

**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 POST-HEARING BRIEF

EL17-055

COMES NOW Commission Staff by and through its attorneys of record and hereby files this post-hearing brief in the above-captioned siting proceeding.

I. Preliminary Statement

For purposes of this brief, the South Dakota Public Utilities Commission is referred to as “Commission”; Commission Staff is referred to as “Staff”; Crocker Wind Farm, LLC is referred to as “Crocker” or “Applicant”. Reference to the transcript of the Evidentiary Hearing will be “EH”, followed by the appropriate page number. Prefiled testimony that was accepted into the record will be referred to by the exhibit number.

II. Jurisdictional Statement

The Applicant filed for a permit to construct a wind energy facility and a 345 kV electric transmission line. The Commission has jurisdiction over siting permits for wind and transmission facilities pursuant to SDCL Chapter 49-41B. SDCL 49-41B-24 requires the Commission to make complete findings in rendering a decision on whether the permit should be granted, denied, or granted with conditions within twelve months of receipt of the initial

application for a transmission facility. SDCL 49-41B-25 requires a decision within six months for a wind energy facility.

III. Statement of the Case and Facts

On December 15, 2017, the Applicant filed a siting permit application pursuant to SDCL 49-41B-4 to construct the Crocker Wind Farm and associated 345 kV transmission line (“the Project”). a wind energy facility located on approximately 29,331 acres of privately owned land in Clark County, South Dakota, approximately 8 miles north of Clark, South Dakota. The proposed projects include up to 120 wind turbines, associated access roads, a new collector substation, an operations and maintenance facility, and associated 345 kilovolt (kV) transmission in Clark County, South Dakota. The projects will result in the installation of approximately 5.2 miles of overhead transmission that will be wholly located within the wind farm’s boundary. The transmission line route will run from a substation in Section 30 of Township 119N, Range 58W to the Point-of-Interconnect (POI), which is located approximately 2 miles north of the town of Crocker in Section 9 of Township 119N, Range 58W. Two routing options from the substation in Section 30 are under consideration. At the POI, the power will transfer to the Basin Electric Groton-to-Watertown 345 kV transmission line, part of the Southwest Power Pool, Inc./Western Area Power Administration transmission line portfolio in Clark County, South Dakota. Pursuant to SDCL 49-41B-15 and 49-41B-16, the Commission held a public input hearing in Clark, South Dakota.

Pursuant to ARSD 20:10:22:40, the Commission established a deadline of February 13, 2018, for submission of applications for party status. Sixty-four individuals were granted party status, all but two of whom later withdrew.

IV. Statement of the Issues

The issue to be decided in this matter is whether pursuant to SDCL 49-41B and ARSD 20:10:22, the permits requested by the Applicant for a wind energy facility and a transmission facility should be granted, denied, or granted upon such terms, conditions or modifications of the construction, operation or maintenance as the Commission finds appropriate. Specifically, the Commission must determine whether the Applicant met its burden of proof with respect to each element of SDCL 49-41B-22 for each of the two requested permits. If the Commission finds that the Applicant has met its burden and the permits is granted, the next issue the Commission must address is what, if any, conditions should be added to the permits.

V. Burden of Proof

Pursuant to SDCL 49-41B-22 provides that the Applicant has the burden of proof to establish that:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;
- (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
- (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

In addition, the administrative rules state that the Applicant “has the burden of going forward with presentation of evidence...” ARSD 20:10:01:15.01.

Therefore, the next question is: What standard shall be applied to determine if the Applicant has met the burden of proof? The general standard of proof for administrative hearings is by preponderance, or the greater weight of the evidence. *In re Setliff*, 2002 SD 58, ¶13, 645 NW2d 601, 605. It is erroneous to require a showing by clear and convincing evidence. *Dillinghan v. North Carolina Dept. of Human Resources*, 132 N.C. App. 704, 513 S.E.2d 823 (1999). “Preponderance of the evidence is defined as the greater weight of evidence.” *Pieper v. Pieper*, 2013 SD 98, ¶22, 841 NW2d 787 (citation omitted). Black’s Law Dictionary defines preponderance of the evidence as:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. This is the burden of proof in most civil trials, in which the jury is instructed to find for the party that, on the whole, has the stronger evidence, however slight the edge may be.

