

MAY ADAM

— Since 1881 —

WWW.MAYADAM.NET

ROBERT B. ANDERSON
TIMOTHY M. ENGEL
MICHAEL F. SHAW
BRETT KOENECKE
CHRISTINA L. KLINGER
JUSTIN L. BELL
DOUGLAS A. ABRAHAM
KARA C. SEMMLER
KATIE J. HRUSKA
TERRA M. FISHER

September 5, 2017

Writer's E-mail: brett@mayadam.net

OF COUNSEL
CHARLES M. THOMPSON
GLENN W. MARTENS 1881-1963
KARL GOLDSMITH 1885-1966
BRENT A. WILBUR 1949-2006
TELEPHONE
605 224-8803
FAX
605 224-6289

Patricia Van Gerpen
SD Public Utilities Commission
500 E. Capitol
Pierre, SD 57501

RE: Application to the South Dakota Public Utilities Commission for a Facility Permit for the Crocker Wind Farm EL17-028
Our file: 7101

Dear Patricia:

Filed herewith please find a proposed layout for the project meeting the current state of the Conditional Use Permit granted by Clark County. This shows setbacks from residences at 3920' and from cemeteries at 5280'.

We have also attached the following documents:

1. The conditional use permit as granted by Clark County with attachments.
2. The pleadings on file with the Third Circuit Court in Clark County, with attachments.
3. The Motion for Partial Summary Judgment which lays out the arguments upon which the Applicant will seek relief.
4. The Clark County Wind Energy System ordinances
5. The available transcripts of the Clark County proceedings
6. A March 20, 2017 memorandum provided to the Clark County Commission.

It's important to state for the record, that the Applicant does not seek any order from the Public Utilities Commission with respect to the project setbacks other than a condition which states: "The project must meet the conditions of any Clark County Conditional Use Permits which apply to the project at the time of construction." The applicant does not consider that the PUC has authority to override the County in this area and manner, and doesn't seek any order from the PUC which contravenes the County permits.

The county ordinance requires wind towers to be more than 1000' from residences. The applicant in an attempt to resolve differences through compromise advised in the March 20 memo that 2000' setbacks would be acceptable. The applicant also removed some potential tower locations from consideration. These efforts were not successful; the applicant however

MAY, ADAM, GERDES & THOMPSON LLP
503 SOUTH PIERRE STREET • P.O. Box 160
PIERRE, SOUTH DAKOTA 57501-0160

stands by the decisions which were made in this regard. Thus the application filed and considered here shows 2000' setbacks. We have filed the map at 3920' for consideration by others, including the PUC and its staff. Either way, the project meets the statutory requirements for a permit. It has to meet them to get its statutory permit.

As the Motion for Partial Summary Judgment describes, the Applicant reasons that the Board of Adjustment has exceeded its authority, and we think the courts will ultimately agree with that proposition. The motion was denied by the court, without opinion being given, and the matter of the appeal will proceed, probably toward evidentiary hearing in circuit court, perhaps later this year, and perhaps toward appeal to the Supreme Court. In either case, applicant considers that the resulting timelines for construction of the project don't provide for obtaining full review of the Board's decision if necessary and THEN asking the PUC for the necessary permit.

The project has had an inquiry from staff about the finality of the proposed and potential tower locations and the permit. It is true that the applicant has not finalized tower locations. Neither had the applicants in SD PUC Docket EL-08-031 and EL09-028. Those dockets were submitted and approved under what is known colloquially as "permit the box." "Permit the box" means that the applicants were approved on condition that the projects meet certain requirements set forth, and that final tower locations could be submitted prior to construction for confirmation. The projects went on to be constructed and are operated under those permits today. Steps away from "permit the box" would seem to be a departure from PUC precedent and practice. The application at issue here seeks to conform to both precedent and practice. If another manner of proceeding is proposed or adopted, the Applicant would like to be notified as soon as can be done.

Finally it is noted that this project faces some local opposition. It is also noted that it enjoys broad local support from landowners and neighbors. The project doesn't have eminent domain authority and is hosted entirely by willing landowners. As shown above, the project has considered the views of opponents and made changes where necessary and possible. The attached hearing transcripts should be unsurprising to anyone seeking to build anything of size in this state or elsewhere.

We look forward to next week's hearing and the continuation of the process.

Very truly yours,

MAY, ADAMI, GERDES & THOMPSON LLP



BRETT KOENECKE

BK/amc

Enclosures