

BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION

DOCKET NO. EL17-055

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

**Direct Testimony of David Lawrence
On Behalf of the Staff of the South Dakota Public Utilities Commission
March 28, 2018**

1 **Q: State your name and occupation.**

2 A: My name is David Lawrence, and I am a real property appraiser.

3

4 **Q: State your business address.**

5 A: My business address is 4820 E. 57th Street, Sioux Falls, South Dakota.

6

7 **Q: By whom are you currently employed?**

8 A: I am a real property appraiser with DAL Appraisal & Land Services.

9

10 **Q: Please state your educational and professional background.**

11 A: I received a Bachelor of Business Administration from Western State College
12 University in Gunnison, Colorado. After completing a four-year degree, I worked in
13 real estate development, site acquisition, and management for a nationally
14 branded franchise system. My career transitioned to real property valuation, and
15 I began work with the RJ Hobson Appraisal Firm. I continued my real property
16 studies with the Appraisal Institute earning the MAI designation, the SRA
17 designation, and the AI-RRS designation. After completing my designations with
18 the Appraisal Institute, I continued my real property studies with the International
19 Right of Way Association, earning the SR/WA designation. I am currently active
20 in the Appraisal Institute, the International Right of Way Association and the
21 Professional Appraisers Association of South Dakota.

22

1 **Q: Can you briefly describe the requirements to be a real property appraiser**
2 **in South Dakota?**

3 A: The South Dakota Appraisal Certification Program has four types of license
4 levels for performing valuation services. The State-Registered Appraiser (entry
5 level), State-Licensed Appraiser (mid-level licensure), State-Certified Residential
6 Appraiser (highest level of residential certification), and the State-Certified General
7 Appraiser (highest level of certification). The first three license levels have scope
8 of practice limitations, with an emphasis on residential property. The State-
9 Certified General Appraiser license is without limits to property type or complexity
10 for an appraisal assignment. The residential license levels require holding an
11 associate degree or higher from an accredited college. The State-Certified General
12 Appraiser license requires a bachelor's degree or higher from an accredited
13 college or university. Beyond the college or secondary education, each license
14 level has specific appraisal education and experience requirements, national
15 testing and peer work product review in conformance with the Uniform Standards
16 of Professional Appraisal Practice (USPAP) and the laws of South Dakota.

17

18 **Q: What level of appraisal credentials do you hold with the State of South**
19 **Dakota?**

20 A: I am a State-Certified General Appraiser.

21

22

1 **Q: What are some of the relevant definitions and laws that apply in South**
2 **Dakota for valuation services pertaining to appraisal practice?**

3 A: Establishment of qualification and standards for appraisal practice in South
4 Dakota was a direct result of the economic turmoil caused by the abuse of the
5 appraisal process in the 1980s, commonly referred to as the savings and loan
6 crisis. Prior to Title XI of FIRREA, the appraisal profession was unregulated, and
7 any individual could represent themselves to the public as a real property
8 appraiser. In 1989, the USPAP was developed with the express purpose of
9 promoting and preserving public trust and confidence in the appraisal profession.
10 The USPAP achieved legal authority in South Dakota by adoption and regulation
11 in South Dakota Codified Law (SDCL) Chapter 36-21B and South Dakota
12 Administrative Rules (ARSD) Article 20:14.

13

14 SDCL 36-21B-1 mandates, *“any person who performs a real estate appraisal or*
15 *advertises or holds himself or herself out to the general public as a real estate*
16 *appraiser in South Dakota shall be certified, licensed or registered by the*
17 *Department of Labor and Regulation unless exempt under another provision of this*
18 *chapter or another provision of the statute.”*

19

20 ARSD Article 20:14 provides the criteria for appraisal practice, and what valuation
21 disciplines are regulated by the Appraisal Certification Program for providing
22 valuation services within South Dakota. For the purposes of determining what

1 constitutes appraisal practice in South Dakota, the performance objectives are
2 provided in ARSD Article 20:14 for practitioners providing valuation services.

3

4 Appraisal Practice is defined as, “*valuation services performed by an individual*
5 *acting as an appraiser.*” It is the expectation of the valuation service that makes
6 one an appraiser, not the holding of any specific credential or state license.

