

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

**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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**STAFF’S FIFTH SET OF DATA
REQUESTS TO CROCKER WIND
FARM, LLC

EL17-055**

Below, please find Crocker Wind Farm, LLC’s (“Crocker”) Responses to Staff’s Fifth Set of Data Requests.

- 5-1) Refer to the rebuttal testimony of Mr. Mike MaRous, Page 1, Line 31, through Page 2, Line 3. Mr. MaRous states he is in the process of completing a market impact study for another wind project in South Dakota. Please provide the name of that wind project, when the market impact study will be completed, and all findings determined to date with the appropriate support.**

Michael MaRous: The Market Impact Analysis for the Dakota Range Wind Project was submitted to the South Dakota Public Utilities Commission on April 6, 2018. The other study work is underway and a completion date has not been set.

Mollie Smith: At this time, Crocker does not intend to submit market analyses for other projects in this docket; however, Mr. MaRous may offer additional information into the record in support of his analysis for Dakota Range, if appropriate.

- 5-2) Refer to the rebuttal testimony of Mr. Mike MaRous, Page 2, Lines 22-24. Mr. MaRous states, “When I use the phrase “proximity to wind turbines,” I generally mean turbines within three to five times the hub height of a wind turbine.”**

- a) Based on the Crocker Wind Farm project proposed turbines, please provide the range Mr. MaRous considers to be within proximity to the proposed wind turbines.**

Michael MaRous: As an initial matter, I note that the quoted portion of my testimony has a typographical error: “hub height” should be “tip height,” generally 1,500 to 2,500 feet. Based on the Project’s proposed turbines, the range I consider to be within proximity to the proposed wind turbines is 1,500 feet – 2,500 feet.

b) Is Mr. MaRous asserting that residences and agricultural land that are at a distance of more than five times the hub height of wind turbine away from a wind turbine do not need to be analyzed for any potential property value impact associated with the Project? Please explain.

Michael MaRous: Based on my years of appraisal experience, the values of residences and agricultural properties that are located more than five times the tip height away from a wind turbine are unlikely to be affected. That does not mean they should not be considered in a market analysis. I viewed all properties and residences in the Project area within Clark County and concluded that there was no market evidence that the value of distant properties and residences would be affected by the Project.

c) What is the basis for selecting three to five times the hub height of a wind turbine as the definition of proximity?

Michael MaRous: As clarified above, I meant to say “tip height,” not “hub height.” I defined “proximity” as three to five times the tip height of a wind turbine based on my experience as detailed in response to DR 5-2(b).

5-3) Refer to the rebuttal testimony of Mr. Mike MaRous, Page 4, Line 19. How did visiting the Project area in Clark County assist in conducting your market value analysis?

Michael MaRous: Visiting the Project area in Clark County, including Crocker, allowed me to get acquainted with the market area and demographics, as well as the physical characteristics of the Project footprint. This familiarity was helpful in conducting the market analysis.

My extensive experience has taught me that a thorough inspection of the subject and subject area is extremely helpful when preparing an accurate report. I have participated in the last several publications of *The Appraisal of Real Estate*, the foremost recognized publication concerning real estate appraisal. A thorough site and area inspection is always considered part of “best practice.” My visit to the Project area in Clark County allowed me to observe the physical characteristics of the area (such as gravel roads, rolling topography, existence of numerous prairie potholes, wire fences in need of maintenance, older homes and out buildings, existing windfarms, small lakes, and limited non-agricultural uses). It also showed the suitability for agricultural pasture and hunting type uses. I viewed residential properties (on my way to and from the Project area) and I also viewed the planted shelterbelts around a large majority of the smaller “farmette” parcels. I could view and observe the proximity to amenities, services, and infrastructure of the area. The inspection also provided a confirmation of issues that I had found with

reviewing the other technical expert reports, as well as published and historical information in the area, which aided me in preparing my market value analysis.

5-4) Refer to the rebuttal testimony of Mr. Mike MaRous, Page 5, Lines 9 – 16. Mr. MaRous states, “I reviewed sales transactions in seven east-river counties in South Dakota with operating wind farms to try to identify matched paired sales to use for comparison, meaning sales of similar rural residential properties where one property was near a wind farm and one property was not. However, of the sales reviewed, only one rural residential property sale was near a wind farm, and that property, located in Brookings County, South Dakota, was nearly four miles away from a turbine. As a result, the sale was not close enough to a wind turbine to use in a proximate/not proximate paired sales comparison.”

a) How close to a wind turbine would a property sale need to be to be included in a paired sales analysis? Explain.

Michael MaRous: Ideally, a property sale included in a paired sales analysis would be located within 5 times the turbine tip height (approximately 2,500 feet) of a wind turbine.

b) Explain the review process Mr. MaRous conducted to ensure he reviewed all sales transactions near operating wind farms.

