

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION OF DAKOTA RANGE I, LLC AND DAKOTA
RANGE II, LLC FOR AN ENERGY FACILITY PERMIT TO CONSTRUCT
A WIND ENERGY FACILITY

SD PUC DOCKET EL-18-003

PREFILED REBUTTAL TESTIMONY OF MARK MAUERSBERGER
ON BEHALF OF DAKOTA RANGE I, LLC AND DAKOTA RANGE II, LLC

May 21, 2018

1 **I. INTRODUCTION**

2

3 **Q. Please state your name.**

4 A. My name is Mark Mauersberger.

5

6 **Q. Did you provide Direct Testimony in this Docket on January 24, 2018?**

7 A. Yes.

8

9 **Q. What is the purpose of your Rebuttal Testimony?**

10 A. The purpose of my Rebuttal Testimony is to respond to the testimony of Jon Thurber
11 submitted on behalf of the South Dakota Public Utilities Commission Staff ("Staff"). I
12 am also responding to portions of the Rebuttal Testimony of Intervenors Teresa
13 Kaaz and Kristi Mogen.

14

15 **Q. Are there any exhibits attached to your Rebuttal Testimony?**

16 A. The following exhibit is attached to my Rebuttal Testimony:

- 17 • **Exhibit 1**: Brookings County 2015 Property Value Survey.

18

19 **Q. Do you have any updates to your Direct Testimony?**

20 A. Yes. Dakota Range has removed turbine location A14 from its proposed
21 configuration. Although compliant with setback and other requirements, the location
22 was internally viewed as an alternate and is the closest proposed location to a
23 residence. At this point, Dakota Range is able to commit to not using the location.

24

25 **II. RESPONSE TO TESTIMONY OF JON THURBER**

26

27 **Q. In his testimony, Mr. Thurber discusses statements you made at the public**
28 **input hearing related to a Brookings County property values analysis. Could**
29 **you discuss the basis of those statements and your purpose in referencing**
30 **that analysis?**

1 A. Yes. During the presentation I provided on behalf of Dakota Range at the public
2 input hearing, I indicated that there was an analysis conducted regarding property
3 values in Brookings County around the Buffalo Ridge Wind Farm. My statements
4 were based on my understanding of information presented by Luke Muller, the
5 Zoning Officer for Codington County and a First District Association of Local
6 Governments' Staff Member, during a Codington County Planning and Zoning
7 meeting held earlier this year. My intent in referencing the analysis was to note that
8 information is available within South Dakota that may be more applicable than some
9 of the studies available on the internet. In my experience working for Apex, I have
10 heard certain flawed property value studies referenced repeatedly, and was trying to
11 let the public know that other information is available. I also stated during the public
12 input hearing that Dakota Range was having a property value analysis conducted for
13 the Project, and that analysis was provided by Mr. MaRous in his Direct Testimony
14 filed on April 6, 2018, and updated in his Rebuttal Testimony.

15
16 As Mr. Thurber noted, I did indicate at the public input hearing that Apex relies on
17 peer-reviewed environmental studies. However, that statement was not meant to
18 apply to non-scientific studies, and was not intended to apply to the Brookings
19 County information.

20
21 **Q. Mr. Thurber noted that Staff requested the Brookings County information**
22 **twice in data requests and that he assumes it will not be provided because it**
23 **has not been provided to date. Do you have a response?**

24 A. Yes. As an initial matter, it may be helpful context to explain the timing of Staff's
25 requests. Staff sent Dakota Range multiple sets of data requests over the course of
26 about a week and a half, which resulted in Dakota Range receiving requests on an
27 almost daily basis. Thus, while Dakota Range was making a very diligent effort to
28 provide Staff with the information requested, the fact that multiple sets of requests
29 were pending at the same time complicated that effort. Staff first requested
30 information regarding the Brookings County analysis in its second set of data

1 requests. Before our answers were due to the second set, Staff asked additional
2 questions regarding the same information in its sixth set of data requests.

3
4 I e-mailed Mr. Muller prior to the due date for the responses to the second set of
5 data requests to ask for further information on the Brookings County analysis. We
6 provided the information we had in our responses to Staff, and indicated we had
7 requested additional information from Mr. Muller. I followed up again with Mr. Muller
8 after providing the responses to the data requests and he recently provided the
9 information, which is attached as Exhibit 1.

