

**IN THE SUPREME COURT  
OF THE  
STATE OF SOUTH DAKOTA**

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**No. 28833**

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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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**APPENDIX TO APPELLEES DAKOTA RANGE I, LLC AND DAKOTA RANGE  
II, LLC'S BRIEF**

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**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
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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

**APP. 1**  
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.

<b>CERTIFICATE OF SERVICE</b>	
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

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION OF 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</b>	<b>) ) ) ) ) )</b>	<b>FINAL DECISION AND ORDER GRANTING PERMIT TO CONSTRUCT WIND ENERGY FACILITY; NOTICE OF ENTRY  EL18-003</b>
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**APPEARANCES**

Commissioners Kristie Fiegen, Gary Hanson, and Chris Nelson.

Mollie Smith and Lisa Agrimonti, Fredrikson & Byron, P.A., 200 South Sixth Street, Minneapolis, Minnesota 55402, appeared on behalf of the Applicant, Dakota Range I, LLC and Dakota Range II, LLC.

Kristen Edwards and Amanda Reiss, 500 E. Capitol Ave., Pierre, South Dakota 57501, appeared on behalf of the South Dakota Public Utilities Commission staff.

Teresa D. Kaaz, South Shore, South Dakota 57263, appeared pro se.

Kristi Mogen, Twin Brooks, South Dakota 57269, appeared pro se.

**PROCEDURAL HISTORY**

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).<sup>1</sup> 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). According to the Application, 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 302.4-mega-watt (MW) 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 Area. The Project is expected to be completed in 2021. Applicant estimates the total construction cost to be \$380 million.

The Application included the prefiled direct testimony and exhibits of Mark Mauersberger/Brenna Gunderson, Robert O'Neal, and David Phillips/Ryan Henning.

<sup>1</sup> See Ex. A1 (Application).

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 30, 2018, Applicant sent a copy of the Application and the prefiled testimony to the auditor of Codington County and Grant County. 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 (Order). The Order scheduled a public input hearing for March 21, 2018, at 5:30 p.m., at the Waverly-South Shore School Gymnasium, 319 Mary Place, Waverly, South Dakota. The Order also set an intervention deadline of March 26, 2018.

On February 9, 2018, Applicant mailed a copy of the public hearing notice via certified mail to all landowners within a half mile of the Project in accordance with SDCL 49-41B-5.2. On February 15, 2018, the Commission issued an Order Assessing Filing Fee assessing a filing fee not to exceed \$390,000 with a minimum filing fee of \$8,000.

The Commission published Notice of Public Hearing in the *Watertown Public Opinion* and the *Grant County Review* on February 21, 2018, and March 14, 2018, and in the *South Shore Gazette* on March 1 and March 15, 2018, as provided in SDCL 49-41B-15. Applicant published Notice of Public Hearing in the *Watertown Public Opinion* on February 13 and February 20, 2018, and in the *Grant County Review* on February 14 and February 21, 2018, and in the *South Shore Gazette* on February 15 and February 22, 2018, as provided in SDCL 49-41B-15.

On March 21, 2018, pursuant to SDCL 49-41B-15, 49-41B-16, and its Order, the Commission held a public input hearing as scheduled. The purpose of the public input hearing was to hear public comment regarding the Application and Project. At the public input hearing, Dakota Range presented a brief description of the project, following which interested persons appeared and presented their views, comments, and questions regarding the Application and Project. See Public Hearing Transcript.

On March 21, 2018, the Commission received Applications for Party Status from 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, Patricia Meyer, and Mark Kriesel. On March 26, 2018, the Commission received an email withdrawing the application for party status for Mark Kriesel. 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.

On April 3, 2018, Teresa Kaaz filed a response to her Party Status Application. On April 6, 2018, the Commission issued an Order Granting Party Status and Establishing Procedural Schedule. On April 6, 2018, Dakota Range filed the prefiled direct testimony and exhibits of Mark Roberts and Michael MaRous.

On May 2, May 4, May 7, and May 10, 2018, respectively, Dan Seurer, Christian Reimche, Paul Nelson, and Derek Nelson requested withdrawal of party status. On May 4, 2018, Commission staff filed the prefiled direct testimony and exhibits of Paige Olson, Tom Kirschenmann, David Hessler, David Lawrence, and Jon Thurber. On May 4, 2018, Teresa Kaaz filed prefiled direct testimony and exhibits; and, Kristi Mogen filed prefiled direct testimony and exhibits.

On May 15, 2018, Dakota Range filed a Motion to Exclude Portions of Testimony and/or Exhibits of Intervenors Teresa Kaaz and Kristi Mogen and Request Regarding Hearing Participation. On May 15, 2018, the Commission issued an Order for and Notice of Evidentiary Hearing. On May 16, 2018, the Commission issued an Order Granting Withdrawal of Party Status. On May 16, 2018, Commission staff filed its Response to Dakota Range's Motion and Motion for Judicial Notice. On May 16, 2018, the Commission issued an Order for and Notice of Motion Hearing on Less Than 10 Days' Notice. On May 21 and May 22, 2018, Dakota Range filed the prefiled rebuttal testimony and exhibits of Mark Mauersberger, Robert O'Neal, David Phillips, Brenna Gunderson, Daniel Pardo, Dr. Mark Roberts, Michael MaRous, Alice Moyer, and Wade Falk. On May 24, 2018, the Commission issued an Order Granting Motion to Exclude Portions of Exhibits.

On June 7, 2018, Dakota Range filed its exhibits for hearing. On June 8, 2018, Kristi Mogen, Teresa Kaaz, and Commission staff each filed their Witness and Exhibit List. On June 8, 2018, Commission staff filed the prefiled surrebuttal testimony and exhibits of David Lawrence. On June 11, 2018, Commission staff filed a Motion to Compel Discovery, which was granted on June 12, 2018, and Dakota Range filed a confidential copy of the Wind Energy Lease and Wind Easement Agreement on the same date (Exhibit A19). On June 12, 13, and 14, 2018, Dakota Range filed exhibits A18 – A27. On June 14, 2018, Commission staff filed Exhibit S7.

The evidentiary hearing was held as scheduled, beginning on June 12, 2018, and ending on June 14, 2018. At the conclusion of the evidentiary hearing, in consultation with the parties, a briefing schedule and decision date was set by the Commission and on June 18, 2018, an Order Setting Post-Hearing Briefing Schedule and Decision Date was issued.

On July 10, 2018, at its ad hoc meeting, the parties made oral arguments. After questions of the parties by the Commissioners and discussion among the Commissioners, the Commission voted unanimously to grant a permit to Dakota Range to construct the Project, subject to the approved Permit Conditions.

Having considered the evidence of record, applicable law, and the briefs and arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law, and Final Decision and Order Granting Permit to Construct Wind Energy Facility:

**FINDINGS OF FACT**

**I. PROCEDURAL FINDINGS.**

1. The Procedural History set forth above is hereby incorporated by reference in its entirety in these Procedural Findings. The procedural findings set forth in the Procedural History are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and decisions rendered by the Commission in this matter.

**II. PARTIES.**

2. Dakota Range I, LLC and Dakota Range II, LLC are wholly owned indirect subsidiaries of Apex Clean Energy Holdings, LLC (Apex).<sup>2</sup> Dakota Range I, LLC and Dakota Range II, LLC will jointly own, manage, and operate the Project.<sup>3</sup>

<sup>2</sup> Ex. A1 at 6-1 (Application).

<sup>3</sup> Ex. A1 at 6-1 (Application).

3. Apex is an independent renewable energy company based in Charlottesville, Virginia. Apex has a large and diversified portfolio of renewable energy resources, capable of producing more than 14,000 MW of clean electricity. Apex has brought 2,200 MW online since 2012, and operating assets under management are nearly 1 gigawatts (GW) as of the first quarter of 2018.<sup>4</sup>

4. Kristi Mogen owns property approximately 9 miles from the Project area.<sup>5</sup>

5. Teresa Kaaz is a landowner within the Project area.<sup>6</sup>

6. Commission staff fully participated as a party in this matter, in accordance with SDCL 49-41B-17(1).

**III. APPLICABLE STATUES AND REGULATIONS FOR AN ENERGY FACILITY PERMIT.**

7. The following South Dakota statutes are applicable: SDCL 49-41B-1 through 49-41B-2.1, 49-41B-4, 49-41B-5.2, 49-41B-11 through 49-41B-19, 49-41B-22, 49-41B-25, 49-41B-26 through 49-41B-37 and applicable provisions of SDCL Chapters 1-26 and 15-6.

8. The following South Dakota administrative rules are applicable: ARSD Chapters 20:10:01 and 20:10:22.

9. Pursuant to SDCL 49-41B-22, Applicant for a facility construction permit has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

10. SDCL 49-41B-25 provides that the Commission must make a finding that the construction of the facility meets all the requirements of Chapter 49-41B.

11. There is sufficient evidence on the record for the Commission to assess the proposed Project using the criteria set forth above.

<sup>4</sup> Ex. A1 at 1-1 – 1-2 (Application).

<sup>5</sup> Ex. A10 at 7 (Mauersberger).

<sup>6</sup> Ex. TK-1a (Kaaz).



#### IV. PROJECT DESCRIPTION.

12. The proposed Project is an up to 302.4 MW wind energy conversion facility located in Grant and Codington counties, South Dakota. 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-kV to 345-kV collection substation, up to five permanent meteorological (MET) towers, and an operations and maintenance (O&M) 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.<sup>7</sup>

13. A new 345-kV interconnection switching station connecting to the Big Stone South to Ellendale line will be constructed, owned, and operated by Otter Tail Power Company and Montana Dakota Utilities. Applicant would construct and own a 345-kV interconnection facility connecting the Project collection substation to the interconnection switching station. Because the interconnection facility is less than 2,640-feet long, does not cross any public highways, and does not require the use of eminent domain, it falls outside the Commission's jurisdiction and has been permitted locally.<sup>8</sup>

14. The Project is located on approximately 44,500 acres of privately owned land in Grant County and Codington County, South Dakota (Project Area). Applicant expects construction to be completed in 2021.<sup>9</sup>

15. The current estimated capital cost of the Project is approximately \$380 million based on indicative construction and wind turbine pricing cost estimates for the proposed Vestas V136-4.2 MW turbine layout. This estimate includes lease acquisition, permitting, engineering, procurement, and construction of turbines, access roads, underground electrical collector system, Project collection substation, interconnection facilities, O&M facility, supervisory control and data acquisition (SCADA) system, and MET towers; and project financing.<sup>10</sup>

16. The proposed turbine that would be utilized for the Project is the Vestas V136-4.2 MW turbine at an 82-meter hub height and 136-meter rotor diameter (RD).<sup>11</sup>

17. All turbines will be constructed within the Project Area consistent with the configuration presented in the Updated Layout Map (Exhibit A25), and subject to all commitments, conditions, and requirements of this Order.<sup>12</sup>

18. Apex currently owns Dakota Range and is overseeing the development of the Project. Northern States Power Company, d/b/a/ Xcel Energy (Xcel Energy) has entered into a Purchase and Sale Agreement (PSA) with Apex to acquire Dakota Range, which owns the Project. The PSA will be finalized after the completion of certain development milestones, including acquisition of an Energy Facility Permit from the Commission for the Project. Xcel

<sup>7</sup> Ex. A1 at 1-1, 9-1 – 9-2 (Application).

<sup>8</sup> Ex. A1 at 1-1 (Application); SDCL 49-41B-2.1(1).

<sup>9</sup> Ex. A1 at 1-1 (Application); Ex. A1 at 20-1 (Application).

<sup>10</sup> Ex. A1 at 8-1 (Application).

<sup>11</sup> Ex. A1 at 9-3 (Application).

<sup>12</sup> See Ex. A25 (Updated Wind Turbine Map).

