymond D. Rylance, P.C.

Counsel to the Firm  
John R. Delzer

August 22, 2018

Hughes County Sheriff's Office  
3200 SD-34 #9  
Pierre, SD 57501

RE: Service of Process

To Whom It May Concern:

Please find enclosed two copies of the Notice of Appeal PUC Docket EL 18-003 that require service upon Cogency Global Inc., 326 N. Madison Ave, Pierre, as the Registered Agent for both Dakota Range I, LLC and Dakota Range II, LLC. We request that you execute a certificate of service for each company individually.

Upon service of process, please return your invoice(s) to the undersigned, and you will be paid by return mail. Should you have any questions, please call.

Yours very truly,

WILES & RYLANCE

  
John C. Wiles

JCW/ajt  
Encs.  
Cc: K. Mogen  
T. Kaaz



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**Hughes County Sheriff's Office**

3200 E. Highway 34 Ste 9  
Pierre, SD 57501  
Administration: 605-773-7470 Dispatch: 605-773-7410

THIRD JUDICIAL CIRCUIT

Return # 16941  
Process # C18-01517  
Docket # 25CIV18-70  
Reference #

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, SD, for the Dakota Range Wind Project PUC Docket EL 18-003

Plaintiff,

- vs -

Defendant

SHERIFF'S RETURN OF PERSONAL SERVICE

I, Michael Leidholt, Sheriff of Hughes County, South Dakota, hereby certify that on the **24th day of August, 2018**, a **Notice of Appeal PUC Docket EL 18-003**, in the above entitled action, came into my hand for service. That on the **28th day of August, 2018 at 3:28 PM**, in said county, I did serve the documents on **COGENCY GLOBAL INC.**

By then and there delivering to and leaving with: **PATTY PERSON (PERSON AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF DAKOTA RANGE I, LLC) at 326 N MADISON AVE, PIERRE, SD 57501**

Item	Disburse To	Amount Owed	Amount Paid
Civil Process Fee	HUGHES COUNTY TREASURER	\$50.00	\$0.00
Mileage Fee	HUGHES COUNTY TREASURER	\$5.00	\$0.00
		<b>Total Owed</b>	<b>\$55.00</b>
		<b>Total Paid</b>	<b>\$0.00</b>
		<b>Uncollectible</b>	<b>\$0.00</b>
		<b>Remaining</b>	<b>\$55.00</b>

Invoice # 18-04073  
WILES & RYLANCE ATTORNEYS AT LAW  
PO BOX 227, WATERTOWN, SD 57201

Comments

Date Returned 8/30/18

Signed

Deputy Jason Hamil  
Hughes County Sheriff's Office  
3200 E Hwy 34 Ste 9  
Pierre, SD 57501  
Phone: (605) 773-7470  
Fax: (605) 773-7417

000055



# Hughes County Sheriff's Office

3200 E. Highway 34 Ste 9  
Pierre, SD 57501  
Administration: 605-773-7470 Dispatch: 605-773-7410

THIRD JUDICIAL CIRCUIT

Return # 16942  
Process # C18-01516  
Docket # 25CIV18-70  
Reference #

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 Codrington County, SD. for the Dakota Range Wind Project PUC Docket EL 18-003

Plaintiff, }  
- vs - }  
Defendant }

## SHERIFF'S RETURN OF PERSONAL SERVICE

I, Michael Leidholt, Sheriff of Hughes County, South Dakota, hereby certify that on the **24th day of August, 2018**, a **Notice of Appeal PUC Docket EL 18-003**, in the above entitled action, came into my hand for service. That on the **28th day of August, 2018 at 3:28 PM**, in said county, I did serve the documents on **COGENCY GLOBAL INC.**

By then and there delivering to and leaving with: **PATTY PERSON (PERSON AUTHORIZED TO ACCEPT SERVICE ON BEHALF OF DAKOTA RANGE II, LLC)** at **326 N MADISON AVE, PIERRE, SD 57501**

Item	Disburse To	Amount Owed	Amount Paid
Civil Papers/No fee charged	HUGHES COUNTY TREASURER	\$0.00	\$0.00
		<b>Total Owed</b>	<b>\$0.00</b>
		<b>Total Paid</b>	<b>\$0.00</b>
		<b>Uncollectible</b>	<b>\$0.00</b>
		<b>Remaining</b>	<b>\$0.00</b>

**Invoice #** 18-04072  
WILES & RYLANCE ATTORNEYS AT LAW  
PO BOX 227, WATERTOWN, SD 57201

**Comments**

**Date Returned 8/30/18**

**Signed**

Deputy Jason Hamil  
Hughes County Sheriff's Office  
3200 E Hwy 34 Ste 9  
Pierre, SD 57501  
Phone: (605) 773-7470  
Fax: (605) 773-7417

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**Smith, Mollie**

---

**From:** John C. Wiles <jcw@wilesandrylance.com>  
**Sent:** Wednesday, August 22, 2018 3:36 PM  
**To:** Edwards, Kristen; Smith, Mollie  
**Subject:** Notice of Appeal; PUC EL 18-003  
**Attachments:** DOC082218-08222018143213.pdf

