

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

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IN THE MATTER OF THE APPLICATION  
BY CROCKER WIND FARM, LLC FOR A  
PERMIT OF A WIND ENERGY FACILITY  
AND A 345 KV TRANSMISSION LINE IN  
CLARK COUNTY, SOUTH DAKOTA, FOR  
CROCKER WIND FARM

EL 17-028

**INTERVENORS' BRIEF OPPOSING  
MOTION TO RECONSIDER**

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Those intervenors identified in the Application for Party Status submitted by Davenport, Evans, Hurwitz & Smith, LLP (“Intervenors”), through counsel, hereby submit this brief opposing Crocker Wind Farm’s (“Crocker”) Motion to Reconsider.

**BACKGROUND**

Crocker filed its Facility Permit Application (“the Application”) with the South Dakota Public Utilities Commission (“PUC”) on July 25, 2017. Intervenors moved to dismiss and deny the Application. The PUC held a hearing on Intervenors’ motion on October 25, 2017, and, after identifying a number of shortcomings surrounding the Application, granted Intervenors’ motion. On November 1, 2017, the PUC issued an order formally granting Intervenors’ motion and denying and dismissing the Application (the “Order”). The Order provides:

The Commission found that the Application failed generally in the form and content required under 20:10:22:33.02. Specifically, the Commission found that the Application included multiple wind turbine configurations instead of a singular configuration. Furthermore, because of the uncertainty surrounding the programmatic agreement between the U.S. Fish and Wildlife Service and Crocker regarding grassland easements, the Commission also found that the Application failed to accurately state the number of wind turbines in the Project.

(Order Granting Motion to Deny and Dismiss Crocker Wind Farm’s Application.)

In addition to those concerns explicitly set forth in the Order, the PUC expressed other concerns during the October 25, 2017 hearing. For example, Commissioners noted that the Application should be in its completed form when it is filed. That allows the general public the opportunity to review the Application in its entirety and ample time to raise concerns. Here, however, the PUC found the Application was incomplete when it was filed on July 25, 2017. Rather, Crocker has continued to provide additional information through revisions to its Application and responses to Data Requests made by the PUC Staff—effectively supplementing and amending its Application on a continuing basis. (*See, e.g.*, Crocker’s Responses to Staff’s Data Requests 1 – 7, which are available on the PUC Docket). Commissioners noted that this ongoing supplementation of the Application did not allow the general public the opportunity to review the Application in its entirety nor did it give the general public adequate time to raise concerns regarding the newly-submitted information. Given these concerns as well as those explicitly set forth in the Order, the PUC denied and dismissed the Application.

Crocker has submitted a Motion to Reconsider. In support of its Motion, Crocker submitted a single proposed tower layout complying with the conditional use permit issued by Clark County. Also, Crocker has represented that it accepts Clark County’s setbacks as final. For the reasons stated herein, Intervenors oppose Crocker’s Motion to Reconsider.

## ARGUMENT

### **I. Crocker Failed to Alleviate the Concerns Identified by the PUC**

Crocker argues that its submission of a single proposed tower layout along with its concession that it accepts Clark County’s setbacks as final alleviates the PUC’s concerns. That simply is not the case.

The PUC voiced significant concern that the Application was incomplete when it was filed on July 25, 2017, and thus, PUC Staff was required to send several Data Requests in order to obtain necessary information—information that should have been included in the original Application. Indeed, PUC Staff sent seven different Data Requests to Crocker containing 91 (not including subparts) specific requests for additional information.<sup>1</sup> Although Crocker responded to those requests and provided supplemental information,<sup>2</sup> the PUC made clear that it was essential that such supplemental information be contained in the original Application, not submitted months after filing the Application. Doing so would have provided all those interested (e.g., PUC Staff, Intervenors, and the general public) adequate opportunity to review the Application and raise concerns, either as intervenors or at the public-input hearing. Instead, much of the supplemental information was provided after the public-input hearing, meaning the general public was not able to comment thereon at the public-input hearing and others are left scrambling to interpret the supplemental information before the evidentiary hearing. (*See* Crocker’s Responses to Data Requests 3 –7.) Put simply, Crocker needed to file a complete Application on July 25, 2017, and its failure to do so prevents this matter from proceeding.

Further, the piece-meal manner in which Crocker has submitted information creates problems of its own. Because Crocker submitted an incomplete application on July 25, 2017, it has since amended and supplemented its Application through revisions to the Application, responses to the various Data Requests, and written testimony. Ultimately, Intervenors and PUC

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<sup>1</sup> Intervenors also sent seventeen specific data requests to Crocker. Crocker has not responded to those, as its deadline to do so was after the October 25, 2017 hearing.

<sup>2</sup> Intervenors question the sufficiency of many of Crocker’s responses. In fact, Intervenors believe many of Crocker’s responses are evasive, incomplete, nonresponsive, and potentially misleading. That said, because the Data Requests were sent by PUC Staff, at this time Intervenors defer to PUC Staff regarding the sufficiency of Crocker’s responses.