Michael MaRous: Using the wind farms associated with the assessor’s survey, we went to real estate websites (such as Zillow, Trulia, Redfin, etc.) and the Northeast South Dakota Association of Realtors (“NESD”) Multiple Listing Service (“MLS”) to look for all sales in the immediate area. We then contacted any relevant brokers to confirm our findings.

5-5) Refer to the rebuttal testimony of Mr. Mike MaRous, Page 6, Lines 1 – 6.

a) Describe the qualifications and experience of each of the six South Dakota County assessors surveyed by the Applicant.

Michael MaRous: The statutorily required qualifications for county assessors in South Dakota (also called “Directors of Equalization”) are contained in Title 10, Chapter 10-3 of the South Dakota Codified Laws, titled “County Directors of Equalization.”

b) Are the duties and responsibilities of an assessor and an appraiser the same? If no, please explain.

Michael MaRous: An assessor is working for a county or public body and an appraiser is working for an individual client. The ultimate goal of both an assessor and an appraiser is to estimate market value as of a specific date.

c) Are the education requirements for an assessor and an appraiser the same? If no, please explain.

Michael MaRous: They have similar course requirements, but appraisers' course requirements are generally more rigorous and extensive.

d) Please explain the difference between an assessed value and an appraised value.

Michael MaRous: "Appraised value" is market value and "assessed value" can be adjusted for level of assessment and equalization factors. Further, in South Dakota, crop and pasture land is assessed on productivity and residential properties are assessed on market value.

e) Does an assessor consider the view from an individuals' property when determining an assessed value for taxation purposes? Please explain.

Michael MaRous: View and any factors that affect value should be considered by the assessor when estimating market value and translating into assessed value.

f) Please provide the objective measures that each of the six South Dakota county assessors consider when determining an assessed value.

Michael MaRous: It is my understanding that they are looking at productivity factors and crop values when valuing agricultural land. When valuing residential properties, they are looking at sales transactions, sales volume, market conditions, location, paved roads, land size, building sizes, amenities, and condition. They are also looking at desirability of location, economic viability, and future trends. Further, they will also consider the views of and from subject property.

5-6) Refer to the rebuttal testimony of Mr. Mike MaRous, Page 6, Lines 12 – 30.

a) On lines 11 – 12, Mr. MaRous stated there have been no reduction in assessed valuations due to proximity to wind turbines. Does the Applicant know how many reductions in assessed valuations there have been in the Counties surveyed during the requested survey time period, and the reasons for each reduction?

Michael MaRous: No.

b) On lines 18 – 20, Mr. MaRous states "Further, county assessors repeatedly stated that county revenues and revenues to individual farms outweighed any initial concerns that residents had about the wind farms joining their communities."

i. Referring to "revenues to individual farms," does "individual farms" refer to participating landowners in the Project? If no, please explain.

Michael MaRous: We understood the county assessors to be referring to participating landowners, but the assessors did not use that phrase in our surveys.

- ii. **Referring to “initial concerns that residents had about wind farms,” does “residents” refer to non-participating landowners to the Project? If no, please explain.**

Michael MaRous: In this portion of my testimony I was referring to all landowners, participants and non-participants, in the Project area.

- iii. **Please explain the County Assessors role and how they are qualified to issue an opinion on how the increased revenues associated with the Project outweighed any concerns.**

Michael MaRous: Assessors set the market value of properties in their jurisdictions. An assessor’s determination of market value is used by the County to assess property taxes, and the assessor’s determination of market value would be what is being challenged in a property tax protest/appeal. Assessors analyze economic factors and sales transactions to estimate market value. They also receive input on factors influencing value, and know of complaints from parties protesting the assessor’s opinion of market value.

The minimum qualifications for county assessors are set by statute. A county assessor must obtain the Certified Appraiser Assessor designation from the South Dakota Department of Revenue. (SD Laws 10-3-1.1; SD Laws 10-3-1.2; SD Admin. Rules 64:02:01:14). To be eligible for this certification, they must have “at least one year of full-time experience in the assessing and appraising field, have completed and passed the required training prescribed in § 64:02:01:16, and ha[ve] passed the certification examination.” (SD Admin. Rules 64:02:01:05.) Appraisers routinely and reasonably rely upon information provided by assessors to prepare market analyses and appraisals.

- 5-7) **Please provide Mr. Mike MaRous’ appraiser work file for this docket.**

Michael MaRous: See enclosed documents, CROCKER000572-CROCKER000888.

- 5-8) **Refer to Mr. MaRous’s Market Analysis. Since Mr. MaRous could not identify any sales of property within the proximity of wind turbine, is the only analysis specific to South Dakota a survey of County Assessors? Please explain.**

Michael MaRous: We included the Brookings County comparison as a South Dakota-specific analysis to reinforce the data we received from the assessors. There was also an analysis of recent residential and land sales of properties that were near the Project, but the analysis was unable to consider proximity to turbines because there were no sales with turbines in proximity to residences.