Energy is a utility company operating in South Dakota, Minnesota, North Dakota, Colorado, Michigan, New Mexico, Texas, and Wisconsin.<sup>13</sup>

19. Applicant presented evidence of consumer demand and need for the Project.<sup>14</sup> The Project would install up to 302.4 MW of wind generating capacity in South Dakota that would contribute to satisfying utilities', commercial and industrial customers', and consumers' demands for renewable energy, and meet utility renewable requirements or individual sustainability goals.<sup>15</sup> Though Xcel Energy will own Dakota Range (the Project entities), and therefore the electricity produced, the specific electrons generated by the Project would be utilized as needed on the Midcontinent Independent System Operator, Inc. (MISO) regional grid and cannot be tracked to their exact delivery location or final use. The electricity generated by the Project would help MISO operators meet electricity demand in both the immediate and surrounding MISO control area. This Project would also provide zero-emission cost electricity to the grid, as well as firm price stability due to the availability of a renewable resource that would replace the need for ongoing fuel costs.<sup>16</sup>

20. Applicant provided evidence to support the need for turbine and associated facility flexibility.<sup>17</sup> With respect to turbine flexibility, Applicant and Commission staff testified to the need for turbine flexibility and material change provisions.<sup>18</sup> With respect to the access roads, the collector system, the O&M facility, the Project substation, and temporary facilities, Applicant and Commission staff agreed to Permit Condition 23, attached hereto.<sup>19</sup>

21. At the evidentiary hearing, Applicant requested that three proposed turbine shifts be approved as part of the Project configuration, with the proposed new locations identified as Turbines 34a, 60a, and A12a in Exhibit A15-3.<sup>20</sup> Applicant provided evidence to demonstrate that the proposed turbine shifts comply with all applicable siting requirements.<sup>21</sup> With respect to the three proposed turbine shifts, Applicant and Commission staff agreed to Permit Condition 39, attached hereto.

22. The record demonstrates that Applicant has made appropriate and reasonable plans for decommissioning.<sup>22</sup>

23. With respect to financial security for decommissioning, if a sale to Xcel Energy does occur, Xcel Energy is a regulated public utility that recovers decommissioning costs from its customers through retail rates. The Commission has the authority to review the decommissioning costs recovered through rates to ensure funds are available for decommissioning.<sup>23</sup>

<sup>13</sup> Ex. A1 at 7-1 (Application).

<sup>14</sup> See Ex. A1 at § 7.2 (Application).

<sup>15</sup> Ex. A1 at 7-3 (Application).

<sup>16</sup> Ex. A1 at 7-1 (Application).

<sup>17</sup> See Ex. A1 at 9-2 (Application); Ex. A15 at 3-4 (Gunderson).

<sup>18</sup> Ex. A18; Evid. Hrg. Tr. at 299-300 (Thurber).

<sup>19</sup> Ex. A18; Recommended Permit Condition 23; Evid. Hrg. Tr. at 299 (Thurber).

<sup>20</sup> Evid. Hrg. Tr. at 214, 216-218 (Gunderson).

<sup>21</sup> See Evid. Hrg. Tr. at 399-402 (O'Neal); Ex. A15-3 (Constraints Map); Ex. A24; Ex. A25 (Updated Wind Turbine Map - Public) and Ex. A25-C (Updated Wind Turbine Map (CONFIDENTIAL)).

<sup>22</sup> See Ex. A1 at Ch. 24.0 (Application); Ex. A4-2 (Decommissioning Cost Estimate Technical Memorandum).

<sup>23</sup> Evid. Hrg. Tr. at 301-302 (Thurber); SDCL 49-34A-6.

24. If a sale to Xcel Energy does not occur, an escrow account is an appropriate financial assurance to cover decommissioning costs.<sup>24</sup>

## V. SATISFACTION OF REQUIREMENTS FOR ISSUANCE OF AN ENERGY FACILITY PERMIT.

### A. The proposed facility will comply with all applicable laws and rules.

25. The evidence submitted by Applicant demonstrates that the Project will comply with applicable laws and rules.<sup>25</sup> Neither Commission staff nor Intervenors have asserted otherwise or submitted evidence to the contrary.

26. Construction of the Project meets all the requirements of Chapter 49-41B.

### B. The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area.

#### 1. Environment.

27. The evidence demonstrates that the Project does not pose a threat of serious injury to the environment in the Project Area and that Applicant has adopted reasonable avoidance and minimization measures, as well as commitments, to further limit potential environmental impacts.<sup>26</sup>

28. Construction of the Project will not result in significant impacts on geological resources.<sup>27</sup> The risk of seismic activity in the vicinity of the Project Area is low according to data from the U.S. Geological Survey.<sup>28</sup>

29. Applicant has demonstrated that it will minimize and/or avoid impacts to soil resources.<sup>29</sup> The majority of impacts will be temporary and related to construction activities.<sup>30</sup> Permanent impacts associated with operation of the Project will be up to 65 acres, which is less than 0.2 percent of the Project Area.<sup>31</sup> Applicant will implement various measures during construction and restoration to minimize impacts to the physical environment, including separating topsoil and subsoil, installing temporary erosion control devices, and decompacting soil after construction is complete.<sup>32</sup>

30. The Project is not anticipated to have material impacts on existing water and air quality.<sup>33</sup>

31. Applicant has demonstrated that it will minimize and/or avoid impacts to hydrology.<sup>34</sup> The record demonstrates that Applicant has minimized impacts to wetlands and

<sup>24</sup> Permit Conditions 37 and 38; Evid. Hrg. Tr. at 318-319 (Thurber).

<sup>25</sup> See, e.g., Ex. A1 at 9-2, 10-2, 13-6, Ch. 17.0 (Application).

<sup>26</sup> See, e.g., Ex. A1 at Ch. 11.0, 12.0, 13.0, 14.0, 15.0, 16.0, 17.0, 18.0, 19.0 (Application).

<sup>27</sup> See Ex. A1 at § 12.1.2 (Application).

<sup>28</sup> Ex. A1 at 12-3 (Application).

<sup>29</sup> See Ex. A1 at § 12.2.2 (Application).

<sup>30</sup> See Ex. A1 at 12-10 (Application).

<sup>31</sup> Ex. A1 at 3-1, 12-10; Table 11 -1 (Application).

<sup>32</sup> Ex. A1 at 9-7 – 9-8, 12-10 – 12-11, 14-3 (Application).

<sup>33</sup> Ex. A1 at 18-1, 19-1 (Application).

<sup>34</sup> See Ex. A1 at Ch. 13.0 (Application).

water bodies.<sup>35</sup> The Project is not anticipated to have long-term impacts on groundwater resources.<sup>36</sup> Any potential impacts to floodplains would be temporary in nature, and existing contours and elevations would be restored upon completion of construction.<sup>37</sup> Project impacts on hydrologic resources are anticipated to be temporary and/or minor.<sup>38</sup> No turbines are located within wetlands, and the Project is anticipated to permanently impact only approximately 0.08 acres of wetlands.<sup>39</sup>

32. Applicant has demonstrated that it will minimize and/or avoid impacts to vegetation.<sup>40</sup> Permanent direct impacts associated with operation of the Project would be up to 65 acres, which is less than 0.2 percent of the Project Area.<sup>41</sup>

33. The Project facilities have been sited to avoid native grasslands, to the extent practicable.<sup>42</sup> In areas where impacts cannot be avoided, temporary impacts would be minimized through construction Best Management Practices (BMPs), such as re-vegetation and erosion control devices.<sup>43</sup>

34. Applicant coordinated with the South Dakota Game, Fish and Parks Department (GFP) to avoid and minimize impacts to grasslands. The Project will directly impact approximately 9.8 acres of potentially untilled grasslands, which is less than 0.13 percent of the total grasslands in the Project Area.<sup>44</sup> Applicant will reseed potentially untilled grasslands temporarily impacted by the Project with native seed mixes following construction.<sup>45</sup> The Project is not likely to result in significant adverse effects to the species that rely on these grasslands or to the functionality of the grassland ecosystem in and near the Project.<sup>46</sup> The record also demonstrates that the Project will not have a significant adverse impact on habitat, and will not substantially increase habitat fragmentation in the area.<sup>47</sup>

35. Applicant will reseed temporarily disturbed uncultivated areas with certified weed-free seed mixes to blend in with existing vegetation.<sup>48</sup>

36. Applicant has conducted numerous wildlife studies and surveys for the Project to assess existing use, identify potential impacts, and incorporate appropriate avoidance and minimization measures.<sup>49</sup> Applicant consulted with the U.S. Fish and Wildlife Service (USFWS) and GFP to seek input on wildlife resources potentially occurring within the Project Area and to seek guidance on the appropriate studies to evaluate risk and inform development of impact avoidance and minimization measures for the Project.<sup>50</sup> Applicant followed the processes outlined in the USFWS Land-Based Wind Energy Guidelines (WEG), Eagle Conservation Plan Guidance (ECPG), and the SD Siting Guidelines for developing, construction, and operation

<sup>35</sup> Ex. A1 at §14.2.2 (Application).

<sup>36</sup> Ex. A1 at §13 (Application).

<sup>37</sup> Ex. A1 at 13-5 (Application).

<sup>38</sup> See, e.g., Ex. A1 at 13-4, 14-5, 14-6 (Application).

<sup>39</sup> Ex. A8 at 5 (Phillips).

<sup>40</sup> See Ex. A1 at § 14.1.2 (Application).

<sup>41</sup> Ex. A1 at 3-1, § 14.1.2 (Application).

<sup>42</sup> Ex. A1 at 14-3 (Application).

<sup>43</sup> Ex. A1 at 14-3 (Application).

<sup>44</sup> Ex. A8 at 7 (Phillips).

<sup>45</sup> Ex. A8 at 8 (Phillips).

<sup>46</sup> Ex. A8 at 7 (Phillips).

<sup>47</sup> Ex. A8 at 9 (Phillips).

<sup>48</sup> Ex. A8 at 8 (Phillips); Ex. A1 at 3-3 (Application).

<sup>49</sup> See, e.g., Ex. A1 at § 14.3.1.4 (Application).

<sup>50</sup> Ex. A1 at 14-6 (Application).

wind energy projects.<sup>51</sup> In addition, Applicant is preparing a Bird and Bat Conservation Strategy (BBCS) in accordance with the WEG, which includes strategies for mitigating risks to avian and bat species during construction and operation of the Project.<sup>52</sup>

37. Construction of the Project may have impacts on wildlife species primarily as a result of habitat disturbance.<sup>53</sup> However, following construction, all areas of temporary disturbance will be reclaimed with vegetation consistent with the surrounding vegetation types.<sup>54</sup> The Project was designed to avoid and minimize displacement of wildlife by minimizing the Project's footprint in undisturbed areas.<sup>55</sup> Permanent wildlife habitat loss and functionality due to construction and operation of the Project would be minimal across the Project Area.<sup>56</sup>

38. The record demonstrates that, while the Project may directly impact birds and bats, avian fatalities due to the Project are anticipated to be low and to not have significant population-level impacts.<sup>57</sup> The Project has been sited in an area and designed in a manner to avoid and minimize impacts to birds and bats.<sup>58</sup>

39. Applicant conducted two years of pre-construction avian surveys.<sup>59</sup> Those surveys indicate that avian impacts from the Project are anticipated to be low.<sup>60</sup>

40. Applicant has demonstrated that it will minimize and/or avoid impacts to federally- and state-listed species.<sup>61</sup> Based on coordination with the USFWS and GFP, the only federally-listed species with the potential to occur in the Project Area are the northern long-eared bat, Dakota skipper, and Poweshiek skipperling.<sup>62</sup> Impacts on federally-listed species due to Project construction and operations are anticipated to be minimal due to the low likelihood or frequency of species' presence in the Project Area and implementation of appropriate species-specific conservation measures.<sup>63</sup> The only state-listed species documented to occur during site-specific studies completed for the Project was the peregrine falcon (state-endangered), and only one individual was observed, suggesting that use of the Project site by this species and associated risk of impact is very low.<sup>64</sup>

41. Overall, there is a low level of risk for potential bald eagle impacts at the site.<sup>65</sup> Applicant conducted eagle nest surveys in April 2016 and April 2017. No eagle nests were identified within the Project Area, and the closest eagle nest is approximately 1.8 miles from the Project Area.<sup>66</sup> In addition, Applicant has agreed to a number of avian-related impact minimization and avoidance measures, including: conducting post-construction avian mortality monitoring and preparing a BBCS in accordance with the USFWS WEG that will be

<sup>51</sup> Ex. A1 at 14-6 (Application).

<sup>52</sup> Ex. A8 at 11 (Phillips); Ex. A1 at § 14.3.2.5 (Application).

<sup>53</sup> Ex. A1 at 14-12 – 14-13 (Application).

<sup>54</sup> Ex. A1 at 14-13 (Application).

<sup>55</sup> See Evid. Hrg. Tr. at 194 (Phillips).

<sup>56</sup> Ex. A1 at 14-13 (Application).

<sup>57</sup> See Ex. A1 at 14-13 – 14-14 (Application).

<sup>58</sup> Ex. A8 at 10 (Phillips).

