

**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 RESPONSE TO
MOTION TO EXCLUDE
EXHIBITS**

EL17-055

COMES NOW Commission Staff and hereby files this Response to Applicant's Motion to Exclude Exhibits. Applicant moved to exclude three intervenor exhibits based on relevance, hearsay, foundation, and outside the scope of testimony. Staff asks that this motion be denied.

Exhibits prefiled prior to the hearing are provided largely for convenience. They need not all be ultimately offered by the providing party. At this time, we have no way of knowing for sure what witness they might be offered through. Thus, it is impossible to discern whether or not a proper foundation will be provided. It is likely that some of these exhibits would be offered upon cross examination, so we cannot limit our determination of relevance to the testimony of the two witnesses the Intervenors intend to offer on direct.

Additionally, SDCL 1-26-19(1) provides administrative agencies with additional discretion when ruling on admissibility of evidence. The statute provides, in relevant part

When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not otherwise admissible thereunder may be admitted except where precluded by statute if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

Should this administrative rule come into play when the exhibits are offered, certain questions would need to be asked of the witness in order to determine whether this statute should apply, assuming the standard relevancy barriers were not surpassed.

Because all parties have a right to cross examination, and cross examination is not prefiled, we cannot know in what manner the proffered exhibits will be utilized. Therefore, we cannot know what foundation will be laid or what relevance they might have. For this reason, any objection should be made at the time it is offered and is premature at this time.

Dated this 7th day of May 2018.



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