7

8 An Assignment is defined as, “*a valuation service that is provided by an appraiser*
9 *as a consequence of an agreement with a client.*” Assignment results include an
10 appraiser’s opinions or conclusions developed in an appraisal assignment and are
11 not limited to value. For example, if a client hires an appraiser to provide opinions
12 and conclusions about the certain impacts a project has on real property values,
13 this would constitute an appraisal assignment.

14

15 An Appraiser is defined as, “*one who is expected to perform valuation services*
16 *competently and in a manner that is independent, impartial and objective.*”

17

18 An Appraisal is defined as, “*the act or process of developing an opinion of value*
19 *of real estate for another and for compensation.*” South Dakota has adopted a
20 specific definition of what constitutes an appraisal. “*An appraisal must be*
21 *numerically expressed as a specific amount, as a range of numbers or as a*
22 *relationship.*” For example, if an appraiser provides an opinion about the effects
23 an overhead transmission line can have on residential properties values within the

1 vicinity of the project, that constitutes an opinion of value in South Dakota because
2 it provides an opinion as to the relationship on value to a specific property type
3 within the project. It doesn't matter if the value opinion is expressed as +10%, 0%,
4 -5% or -50%, or a stated conclusion that a project will not have an effect on real
5 property value; it is an opinion of the relationship of value to a specific property
6 that is applicable to the definition that makes it an opinion of value.

7

8 In South Dakota, only appraisers can offer services that are considered appraisal
9 practice that pertain to valuation services. South Dakota is a mandatory appraisal
10 state and the laws are specific to any person representing themselves to the public
11 as a real property appraiser. If a person is providing an opinion of value for
12 compensation in South Dakota, that person is required to be licensed by the
13 Appraisal Certification Program and have the required education, experience and
14 competency for the assignment and property type, including being geographically
15 competent within the market area of the assignment. South Dakota provides these
16 requirements to appraisers in order to elevate appraisal practice to a level of
17 objectivity and independence that is worthy of public trust and confidence.

18

19 **Q: What work experience have you had that is relevant to your involvement**
20 **in this project?**

21 A: I have a wide range of appraisal experience and geographical competency
22 across South Dakota and neighboring states including property types such as
23 residential, commercial, ranch and farm. I've been fortunate in my appraisal career

1 to have worked across the diverse market areas of South Dakota, including East
2 and West River. Most of my appraisal experience is in right-of-way, linear and
3 energy projects. I have provided appraisals for right-of-way acquisitions,
4 condemnation, and damage property cases. I have managed the appraisal
5 process for several recent energy and large-scale linear project in South Dakota
6 including Keystone L.P., Keystone XL and the Dakota Access pipelines. As part
7 of my practice, I provide appraisal services for damaged property and diminution
8 value studies. These assignments have ranged from measuring the impacts of a
9 high-voltage transmission line on residential property values, to analyzing the
10 impacts of the 2011 Missouri River flood on residential and agricultural property
11 values in Union County. In the last nine years, I've completed several studies
12 analyzing the impacts of underground pipelines on agricultural land values in
13 Montana, South Dakota, Minnesota, and Nebraska. I have extensive experience
14 in South Dakota developing damage studies and their relationship to properties
15 values. I've developed South Dakota impact studies on the Keystone Phase I,
16 Keystone XL, NuStar, SDIP, Northern Border, Lewis & Clark, Magellan, Rockies
17 Express, and MDU pipelines. The scope of work for these projects, includes sales
18 analysis studies, site impact studies, and highest and best use studies across
19 South Dakota, from border to border. My various impact studies have relied upon
20 survey-based research with hundreds of South Dakota market participants
21 impacted by an energy project, and sales research in every county which the
22 projects occupy. My experience with impact studies across the state has given

1 me the competency and knowledge to correctly research and apply the
2 methodology for credible analysis.

3 **Q: Have you testified before the South Dakota Public Utilities Commission?**

4 A: No.

5

6 **Q: On whose behalf was this testimony prepared?**

7 A: This testimony was prepared on behalf of the Staff of the South Dakota Public
8 Utilities Commission.

9

10 **Q: What is the purpose of your testimony in this proceeding?**

11 A: The purpose of my testimony is to assist the Commission in understanding
12 South Dakota appraisal requirements, valuation principles and techniques, and
13 how they can be appropriately applied to estimate value impacts from the Crocker
14 Wind Project, and other wind energy projects in South Dakota.