Staff were left piecing together the dizzying<sup>3</sup> array of information contained in the original Application, the revisions to the Application, the responses to the various Data Requests, and the written testimony in order to comprehend and analyze the project. Frankly, Intervenors still are not totally convinced they fully comprehend the different aspects of the project given the piecemeal manner in which Crocker provided information. Understanding and examining the project would be far more feasible—for Intervenors, PUC Staff, the general public, and the PUC—if all relevant information were contained in one complete application, rather than spread across the Docket like a jigsaw puzzle waiting to be solved.

Moreover, Crocker's newly-submitted information raises more questions than it answers. First, the new layout is just that, a new layout. To be sure, turbine #56 is not included in any of the five previous layouts Crocker submitted to the PUC. (*See* Application, Figures 2a, 2b, 2c, 2d, and 9/5/17 Filing on PUC Docket.) Why is Crocker now placing turbines in new locations, and how does that affect other aspects of the Application?<sup>4</sup> Second, it is notable that Crocker failed to address the Tier 3 environmental impact study, which is referenced on page 13-8 of its Application and was underscored in Intervenors' Motion to Deny and Dismiss. What is the status of the Tier 3 environmental impact study? Third, what are the reasons Crocker is willing to remove twenty-six of the turbines located on USFWS easements but not the other fifteen? What makes those fifteen locations different than the other twenty-six? Fourth, is Crocker withdrawing its appeal of the conditions imposed by the Clark County conditional use permit? If Crocker indeed accepts Clark County's setbacks as final, it should formally withdraw its pending

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<sup>3</sup> For example, Crocker's constant overuse of cross references both in its Application and in its responses to Data Requests makes comprehending the information challenging.

<sup>4</sup> Also, turbine #84 did not appear on the most recent layout (i.e., Vestas V110) Crocker asked the PUC to consider.

appeal. These questions should not be unanswered. In fact, they all should have been answered when Crocker submitted its Application.

For all of these reasons, Intervenors oppose Crocker's Motion to Reconsider. Crocker should submit one complete Application in compliance with ARSD 20:10:22:05 and ARSD 20:10:22:33.02 and allow Intervenors, PUC Staff, the PUC, and the general public adequate opportunity to analyze the same.

## **II. Crocker's Inconvenience Argument Falls Flat**

Crocker argues its Motion should be granted because it would be inconvenient for it to have to reapply with a new application. Specifically, Crocker complains about the costs associated with filing a new application. Crocker's argument falls flat.

While it is true Crocker will have to incur additional costs, that problem is of Crocker's own doing. Had Crocker, on July 25, 2017, submitted a complete application, it would not need to incur these additional costs.

Crocker had total control over the information it submitted with the Application. Rather than spending sufficient time performing the due diligence necessary to submit a complete application, Crocker chose to submit an incomplete application and, presumably, intended to fill the gaps if and when requested by PUC Staff and Intervenors. As acknowledged by the PUC and PUC Staff at the October 25, 2017 hearing, there were numerous gaps that needed filling. (*See, e.g.,* the 91 specific requests contained in the seven different sets of PUC Staff Data Requests.) Had Crocker submitted a complete application, Intervenors and PUC Staff would have expended far less time and resources attempting to comprehend and analyze this project. Thus, Intervenors have little empathy for Crocker having to expend additional resources to submit one new and complete application to be considered by the PUC and the general public.

Moreover, all parties would benefit from Crocker filing one complete application in a new proceeding. It would be much easier to comprehend and analyze the project if all of the relevant information can be found in one location, rather than forcing those interested to scour the PUC Docket and piece together the various nuggets of information spread throughout the Docket. In sum, Crocker's inconvenience argument should be rejected.

### **III. Crocker Cannot Unilaterally Waive the Six-Month Timeline**

Lastly, Crocker seeks to waive the six-month timeline imposed by SDCL 49-41B-25. Intervenors agree with the general notion that the six-month timeline can be waived. But Intervenors dispute the notion that Crocker can unilaterally waive the six-month timeline. Rather, all parties to the proceeding must stipulate to such a waiver. And here, all parties have not so stipulated.

### **CONCLUSION**

For the reasons stated herein and expressed during the October 25, 2017 hearing, Crocker's Motion to Reconsider should be denied. To the extent Crocker wishes to proceed with this project, it should perform all necessary due diligence before submitting an application with the PUC. Only then will interested parties truly be able to understand and analyze such an application. Considering a wind energy project of this size is not something that should be rushed. Thus, Intervenors respectfully request the PUC deny Crocker's Motion to Reconsider.

Dated at Sioux Falls, South Dakota this 28<sup>th</sup> day of November, 2017.

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**CERTIFICATE OF SERVICE**

The undersigned, one of the attorneys for Intervenors, certifies that a true and correct copy of the foregoing was served on November 17, 2017, via email upon the following persons listed on the South Dakota Public Utilities Commission's docket service list:

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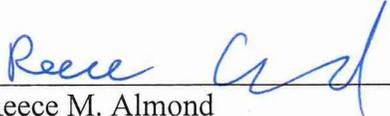
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