Counsel, your client's have or are being served today.jcw

John C. Wiles  
Wiles & Rylance  
3 East Kemp, Suite 200  
Watertown, SD 57201  
Telephone: 605-886-5881  
Fax: 605-886-3934  
[jcw@wilesandrylance.com](mailto:jcw@wilesandrylance.com)

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-----Original Message-----

**From:** Toshiba Copier [<mailto:wilesandrylance@gmail.com>]  
**Sent:** Wednesday, August 22, 2018 4:32 PM  
**To:** John C. Wiles  
**Subject:** Send data from MFP11349240 08/22/2018 14:32

Scanned from MFP11349240  
Date:08/22/2018 14:32  
Pages:4  
Resolution:200x200 DPI

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# Appendix K

1 STATE OF SOUTH DAKOTA ) IN. CIRCUIT COURT  
 )  
 2 COUNTY OF GRANT ) THIRD JUDICIAL CIRCUIT  
 )  
 3 )  
 4 In the Matter of the Application) )  
 5 by Dakota Range I, LLC, and ) )  
 6 Dakota Range II, LLC, for a ) )  
 7 Permit of a Wind Energy Facility) Motions Hearing  
 8 in Grant County and Codington ) )  
 9 County, South Dakota, for the ) )  
 10 Dakota Range Wind Project ) )  
 11 PUC Docket EL18-003 ) 25CIV18-000070  
 12 ) )

8  
 9 BEFORE: **THE HONORABLE ROBERT L. SPEARS**  
 10 Circuit Court Judge  
 11 Watertown, South Dakota  
 12 October 19, 2018, at 1:30 p.m.

11 APPEARANCES:

12 For the Petitioners Teresa Kaaz and Kristi Mogen:

13 **MR. JOHN C. WILES**  
 14 **MS. LINDSAY MARTIN**  
 15 Wiles & Rylance  
 16 P.O. Box 227  
 17 Watertown, South Dakota 57201

16 For the Respondents Dakota Range I, LLC,  
 17 and Dakota Range II, LLC:

18 **MS. MOLLIE M. SMITH**  
 19 Fredrikson & Byron, P.A.  
 20 200 South Sixth Street, Suite 4000  
 21 Minneapolis, Minnesota 55402

20 **MR. JOE ERICKSON**  
 21 Schoenbeck Law, PC  
 22 P.O. Box 1325  
 23 Watertown, South Dakota 57201

22 For the Respondents Public Utilities Commission:

23 **MS. KAREN E. CREMER**  
 24 South Dakota Public Utilities Commission  
 25 500 East Capitol Avenue  
 Pierre, South Dakota 57501

1 of-service with the circuit court also within the noted 30  
2 days. This is a strict compliance statute. It means that  
3 it has to be complied with in order for there to be  
4 jurisdiction for the Court. Substantial compliance is not  
5 sufficient as noted in the cases in our brief.

6 In this case, there's no dispute that August 22,  
7 2018, was the deadline to file and serve the notice of  
8 appeal. Everyone has agreed that -- to that date.

9 THE COURT: Based on my reading, and I will inform counsel  
10 on both sides, I read the entire file. And based on the  
11 briefs, both sides concede that was the deadline. Go  
12 ahead.

13 MS. SMITH: Certainly. In this case, the appellants have  
14 failed to serve Dakota Range I and Dakota Range II by the  
15 statutory deadline, and they have also failed to serve the  
16 PUC staff, a party to the underlying action, at all. And,  
17 third, they have failed to file the requisite proof of  
18 service on --

19 THE COURT: Ms. Smith, is service on the PUC staff  
20 mandatory or the attorneys and the parties?

21 MS. SMITH: So all the parties to the action must be --  
22 receive the notice of appeal. It must be served on all  
23 the parties. In the underlying action, and it's noted in  
24 the final order of the commission, the Public Utilities  
25 Commission, that the Public Utilities Commission staff was

1 . . . copy of the pleadings. I wasn't required to, not by  
2 statute. I was trying to be overly cautious in making  
3 sure that counsel did receive a copy of the pleadings the  
4 same time I filed them in court. But as the statute  
5 indicates, 1-26-31, the adverse party, the agency have to  
6 be served. It doesn't say anything about counsel.

7 And, in fact, the certificate of service, all of  
8 those people received admission of service with the  
9 exception of Dakota Range I and Dakota Range II. Now,  
10 contact was also made with them, but we learned from their  
11 procedures that, one, they don't accept an admission of  
12 service; and, two, they require service by the sheriff to  
13 be served.

14 And that is exactly why on August 22, I authored and  
15 sent to the Hughes County Sheriff a letter by First Class  
16 United States Mail that says please make service upon  
17 Dakota Range I and Dakota Range II at the registered  
18 agent's service address, which is their last known  
19 address.

20 What happened after we got it to the sheriff was it  
21 took him a few days to get it served, but the statutes  
22 also save that, Your Honor, because 15-6-5(b) provides  
23 that service by mail shall be by First Class Mail and is  
24 complete upon mailing.

25 So the service process on Dakota Range I and Dakota