15

16 **Q: What materials have you reviewed in this matter?**

17 A: I have reviewed the Application and Appendix I to the Application, "The Impact
18 of Wind Power Projects on Residential Property Values in the United States." In
19 addition, I reviewed the direct testimony of Mark Thayer, including Exhibits 1
20 through 19 attached to his testimony.

21

22

23

1 **Q: In your opinion, do the studies and testimony of the applicant adequately**
2 **reflect the potential impact to the value of properties in the vicinity of the**
3 **proposed Crocker Wind project?**

4 A: It is my opinion that the studies and testimony do not provide adequate market
5 evidence that can be applied to the subject area of the Crocker Wind Project. Most
6 of the studies only present a statistical analysis of a large, well-defined residential
7 dataset not necessarily applicable to rural South Dakota property values impacted
8 by wind energy projects. The studies and testimony do provide a starting point to
9 gauge the potential impacts upon residential property values, but do not address
10 the potential impacts, if any, that a wind farm can have on agricultural land classes.

11

12 **Q: Please explain why the studies and testimony are not reflective of the**
13 **potential impact the Crocker Wind project may have on land value.**

14 A: Most of the studies, articles, and testimony focus on the hedonic regression
15 method for determining the effects on residential property values resulting from a
16 wind energy project. To estimate the value of real property using the hedonic
17 mathematical equation, property characteristics or independent variables are
18 identified that contribute to market value such as view, shape, topography,
19 location, and utility. By including proximity or view of a wind energy project or wind
20 tower as a variable in the regression the appraiser can better estimate the negative
21 or positive impact the wind energy project or tower will have on the value of the
22 property. The hedonic analysis has been an accepted methodology in the
23 appraisal profession for years; however, it has limitations. One significant

1 weakness of hedonic analysis was pointed out in the winter 2012 edition of the
2 Appraisal Journal. In the article James Chalmers, PhD states, “(hedonic
3 analysis)...*does not rule out the possibility that some individual properties are*
4 *significantly affected nor provide any insight into the conditions shared by those*
5 *individual properties that make them vulnerable to transmission line impacts.”* In
6 my experience with damages studies, I have found Chalmers’ statement to be valid
7 in analyzing properties affected by an energy project. To truly gauge the value
8 impacts from a project, the methodology needs to address more than just a
9 mathematical analysis of a large data set from different market areas from around
10 the United States. The study needs to analyze market evidence from specific and
11 surrounding market areas that would be applicable to the impacted property type,
12 and in some cases, individual analysis of an affected property.

13

14 **Q: Please explain the limitation of the studies and direct testimony of the**
15 **applicant as they would apply to the impacts upon property values in South**
16 **Dakota, for the proposed Crocker Wind project?**

17 A: While I have read through the exhibits, my comments will specifically address
18 the report developed by Crocker’s valuation expert, Mark Thayer:

- 19 • The study and direct testimony conclude that the LBNL research is
20 transferable to South Dakota properties in the neighborhood of wind
21 facilities. I disagree. The LBNL studies only focus on residential property
22 values from populated areas in the United States including New York,
23 Texas, Washington, Wisconsin, Illinois, and others. South Dakota property

1 characteristics are not comparable to the areas of LBNL studies. For
2 example, on Page 13 of Mr. Thayer's direct testimony, the Applicant
3 attempts to make the data applicable to South Dakota by concluding
4 Minnesota and Iowa counties are quite similar to South Dakota
5 counties....*"But the South Dakota counties look very much like their*
6 *Minnesota counterparts, especially Cottonwood County and Jackson*
7 *County and Franklin and Sac counties in Iowa are also quite similar to South*
8 *Dakota counties."* While I agree there are some overall similarities for
9 comparison of highest and best use, the data shows these Minnesota and
10 Iowa counties are all superior regarding population, median home value,
11 population density, and production capability. Mr. Thayer's study averages
12 Clark, Codington, and Grant Counties' demographics for comparison, but
13 this can provide misleading results for analysis. For example, the population
14 of Codington County is nearly eight times that of Clark County. The county
15 seat, Watertown, is the fifth largest city in South Dakota with significant
16 industrial and retail facilities. Clark is the sixty-second largest city in South
17 Dakota and like many rural communities in our state face significant
18 obstacles to growth and prosperity, including declining (-8% 2016)
19 population. As well, median home values are skewed by Watertown's
20 population and recreational homes on Lake Kampeska, Pelican Lake and
21 Big Stone. Big Stone Lake is in Grant County and not a county impacted by
22 the project. Franklin, Sac, Cottonwood, and Jackson have an approximately
23 65 percent larger population, 76 percent larger population density and a 17