<sup>59</sup> See Ex. A1 at 2-1 – 2-2 (Application).

<sup>60</sup> Ex. A1 at 14-14 (Application); Ex. A8 at 10 (Phillips).

<sup>61</sup> See Ex. A1 at § 14.3.2 (Application).

<sup>62</sup> Ex. A1 at 14-7, 14-13 (Application).

<sup>63</sup> See Ex. A1 at 14-7, 14-13 (Application); Ex. A8 at 10-11 (Phillips).

<sup>64</sup> Ex. A1 at 14-13 (Application).

<sup>65</sup> Ex. A7 at 15 (Phillips).

<sup>66</sup> Ex. A1 at 14-10 (Application); Ex. A7 at 15 (Phillips).

implemented to minimize impacts to avian and bat species during construction and operation of the Project.<sup>67</sup>

42. Applicant has demonstrated that it will minimize and/or avoid impacts to aquatic ecosystems.<sup>68</sup> Applicant consulted with USFWS and GFP regarding the federally-and state-listed aquatic species with potential to occur in or near the Project, and both agencies agree that the species are not anticipated to be affected by the Project.<sup>69</sup>

43. Applicant has demonstrated that it will minimize and/or avoid impacts to land use.<sup>70</sup> The Project will not displace existing residences or businesses.<sup>71</sup> In all areas proposed for ground disturbance, Applicant will coordinate with the landowners to minimize impacts to the extent practicable so as to maintain opportunities to continue current land uses.<sup>72</sup> Areas disturbed due to construction that would not host Project facilities would be re-vegetated with vegetation types matching the surrounding agricultural landscape.<sup>73</sup> Agricultural uses may continue within the Project Area during construction and operation.<sup>74</sup>

44. Applicant has demonstrated that it will minimize and/or avoid impacts to recreation.<sup>75</sup> Only five turbines and associated infrastructure will be located on three of the Walk-In Area parcels.<sup>76</sup> To address concerns related to potential viewshed impacts at Punished Woman's Lake, Applicant voluntarily agreed to a turbine setback of two miles from the shoreline of Punished Woman's Lake.<sup>77</sup>

45. Applicant has demonstrated that it will minimize and/or avoid impacts to conservation easements and publicly-managed lands.<sup>78</sup> Applicant coordinated with the USFWS to identify and avoid areas held as conservation easements by the USFWS within the Waubay National Wildlife Refuge Complex (i.e., grassland easements, wetland easements, and waterfowl production area easements).<sup>79</sup> The Project has been designed such that no Project facilities (e.g., turbines, collector lines, access roads) would be placed on these USFWS Wetland, Conservation, or Grassland Easements, and thus, no direct impacts to these easement areas would occur.<sup>80</sup> The Project will also avoid direct impacts to all Game Production Areas and Waterfowl Production Areas.<sup>81</sup>

46. In accordance with Federal Aviation Administration (FAA) regulations, the turbine towers would be painted off-white to reduce potential glare and minimize visual impact.<sup>82</sup> No scenic resources with sensitive viewsheds are located within the Project Area or within viewing

<sup>67</sup> See Ex. A7 at 16 (Phillips) and Ex. A8 at 10-11 (Phillips); Ex. A1 at § 14.3.2.5 (Application).

<sup>68</sup> See Ex. A1 at § 15.2 (Application); Ex. A7 at 13 (Phillips).

<sup>69</sup> See Ex. A1 at § 15.2 (Application); Ex. A7 at 13 (Phillips).

<sup>70</sup> See Ex. A1 at §§ 16.1.2, 16.2.2 (Application).

<sup>71</sup> Ex. A1 at 16-3 (Application).

<sup>72</sup> Ex. A7 at 7 (Phillips).

<sup>73</sup> Ex. A1 at 16-3 (Application); Ex. A7 at 14 (Phillips).

<sup>74</sup> Ex. A1 at 16-3 (Application).

<sup>75</sup> See, e.g., Ex. A1 at §§ 13.3.2, 16.2.2, 16.6.2 (Application).

<sup>76</sup> Ex. A7 at 7 (Phillips).

<sup>77</sup> Ex. A9 at 6 (Mauersberger); Ex. A1 at 10-3 (Application).

<sup>78</sup> See Ex. A1 at § 16.2.2 (Application).

<sup>79</sup> Ex. A8 at 6 (Phillips).

<sup>80</sup> Ex. A1 at 16-4 (Application).

<sup>81</sup> Ex. A1 at 16-4 (Application); Ex. A8 at 6 (Phillips).

<sup>82</sup> Ex. A1 at 16-13 (Application).

distance of the Project; therefore, no impacts to scenic resources would result from construction or operation of the Project.<sup>83</sup>

47. With respect to cultural and historical architectural resources, the State Historic Preservation Office (SHPO) made four recommendations.<sup>84</sup> First, the SHPO recommended that an official record search be conducted for the Project. Applicant satisfied this recommendation when it conducted the Level I cultural resources records search in June 2017.<sup>85</sup> Second, the SHPO recommended that a Level III Intensive Survey be completed for the Project Area. Applicant completed Level III intensive cultural resource surveys in December 2017 in areas of potential ground disturbance determined to have high probability of sensitive cultural resources.<sup>86</sup> The Level III survey results were provided to the SHPO, and the SHPO issued a letter stating that the Project would not encroach upon, damage or destroy any properties listed in the State or National Register of Historic Places (NRHP) or the environs of such property.<sup>87</sup> Third, the SHPO recommended that Applicant analyze the visual effects to architectural resources located within one mile of the Project, which Applicant completed.<sup>88</sup> No historic architectural resources were identified within the proposed Project footprint or direct area of potential effects.<sup>89</sup> Within the visual area of potential effects, there are three structures recommended eligible for listing on the NRHP; however, the Project will have no adverse effect on the resources.<sup>90</sup> Fourth, the SHPO recommended that Applicant contact the Tribal Historic Preservation Officers (THPO) in South Dakota. Applicant has engaged in ongoing voluntary coordination with the Sisseton-Wahpeton Oyate (SWO) to seek input on cultural resources in the Project Area, the Cultural Resources Monitoring and Management Plan (CRMMP), and the proposed cultural resource surveys for the Project.<sup>91</sup> Applicant completed tribal resource surveys with SWO in May 2018.<sup>92</sup> Commission staff witness Ms. Olson stated that the SHPO's recommendation that Applicant reach out to Native American tribes and consult on tribal resources has been satisfied.<sup>93</sup>

48. Applicant has demonstrated that it will minimize and/or avoid impacts to cultural resources.<sup>94</sup> Applicant conducted multiple cultural resource surveys to identify cultural resources within the Project Area.<sup>95</sup> Applicant would avoid direct impacts to identified cultural resources as defined in the CRMMP and in coordination with the SWO.<sup>96</sup> Both the SHPO and SWO have agreed that the measures outlined in the CRMMP are appropriate to avoid negatively impacting landmarks and cultural resources of historic, religious, archaeological, scenic, natural, or other cultural significance.<sup>97</sup> Further, Applicant's CRMMP provides a plan for unanticipated discovery of sensitive cultural resources, should any be unearthed during construction.<sup>98</sup>

<sup>83</sup> Ex. A1 at 16-14 (Application); ARSD 20:10:22:23(6).

<sup>84</sup> Ex. S3 at 3-4 (Olson).

<sup>85</sup> See Ex. A7 at 17 (Phillips); Ex. A1 at Appendix M (Application); see also Ex. S3 at 4 (Olson).

<sup>86</sup> See Ex. A7 at 17 (Phillips).

<sup>87</sup> Ex. A8-1 at 2 (SHPO Letter, dated February 14, 2018).

<sup>88</sup> See Ex. A7 at 18 (Phillips); see also Ex. S3 at 4 (Olson).

<sup>89</sup> Ex. A7 at 18 (Phillips).

<sup>90</sup> Ex. A7 at 18 (Phillips).

<sup>91</sup> Ex. A1 at 21-16 (Application); Ex. A7 at 5 (Phillips).

<sup>92</sup> Ex. A15 at 3 (Gunderson).

<sup>93</sup> Evid. Hrg. Tr. at 293 (Olson); Ex. S3 at 4 (Olson).

<sup>94</sup> See Ex. A1 at § 21.5.2 (Application); Ex. A7 at 19 (Phillips); Ex. A8 at 3-4 (Phillips).

<sup>95</sup> See Ex. A1 at § 21.5.1, Appendix M, Appendix N, Appendix O (Application); Ex. A7 at 17-18 (Phillips).

<sup>96</sup> See Ex. A1 at 3-2 (Application).

<sup>97</sup> See Ex. A1 at 21-16 (Application); Ex. A7 at 19 (Phillips).

<sup>98</sup> Ex. A8 at 3 (Phillips).

49. Commission staff and Applicant have agreed upon Permit Conditions 11 through 13 regarding cultural resources, which are attached hereto.

2. Social and Economic.

50. Apex acquired the Dakota Range Project from a small local developer, Wahpeton Wind, in March 2015.<sup>99</sup> The Project was acquired after initial site selection and a specific area was offered for sale; therefore, Apex was not involved in considering broader alternative locations.<sup>100</sup> The identification of the final Project site was primarily driven by: (1) the site's strong wind speeds; (2) direct access to transmission interconnection; (3) land use and environmental compatibility with wind development; (4) landowner support for wind energy development; and (5) the Project's ability to avoid or minimize potential adverse impacts to cultural resources, wetlands, grasslands, and wildlife species of concern.<sup>101</sup>

51. Participating landowners Mr. Falk and Ms. Moyer testified regarding their support for the Project.<sup>102</sup> The Project will provide an additional stable source of income for landowners.<sup>103</sup> Mr. Falk and Ms. Moyer also testified to their good working relationships with Applicant and their belief that Applicant has shown itself to be responsive and thoughtful.<sup>104</sup> Further, the Project uses a community compensation formula that does not limit compensation to only those landowner participants who host Project facilities.<sup>105</sup>

52. Applicant has demonstrated that construction and operation of the Project will result in benefits to South Dakota and local economies.<sup>106</sup> The Project will create temporary job opportunities during construction, and permanent operations and maintenance job opportunities.<sup>107</sup> Additionally, local industrial businesses would also likely benefit from construction-related expenditures for the Project.<sup>108</sup> The Project will make lease payments to participating landowners and will provide long-term benefits to the state and local tax base.<sup>109</sup>

53. Applicant has demonstrated that there was no market data indicating the Project would have a negative impact on either rural residential or agricultural property values in the area surrounding the Project.<sup>110</sup> Mr. MaRous, a South Dakota State Certified General Appraiser and a certified Member Appraisal Institute appraiser, conducted a Market Analysis to analyze the potential impact of the Project on the value of the surrounding properties and found no credible data indicating property values will be adversely impacted due to proximity to the Project.<sup>111</sup>

54. Commission staff's witness, Mr. Lawrence, also a South Dakota State Certified General Appraiser and a certified Member Appraisal Institute appraiser conducted his own analysis of the sales of six Brookings County residential properties in proximity to wind turbines

<sup>99</sup> Ex. A1 at 2-1 (Application).

<sup>100</sup> Ex. A1 at 10-1 (Application).

<sup>101</sup> Ex. A1 at 10-1 – 10-2 (Application).

<sup>102</sup> See Ex. A11 (Moyer) and Ex. A12 (Falk); Evid. Hrg. Tr. at 138 – 158 (Falk) and 159 – 168 (Moyer).

<sup>103</sup> See Ex. A11 at 2 (Moyer); Ex. A12 at 2 (Falk).

<sup>104</sup> See Ex. A12 at 2 (Falk); Ex. A11 at 2 (Moyer); Evid. Hrg. Tr. at 140-141 (Falk).

<sup>105</sup> Evid. Hrg. Tr. at 92-93, 97 (Mauersberger).

<sup>106</sup> See Ex. A1 at § 21.1.2.1 (Application).

<sup>107</sup> Ex. A1 at 21-3 (Application).

<sup>108</sup> Ex. A1 at 21-3 (Application); Ex. A9 at 18 (Mauersberger).

<sup>109</sup> Ex. A9 at 19 (Mauersberger); Ex. A1 at 21-4 – 21-5 (Application).

<sup>110</sup> See Ex. A1 at § 21.1.2.3 (Application); Ex. A13 at 5, 6 (MaRous); Ex. A13-1 at 3, 35 (Market Impact Analysis); Ex. A14 at 2, 11, 13 (MaRous); Evid. Hrg. Tr. at 171-172 (MaRous).