10
11 **Q. Do you have a clarification regarding your statements at the public input**
12 **hearing regarding the Brookings County analysis?**

13 A. Yes. According to the quote provided by Mr. Thurber, I misspoke when I referenced
14 the Brookings County analysis. As indicated in Exhibit 1, the study included 233
15 parcels, which included agricultural land and residences, rather than 243 home sites.
16 However, the study did indicate that the average property value increase from 2011
17 to 2015 was 58 percent, and only one property had decreased in value by 3 percent.
18 In addition, it was my understanding that the property data for the analysis was
19 compiled by the Brookings County equalization office, and my statements at the
20 public input hearing and in response to Staff's Data Request 2-19 were based on
21 this understanding. However, the documentation Mr. Muller provided indicates that
22 the analysis was conducted by Prevailing Winds, LLC. Again, my intent was not to
23 indicate that the Brookings County information was a peer-reviewed study, but to
24 emphasize that other information on property values in South Dakota is available.

25
26 **Q. Have you provided the Brookings County analysis to Dakota Range's property**
27 **value expert, Mr. MaRous?**

28 A. Yes. While I did not have the written analysis until after Mr. MaRous provided his
29 Direct Testimony, I provided the information to him upon receipt, and Mr. MaRous
30 addresses the information in his Rebuttal Testimony.

1 **Q. Starting on page 13 of his testimony, Mr. Thurber discusses the Project's**
2 **setback from Punished Woman's Lake. Please describe this voluntary**
3 **setback.**

4 A. The Applicant has made a voluntary commitment that wind turbines will be set back
5 two miles from the shoreline of Punished Woman's Lake.

6
7 **Q. Why does the Applicant propose a two-mile voluntary setback from Punished**
8 **Woman's Lake?**

9 A. As I discussed in my Direct Testimony, the Applicant met with the Punished
10 Woman's Lake Association to discuss the Project and address concerns related to
11 potential viewshed impacts at Punished Woman's Lake. In response, as well as to
12 avoid areas of potential tribal resources near the lake and to be a good neighbor to
13 the town of South Shore, Dakota Range voluntarily imposed a turbine setback of two
14 miles from the shoreline of Punished Woman's Lake.

15
16 Before making this voluntary commitment, Dakota Range reviewed the lake
17 setbacks imposed by Deuel County during its recent zoning amendment process.
18 Deuel County imposed a three-mile setback from Lake Cochrane, a two-mile
19 setback from Lake Alice, and a one-mile setback from Bullhead Lake. Punished
20 Woman's Lake is similar in size to Bullhead Lake and in depth to Lake Alice,
21 although much smaller. Punished Woman's Lake is not comparable to Lake
22 Cochrane, which has higher real estate and recreational value. Based on the lake
23 setbacks in Deuel County, a one-mile setback appeared to be the most appropriate
24 setback from Punished Woman's Lake. However, in the interest of being a good
25 neighbor, Apex voluntarily imposed a two-mile setback.

26
27 **Q. Why has Dakota Range not adopted a three-mile setback from Punished**
28 **Woman's Lake?**

29 A. There are two key reasons why Dakota Range did not adopt a three-mile setback
30 from Punished Woman's Lake. First, based on the rationale from Deuel County
31 discussed above, a two-mile setback is generous. Second, Punished Woman's

1 Lake Association representatives strongly lobbied their own county's Planning and
2 Zoning Board to consider a three-mile setback from their lake during a recent (post-
3 application filing) zoning ordinance amendment process. The proposal did not
4 receive a single vote of support, and a setback from Punished Woman's Lake is not
5 included in the proposed zoning ordinance amendment referred by the Codington
6 County Planning and Zoning to the Board of County Commissioners.

7
8 **Q. Could you respond to Mr. Thurber's questions on page 14 of his testimony?**

9 A. Answers to Mr. Thurber's questions are provided below:

- 10 • *How much of the Project Area under lease is impacted by the voluntary 2-mile*
11 *setback?*

12 Approximately 68 acres under lease within the Project Area are within the
13 voluntary two-mile setback.

- 14 • *How many turbines needed to be moved or removed from previous layouts in*
15 *order to accommodate the Punished Woman Lake setback?*

16 At this point, only a small amount of the Project Area is within the two-mile
17 setback, and the configuration within the Project Area was developed to avoid
18 that acreage. Prior to establishing the Project boundary, Dakota Range was
19 acquiring and pursuing leases closer to Punished Woman's Lake. However,
20 when the decision was made to impose a voluntary two-mile setback from the
21 shoreline of Punished Woman's Lake, Dakota Range halted those leasing
22 efforts. Thus, Dakota Range has acquired some leases outside of the Project
23 Area closer to Punished Woman's Lake, but is not utilizing those leases for
24 the Project and stopped pursuit of obtaining further leases that it may
25 otherwise have acquired.

