

February 5, 2018

My name is Darci Adam. I'm here to speak in opposition to Crocker Wind Farm's second application for facility permits.

Last July, Crocker Wind Farm filed an application with the Public Utilities Commission for a wind energy facility and transmission facility permit. Our attorney, on behalf of 44 intervenors, filed a Motion to Deny and Dismiss that application. You voted unanimously to grant the Motion because that application "failed generally in the form and content required in ARSD 20:10:22:05 and 20:10:22:33.02". At the time of that denial, two issues critical to turbine configuration were unresolved: Crocker's lawsuit against Clark County, and federal permitting of grassland easements. A mere two days after closure of the PUC docket, Crocker Wind Farm submitted this new application. Although approval is being sought once again, those pending issues still exist.

In section 1.4 of this application, Crocker states that they have addressed the Commission's concerns by complying with the three-quarter-mile setback between turbines and nonparticipating residences. This is completely misleading, however, since they admit in their response to staff's First Set of Data Requests that "The Clark County litigation is pending and on hold". As of today, this court docket that opened last May is still open. There has been no filed action on it since Judge Means denied Crocker's Motion for Partial Summary Judgment in August of last year.

Appendix H of this application includes a letter to the attorneys representing Clark County, dated December 1st, 2017. Crocker states, "we find ourselves at a place where we can see our way clear to accept the setbacks set by the Board of Adjustment." However, nothing about that letter is binding. Furthermore, Crocker is arguing about the definition of 'residence', hoping to still use the lesser setback around some homes. Until this pending litigation in Circuit Court is either dropped or decided upon, there is no guarantee that the applicant will abide by the decision of the local governing board. This is in direct violation of the Applicant's Burden of Proof which requires: "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." The applicant claims that "the setbacks are no longer at issue." Indeed, I disagree. They are an issue until the court case is finalized.

This open court docket continues to cost Clark County residents and taxpayers thousands of dollars. In addition, our State's Attorney has advised local government officials not to comment on the progress of the case, creating effectively a "gag order" between residents and the local government on an issue with significant impact to their daily lives. Information critical to evaluation of the application remains unavailable.

In addition to the litigation issue, the Commission found that because of the uncertainty surrounding the programmatic agreement between the U.S. Fish & Wildlife Service and Crocker regarding grassland easements, the prior application "failed to accurately state the number of wind turbines." This issue is still uncertain. Crocker anticipates that permitting from the USFWS won't occur until the second quarter of 2018. Will the USFWS approve as is? Allow a land swap? If so, how many acres? Where? And if all this isn't vague enough, Crocker requests the right to shift locations up to 1,000 feet! No one really knows where these turbines may end up. Due to the incompleteness, the application still does not identify turbine number and placement.

Denial or approval of this application has significant impact on Clark County. Rushing to approve an incomplete (some might say "cut and paste") application that once again contains placeholders for critical data is premature. I strongly urge you to deny.

Thank you for your time and consideration.