Black’s Law Dictionary (10th ed. 2014).

Each element must be established by reliable, probative, and substantial evidence of such sufficient quality and quantity that a reasonable administrative law judge could conclude that the existence of facts supporting the claim are more probable than their nonexistence.

U.S. Steel Min. Co., Inc. v. Director, Office of Worker's Compensation Programs, U.S. Dept. of Labor, 187 F. 3d 384 (4th Cir. 1999).

If the Applicant meets its burden of proof, South Dakota code does not give the Commission any discretion regarding whether to grant a permit. The siting chapter provides no authority for the Commission to search outside of the four elements listed in SDCL 49-41B-22 for additional burdens of proof in deciding whether to grant or deny an application.

However, the Legislature has clearly indicated that it intended for the Commission to very carefully and thoroughly scrutinize applications for siting permits. This is evidenced by its passage of SDCL 49-41B-12, which provides for a deposit and a filing fee to investigate, review, process, and notice the application. Because the Legislature established a fee to support the investigation into permit applications, it is apparent that the Legislature intended for an extensive and complete review of the application. It would not have done so if it did not expect this to be a high bar. Such a high bar protects the land and the citizens of this state, as well as adds legitimacy to all applications that are granted.

VI. Argument regarding Wind Energy Facility

This section of the brief focuses solely on the wind energy facility. The transmission line permit application will be discussed separately in Section VIII of the brief. Therefore, any reference to the facility of the permit within this section refers to the wind energy facility unless otherwise stated.

Wind energy facilities "may not be constructed or operated in this state without first obtaining a permit from the Public Utilities Commission." SDCL 49-41B-1. The Project is greater than 100 megawatts and is therefore a wind energy facility for the purposes of the SDCL 49-41B. SDCL 49-41B-2(13).

As discussed above, the Applicant has the burden of proof to establish that four specific elements are met. Those elements are provided in SDCL 49-41B-22. Staff will address each element individually.

a. Analysis of SDCL 49-41B-22

1) Compliance with all applicable laws and rules.

Throughout the hearing, it became evident that the Applicant, whether by omission or commission, failed to provide requested material and provided responses that were less than candid.. One example is the testimony of Mr. Coppouls on cross-examination by Mr. Almond. It was established that Mr. Almond requested turbine manuals and was told Crocker did not have the manuals in their possession. Mr. Coppouls testified that he was provided the manuals by Crocker.

Although this causes great concern to Staff, neither Staff's witness from Game, Fish, and Parks nor the State Historic Preservation Office testified that Applicant had acted in a manner that was out of compliance with their office's rules and regulations. While the evidence tends to show that Applicant has a tendency not to go above and beyond when it comes to compliance, there is no evidence to indicate Applicant has violated or will violate any laws. With appropriate conditions, it appears that any concerns in this area can be addressed.

2) Risk of serious injury to the environment or social and economic condition of inhabitants in the siting area

Pursuant to ARSD 20:10:22:23(1), the Applicant is required to provide information on the Project's impacts on land value. This information is necessary in order to evaluate the potential for injury to the economic condition of inhabitants in the siting area. The Applicant was dilatory and less than forthcoming in providing this information. As is evidenced in the numerous data requests sent by Staff to the Applicant, Staff made many attempts to elicit this information from the Applicant. See Exhibit S1.

While the sixth-month time frame places limitations on the studies that Staff is able to complete, the Applicant chooses when to file its Application and start the clock. It is incumbent upon the Applicant to have this information available at the time the Application is filed. At this time, there is no evidence in the record to establish what effect, if any, the Project could have on property value. Thus, this potential effect on the economic condition of inhabitants cannot be evaluated and any effect on the public interest is indeterminate.

Additionally, some of the language in the easements signed by participating landowners has the potential to threaten the social and economic condition of participating landowners. Applicant's response to Staff Data Request 4-2 states that "the leases do obligate participating landowners to cooperate with Crocker to obtain and maintain permits for the Project." See Exhibit S1 (Exhibit_DK-3, page 26 of 44). Any complaint to the Commission may be construed as failing to cooperate with Applicant's ability to maintain its permit. SDCL 49-41B-33(2) allows the Commission to revoke or suspend a permit for failure to comply with the terms and conditions of the permit. Landowners are in the best position to witness a violation of the conditions and would be one of the parties greatest affected by a violation of the conditions. The idea that they could be subject to legal action for reporting a violation is chilling and certainly not in the public interest.