- 26 • *How much Buildable Area, as defined in Figure 5 [of the Application], was*
27 *eliminated as a result of the Punished Woman Lake voluntary setback?*

28 Since the edge of the Project Area is near the outer boundary of the voluntary
29 two-mile setback, there is little, if any, Buildable Area within the Project
30 boundary that is within the voluntary setback. As discussed above, leasing
31 efforts within two miles of the shoreline of Punished Woman Lake were halted

1 before the Project boundary was defined, so the majority of the setback area
2 was never within the defined Project Area.

3

4 **Q. Staff requests that Dakota Range commit to mitigating shadow flicker for any**
5 **residence that experiences shadow flicker in excess of 30 hours per year,**
6 **based on actual operation. Is Dakota Range willing to make such a**
7 **commitment?**

8 A. Yes. Additional discussion of the shadow flicker analysis conducted for the Project
9 and potential mitigation are discussed in the Rebuttal Testimony of Robert O’Neal.

10

11 **Q. In Mr. O’Neal’s rebuttal testimony, he provides a proposed sound level**
12 **condition. Did Dakota Range authorize Mr. O’Neal to propose that condition?**

13 A. Yes.

14

15 **Q. Mr. Thurber states that Staff “wants to ensure participating landowners have**
16 **access to the Commission’s complaint process as set forth in ARSD**
17 **20:10:01.” Do you have a response?**

18 A. Yes. Both participating and nonparticipating landowners have access to the
19 Commission’s complaint process. The condition Mr. Thurber cited in his testimony
20 on page 16 is acceptable to Dakota Range.

21

22 **III. RESPONSE TO TESTIMONY OF JON THURBER**

23

24 **Q. In her testimony, Ms. Kaaz indicates concerns that she will not be able to**
25 **construct a bigger shop or install a shelterbelt on her property because she**
26 **claims there is a turbine safety zone. Do you have a response to this**
27 **statement?**

28 A. Yes. Ms. Kaaz appears to believe a setback from the turbine must be maintained.
29 However, other than the general zoning district and structure setbacks in the
30 Codington County zoning ordinance, there is not a prohibition on constructing
31 structures or installing shelterbelts in proximity to a wind turbine. Rather, a wind

1 turbine cannot be constructed within 1,000 feet of an existing residence, business, or
2 government building. The closest turbine to Ms. Kaaz's property is turbine 67, which
3 is approximately 1,271 feet from her property line and approximately 2,043 feet
4 away from her residence.

5

6 **Q. In her testimony, Ms. Mogen notes a number of concerns regarding the**
7 **Project, including concerns about potential impacts to her home and family.**
8 **Do you have a response?**

9 A. In her Rebuttal Testimony, Ms. Mogen identified her address as 15160 471st Ave,
10 Twin Brooks, South Dakota. Based on mapping the address, it is my understanding
11 that Ms. Mogen lives approximately 9 miles east of the closest proposed Project
12 turbine location, which is turbine 44. Given the distance Ms. Mogen lives from the
13 Project, it is unclear what the basis is for her concerns.

14

15 **Q. Ms. Mogen also notes concerns regarding the Codington County and Grant**
16 **County conditional use processes. To your knowledge, did Ms. Mogen raise**
17 **concerns during those processes?**

18 A. No. I attended the Codington County and Grant County conditional use permit
19 hearings, and neither Ms. Mogen nor Ms. Kaaz spoke at either hearing.

20

21 **IV. CONCLUSION**

22

23 **Q. Does this conclude your Rebuttal Testimony?**

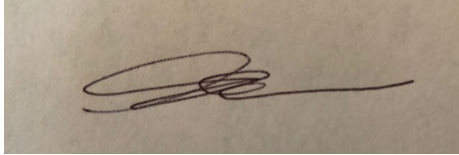
24 A. Yes.

25

1 Dated this 21st day of May, 2018.

2

3

A rectangular photograph of a handwritten signature in black ink on a light-colored, textured paper background. The signature is cursive and appears to read 'Mark Mauersberger'.

4

5

6 Mark Mauersberger

7