

**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**

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**CROCKER WIND FARM, LLC'S  
RESPONSE TO APPLICATION FOR  
PARTY STATUS AND MOTION FOR  
PROCEDURAL AND SCHEDULING  
ORDERS**

**EL17-055**

**I. INTRODUCTION.**

Crocker Wind Farm, LLC (“Crocker”) submits this Response to Application for Party Status and Motion for Procedural and Scheduling Orders (“Motion”). Crocker respectfully requests that the South Dakota Public Utilities Commission (“Commission”) issue an order governing the remainder of these proceedings so that they may proceed effectively and efficiently and result in a record that is helpful to the Commission in its consideration of the Crocker Wind Farm and associated transmission line (“Project”).

**II. BACKGROUND.**

On December 15, 2017, Crocker submitted its Facility Permit Application (“Application”) to the Commission for Energy Facility Permits to construct and operate the Project. On December 20, 2017, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; and Notice of Opportunity to Apply for Party Status, in which it scheduled a public input hearing for February 5, 2018, and set February 13, 2018 as the deadline to apply for party status.

On February 9, 2018, the law firm Davenport, Evans, Hurwitz & Smith, LLP, submitted an Application for Party Status (“Petition”), seeking party status for 64 of its clients (the

“Davenport Opponents”). Per the Petition, all of the Davenport Opponents “are opposed to the proposed wind project.”<sup>1</sup>

### III. DISCUSSION.

#### A. Response to Application for Party Status.

Consistent with ARSD 20:10:01:15.04, which provides that a party may submit an answer to a petition to intervene within 15 days after service of the petition, Crocker submits this Response to the Petition. Crocker does not oppose the Petition; however, because there are 64 Davenport Opponents who (1) all seek to intervene on the same basis (opposition to the Project), (2) submitted a single application for party status, and (3) are all represented by a single law firm, Crocker respectfully requests that the Commission grant the Petition with specified procedural requirements and guidelines, such as those discussed in Section III(B) below. This is consistent with ARSD 20:10:01:15.05, which provides that, “[a]s soon as practicable after the expiration of the time for filing an answer to a petition for intervention, the commission shall grant or deny the petition *in whole or in part*.”<sup>2</sup> See also Order Granting Intervention, *In the Matter of the Application of Black Hills Power, Inc. for Authority to Increase its Electric Rates*, Docket No. EL14-026 (June 26, 2014) (“[T]he Commission voted unanimously to grant intervention to DRA, subject to the conditions that DRA shall file an affidavit attesting to the DRA members who are customers of BHP and that the issues to be considered in the docket shall be subject to normal standards of relevancy and scope applicable to rate cases.”).

Establishing procedural requirements and a schedule up front is essential to an effective and efficient process that provides the Commission with a well-developed record concerning the

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<sup>1</sup> Petition at 1.

<sup>2</sup> Emphasis added.

Project. Without procedural requirements, like those set forth below, the process will be unpredictable and issues may arise at the eleventh hour that could delay the process or interfere with a party's ability to present its case. To avoid these issues, it is important that all parties understand the limitations on and obligations of their party status. In particular, it is important for the Davenport Opponents to understand the implications of selecting a single law firm to represent 64 individuals (i.e., they have one opportunity for cross-examination, briefing, etc.), and that they must adhere to the rules of evidence when presenting testimony. Given the timeframe within which the Application must be processed, Crocker wants to ensure that any procedural and scheduling questions are addressed now, and are not still lingering as we approach the evidentiary hearing.

**B. Motion for Procedural and Scheduling Orders.**

**1. Participation of all Parties, including the Davenport Opponents.**

To provide for an efficient process that results in a well-developed record within statutory timeframes, Crocker respectfully suggests the Commission issue a Procedural Order that incorporates the following requirements and/or guidelines. These requirements and guidelines would apply to all parties, including Crocker and the Davenport Opponents:

- Discovery: All discovery requests should be submitted through a lawyer and comply with the South Dakota Rules of Civil Procedure's requirement that discovery be relevant and not unduly burdensome or cumulative. *See* SDCL § 15-6-26(b); ARSD 20:10:01.02.

- Testimony & Conduct of Hearing:
  - 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.<sup>3</sup>
  - All pre-filed and live testimony will be under oath and subject to typical rules of evidence regarding relevance, privilege, hearsay, etc. See SDCL § 1-26-19(1). Thus, lay witnesses will testify regarding matters within their personal knowledge, and expert witnesses should be retained to present expert testimony.
  - Lawyers will have one opportunity to cross-examine witnesses; for the Davenport Intervenors, this means that they will have one – rather than 64 – opportunities for cross-examination of each witness. Parties may choose to waive cross-examination.
- Post-Hearing: Counsel for the parties (including the Davenport Opponents) may submit one post-hearing brief and one set of proposed findings for the Commission's consideration.

## 2. **Schedule.**

Crocker further respectfully requests that the Commission issue a Scheduling Order establishing a schedule similar to that in the table below, which will allow for development of the record within the applicable timeframes. This proposed schedule is similar to the schedule proposed by Staff in Crocker's Docket No. EL17-028, and Staff's input has been incorporated into the proposal.<sup>4</sup> In addition to the deadlines set forth below, we propose that responses to discovery be provided within 10 business days of service, to the extent consistent with the proposed schedule.

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<sup>3</sup> See Order for and Notice of Evidentiary Hearing, *In the Matter of the Petition of TransCanada Keystone Pipeline, LP for Order Accepting Certification of Permit Issued in Docket No. HP09-001 to Construct the Keystone XL Pipeline*, Docket No. HP14-001 (Apr. 17, 2015).

<sup>4</sup> See Staff's Proposal for Procedural Schedule, *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*, Docket No. EL17-028 (Sept. 25, 2017).

<b>Milestone</b>	<b>Proposed Date</b>
Staff and Intervenor Testimony Due	March 28, 2018
Applicant's Rebuttal Testimony Due	April 13, 2018
Final Day to Serve Discovery to All Parties	April 18, 2018
All Responses to Discovery Due	April 30, 2018
File Witness and Exhibit Lists	May 2, 2018
Deadline for Pre-Hearing Motions	May 4, 2018
Final Pre-Hearing Conference (to address pre-hearing motions and any procedural matters)	May 8, 2018
Evidentiary Hearing	May 9-11, 2018
All Parties to Submit Post-Hearing Briefs and Proposed Findings	May 28, 2018

#### **IV. CONCLUSION.**

As discussed above, Crocker does not oppose the Davenport Opponents' Petition. Further, Crocker believes that the incorporation of the procedural requirements and the schedule discussed herein will aid in ensuring an efficient proceeding that will deliver a comprehensive record to the Commission for its decision. Accordingly, Crocker respectfully requests that the Commission grant its Motion and issue the requested Scheduling and Procedural Orders.

Dated this 21st day of February, 2018.

Respectfully Submitted,

By  \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

Brett Koenecke, of May, Adam, Gerdes & Thompson LLP, hereby certifies that on the 21st day of February, 2018, a true and correct copy of the Crocker Wind Farm, LLC's Response to Application for Party Status and Motion for Procedural and Scheduling Orders and this Certificate of Service were served electronically on the Parties listed below:

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