Several witnesses testified about potential harm to the environment or lack thereof. There is no statewide policy on mitigating negative effects of wind towers on the environment. However, the lack of a policy should not preclude Crocker from behaving in an environmentally responsible manner. Without any mitigation, the Project poses a serious threat of harm to the environment.

The Applicant has the burden to show that the project will not pose significant harm to the environment. In this case, the Applicant has failed to meet its burden of proof. Instead the evidence shows that this project will likely cause direct and indirect impacts to the grassland habitats to a number of species and absent some form of adequate mitigation, this project poses a threat to the environment.

In its application and supporting exhibits, even the Applicant recognizes there are potential impacts to the environment, stating “indirect impacts on birds may occur through displacement or avoidance of habitat, habitat fragmentation, and edge effects” *Application pg. 78*. The Applicant identifies that “a mosaic of grassland, pasture and wetlands comprise the majority of the Project area. Aerial imagery and the site visit indicate that there are some relatively large areas of intact mixed herbaceous grasslands and pasture/hay within the Project. The relatively large areas of contiguous grasslands and pastures may be suitable for some species such as grasshopper sparrow, northern harrier, sedge wren, marbled godwit, and upland sandpiper.” *Pg Appendix D- Draft Bird and Bat Conservation Strategy (Appendix D)*. “Based on available information, there is potential for localized indirect impacts to breeding populations of grassland birds as well as direct impacts to several species of concern” and “there is some evidence that some grassland specialist bird species may be susceptible to displacement effects from wind turbines; some studies have also indicated some displacement effects of breeding duck pairs in the vicinity of wetlands” *Appendix D pg 11 and pg 18*. Throughout the hearing, Applicant witnesses, Brie Anderson and Joyce Pickle again recognized potential impacts to the environment. Ms. Anderson agreed that undisturbed native grassland can have a high conservation value. *EH 201:10-24*. Ms. Pickle later agreed that there are several grassland species, including the grasshopper sparrow, that are currently in decline due to habitat loss and that Crocker’s project will cause additional land to be taken out of grassland,

causing additional habitat loss. *EH 280-281*. Additionally, Ms. Pickle testified that there are studies that indicate wildlife displacement or avoidance of wind turbines and that it does not surprise her that these studies show that the impacts in year one of the studies were less than the impacts in year five. *EH 339-340*.

Both Staff and the Intervenors presented additional evidence throughout this application process that further shows that, without mitigation, the proposed project will directly and indirectly harm the environment. The proposed Project will reduce and fragment the native prairie grassland in the area due to the construction of access roads, the turbines and other associated facilities. This fragmentation will diminish the overall value of the grassland habitat. *EH 546-547*.

In his prefiled direct testimony, Mr. Tom Kirschenmann explained that all grasslands have a conservation value to wildlife and livestock and that continued development of these lands could result in reduced or limited habitat value. *Kirschenmann Direct pg 7 and 14, lines 9-12*. He further explains that North American Prairies are one of the world's most endangered ecosystems and that there are several endemic grassland bird species that require native prairie, many of which are rare or declining in population, mainly due to habitat loss. *Kirshenmann Direct pg 6-7*. Additionally, Mr. Kirchenmann testified that grassland habitat is the number one component for pheasant reproduction and nesting and that the nesting habitat is critical for pheasant populations to sustain or grow. *EH 570:18-22*. Mr. Kirschenmann indicated that "for those areas that are permanently changed, the lost grassland or wetland acres are typically replaced. Disturbed areas again should be restored using native seed sources to reduce the introduction of new or discourage encroachment of already present exotic and/or invasive species. It would also be recommended to replace lost acres within the Prairie Coteau ecoregion." *Kirschenmann Direct pg 11 lines 4-9*.