1 percent higher median home value when compared to Clark County.
2 Median income levels are similar for comparison; however, when compared
3 to the median home value, the typical market participant in Franklin, Sac,
4 Cottonwood and Jackson County has less effective purchasing power than
5 the typical buyer in Clark County South Dakota. Additionally, land values
6 are dramatically different, with Sac County reporting an average 2016 land
7 value of \$8,858 per acre, Franklin reporting an average 2016 land value of
8 \$7,538 per acre, and Jackson and Cottonwood reporting an average 2016
9 land value of \$7,195 per acre as compared to the 2016 average land value
10 for Clark County of \$4,300 per acre¹. County soil productivity comparisons
11 are also superior to Clark County. Clark County has an average soil
12 productivity index of 65.1 as compared to the soil index of Cottonwood at
13 86, Jackson at 84.5, Sac at 82.1 and Franklin at 79.2². There are
14 similarities; however, no basis for a direct comparison to Clark County.

15

- 16 • The direct testimony and study opine *“the planned wind projects in South*
17 *Dakota will not significantly reduce the sale prices of properties in the*
18 *neighborhood of the wind facility.”* The conclusion is not supported by the
19 evidence. The research and studies are limited to the impacts of wind
20 energy projects on residential property values. The Crocker Wind Project is
21 in Northwest Clark County. Approximately 94 percent of the county acreage

¹ AG Decision Market Iowa State University www.extension.iastate.edu/agdm 2016. SDSU Igrow 2017. University of Minnesota Agricultural and Natural Resource Sciences, 1990-2016

² Agridata Surety Pro

1 is used for agricultural production, and six percent for other uses. The
2 county is rural in nature with farming as the principal economic enterprise.
3 Hunting is another important economic enterprise, as the county is in the
4 major flyway for migrating waterfowl. All Clark County agricultural land
5 classes will be impacted by the Crocker Project area, including rural
6 residential. The conclusion relies on the LNBL study that focuses on
7 residential property values, and then broadly applies the results to all types
8 of properties in South Dakota. There is no market data to support this
9 conclusion. South Dakota property types include productive crop ground,
10 native pasture, grass, hay, rural residential, and recreation highest and best
11 uses. Analyzing mass residential sales data from around the United States
12 and generally applying the analysis to all South Dakota property types could
13 mislead the public and the Commission.

14

15 **Q: In your opinion, does the services provided by Crocker's value expert fall**
16 **under appraisal practice as defined by the laws and regulation in South**
17 **Dakota?**

18 A: Expectation is a crucial component for determining when an individual is
19 providing valuation services as an appraiser. It seems clear by the evidence
20 presented by Crocker, that Mark Thayer has been engaged as a valuation expert
21 to answer the client's questions about effects on real property values from the
22 Crocker Wind Farm. In the direct testimony and report by Mark Thayer, both

1 opinions and conclusions have been provided to measure the effects on the value
2 of real property:

3
4 *“Based on this extensive literature, the planned wind project in South*
5 *Dakota will not significantly reduce the sales prices of properties around the*
6 *wind facilities.”*

7
8 *“We would be confident that the LBNL studies would be a reasonable*
9 *source for a benefit transfer (or damage) effort to South Dakota.”*

10
11 *“This leads to the overall conclusion that the planned wind projects in South*
12 *Dakota will not significantly reduce the sales prices of properties in the*
13 *neighborhood of the wind facilities.”*
14

15 In South Dakota, any valuation service performed by someone who is acting as an
16 appraiser is appraisal practice and subject to the laws and regulation of South
17 Dakota. An individual must be licensed or certified by the Appraiser Certification
18 Program or must apply for a non-resident temporary practice permit for a single
19 appraisal assignment.