<sup>111</sup> See Ex. A13 at 2, 6 (MaRous); Ex. A13-1 at 3, 35 (Market Impact Analysis); Evid. Hrg. Tr. at 169 (MaRous).



and testified that based on his research, the evidence supports the presumption there have been no adverse effects on the selling price of rural residential properties in proximity to a wind tower, turbine, or wind project.<sup>112</sup> However, the summary of Mr. Lawrence's research was limited to Brookings County and he analyzed a small population of sales.<sup>113</sup>

55. There is no basis in the record to require a property value guarantee. There is no record evidence that property values will be adversely affected.<sup>114</sup>

56. The record demonstrates that the Project is not anticipated to adversely impact communications systems.<sup>115</sup> If, after construction, Applicant receives information relative to communication systems interference potentially caused by operation of the wind turbines in areas where reception is presently good, Applicant has committed to resolve such problems on a case-by-case basis.<sup>116</sup>

57. The record demonstrates that Applicant has avoided and/or minimized impacts to transportation.<sup>117</sup> Applicant will coordinate with applicable local road authorities to establish road use agreements, as needed, to minimize and mitigate Project impacts to haul roads.<sup>118</sup> For example, Applicant has entered into a road use agreement with Grant County.<sup>119</sup> The Project will utilize the One-Call program to locate underground infrastructure prior to construction.<sup>120</sup> In addition, once construction is completed, the Project will register its facilities with the One-Call program.<sup>121</sup>

**C. The facility will not substantially impair the health, safety or welfare of the inhabitants.**

58. The record demonstrates Applicant has minimized impacts from noise.<sup>122</sup> Commission staff and Applicant agreed to Permit Condition 27, attached hereto.

59. Section 1211.04(13) of the Zoning Ordinance for Grant County imposes the following noise limit on wind energy facilities: Noise level shall not exceed 50 [A-weighted decibel (dBA)], average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.<sup>123</sup>

60. Section 5.22.03(12) of the Comprehensive Zoning Regulations for Codington County requires the following: Noise level shall not exceed 50 dBA, average A-weighted Sound pressure including constructive interference effects at the property line of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.<sup>124</sup>

<sup>112</sup> Ex. S6 at 4 (Lawrence); *see also* Evid. Hrg. Tr. at 289-290 (Lawrence).

<sup>113</sup> Ex. S6 at 5, 6 (Lawrence).

<sup>114</sup> *See* Ex. A1 at § 21.1.2.3 (Application); Ex. A13 at 5, 6 (MaRous); Ex. A13-1 at 3, 35 (Market Impact Analysis); Ex. A14 at 2, 11, 13 (MaRous); Evid. Hrg. Tr. at 171-172 (MaRous) and 289-290 (Lawrence).

<sup>115</sup> *See* Ex. A1 at § 16.5 (Application).

<sup>116</sup> Ex. A1 at 16-11 (Application).

<sup>117</sup> *See* Ex. A1 at § 21.4.2 (Application).

<sup>118</sup> Ex. A9 at 16 (Mauersberger); Ex. A1 at 21-12 (Application).

<sup>119</sup> Evid. Hrg. Tr. at 67-68 (Mauersberger).

<sup>120</sup> Ex. A1 at 25-2 (Application); Ex. A9 at 16 (Mauersberger).

<sup>121</sup> Ex. A1 at 25-2 (Application); Ex. A9 at 16 (Mauersberger).

<sup>122</sup> *See* Ex. A1 at § 16.3.2 (Application).

<sup>123</sup> *See* Ex. A5 at 4 (O'Neal).

<sup>124</sup> *See* Ex. A5 at 5 (O'Neal).

61. Applicant conducted a Sound Level Modeling Report to measure the Project's anticipated sound level in order to determine whether the Project will comply with the noise limits established by Grant and Codington counties.<sup>125</sup> The projected one-hour sound levels from the Project are 45 dBA or less at all participating residences and 44 dBA or less at all non-participating residences.<sup>126</sup>

62. The record demonstrates that Applicant has minimized and/or avoided impacts from shadow flicker.<sup>127</sup> Applicant has committed to limit shadow flicker to 30 hours or less per year at any existing non-participating residence, business, or building owned and/or maintained by a governmental entity, unless otherwise agreed to by the landowner.<sup>128</sup> Applicant will take steps to mitigate shadow flicker concerns at residences that could experience shadow flicker levels above 30 hours per year.<sup>129</sup>

63. There is no record evidence that the proposed Project will substantially impair human health.<sup>130</sup> Construction and placement of facilities meet or exceed industry standards established for protection of the health and welfare of residences and businesses in and around the Project.<sup>131</sup> Further, the South Dakota Department of Health provided Commission staff with a letter stating that the Department of Health has not taken a formal position on the issue of wind turbines and human health.<sup>132</sup> The South Dakota Department of Health referenced the Massachusetts Department of Public Health and Minnesota Department of Health studies and noted that those studies generally conclude that there is insufficient evidence to establish significant risk to human health.<sup>133</sup> Applicant's witness, Dr. Roberts, analyzed and reviewed peer reviewed, published literature and did not identify any scientific works that provide objective support for claims that wind turbines cause adverse health effects.<sup>134</sup> He concluded that there is no peer-reviewed, scientific data to support a claim that wind turbines are causing disease or specific health conditions.<sup>135</sup>

64. The Project will utilize aviation warning lights compliant with the FAA requirements. The FAA determines lighting specifications and determines which turbines must be equipped with lights.<sup>136</sup>

65. Commission staff witness, Mr. Thurber, testified that use of the Aircraft Detection Lighting System (ADLS) by Applicant would be beneficial for the public.<sup>137</sup>

66. Ms. Kaaz testified that she is a landowner within the Project footprint with multiple wind turbines very near her property line.<sup>138</sup> Due to the proximity of the wind turbines,

<sup>125</sup> See Ex. A5 at 5 (O'Neal); Ex. A1 at Appendix I (Application); see also Ex. A24 (Updated Wind Turbine Coordinates).

<sup>126</sup> Ex. A6 at 7 (O'Neal); Evid. Hrg. Tr. at 400-403.

<sup>127</sup> See Ex. A1 at § 16.4 (Application); Ex. A5 at 11 (O'Neal).

<sup>128</sup> Ex. A1 at 16-11 (Application); Permit Conditions 28 and 29.

<sup>129</sup> Permit Condition 28.

<sup>130</sup> See, e.g., Ex. A2 at 13-14 (Roberts).

<sup>131</sup> See, e.g., Ex. A9 at 14-15 (Mauersberger); Ex. A1 at § 25.2 (Application).

<sup>132</sup> See Ex. S1 at 3 (Thurber).

<sup>133</sup> See Ex. S1 at 3 (Thurber); Ex. A2 at 13-14 (Roberts).

<sup>134</sup> Ex. A2 at 12 (Roberts).

<sup>135</sup> Ex. A2 at 12 (Roberts); see also Ex. A2 at 13 (Roberts) ("Despite the attribution of various health events to wind turbines, there has not been a specific health condition documented in the peer-reviewed published literature to be recognized by the medical community or professional societies as a disease caused by exposure to sound levels and frequencies generated by the operation of wind turbines.").

<sup>136</sup> Ex. A1 at 9-4 (Application).

<sup>137</sup> Evid. Hrg. Tr. at 309 (Thurber).

in particular turbine 67 which is only 1271 feet from her property line, she requested that the Project be required to use the ADLS.<sup>139</sup>

67. ARSD 20:10:22:18(3) requires an analysis of the compatibility of the Project with present land use of the surrounding area, with special attention paid to the effects on rural life and the business of farming. The Commission accordingly finds and concludes that it has the authority to require Applicant to implement the use of the ADLS.

68. The record evidence supports implementing a Permit Condition requiring Applicant to use the ADLS within the Project Area.<sup>140</sup>

69. Applicant provided evidence that the potential for ice to be thrown from turbines is not a common occurrence.<sup>141</sup> The Project meets both the state and county non-participating property line setback requirements.<sup>142</sup> The concern for ice shedding is typically within 300 feet of the turbine. While there is the potential for ice to be thrown further, impacts are not anticipated at 620 feet from a turbine (the closest distance of a turbine to a nonparticipating property line).<sup>143</sup> The record also demonstrates that Applicant has in place appropriate operational mechanisms to minimize and avoid the potential for ice throw. In addition, turbines have ice detection systems that will detect icing conditions from a remote control center, enabling the turbines to be paused remotely in the event that icing is taking place.<sup>144</sup> Further, Applicant has committed to the following condition: Applicant will use two methods to detect icing conditions on turbine blades: (1) sensors that will detect when blades become imbalanced or create vibration due to ice accumulation; and (2) meteorological data from on-site permanent meteorological towers, on-site anemometers, and other relevant meteorological sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the turbine(s) in icing conditions (per the sensors) or Applicant will manually shut down turbine(s) if icing conditions are identified (using meteorological data). Turbines will not return to normal operation until the control systems no longer detect an imbalance or when weather conditions either remove icing on the blades or indicate icing is no longer a concern.

**D. The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.**

70. The record demonstrates that the Project will not unduly interfere with the orderly development of the region, as demonstrated by Grant County's and Codington County's granting of conditional use permits for the Project.<sup>145</sup>

71. Ms. Mogen and Ms. Kaaz proposed a two-mile setback, with the option of a waiver, from non-participating landowners in order to protect public health and safety, and to protect property rights.<sup>146</sup> Ms. Mogen and Ms. Kaaz did not present any evidence in support of the two-mile setback, and did not request a two-mile setback from the County during the County

<sup>138</sup> Ex. TK-1a; Evid. Hrg. Tr. at 348, 351-355; Ex. A27.

<sup>139</sup> Ex. S1, JT-1, pg. 88 of 156.

<sup>140</sup> Permit Condition 42.

<sup>141</sup> Evid. Hrg. Tr. at 424 (Gunderson) (CONFIDENTIAL); Evid. Hrg. Tr. at 434-435 (James) (CONFIDENTIAL).

<sup>142</sup> SDCL 43-13-24. Codington County, Ordinance 65 §5.22.03(1)(d)(c) and Grant County Compiled Zoning Ordinances, § 1211.04(2)(c).

<sup>143</sup> Evid. Hrg. Tr. at 435 (James) (CONFIDENTIAL).

<sup>144</sup> Evid. Hrg. Tr. at 432 (James) (CONFIDENTIAL).

<sup>145</sup> See Ex. A1 at 17-1 (Application).

<sup>146</sup> See Evid. Hrg. Tr. at 331 (Mogen) and 356 (Kaaz).

conditional use permitting process for the Project.<sup>147</sup> Nothing in the record supports a proposed two-mile setback from non-participants' land.

72. Ms. Kaaz raised concerns regarding the proximity of the turbines to her land. However, the Project complies with all state and county setback requirements. Additionally, Applicant committed that it will use no more than three of the four turbine locations closest to Ms. Kaaz's property (Turbines 67, 68, 69 and A26).<sup>148</sup>

## VI. GENERAL.

73. An application may be denied, returned, or amended, at the discretion of the Commission, for failure to file an application generally in the form and content required by SDCL Chapter 49-41B and ARSD Chapter 20:10:22. SDCL 49-41B-13(2). The Commission finds that Applicant filed its application generally in the form and content required by SDCL Chapter 49-41B and ARSD Chapter 20:10:22. The Commission notes that the supplementation of an application with additional information is common.<sup>149</sup>

74. An application may be denied, returned, or amended, at the discretion of the Commission, if there are any deliberate misstatements of material facts in the application or in accompanying statements or studies. SDCL 49-41B-13(1). The Commission finds that the application and its accompanying statements and studies did not contain any deliberate misstatements of material facts.

75. The Commission finds that the Permit Conditions attached hereto as Attachment A and incorporated herein by reference are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and should be adopted.

76. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will comply with all applicable laws and rules, including all requirements of SDCL Chapter 49-41B and ARSD Chapter 20:10:22.

77. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will not pose an unacceptable threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area.

78. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.

79. The Commission finds that the Project, if constructed in accordance with the terms and conditions of this decision, will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

<sup>147</sup> See Evid. Hrg. Tr. at 332-333 (Mogen) and 355 (Kaaz); see also Evid. Hrg. Tr. at 72-73 (Mauersberger).

<sup>148</sup> Evid. Hrg. Tr. at 220 (Gunderson).