Despite this evidence, the Applicant refuses to recognize that the project, as proposed to the Commission, poses a threat to the environment with direct and indirect impacts to grassland habitat of many species. The Applicant continues to ignore the requests and suggestions from both the US Fish and Wildlife Service and the South Dakota Game, Fish and Parks that the Applicant mitigate for the impacts caused by the construction and operation of the Project. Additionally, even when pushed by Staff, the Applicant refused to discuss or propose any meaningful amount of mitigation to address the environmental impacts to grassland habitat caused by the project. Instead, the Applicant has repeatedly indicated that because neither the state Legislature nor the South Dakota Department of Game, Fish and Parks has established a specific mitigation policy for disruption of native grassland that no mitigation is necessary and that there is no standard for mitigation.

Although there is evidence in the record that there is not currently a state mitigation policy, the idea that this lack of policy means that no mitigation is necessary or appropriate has no basis and the Applicant's position conflicts with the PUC's rules and the applicant's burden of proof. The Legislature specifically vested authority in this Commission to review applications for wind energy facilities over 100 MW and to specifically consider the environmental impacts the facility will cause. The PUC's administrative rules are written to consider the existing environment at the time of submission of the application and the expected impacts from the project (ARSD 20:10:22:13). Neither the guiding statutes, nor the PUC's administrative rules indicate the Commission does not need to consider impacts to the environment if the project is on private land.

The Legislature also specifically vested authority in the Commission to deny a permit application if the proposed project poses significant harm to the environment or to modify the project or set conditions to the permit to ensure the project does not significantly harm the

environment. If the Legislature or the Department of GF&P had mitigation policies in place, the Commission could certainly look to those policies as guidance for determining what mitigation was appropriate. However, absent legislative direction for the state to develop a policy, the regulatory decision falls under this Commission through SDCL 49-41B-22(2) should the Commission find mitigation will adequately addresses the project's risk to the environment.

The applicant offered testimony at the hearing to support the contention that the Project will provide economic benefits to the local area. Two participating landowners testified to the economic benefits to their families. On page 114 of the Application (Exhibit A1), the tax benefit is shown to be around \$1.8 million per year. The projected annual tax revenue was said to be approximately \$480,000 to the state; \$462,000 to Clark County; \$198,000 to the townships; and \$660,000 to the school district. However, with respect to tax revenue retained by the school district, the amount will go to zero after nine years of operation. SDCL 13-13-10.1(6B) provides:

any wind energy tax revenue apportioned to school districts pursuant to § 10-35-21 from a wind farm producing power for the first time before July 1, 2016, shall be considered local effort pursuant to subdivision (6) and other revenue base amount pursuant to subdivision (6A). However, any wind energy tax revenue apportioned to a school district from a wind farm producing power for the first time after June 30, 2016, one hundred percent shall be retained by the school district to which the tax revenue is apportioned for the first five years of producing power, eighty percent for the sixth year, sixty percent for the seventh year, forty percent for the eighth year, twenty percent for the ninth year, and zero percent thereafter;

Therefore, while Crocker will continue to pay the same amount in taxes, the disbursement will change materially with respect to funding of education.

Another positive economic impact is the Community Fund, described on page 114 of the Application. The Applicant has committed to placing \$80,000 per year into a Community Fund. This will total \$1.6 million over twenty years. This amount will weigh against some of the negative economic impacts the Project might have, but to what extent is unknown.

It is noteworthy that at the evidentiary hearing, Applicant introduced the concept that it considers this to be two wind projects, each up to 200 megawatts. Elizabeth Engelking testified that at this time, “it is prudent for the [Applicant] to build the first 200 megawatts”. EH 19:12-13. Ms. Engelking went on to describe the Project as Crocker 1 and Crocker 2. EH 31:5-6. According to her testimony, Applicant currently has 200 megawatts of offtake. EH 31:8-9. These are very significant facts which will affect the tax revenue generated by the Project.