5-9) Refer to the direct testimony of Mr. Eddie Duncan, Page 5, Lines 98 – 116. Regarding Clark County’s sound level requirement for wind energy facilities:

a) Please explain what “constructive interference” means in the ordinance.

Eddie Duncan: Constructive interference is when the peak of the amplitude of two or more sound waves that are in phase with one another at a given frequency meet at a given location. It causes an increase in sound level. The opposite effect occurs when two or more sources are out of phase with one another, which is called destructive interference and results in a lower sound level.

b) Is the “average sound” measurement defined in the ordinance? Please explain.

Eddie Duncan: It is not explicitly defined, but when an ordinance states “average,” it is commonly taken in the field of noise control engineering to mean Leq.

c) Has Mr. Duncan confirmed with Clark County that the Leq metric is appropriate? If so, please provide documentation.

Eddie Duncan: I have not spoken with Clark County. However, I prepared a sound analysis for the Project using a Leq measurement. It is my understanding the county accepted the modeled Leq sound levels as compliant with the county’s requirements.

d) Please explain all efforts of the Applicant to work with Clark County to better define the sound ordinance.

Melissa Schmit: It is unclear what is meant by this request. Crocker believes that it has demonstrated compliance with Clark County’s sound requirement, as evidenced by issuance of a CUP.

e) Please explain how Clark County will audit the Crocker Wind Farm for compliance with its sound ordinance.

Melissa Schmit: The Clark County ordinance does not include any specific audit provisions. Crocker believes that it has demonstrated compliance with Clark County’s sound requirement, as evidenced by issuance of a CUP, and commitment with all applicable county requirements.

5-10) Refer to the rebuttal testimony of Mr. Eddie Duncan, Page 1, Lines 20-21. Mr. Duncan states, “In portions of Mr. Hessler’s testimony, he goes beyond evaluating the objective noise standard required by Clark County...”. for wind energy facilities:

- a) **Is the South Dakota Public Utilities Commission sole purpose in evaluating sound or noise associated with a wind energy facility to review for compliance with a County ordinance? If yes, please cite the appropriate codified laws or administrative rules?**

Mollie Smith: This question calls for a legal conclusion. Crocker will address this issue to the extent necessary in briefing.

- b) **In Mr. Duncan’s professional opinion, do County officials use any judgment in selecting the appropriate noise limit for a wind energy facility? If yes, what type of factors do government officials consider in setting an appropriate noise limit?**

Eddie Duncan: I am without knowledge of the factors that counties in general or Clark County in particular used in establishing sound limits for wind energy facilities.

- 5-11) Refer to the rebuttal testimony of Mr. Eddie Duncan, Page 1, Lines 25-26. Please explain the Applicant’s understanding is of the “applicable requirements of the South Dakota Public Utilities Commission” associated with the noise of the wind energy facility during operation.**

Eddie Duncan: I was referencing Crocker’s burden of proof as set forth in SDCL 49-41B-22.

- 5-12) Please explain why the South Dakota Public Utilities Commission should not, or cannot, consider a different noise requirement than what is required by the County.**

Mollie Smith: This question calls for a legal conclusion. Crocker will address this issue to the extent necessary in briefing.

- 5-13) Since Crocker’s noise modeling indicates noise levels of 40 dBA or lower at non-participating residences, will Crocker agree to a condition that sets a maximum limit of 45 dBA at non-participating residences? Please explain.**

Mollie Smith/Melissa Schmit: This issue is a matter of negotiations with PUC Staff regarding permit conditions. Crocker is open to establishing a sound limit for non-participating residences. Crocker would request that the sound limit be specifically defined in the context of the specific modeling to be used. As noted in Mr. Duncan’s rebuttal testimony, pages 3 and 4, the limit Mr. Hessler proposes does not include conservative assumptions Crocker included in its modeling.

- 5-14) Refer to the rebuttal testimony of Ms. Melissa Schmit, Page 9, Lines 4-9.**

- a) **Please explain how the request for turbine flexibility is compliant with ARSD 20:10:22:33.02 based on the Commission's interpretation of the rule in Docket EL17-028.**

Mollie Smith: The rule cited is an application content requirement (as noted by the PUC's Order Granting Motion to Deny and Dismiss Crocker Wind Farm's Application, dated November 1, 2017), and, therefore, is not determinative of the final conditions of the permit issued. Further, said order does not address turbine shifts.

- b) **Please explain why shifts of turbines of up to 1,000 ft. should not be considered a new configuration of wind turbines.**

Mollie Smith: See response DR 5-14(a).

Dated this 30th day of April, 2018.



Melissa Schmit