<sup>149</sup> Ex. S1 at 4 (Thurber).

80. The Commission finds that a permit to construct the Project should be granted subject to the Permit Conditions set forth in Attachment A.

81. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated herein by reference as a Finding of Fact as if set forth in full herein.

Based on the foregoing Findings of Fact and the record in this proceeding, the Commission hereby makes the following:

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding pursuant to SDCL Chapter 49-41B and ARSD Chapter 20:10:22. Subject to the findings made on the four elements of proof under SDCL 49-41B-22, the Commission has authority to grant, deny, or grant upon terms, conditions, or modifications, a permit for the construction, operation, or maintenance of the Project.

2. The Dakota Range Wind Project proposed by Applicant is a wind energy facility as defined in SDCL 49-41B-2(13).

3. Applicant's permit Application, as amended and supplemented through the proceedings in this matter, complies with the applicable requirements of SDCL Chapter 49-41B and ARSD Chapter 20:10:22. The Commission finds that Applicant filed its Application generally in the form and content required by SDCL Chapter 49-41B and ARSD Chapter 20:10:22.

4. The Commission finds there was no showing that there are any deliberate misstatements of material facts in the Application or in accompanying statements or studies.

5. SDCL 49-41B-1 provides in part that "[t]he Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled." The Commission finds that this language is directed toward ensuring that the permit process is conducted in a timely manner.

6. The Commission satisfied the hearing and notice requirement in SDCL 49-41B.

7. Applicant satisfied the applicable notice requirements in SDCL 49-41B.

8. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will comply with all applicable laws and rules, including all requirements of SDCL Chapter 49-41B and ARSD Chapter 20:10:22.

9. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will not pose a threat of serious injury to the environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area.

10. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.

11. The Project, if constructed and operated in accordance with the terms and conditions of this decision, will not unduly interfere with the orderly development of the region

with due consideration having been given the views of governing bodies of affected local units of government.

12. The standard of proof is by the preponderance of evidence. Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a permit as provided in SDCL 49-41B-25.

13. The Commission has authority to revoke or suspend any permit granted under the South Dakota Energy Facility Permit Act for failure to comply with the terms and conditions of the permit pursuant to SDCL 49-41B-33 and must approve any transfer of the permit granted by this Order pursuant to SDCL 49-41B-29.

14. The Commission concludes that it needs no other information to assess the impact of the proposed facility or to determine if Applicant has met its burden of proof.

15. The Commission concludes that it possesses the authority under SDCL 49-41B-25 to impose conditions on the construction, operation, or maintenance of the Project, that the Permit Conditions set forth in Attachment A are supported by the record, are reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41B-22 and that the Permit Conditions are hereby adopted.

16. To the extent that any the Findings of Fact in this decision are determined to be Conclusions of Law or mixed findings of fact and conclusions of law, the same are incorporated herein by this reference as a Conclusion of Law as if set forth in full herein.

It is therefore

ORDERED, that a permit to construct the Dakota Range Project is granted to Dakota Range I, LLC and Dakota Range II, LLC, subject to the Permit Conditions set forth in Attachment A.

**NOTICE OF ENTRY**

PLEASE TAKE NOTICE that this Final Decision and Order Granting Permit to Construct Wind Energy Facility was duly issued and entered on the 23<sup>rd</sup> day of July 2018.

<b>CERTIFICATE OF SERVICE</b>	
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 and mail.	
By:	<u>Adam deHueck</u>
Date:	<u>7/23/18</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

Kristie Fiegen

KRISTIE FIEGEN, Chairperson

Gary Hanson

GARY HANSON, Commissioner

Chris Nelson

CHRIS NELSON, Commissioner

**ATTACHMENT A**  
**PERMIT CONDITIONS**

1. Applicant will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency, or any other governmental unit for construction and operation activity prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by Applicant shall be sent to the Commission.
2. Applicant shall construct, operate, and maintain the Project in a manner consistent with (1) descriptions in the Application, (2) Application supplements, (3) responses to any data requests, (4) the Final Decision and Order Granting Permit to Construct Wind Energy Facility, Attachment A-Permit Conditions, (5) any applicable industry standards, (6) any permits issued by a federal, state, or local agency, and (7) evidence presented by Applicant at the evidentiary hearing.
3. Applicant agrees that the Commission's complaint process as set forth in ARSD Chapter 20:10:01 shall be available to landowners and other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit. Participating landowners are free to use the complaint process free from retribution or consequence regardless of any private easement term to the contrary.
4. Applicant shall provide each landowner in the Project Area with the following information:
  - a) A copy of the Final Decision and Order Granting Permit to Construct Wind Energy Facility;
  - b) Detailed safety information describing:
    - 1) Reasonable safety precautions for existing activities on or near the Project,
    - 2) Known activities or uses that are presently prohibited near the Project, and
    - 3) Other known potential dangers or limitations near the Project;
  - c) Construction/maintenance damage compensation plans and procedures;
  - d) The Commission's address, website, and phone number;
  - e) Contact person for Applicant, including name, e-mail address, and phone number.
5. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors, and agents of Applicant involved in this Project be made aware of the terms and conditions of this Permit.

6. Except as otherwise provided in the Permit Conditions, Applicant shall comply with all mitigation measures set forth in the Application and Applicant's responses to Commission staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
7. Applicant will negotiate road use agreements with Grant County, Codington County, and all affected townships, if required. Applicant will follow the terms of all road use agreements. Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being windblown, and the removal of any soils or mud deposits by construction equipment when necessary.
8. Applicant shall comply with the following conditions regarding road protection:
  - a) Applicant shall acquire all necessary permits authorizing the crossing of federal, state, county, and township roads.
  - b) Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
  - c) Applicant shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public.
  - d) After construction, Applicant shall repair and restore deteriorated roads resulting from construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads, such that the roads are returned to their preconstruction condition.
  - e) Within 180 days of completing construction and reclamation of the Project, Applicant shall submit documentation to the Commission identifying that the roads were repaired in accordance with condition 8 and to the satisfaction of affected townships and counties. If the townships or counties will not provide such documentation, then Applicant shall provide a report to the Commission on the outstanding road repair issues and how those issues will be resolved.
  - f) Privately owned areas used as temporary roads during construction will be restored to their preconstruction condition, except as otherwise requested or agreed to by the landowner.
  - g) Should Applicant need to widen any existing roadways during construction of the Project, Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
  - h) Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways.
9. Applicant will provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.



10. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the Project area that Applicant becomes aware of and that was not previously reported to the Commission.
11. Sites identified as potentially eligible for National Register of Historic Places (NRHP) listing will be addressed by micrositing facilities to avoid impacts. If complete avoidance cannot be achieved, Applicant shall notify the Commission and work with the South Dakota State Historical Society SHPO program to minimize impacts.
  - a) An example of an avoidance measure that may be implemented is rerouting a collector line road around a resource, or boring under it to avoid ground disturbance.
  - b) If sites must be impacted that are afforded regulatory protection and would require mitigation, the SHPO will be engaged to ensure regulatory compliance is achieved.
12. Applicant agrees to follow the unanticipated discovery plan outlined in the document entitled *Cultural Resources Monitoring and Management Plan for the Dakota Range I Wind Project (CRMMP)*, and follow SDCL 34-27-25, 34-27-26, and 34-27-28.
13. Applicant shall file the final cultural resources report with the Commission prior to construction. If any potential adverse impacts to NRHP unevaluated, listed, or eligible cultural resources are identified in the final cultural resources report, Applicant shall comply with the requirements of the CRMMP.
14. Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) to the Commission when Applicant has a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP will be completed before submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors to be engaged in ground disturbing activities will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.
15. Applicant will repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical. In order to facilitate compliance with this Permit Condition, Applicant shall:
  - a) Strip topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing (e-mail is sufficient), in all areas disturbed by the Project; however, with respect to access roads, Applicant may remove less than the actual depth of topsoil to ensure roads remain low-profile and the contours align with the surrounding area;
  - b) Store topsoil separate from subsoil in order to prevent mixing of the soil types;
  - c) All excess soils generated during the excavation of the turbine foundations shall remain on the same landowner's land, unless the landowner requests, and/or agrees, otherwise; and

- d) When revegetating non-cultivated grasslands, Applicant shall use a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, unless otherwise agreed upon with the landowner in writing.
16. Applicant shall work closely with landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds.
17. Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between Applicant and landowner or Applicant and the appropriate federal, state, and/or local government agency. All excess construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
18. In order to mitigate interference with agricultural operations during and after construction, Applicant shall locate all structures, to the extent feasible and prudent, to minimize adverse impacts and interferences with agricultural operations, shelterbelts, and other land uses or activities. Applicant shall take appropriate precautions to protect livestock and crops during construction. Applicant shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed with the landowner or designee. Applicant shall be responsible for the repair of private roads damaged when moving equipment or when obtaining access to the right-of-way.
19. Applicant shall bury the underground collector system at a minimum depth of three and one-half feet, or deeper if necessary, to ensure the current land use is not impacted.
20. Applicant shall repair or replace all property removed or damaged during all phases of construction, including but not limited to, all fences, gates, and utility, water supply, irrigation or drainage systems. Applicant shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair, replacement and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicant and affected landowners where such agreements exist.
21. Applicant shall, in the manner described in its written agreement with a landowner, indemnify and hold the landowner harmless for loss, damage, claim, or actions resulting from Applicant's use of the easement, including any damage resulting from any release, except to the extent such loss, damage claim, or action results from the negligence or willful misconduct of the landowner or his employees, agents, contractors, invitees, or other representatives.
22. Applicant may make turbine adjustments of 250 feet or less from the turbine locations identified in the Application without prior Commission approval, so long as the turbine shifts comply with county and state setback requirements, comply with specified noise and shadow flicker requirements, cultural resource impacts are avoided or minimized per the CRMMP, environmental setbacks are adhered to as agreed upon with the USFWS and the GFP, and wetland impacts are avoided. Prior to implementing the turbine adjustment, Applicant will file in the docket an affidavit demonstrating compliance with the limitations set forth above. Any turbine adjustment that does not comply with the aforesaid limitations would be considered a "material change," and Applicant shall file a request for approval of the "material change" prior to making the adjustment pursuant to the following approval process:

- Applicant will file with the Commission and serve on the official Service List a request for approval of the adjustment that includes:
    - An affidavit describing the proposed turbine adjustment, the reason for the adjustment, the reason the adjustment does not comply with one or more turbine flexibility limitations set forth above, and information regarding compliance with all other applicable requirements; and
    - A map showing both the approved location and the proposed adjustment (in different colors);
  - Once received, the information would be reviewed by Commission staff, and Commission staff will have 10 calendar days within which to request further Commission review.
  - If no further review is requested, Applicant may proceed with the adjustment.
  - If further review is requested, the Commission will issue a decision regarding Applicant's request at its next available regularly scheduled Commission meeting, subject to notice requirements, after the request for further review is made by Commission staff.
23. Applicant may adjust access roads, the collector system, the operations and maintenance facility, the Project substation, and temporary facilities, so long as they are located on leased land, cultural resource impacts are avoided or minimized per the CRMMP, environmental setbacks are adhered to as agreed upon with the U.S. Fish and Wildlife Service (USFWS) and the South Dakota Game, Fish and Parks Department (GFP), wetland impacts are avoided or are in compliance with applicable regulations and requirements, and all other applicable regulations and requirements are met.
24. The terms and conditions of the Permit shall be made a uniform condition of construction, subject only to an affirmative written request for an exemption addressed to the Commission. A request for an exemption shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis, which evaluation shall be completed within 60 days unless exigent circumstances require action sooner.
25. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project. This mitigation requirement shall not apply to any dwellings or other structures built after completion of the Project.
26. Applicant will provide Global Positioning System (GPS) coordinates of structure locations to affected landowners at any time during the life of the Project. Coordinates will be provided in writing to landowners within 30 days of a request.
27. The Project, exclusive of all unrelated background noise, shall not generate a long-term average sound pressure level (equivalent continuous sound level, Leq), as measured over a period of at least two weeks, defined by Commission staff, that includes all integer wind speeds from cut in to full power, of more than 45 dBA within 25 feet at any non-participating residence or more than 50 dBA within 25 feet at any participating residence. Applicant shall, upon Commission formal request, conduct field surveys or provide post-construction monitoring data verifying compliance with specified noise level

limits using applicable American National Standards Institute (ANSI) methods. If the long-term average level exceeds 45 dBA at any non-participating residence or 50 dBA at any participating residence, then the Project Owner shall take whatever steps are necessary in accordance with prudent operating standards to rectify the situation. Sound monitoring will not be repeated in a representative area during any five-year period unless operational or maintenance changes result in a reasonable assumption of higher turbine sound levels.

