

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

EL17-055
RESPONSE TO MOTION OF
INTERVENORS TO WITHDRAW

COMES NOW, the Applicant, Crocker Wind Farm, LLC, through one of its attorneys of record Brett Koenecke of May, Adam, Gerdes & Thompson LLP and provides this Response to the Motion for withdrawal of individual intervenors of party status from the above captioned docket. In support of this Motion and the Applicant states as follows:

62 of 64 individual intervenors filed on March 21, 2018 a withdrawal of party status from the above captioned docket. Applicant does not object to the withdrawal of any of the parties and urges the Commission to accept the same, with conditions as outlined below.

Attached please find a form of discovery served on the individual intervenors on or about March 9, 2018. The discovery served is a legitimate exercise under the rules of procedure. The questions asked were attempts to understand the positions held by the parties, and what testimony might be offered by them at the hearing and as such, are clearly relevant to the proceedings. The questions are not unduly burdensome and in fact, are strikingly similar to questions asked of intervenors in other prior dockets. Finally, neither the Applicant nor anyone working on its behalf have any knowledge of any harassment or intimidation in connection with this docket, at all.

Shortly before the withdrawing intervenors filed their motion, Crocker served responses to intervenor data requests (“DR Responses”), which included both written responses and substantial documentation from Applicant. Because the withdrawing intervenors are no longer participating in these proceedings, Crocker respectfully requests that the Commission order the withdrawing intervenors to:

- return or destroy any copies of the DR Responses;
- certify such return or destruction;
- refrain from posting the information publicly on the docket in this proceeding; and
- refrain from using the DR Responses outside of this proceeding.

The applicable discovery rules contemplate that discovery responses are sought and used as part of the ongoing proceeding, and not that they are requested and/or used for purposes outside of such litigation. *See* SDCL 15-6-33(b) (noting that interrogatory answers “may be used to the extent permitted by the rules of evidence”); SDCL 15-6-26(b) (parties may obtain discovery “relevant to the subject matter involved in the pending action”); ARSD 20:10:01:01.02 (applying the Rules of Civil Procedure to proceedings before the Commission); ARSD

20:10:01:22.01 (“The taking *and use* of discovery shall be in the same manner as in the circuit courts of this state.”) (emphasis added).

The withdrawing intervenors were provided with the DR Responses solely because of their party status in this matter. Because they no longer wish to be parties, that information should be returned/destroyed as applicable and not used further or outside this proceeding. To the extent that the withdrawing intervenors are allowed to use the DR Responses outside of this proceeding, doing so would violate the purpose and the spirit of discovery in Commission proceedings. This could result in other parties similarly abusing the Commission’s discovery processes for improper purposes in the future, and Crocker respectfully suggests that by so ordering, this practice would be discouraged.

Dated this 27 day of March, 2018.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

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CERTIFICATE OF SERVICE

27 Brett Koenecke of May, Adam, Gerdes & Thompson LLP hereby certifies that on the 27 day of March, 2018, he served via email, a true and correct copy of the foregoing in the above-captioned action to the following at their last known address, to-wit:

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