Up through the evidentiary hearing, numerous factors led to concerns regarding the effect the proposed project would have on cultural resources in the project area. Significantly, the application requested a 1,000-foot material deviation for all turbines. Additionally, the final studies had not been provided for review and the Applicant refused to engage with a Tribal Historic Preservation Officer to review whether there are any cultural resources of significance to the Tribe within the project are as requested by the South Dakota State Historical Preservation Office. Since the conclusion of the May 9-11, 2018 evidentiary hearing, the parties have engaged in conversations and have agreed that a 325-foot material deviation for all turbines as well as conditions regarding the filing of the final cultural resource reports with the Commission prior to construction, the development of a plan for the unanticipated discovery of cultural resources and the treatment of National Register of Historic Places. (Crocker Draft Permit Conditions, Conditions # 12, 13,14, and 23). The adoption of these proposed conditions would alleviate the concern regarding cultural resources.

3) Health, safety, and welfare of inhabitants

Provided the Applicant complies with the noise condition agreed upon by my Staff and the Applicant and complies with the noise levels established by the CUP with respect to participating landowners, the Project should not have a significant negative impact on the health, safety, and welfare of the inhabitants.

4) Interference with orderly development of the region

There is no testimony in the record to indicate that the region was likely to experience any development or expansion with which the Project would interfere. The Applicant will create an \$80,000 per year Community Fund as previously discussed, as well as provide additional tax revenue for the region. Thus, the preponderance of the evidence suggests that the impact, if any, on the orderly development of the region will be positive.

VII. Recommended Conditions

Staff reserves its position on whether or not a permit should be granted. However, if the Commission ultimately grants the permit, Staff recommends the conditions attached as Attachment A. Staff reserves the right to recommend additional conditions not included in Attachment A. Additional conditions that Staff recommends at this time are discussed below.

Additionally, Staff strongly recommends the Commission require Applicant to employ a public liaison officer, approved by the Commission, as has been done in pipeline siting dockets. Over sixty people sought and were granted party status in this proceeding, rivaling or exceeding the number of opponents in recent pipeline siting dockets. See, HP14-001 and HP14-002. This amount of interest and opposition greatly increases the likelihood that the Commission will receive inquiries and complaints from both participating and non-participating landowners. Further, the record demonstrates a continuous lack of willingness to give credence to the

concerns of government agencies¹, Commission Staff included, leading Staff to be concerned the complaints from those with limited legal means will not be taken seriously by Crocker. The use of a public liaison officer will also ensure that the Commission's excellent, but very busy, consumer affairs staff time is not unduly burdened.

For the foregoing reasons, Staff requests the Commission place the following condition on any permit issued for the Project.

Crocker shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between Crocker, including its contractors, and landowners, local communities, and residents and to facilitate prompt resolution of complaints and problems that may develop for landowners, local communities, and residents as a result of the Project. Crocker shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Crocker without the approval of the Commission. The public liaison officer shall be afforded immediate access to Crocker's on-site project manager, its executive project manager, and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. As soon as the Crocker's public liaison officer has been appointed and approved, Crocker shall provide contact information for him/her to all landowners in the Project area and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Crocker and the public liaison officer, take action to remove the public liaison officer.

¹ See, Exhibit I-64

Staff also requests that if a permit is granted, the following condition be included to help address environmental impacts:

The Applicant shall work with the SD GF&P to develop a grassland mitigation plan and submit the plan to the Commission for approval prior to commencing operation of the project. The grassland mitigation plan shall identify the mitigation measures to be implemented by the Applicant and must result in meaningful mitigation for the Project's actual direct and indirect impacts to grasslands. Mitigation measures may include, but are not limited to: funding for beneficial grazing management practices to be promoted through federal, state, and/or local conservation district partnerships; contributing to grassland or wetland conservation projects implemented through federal, state, and/or local conservation district partnerships; and/or purchasing offsets for the grassland acres directly and indirectly impacted by the Project.

a. Specific Turbine Locations

While Staff does not take a position on whether certain turbines should be removed, Intervenor Gale Paulson testified that if the Commission grants the permit, he would like the twelve southernmost towers near Reid Lake to be removed. Exhibit I-53, lines 219-220. This leads to the question of whether the Commission has the authority to grant a permit, subject to the removal of specified turbines.