28. Applicant will take steps to mitigate shadow flicker concerns at residences that could experience shadow flicker levels above 30 hours per year.
29. Not less than 30 days prior to commencement of construction work in the field for the Project, Applicant will provide to Commission staff the following information:
  - a) the most current preconstruction design, layout, and plans, including the specifications of the turbine model selected;
  - b) a sound level analysis showing compliance with the applicable sound level requirements;
  - c) a shadow flicker analysis showing the anticipated shadow flicker levels will not exceed Applicant's voluntary commitment of 30 hours per year at any non-participating residence; and
  - d) such additional Project preconstruction information as Commission staff requests.
30. Within 90 days of the Project's commercial operation date, Applicant shall submit a report to the Commission that provides the following information:
  - a) as-built location of structures and facilities, including drawings clearly showing compliance with the setbacks required by state and local governments and the voluntary commitments set forth in Table 10-1 of the Application;
  - b) the status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulting from Project construction activities; and
  - c) a summary of known landowner complaints and Applicant's plan for resolving those complaints.
31. For purposes of this Project and the commitments herein, "residences," "businesses," and "buildings owned and/or maintained by a governmental entity" shall include only those that are in existence and in use as of the date of the Commission's order issuing a permit.
32. Applicant shall seek input from local emergency response personnel to properly and effectively coordinate an emergency response plan consistent with local resources and response abilities. Upon completion of construction, a Project operation emergency response plan shall be provided to Commission staff to make available to the general public on the Commission's website.

33. Prior to the construction of the Project, Applicant will notify public safety agencies by providing a schedule and the location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public safety, the Sheriff of Codington County, the Sheriff of Grant County, the Codington County Office of Emergency Management, and the Grant County Office of Emergency Management.
34. Applicant agrees to undertake two years of independently-conducted post-construction avian mortality monitoring for the Project, and to provide a copy of the report to the USFWS, GFP, and the Commission. Based on the results of the monitoring, the need for and scope of an additional year of independently-conducted post-construction avian mortality monitoring will be determined in coordination with USFWS and GFP.
35. Applicant shall file the Bird and Bat Conservation Strategy (BBCS) prior to beginning construction of the Project. The BBCS shall be implemented during construction and operation of the Project.
36. Applicant shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Applicant, including its contractors, and landowners, local communities, and residents, and to facilitate prompt resolution of complaints and problems that may develop for landowners, local communities, and residents as a result of the Project. Applicant shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Applicant without the approval of the Commission. The public liaison officer shall be afforded immediate access to Applicant's on-site project manager, its executive project manager, and to the contractors' on-site managers and shall be available at all times to Commission staff via mobile phone to respond to complaints and concerns communicated to the Commission staff by concerned landowners and others. As soon as Applicant's public liaison officer has been appointed and approved, Applicant shall provide contact information for him/her to all landowners in the Project area and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Applicant and the public liaison officer, take action to remove the public liaison officer. The public liaison's services shall terminate ninety days after the Project commences commercial operations, unless the appointment is extended by order of the Commission.
37. If the Project is decommissioned, Applicant will follow Section 24 of the Application, the decommissioning plan laid out in Appendix P of the Application, as supplemented by Applicant in Exhibit A4-2, and answers to Commission staff's data requests in Exhibit S1. The Commission shall be notified prior to any decommissioning action.
38. If Applicant is purchased by Xcel Energy, as stated in Section 7.0 of the Application, Xcel Energy will assume financial responsibility for decommissioning and provide funding for the decommissioning and removal of the Project. As a regulated electric utility, the projected financial cost of decommissioning will be reviewed when Xcel Energy requests recovery of the Project investment and associated decommissioning cost from customers in a rate proceeding. The Commission may review and adjust the Project decommissioning cost recovered from customers in subsequent Xcel Energy rate proceedings using the most current information available regarding

decommissioning. In the event Xcel Energy does not purchase Dakota Range, Applicant shall file a decommissioning plan with a proposal for financial assurance consistent with the provisions in Section 37 of the EL17-055 Permit Conditions, at least 60 days prior to construction, for Commission approval. No construction may occur until the Commission approves the decommissioning plan.

39. Applicant's proposed turbine shifts, identified as Turbine 34a, Turbine 60a, and Turbine A12a in Exhibit A15-3, are hereby incorporated into the approved Project configuration.
40. Applicant will use two methods to detect icing conditions on turbine blades: (1) sensors that will detect when blades become imbalanced or create vibration due to ice accumulation; and (2) meteorological data from on-site permanent meteorological towers, on-site anemometers, and other relevant meteorological sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the turbine(s) in icing conditions (per the sensors) or Applicant will manually shut down turbine(s) if icing conditions are identified (using meteorological data). Turbines will not return to normal operation until the control systems no longer detect an imbalance or when weather conditions either remove icing on the blades or indicate icing is no longer a concern. The Project Owner will pay for any documented damage caused by ice thrown from a turbine.
41. Applicant may construct turbines on only three of the following four turbine locations: Turbines 67, 68, 69 and A26.
42. Applicant shall utilize an Aircraft Detection Lighting System.

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

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](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 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 (see attached) by Admission of Service or as otherwise provided by law, all on the 22<sup>nd</sup> day of August, 2018.

WILES &amp; RYLANCE




---

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

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  
16050 464th Ave  
South Shore, SD 57263

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

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 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

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

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 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

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

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF GRANT            )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*

25CIV.18- 70

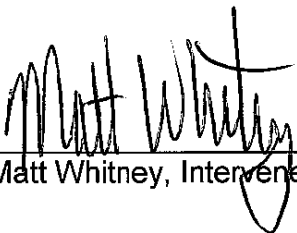
IN THE MATTER OF THE APPLICATION BY\*  
DAKOTA RANGE I, LLC AND DAKOTA\*  
RANGE II, LLC FOR A PERMIT OF A WIND\*  
ENERGY FACILITY IN GRANT COUNTY AND\*  
CODINGTON COUNTY, SOUTH DAKOTA,\*  
FOR THE DAKOTA RANGE WIND PROJECT\*  
PUC DOCKET EL18-003

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 Watertown, South Dakota, this 27 day of August, 2018.

Dated this 27 day of August, 2018.

  
Matt Whitney, Intervener

**APP. 37**

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



STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF GRANT            )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*

25CIV.18- 78

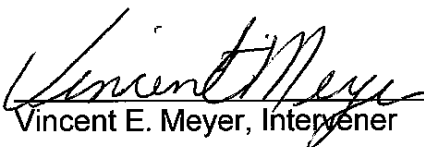
IN THE MATTER OF THE APPLICATION BY\*  
DAKOTA RANGE I, LLC AND DAKOTA\*  
RANGE II, LLC FOR A PERMIT OF A WIND\*  
ENERGY FACILITY IN GRANT COUNTY AND\*  
CODINGTON COUNTY, SOUTH DAKOTA,\*  
FOR THE DAKOTA RANGE WIND PROJECT\*  
PUC DOCKET EL18-003

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.

  
\_\_\_\_\_  
Vincent E. Meyer, Intervener

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

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

**APP. 41**

STATE OF SOUTH DAKOTA     )  
  : SS  
COUNTY OF GRANT            )

IN CIRCUIT COURT  
THIRD JUDICIAL CIRCUIT

\*\*\*\*\*

25CIV.18- 70

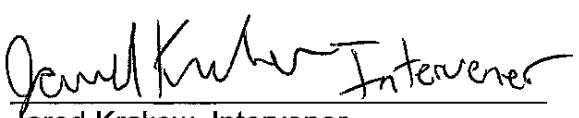
IN THE MATTER OF THE APPLICATION BY\*  
DAKOTA RANGE I, LLC AND DAKOTA\*  
RANGE II, LLC FOR A PERMIT OF A WIND\*  
ENERGY FACILITY IN GRANT COUNTY AND\*  
CODINGTON COUNTY, SOUTH DAKOTA,\*  
FOR THE DAKOTA RANGE WIND PROJECT\*  
PUC DOCKET EL18-003

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

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 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*

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*  
Timothy J. Lindgren, Intervener *Intervener*

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 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

**APP. 45**

**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,

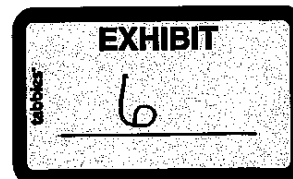
WILES & RYLANCE

  
John C. Wiles

JCW/ajt

Encs.

Cc: K. Mogen  
T. Kaaz



**APP. 46**





**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 # 25CV18-70  
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



**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 # 25 CIV 18- 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

STATE OF SOUTH DAKOTA  
COUNTY OF GRANT

IN CIRCUIT COURT  
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

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

STATE OF MINNESOTA            )  
  ) SS.  
COUNTY OF HENNEPIN         )

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

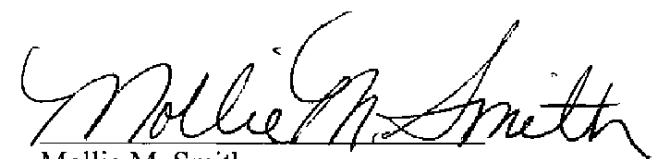
1. I am an attorney with the law firm of Fredrikson & Byron, P.A., which represented Dakota Range I, LLC and Dakota Range II, LLC (together, "Dakota Range") in *In the Matter of the Application by Dakota Range I, LLC and Dakota Range II, LLC for a Permit of a Wind Energy Facility in Grant County and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

**APP. 49**

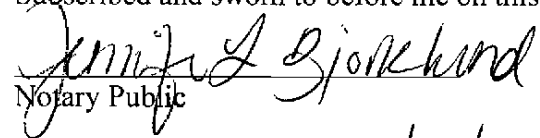
5. As of August 22, 2018, I was not registered with the South Dakota Unified Judicial System ("UJS") Portal, which is required in order to be served by "electronic e-file transmittal" under the South Dakota Odyssey® File & Serve Portal.
6. On August 30, 2018, I attempted to register with the UJS Portal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

FURTHER AFFIANT SAYETH NOT.

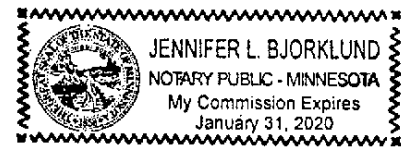
Dated this 7<sup>th</sup> day of September, 2018.

  
Mollie M. Smith

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

  
Notary Public

My Commission Expires: 1/31/2020



64777082.3

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 EL 18-003

25CIV18-000070

**AFFIDAVIT OF MELISSA TOMELDEN IN SUPPORT OF DAKOTA RANGE I, LLC AND DAKOTA RANGE II, LLC'S MOTION TO DISMISS**

STATE OF NEW YORK )  
 ) SS.  
COUNTY OF NEW YORK )

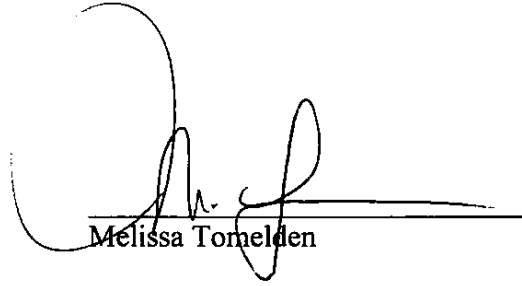
I, Melissa Tomelden, being first duly sworn on oath, depose and state as follows:

1. I am a Vice President for Cogency Global Inc. (the "Company").
2. The Company serves as an agent for service of process for corporations and other business entities nationwide.
3. The Company maintains, through agreement with a third party, an office located at 326 North Madison Avenue, Pierre, South Dakota 57501 (the "South Dakota Office").
4. The Company receives official correspondence, including service of process documents, on behalf of any entity for whom the Company provides registered agent services (the "clients"). Any official correspondence sent to the Company and directed to the Company's clients is forwarded to such clients in accordance with the Company's role as registered agent.
5. The Company's records reflect that on July 27, 2015, Dakota Range I, LLC ("Dakota Range I") appointed the Company as its agent for service of process in South Dakota. The Company's records further reflect that on July 27, 2015, Dakota Range II, LLC ("Dakota Range II") appointed the Company as its agent for service of process in South Dakota.
6. The Company's records reflect that on August 28, 2018, the South Dakota Office received, via personal service, two copies of a Notice of Appeal (the "Notice") in the matter styled *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 El 18-003*, matter number 25CIV18-000070, pending in the Circuit Court of Grant County, South Dakota, Third Judicial Circuit.

