

From: Hanson, Gary (PUC)
Sent: Thursday, July 26, 2018 9:20 PM
To: davidbrouwer@msn.com
Subject: FW: EL18-026

Mr. Brouwer,

Thank you for your message regarding wind farm applications and the processing of them by the commission. You would be correct to infer that the Crocker wind farm was a challenging docket.

To directly answer your question;

“I guess I am questioning if any application will be denied unless there is something so grossly negligent within the application?”

That may very well be the perception. However, in the docket of the Dakota Access Pipeline; in all the states where DAPL applied for siting, I was the only Commissioner who voted against the docket. The decisions that I make are based upon the weight of actual evidence that is presented at the evidentiary hearing.

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.

The challenge for opponents is to provide evidence that is as powerful as the expert testimony that is presented by the applicant. I recognize this can be nearly an impossible task for lay persons when I consider the significant financial ability of the applicant and the expert witness testimony the applicant presents. The PUC staff presented excellent concerns regarding the project. However, those concerns were resolved through adoption of conditions that were placed in the Commission's Final Order and so did not reach the level of requiring denial. Unfortunately, not all the

motions I made for conditions to be placed on the order succeeded. The motions that passed were essential to me and I was committed to vote against the application if those other motions did not succeed.

For the commission to deny a siting permit we need to have actual 'evidence'. Evidence must be from testimony of expert witnesses who are available for cross examination. They cannot come from books or newspaper or magazine clippings. Neither can they be based upon individual's beliefs that flicker or wind turbine noise is harmful. There must be proof to substantiate the claims. Emotional requests, personal feelings, speculation is not considered evidence. Our decisions cannot even be based upon our own feelings. We are not legislators. Our feelings do not count. Whether we like a project or not we must make the decision based upon evidence presented at the evidentiary hearing. That is the law. If we do not follow the law our decisions will be overturned by the circuit court or the Supreme court.

You appear to have a good grasp regarding the process the PUC follows in the siting of wind farms. However, if you wish to research it more thoroughly please read the Siting Guide posted on the PUC website home page. This explains the commission's processing of such dockets: <https://puc.sd.gov/commission/Publication/sitinghandout.pdf>. You will want to pay particular attention to the following excerpt on communication with commissioners regarding open dockets.

Submit comments. Members of the public are encouraged to submit written comments about an active siting case to the PUC. These **informal** public comments are reviewed and considered by the PUC commissioners and staff. Comments should include the docket number or siting project name, commenter's full name and full mailing address. Email address must be included for comments submitted by email. These comments should be emailed to puc@state.sd.us or mailed or hand-delivered to PUC, 500 E. Capitol Ave., Pierre, SD 57501. Comments are posted in the "Comments" section of the docket within a reasonable time after having been received. The commenter's name, city and state will be posted along with their comment. Comments received from businesses, organizations or other commercial entities (on letterhead, for example) will include the full contact information for such.

Please follow these guidelines when submitting written comments to the PUC:

- For comments sent by email, the maximum file size is 10 MB. If you have questions, please contact South Dakota PUC staff at 605-773-3201 (Monday – Friday, 8 a.m. – 5 p.m. Central Time).
- For comments sent by U.S. mail or hand delivered, no more than twenty (20) 8.5" x 11" pages, including attachments and support materials, should be submitted with a comment. Sheets with printing on both sides are counted as two pages.
- A reference document, article or other attachment not written by the person

commenting should clearly identify the source of the content. The inclusion of any copyrighted material without accompanying proof of the commenter's explicit right to redistribute that material will result in the material being rejected.

- In instances where individual comments are deemed to be a duplicate or near duplicate copies of a mass message campaign, the PUC will post only a representative sample and list the name, city and state of the commenter.
- Comments containing threatening language or profanity will be rejected.
- Multimedia submissions such as audio and video files will not be accepted as written comments.
- Electronic links will not be accepted.

Become an intervenor. Individuals who wish to be formal parties in a siting case may apply to the PUC for intervenor status. The intervention deadline is clearly indicated within the docket. Intervention is appropriate for people who intend to actively participate in the case through legal motions, discovery (requests for facts or documents), the written preparation and presentation of actual evidence, and in-person participation in a formal hearing. Intervenors are legally obligated to respond to discovery from other parties and to submit to cross-examination at a formal hearing. Individuals seeking only to follow the progress of a siting case or to offer comments for the PUC's consideration need not become intervenors.

Communicate on record. Verbal communication between a commissioner and a person with an interest in a matter before the commission that does not occur in a public forum or as part of the official record should be avoided. Those who communicate in writing with a commissioner about an open or imminent docket matter should understand that their comments will become part of the official record and subject to review by all parties and the public. Likewise, comments made at a PUC public proceeding or submitted to the commission relative to a docket matter become part of the record, open to review by all parties and the public. Because commissioners have a decision-making role in docket matters, any discussion with a commissioner about an open or imminent docket must take place in an open forum, such as a public meeting, with notice given to all parties

I also suggest you visit with one the PUC's staff attorneys for additional information regarding your questions on the laws governing the commission on siting permits. You may reach one of these attorneys by calling the PUC at (605) 773-3201 or emailing PUC@state.sd.us. As explained above, as a commissioner I cannot discuss the subject of a docketed item with you outside of a publicly noticed meeting when that or any other similar docket is pending consideration with the commission. Therefore, your message and my response will be posted in the Prevailing Wind docket, EL18-026, so that my fellow commissioners and others may read them.

Gary Hanson, Vice Chairman
South Dakota Public Utilities Commission