The Commission does have the authority to grant a permit subject to the removal of specific turbines. SDCL 49-41B-25 provides in pertinent part

Within six months of receipt of the initial application for a permit for the construction of a wind energy facility, the commission shall make complete findings, and render a decision, regarding whether a permit should be **granted**, denied, or granted upon such terms, conditions, **or modifications of the construction**, operation, or maintenance as the commission deems appropriate.

This statute clearly provides the Commission with the authority to modify the construction of the Project. It is logical that the Legislature would have wanted the Commission

to have this authority, as it would not have desired for an entire Project to be denied a permit due to the location of only a small and immaterial portion of its facilities.

SDCL 49-41B-36 is not contrary to this interpretation. SDCL 49-41B-36 provides

Authority to route or locate facilities not delegated to commission.
Nothing in this chapter is a delegation to the commission of the authority to route a transmission facility, or to designate or mandate location of an energy conversion facility, AC/DC conversion facility, or wind energy facility.

Removal of a small number of turbines does not constitute mandating the location of a wind energy facility. The act of mandating the location of the facility would be dictating turbines be placed in a certain location, especially outside of the project footprint. SDCL 49-41B-36 precludes the Commission from requiring that facilities be located in a certain location. The statute says nothing of requiring that facilities *not* be placed in a certain location. Such an interpretation would certainly lead to an absurd result, causing the Commission to deny entire projects because of minor nuances. For example, the Commission would be required to deny a permit for a hundred-mile transmission line that crossed a landowner's irrigation pivot, rather than requiring that the line be moved within the designated corridor to avoid the pivot. The result would be detrimental to both the project applicant and the landowner. Further, such a preclusion would render certain provisions of SDCL 49-41B-25 meaningless. In interpreting statutes, there is a presumption that the Legislature did not intend an absurd result. *Esling v. Krambeck*, 2003 SD 59, ¶6, 663 NW2d 671, 676.

The Legislature clearly intended for the Commission to be able to address landowner, cultural, environmental, and other concerns by requiring removal of specific turbines. The Commission may order certain turbine locations not be utilized if the Commission finds they

would pose a serious threat of injury. Staff does not, however, take a position on whether the Commission should do so now.

VIII. Electric Transmission Line

Staff recommends that a permit to construct the electric transmission line be granted contingent upon Applicant's receipt of a permit for the Crocker Wind Farm and on the condition that its primary use be related to the operation of the wind farm. Staff further recommends that all conditions applied to a permit, if granted, for the wind facility be applied as applicable to the transmission facility.

IX. Recommendation

Each issue must be weighed using the preponderance of evidence standard. Is it more likely than not that Applicant has satisfied each requirement of SDCL 49-41B-22? Because this is the first time the Commission will rule on a wind siting permit subsequent to a full evidentiary hearing, which implicates policy decisions be made as a case of first impression, Staff will refrain from making a recommendation on the ultimate issue of whether the permit should be granted. However, Staff will lay out the options below.

SDCL 49-41B-25 authorizes the Commission to grant the permit, deny, or grant upon conditions. To Staff's knowledge, no permit has ever been granted without conditions. Absent conditions, this project would pose a serious threat to the health, safety, and welfare of the environment and inhabitants in the area.

Staff notes that if the Commission finds insufficient information was available on a specific topic, the Commission could deny and allow Applicant to reapply pursuant to SDCL 49-

41B-22.1. Under this statute, Applicant could reapply and need only establish those criteria upon which the permit was denied. If the Commission finds a completed cultural resource survey is necessary, Crocker could complete the requisite study and reapply. Because the legislature specifically provided for the filing fee statute to apply to a reapplication, it can be inferred that the legislature considered what statutes it intended to apply to reapplications. See SDCL 49-41B-22.3. Public input meetings and notice requirements were not specifically called out by the legislature as requirements upon reapplication. Therefore, it is apparent that those statutes would not apply. This means that upon receipt of a reapplication, the parties, including intervenors, could quickly assess the information and the matter could be brought before the Commission in a timely manner to the benefit of all involved.

Conclusion

Should the Commission grant the permit for the wind and transmission facilities, Staff recommends that it do so subject to the conditions agreed upon by Staff and the Applicant, which are contained in Attachment A, as well as other conditions recommended in Section VII of this brief.

Respectfully submitted this 29th day of May 2018.



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