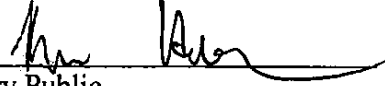
**APP. 52**

FURTHER AFFIANT SAYETH NOT.

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

  
Melissa Tomelden

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

  
Notary Public

My Commission Expires: 3/27/2021

RAFAEL DUARTE PEREIRA  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 02DU6356353  
Qualified in Queens County  
My Commission Expires 03/27/2021

64777643.3

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

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

11 APPEARANCES:

12 For the Petitioners Teresa Kaaz and Kristi Mogen:

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

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

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

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

22 For the Respondents Public Utilities Commission:

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

**APP. 55**

1 County Auditors regarding receiving service by an  
2 admission of service.

3 And as indicated in Ms. Smith's brief, all of those  
4 admissions of service for PUC, Grant County, Codington  
5 County, and all of the intervenors are -- are dated and  
6 filed August 22. That's because they were served on those  
7 parties on August 22. That doesn't necessarily mean that  
8 they had to acknowledge the admission by dating it on  
9 August 22, but all but one of them did.

10 The problem that we've got, Your Honor, is that  
11 Dakota Range I, Dakota Range II have, as indicated in the  
12 certificate of service, didn't have counsel at that time  
13 as Ms. Smith admits.

14 And under statutes and the statute being 1-26-31, she  
15 wasn't required to be served. Neither, Your Honor, was  
16 PUC staff, which I will explain in a minute. They were  
17 provided courtesy copies of all of the pleadings, simply  
18 because we wanted to make sure that everybody was aware of  
19 what was going on. The certificate of service --

20 THE COURT: Mr. Wiles, weren't you attempting to serve  
21 Ms. Smith through Odyssey File and Serve but she wasn't  
22 registered, or did I misread or misunderstand --

23 MR. WILES: No. I --

24 THE COURT: -- or infer something that isn't there?

25 MR. WILES: I listed her because I wanted to give her a

**APP. 56**

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

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1 THE COURT: All right. Ms. Cremer?

2 MS. CREMER: Thank you, Your Honor. I do just want to  
3 clarify a couple of comments made by Mr. Wiles. And on  
4 page 4 of the commission's final order, under parties,  
5 it's a Finding of Fact Number 6. It says commission staff  
6 fully participated as a party in this matter in accordance  
7 with SDCL 49-41B-17.1.

8 And the reason for that is, as pointed out by  
9 Ms. Smith, that statute you have two types of parties.  
10 You have a party by right, which are those that by statute  
11 are a party. They don't have to apply for intervention  
12 and the commission could not deny them party status. And  
13 that -- those two parties are the Public Utilities  
14 Commission and the applicant.

15 Everybody else under 49-41B-17 are parties of  
16 permission. And they have to -- and it says in the  
17 statute if timely application is made. And then that is  
18 what the commission does. They grant intervention and  
19 that would be the group of people, a number of them  
20 sitting behind us.

21 So I just wanted to clarify. And because the  
22 commission is the finder of fact here, the Public  
23 Utilities Commission, clearly they couldn't also be a  
24 party. So that's why they, in their order, say that  
25 they -- that the commission staff is the party. So they

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1 are an adverse party here and should have been served.

2 Ms. Edwards represents staff. The commission sits as  
3 the judge. Staff is a total separate -- within the  
4 commission. Ex parte rules are followed. Lines are not  
5 crossed. Staff does not talk to the commission or its  
6 advisors and attorneys. So they are a separate. They are  
7 a party.

8 Ms. Edwards was their attorney. She is on Odyssey  
9 and has been for a number of years from when she was in  
10 private practice. I will say that, you know, with the  
11 email that Mr. Wiles attached, he did send her a copy by  
12 email, but there were no follow-up documents to that.  
13 There was nothing further sent.

14 THE COURT: What was the date of that email?

15 MS. CREMER: The date of that email is August 22nd and  
16 it's Mr. Wiles' Exhibit 2. And he -- and, basically,  
17 well, the PUC admits service or should I serve the  
18 executive director by sheriff?

19 She responds please email the notice and admission to  
20 Patty and I and we'll scan it and send it back to you.

21 So he did by email, but not through Odyssey, which he  
22 could have done because Ms. Edwards is in the Odyssey  
23 system. And I just wanted to clarify that. Thank you.

24 THE COURT: Anything else?

25 MS. CREMER: No. That would be it. Thank you.

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CIV18-0070

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  
Robert.Spears@uj.s.state.sd.us



KELLI ASLESEN  
Court Reporter  
(605) 882-5020  
Kelli.Aslesen@uj.s.state.sd.us

Mollie Smith  
200 South Sixth St., Ste 4000  
Minneapolis, MN 55402

Joe Erickson  
P.O. Box 1325  
Watertown, SD 57201

Karen Cremer  
500 East Capitol Ave.  
Pierre, SD 57501

John Wiles  
P.O. Box 227  
Watertown, SD 57201

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].”

---

<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 *servicing 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.").

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<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 *Julie Anderson*

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

IN CIRCUIT COURT  
  
THIRD JUDICIAL CIRCUIT

---

IN THE MATTER OF THE )	
APPLICATION BY DAKOTA RANGE I, )	25CIV. 18-000070
LLC AND DAKOTA RANGE II, LLC )	
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

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



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

/s/ Joe Erickson

JOE ERICKSON

STATE OF SOUTH DAKOTA  
COUNTY OF GRANT

IN CIRCUIT COURT  
THIRD JUDICIAL DISTRICT

<p>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</p>	<p>Case No. 25CIV18-000070</p> <p><b>DAKOTA RANGE I, LLC, AND DAKOTA RANGE II, LLC'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER</b></p>
--	--

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

**APP. 72**

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.

---

<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

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<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 in 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 *AEG 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

*Robert L. Spears*  
 \_\_\_\_\_  
 HONORABLE ROBERT L. SPEARS  
 CIRCUIT COURT JUDGE

65123326.2

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION  
OF CROWNED RIDGE WIND II, LLC  
FOR A FACILITY PERMIT TO  
CONSTRUCT A 230 KV TRANSMISSION  
LINE AND ASSOCIATED FACILITIES IN  
CODINGTON COUNTY

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JOINT MOTION FOR  
APPROVAL OF SETTLEMENT  
STIPULATION

EL18-019

The Staff of the Public Utilities Commission (Staff) and Crowned Ridge Wind II, LLC (Crowned Ridge) jointly referred to as "Parties," hereby file this Joint Motion for Approval of Settlement Stipulation. The Parties request that the South Dakota Public Utilities Commission adopt the attached Settlement Stipulation as the settlement and resolution of all the issues between Staff and Crowned Ridge in this proceeding. In support of this Motion, the Parties submit as follows:

1. This Joint Motion is made pursuant to ARSD 20:10:01:19;
2. The Settlement Stipulation resolves all issues between Staff and Crowned Ridge in this docket;
3. The terms of the Settlement Stipulation represent a negotiated settlement of all the issues between Staff and Crowned Ridge in this docket;
4. The terms of the Settlement Stipulation agreed upon are just and reasonable and consistent with South Dakota Law.

WHEREFORE, for the foregoing reasons, the undersigned Parties jointly request the Commission grant the Joint Motion for Approval of the Settlement Stipulation and adopt the attached Settlement Stipulation without modification for the purpose of resolving all issues in this proceeding between Staff and Crowned Ridge.

Dated this 8<sup>th</sup> day of January 2019.

Crowned Ridge Wind II, LLC

By: 

Its: John Di Donato

Vice President

SD Public Utilities Commission Staff

By: 

Its: Staff Attorney



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

---

**IN THE MATTER OF THE APPLICATION  
OF CROWNED RIDGE WIND II, LLC  
FOR A FACILITY PERMIT TO  
CONSTRUCT A 230 KV TRANSMISSION  
LINE AND ASSOCIATED FACILITIES IN  
CODINGTON COUNTY**

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**SETTLEMENT STIPULATION**

**EL18-019**

It is hereby stipulated and agreed by and between the Applicant, Crowned Ridge Wind II, LLC (Applicant or Crowned Ridge), and Staff of the South Dakota Public Utilities Commission (Staff), (jointly the Parties), that the following Settlement Stipulation may be adopted by the South Dakota Public Utilities Commission (Commission) in the above-captioned matter.

In its support of its Application, the Applicant hereby offers this Stipulation, the Application filed on April 11, 2018, the supplement to the Application filed on May 23, 2018, and all of the responses submitted by the Applicant to the Staff's Data Requests and attached hereto. The Parties offer no answering testimony or exhibits, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions without any material condition or modification.

**INTRODUCTION**

Crowned Ridge proposes to construct an approximately 5-mile 230-kilovolt (kV) generation tie line and associated facilities from the collector substation at Crowned Ridge Wind II to a dead-end transmission structure adjacent to the collector substation at Crowned Ridge Wind. Utilizing a breaker position at the Crowned Ridge Wind collector substation, the 300 megawatts (MW) from Crowned Ridge II will be aggregated with the 300 MW from the Crowned Ridge collector substation and conjoined to the Crowned Ridge 230 kV generation tie line which will terminate at the reactive compensation substation adjacent to the Big Stone South Substation. The generation tie line will be located in Codington County, South Dakota.

**PURPOSE**

This stipulation has been prepared and executed by the Parties for the sole purpose of resolving Docket EL18-019. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of this Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.

2. This Stipulation includes all terms and conditions of the settlement and is submitted with the condition that, in the event the Commission imposes any material changes or conditions to this Stipulation which are unacceptable to any Party, this Stipulation may, at the option of any Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.
3. This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void, and privileged. This Stipulation is intended to relate only to the specific matter referred to herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein. No Party or a representative thereof shall directly or indirectly refer to this Stipulation as precedent in any other current or future proceeding before the Commission.
4. The Parties to this proceeding stipulate that all pre-filed testimony, exhibits, and responses to Staff data requests will be made a part of the record in this proceeding. The Parties understand that if this matter had not been settled, the Parties would have filed direct and rebuttal testimony.
5. The terms and conditions contained in this Stipulation shall inure to the benefit of and be binding upon the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, attorneys, and assigns of the Parties. In addition, the terms and conditions of this Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors and retained professionals.
6. This Stipulation constitutes the entire agreement between the Parties and shall be deemed to supersede any other understanding or agreements, whether written, oral, expressed or implied, relating to the Application. This Stipulation may not be amended, modified, or supplemented, and waivers or consents to departures from the terms and conditions of this Stipulation may not be given without the written consent thereto executed by all Parties.
7. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.
8. This Stipulation may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
9. The Parties agree that subject to the four elements of proof under SDCL 49-41B-22, the Commission has the authority to grant, deny, or grant upon reasonable terms, conditions, or modifications a permit for the construction, operation, and maintenance

of the Project. Each Party further agrees that Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a Permit to construct the Project as provided in SDCL 49-41B-24, subject to the following:

#### **TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION**

1. The Applicant will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency or any other governmental unit for construction and operation activity prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by the Applicant shall be filed with the Commission.
2. The Applicant shall comply with all other terms and conditions as set forth in this Settlement Stipulation.
3. If construction of any portion of the Project commences more than four years after the date the permit is granted, the Applicant must certify to the Commission before the construction commences that such facilities will meet the permit conditions.
4. The Permit granted by the Order in this matter shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.
5. The Applicant shall construct, operate, and maintain the Project in a manner consistent with:
  - a. Descriptions in the Application,
  - b. Application supplements,
  - c. Responses to any data requests,
  - d. The Terms and Conditions of the Permit to Construct Facilities,
  - e. Any applicable industry standards, and
  - f. Any permits issued by a Federal, State, or Local agency.
6. Applicant agrees that the Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners and other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit.
7. The Applicant shall provide each landowner on whose property the Project is to be constructed with the following information:
  - a. A copy of the Commission Order Granting Permit to Construct Facilities;
  - b. Detailed safety information describing:
    - i. Reasonable safety precautions for existing activities on or near the Project,
    - ii. Known activities or uses that are presently prohibited near the Project, and
    - iii. Other known potential dangers or limitations near the Project;
  - c. Construction/maintenance damage compensation plans and procedures;
  - d. The Commission's address, website and phone number; and
  - e. Contact person for Applicant, including name, e-mail address, and phone number.

8. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors, and agents of Applicant involved in this Project be made aware of the terms and conditions of this Permit.
9. Except as otherwise provided in the conditions of this Stipulation, Applicant shall comply with all mitigation measures set forth in the Application and Applicant responses to Staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
10. Applicant will negotiate road use agreements with Codrington County, and all affected townships, if required. Applicant will comply with the terms of all road use agreements. Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being windblown, and the removal of any soils or mud deposits by construction equipment when necessary.
11. Applicant shall comply with the following conditions regarding road protection:
  - a. Applicant shall acquire all necessary permits authorizing the crossing of federal, state, county, and township roads.
  - b. Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
  - c. Applicant shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public.
  - d. After construction Applicant shall repair and restore deteriorated roads resulting from construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads, such that the roads are returned to their preconstruction condition.
  - e. Privately owned areas used as temporary roads during construction will be restored to their preconstruction condition, except as otherwise requested or agreed to by the landowner.
  - f. Should applicant need to widen any existing roadways during construction of the Project, the Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
  - g. Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways.
  - h. Before commencing construction, the Applicant shall furnish an indemnity bond in the amount of \$500,000 to comply with the requirements of SDCL 49-41 B-38. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the transmission facilities. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicant shall give notice of the existence and amount of this bond to all

counties, townships and other governmental entities whose property is crossed by the transmission facilities.

12. Applicant will provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
13. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the siting area that Applicant becomes aware of and that was not previously reported to the Commission.
14. Applicant shall design the transmission line following the Avian Power Line Interaction Committee Suggested Practices.
15. Applicant agrees to avoid cultural resources sites evaluated or eligible for listing on or already listed on or that are eligible for listing on the National Register of Historic Places (NRHP), and those that are not evaluated for listing on the NRHP. When NRHP eligible or listed sites cannot be avoided, Applicant will notify the State Historic Preservation Office (SHPO) and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
16. If during construction Applicant discovers what may be a cultural resource, human skeletal remains, or associated funerary objects, Applicant or its agent shall immediately cease work at the location and notify the landowner(s), the SHPO, and other authorities as appropriate (per SDCL 34-27-25 and SDCL 34-27-28 in the case of human burials). If it is determined, in coordination with SHPO, that a significant resource is present, Applicant shall develop a plan that is reasonably acceptable to the landowner and SHPO that minimizes the impact or threat to the resource.
17. Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) to the Commission when Applicant has a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP will be completed before submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.

Applicant will repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical.

18. Applicant shall work closely with landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds.

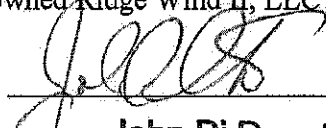
19. Applicant's obligation with respect to restoration and maintenance of the right-of-way (ROW) shall continue throughout the life of the Project for disturbances caused by the actions of the Applicant. Where the soil is disturbed during construction or maintenance of the line, Applicant shall restore vegetation in and along the ROW. Applicant shall remove or eliminate noxious weeds that sprout in restored areas. Landowner permission shall be obtained before the initial application of herbicides.
20. Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between Applicant and landowner or Applicant and appropriate federal, state, and/or local government agencies. All excess construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
21. In order to mitigate interference with agricultural operations during and after construction, Applicant shall locate all structures, to the extent feasible and prudent, to minimize adverse impacts and interferences with agricultural operations, shelterbelts, and other land uses or activities. Applicant shall take appropriate precautions to protect livestock and crops during construction. Applicant shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed with the landowner or designee. Applicant shall be responsible for the repair of private roads damaged when moving equipment or when obtaining access to the ROW.
22. Applicant shall repair or replace all property removed or damaged during all phases of construction, including but not limited to, all fences and gates and utility, water supply, irrigation, or drainage systems. Applicant shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair, replacement, and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicant and affected landowners where such agreements exist.
23. Applicant shall, in the manner described in its written landowner agreements, indemnify and hold the landowner harmless for loss, damage, claim, or actions resulting from Applicant's use of the easement, including any damage resulting from any release, except to the extent such loss, damage, claim, or action results from the negligence or willful misconduct of the landowner or his employees, agents, contractors, or other representatives.
24. If it becomes necessary to materially deviate from the described centerline to accommodate engineering and applicable safety and construction requirements based on actual conditions encountered during construction, all landowners affected by the deviation and the Commission must be notified in writing five working days before any deviation may occur. Applicant shall seek approval from the Commission prior to making any material deviations to the Project. For purposes of this paragraph, the term "material deviations" shall mean any action or activity outside the reasonable parameters of this Permit.
25. The terms and conditions of the Permit shall be made a uniform condition of construction, subject only to an affirmative written request for an exemption addressed to the

Commission. A request for an exemption shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis which evaluation shall be completed within 60 days unless exigent circumstances require action sooner.

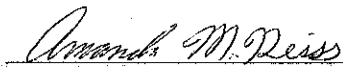
26. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project. This mitigation requirement shall not apply to any dwellings or other structures built after completion of the Project.
27. Applicant will provide Global Positioning System coordinates of structure locations to affected landowners at any time during the life of the Project. Coordinates will be provided in writing to landowners within 30 days of a request.
28. Applicant will negotiate crossing agreements with owners of existing underground pipeline facilities and will comply with the terms of all such agreements. Applicant will coordinate with pipeline owners to perform any necessary studies to ensure that the Project does not cause harm to existing pipeline facilities. Based on the outcome of these studies, Applicant will work with pipeline owners to implement any necessary and reasonable mitigation requirements.
29. Applicant shall secure all necessary easements for the Project prior to construction.
30. Not less than 30 days prior to commencement of construction work in the field, Applicant will provide to Staff the most current preconstruction design, layout, and plans. Applicant will also provide such additional Project preconstruction information as Staff requests.
31. Within 90 days of the Project's completion, Applicant shall submit a report to the Commission that provides the following information:
  - a. As-built location of structures and route;
  - b. The status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulted from construction activities; and
  - c. A summary of known landowner complaints and Applicant's plan for resolving those complaints.
32. Prior to construction, Applicant will provide notices of construction to the South Dakota Department of Public Safety, the Sheriff of Codington County, and the Offices of Emergency Management of Codington County with a schedule and location of work to be performed within the agency's jurisdiction.

Dated this 8<sup>th</sup> day of January 2019.

Crowned Ridge Wind II, LLC

By:   
Its: John Di Donato  
Vice President

Public Utilities Commission Staff

By:   
Its: Staff Attorney



South Dakota Codified Laws

Title 1. State Affairs and Government (Refs & Annos)

Chapter 1-26. Administrative Procedure and Rules (Refs & Annos)

SDCL § 1-26-31

1-26-31. Notice of appeal--Time for service and filing

**Currentness**

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 or, if a rehearing is authorized by law and is requested, within thirty days after notice has been served of the decision thereon. Failure to serve notice of the appeal upon the hearing examiner does not constitute a jurisdictional bar to the appeal.

**Credits**

**Source:** SDC 1939 & Supp 1960, § 33.4208; SL 1966, ch 159, § 15(2); SDCL § 21-33-5; SL 1972, ch 8, §§ 28, 32; SL 1974, ch 16, § 10; SL 1975, ch 17, § 3; SL 1979, ch 8, § 4; [SL 1999, ch 7, § 1](#); [SL 2004, ch 23, § 1](#).

[Notes of Decisions \(29\)](#)

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S D C L § 1-26-31, SD ST § 1-26-31

Current through 2018 Regular and Special Session Laws and Supreme Court Rule 18-15

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South Dakota Codified Laws

Title 1. State Affairs and Government (Refs & Annos)

Chapter 1-26. Administrative Procedure and Rules (Refs & Annos)

SDCL § 1-26-32.1

1-26-32.1. Procedural rules applied

Currentness

The sections of Title 15 relating to practice and procedure in the circuit courts shall apply to procedure for taking and conducting appeals under this chapter 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.

**Credits**

**Source:** SDC 1939 & Supp 1960, § 33.4204; SDCL § 21-33-13; SL 1975, ch 17, § 8.

[Notes of Decisions \(3\)](#)

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SDCL § 1-26-32.1, SD ST § 1-26-32.1

Current through 2018 Regular and Special Session Laws and Supreme Court Rule 18-15

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South Dakota Codified Laws

Title 15. Civil Procedure

Chapter 15-6. Rules of Procedure in Circuit Courts (Refs & Annos)

II. Commencement of Action--Service of Process, Pleadings, Motions and Orders

15-6-5--Service and Filing of Pleadings and Other Papers

SDCL § 15-6-5(b)

15-6-5(b). Service--How made--Proof

Currentness

Whenever under this chapter service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of the court. Service upon a party represented by an attorney may also be made by facsimile transmission as provided in § 15-6-5(f). Delivery of a copy within § 15-6-5 means: Handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving it at his dwelling house or usual place of abode with some person over the age of fourteen years then residing therein. Service by mail shall be by first class mail and is complete upon mailing. Service by facsimile transmission is complete upon receipt by the attorney receiving service. 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. In the case of service by facsimile transmission, proof of service shall state the date and time of service and the facsimile telephone number or identifying symbol of the receiving attorney. The provisions of § 15-6-5 shall not apply to the service of a summons or other process or of any paper to bring a party into contempt.

**Credits**

**Source:** SDC 1939 & Supp 1960, § 33.0819; SD RCP, Rule 5 (b), as adopted by Sup. Ct. Order March 29, 1966, effective July 1, 1966; SL 1991, ch 424 (Supreme Court Rule 90-01); SL 1991, ch 446 (Supreme Court Rule 91-12); SL 2004, ch 328 (Supreme Court Rule 04-01), effective July 1, 2004.

Notes of Decisions (6)

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SDCL § 15-6-5(b), SD ST § 15-6-5(b)

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South Dakota Codified Laws  
Title 15. Civil Procedure  
Chapter 15-6. Rules of Procedure in Circuit Courts (Refs & Annos)  
XI. General Provisions  
15-6-81--Applicability

SDCL § 15-6-81(c)

15-6-81(c). Appeals to circuit courts

[Currentness](#)

This chapter does not supersede the provisions of statutes relating to appeals to the circuit courts.

**Credits**

**Source:** SD RCP, Rule 81 (c), as adopted by Sup. Ct. Order March 29, 1966, effective July 1, 1966.

[Notes of Decisions \(1\)](#)

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SDCL § 15-6-81(c), SD ST § 15-6-81(c)

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South Dakota Codified Laws

Title 49. Public Utilities and Carriers (Refs & Annos)

Chapter 49-41b. Energy Conversion and Transmission Facilities (Refs & Annos)

SDCL § 49-41B-17

49-41B-17. Parties to proceedings under chapter

Currentness

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, if timely application therefore is made as determined by the commission pursuant to rule; and
- (3) Any person residing in the area where the facility is proposed to be sited, any nonprofit organization, formed in whole or in part to promote conservation or natural beauty, to protect the environment, personal health or other biological values, to preserve historical sites, to promote consumer interests, represent commercial and industrial groups, or to promote the orderly development of the areas in which the facility is to be sited or any interested person, if timely application therefore is made as determined by the commission pursuant to rule. A statement filed by a party to a permit proceeding shall become part of the record and shall be available to the public.

**Credits**

**Source:** SL 1977, ch 390, § 20; SL 1982, ch 332, § 1.

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SDCL § 49-41B-17, SD ST § 49-41B-17

Current through 2018 Regular and Special Sessions, Sup. Ct. Rule 18-15 and Nov. 2018 election

South Dakota Codified Laws

Title 49. Public Utilities and Carriers (Refs & Annos)

Chapter 49-41b. Energy Conversion and Transmission Facilities (Refs & Annos)

SDCL § 49-41B-30

49-41B-30. Circuit court review of commission decision by aggrieved party--Procedures

[Currentness](#)

Any party to a permit issuance proceeding aggrieved by the final decision of the Public Utilities Commission on an application for a permit, may obtain judicial review of that decision by filing a notice of appeal in circuit court. The review procedures shall be the same as that for contested cases under chapter 1-26.

**Credits**

**Source:** SL 1977, ch 390, § 22; SL 1982, ch 332, § 4.

[Notes of Decisions \(8\)](#)

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S D C L § 49-41B-30, SD ST § 49-41B-30

Current through 2018 Regular and Special Session Laws and Supreme Court Rule 18-15

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