20

21 **Q: Based on your experience, please explain what type of study would**
22 **adequately reflect the potential impact to the value of properties in the**
23 **vicinity of the proposed Crocker Wind project?**

24 A: A comprehensive study from the market area of South Dakota will provide the
25 evidence that is required to determine the potential impacts of a wind energy
26 project on property values. In South Dakota, there are approximately thirteen
27 operating wind energy projects. Some of these wind energy projects have been in
28 operation since the early 1990's and includes all types of South Dakota property.
29 The methodology that is applicable for comparison in this type of study is referred

1 to as the case-by-case sales comparison approach which provides a more reliable
2 alternative to the hedonic analysis. This analysis uses the traditional appraisal
3 methods of interviews, sales comparison, and paired sales analysis. A South
4 Dakota study should include analyzing all operating wind energy projects from
5 around the state and include a wide representation of the property characteristics
6 including agricultural, residential and mixed land uses. The study should identify
7 the characteristics that would make properties prone to value effects such as size
8 and use and analyze if certain property types are more susceptible to value
9 impacts from wind energy projects. The study should also incorporate survey-
10 based research to measure the potential effects. The survey-based methods are
11 used as an alternative to statistical price analysis to estimate potential impacts
12 from a wind energy project. The survey would use a scientific method and
13 acceptable methodology in the appraisal process that could be applied to
14 geographical areas like South Dakota where the sales population is limited. The
15 results of the case-by-case analysis could be compared to the LBNL studies to
16 determine if the results are consistent with national market evidence.

17

18 **Q: Please explain why this type of study would more adequately reflect the**
19 **potential impact to land value.**

20 A: Crocker Wind Farm, LLC has presented a study covering residential property
21 values from different market areas of the United States. While I do agree these
22 studies provide useful insight to understand the general impact on residential
23 property values, they do not apply to the market characteristics and land classes

1 that are predominately impacted in South Dakota. To truly understand the impacts
2 of a wind energy project in South Dakota, a valuation expert needs to use research
3 that is applicable to the market area of study and market evidence specific to the
4 property type.

5

6 **Q: What is the process for preparing this type of study?**

7 A: The general approach of this study would identify and examine all arm's length
8 transactions involving properties within a wind energy project area in the South
9 Dakota. The general steps for the study would be: 1) Identify properties affected
10 by a South Dakota wind energy project since the time the project became
11 operational; 2) Organize the properties into common ownership and property
12 types; 3) Research the chain of title for each property ownership from the
13 operational date of the wind project to current effective date of the study; 4) Study
14 the title history to identify transfers in ownership that appear to be arm's length and
15 qualify per South Dakota's definition of fair market value; 5) Conduct site
16 inspections and interview buyers and sellers to establish the sales qualifies as an
17 arm's length transaction, and if so, verify transaction details and gather information
18 on terms of the sale, participant motivation and effect of the wind project, if any; 6)
19 For each sale, collect and verify data on comparable property sales not within the
20 proximity of a wind energy project for comparison (unaffected sales); 7) Conduct
21 survey-based research with market participants as an alternative to statistical price
22 analysis to estimate the potential impacts from a wind energy property; 8) Analyze
23 the survey based research, interview data and the market data to reach a

1 conclusion in regards to the effect of the wind energy project or wind tower, on the
2 value of the applicable property types; 9) Prepare a work file of the research to
3 support the analysis and conclusions; 10) Prepare a study report summarizing the
4 research and findings. The study would include individual sale analysis for all
5 properties types impacted by wind energy projects statewide, including farm and
6 ranch, residential, and rural residential.

7

8 **Q: What would be the timeline necessary to prepare such a study?**

9 A: Depending on the scope of work and project area selected, approximately six
10 months would be an anticipated timeline for project completion.

11

12 **Q: What is the approximate cost of preparing such a study?**

13 A: Cost depends on the scope of work agreed to with the client. In South Dakota,
14 a comprehensive study of this type would be required to have an extensive level
15 of quality and research that could withstand scrutiny from courts and peer review,
16 as well as assure the public that due diligence has been done to answer the
17 questions about impacts on property values.

18

19 **Q: Why did you not prepare a study like you just described?**

20 A: I had several discussions about this with Staff. Unfortunately, it was impossible
21 to properly conduct a study in the time provided by statute. As I stated previously,
22 it would take six months to complete an accurate study. This would not include

1 the time it would take to contract for services, conduct discovery and do necessary
2 investigation, prepare testimony, and participate in an evidentiary hearing.

3

4 **Q: Are you aware of any available studies of this nature that would**
5 **adequately reflect the potential impact to land value of properties in the**
6 **vicinity of the proposed Crocker Wind project?**

7 A: No. I'm not aware of any South Dakota study exactly like the one required.

8

9 **Q: Does this conclude your testimony?**

10 A: Yes.