

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE APPLICATION
BY PREVAILING WIND PARK, LLC FOR
A PERMIT OF A WIND ENERGY
FACILITY IN BON HOMME COUNTY,
CHARLES MIX COUNTY AND
HUTCHINSON COUNTY, SOUTH
DAKOTA, FOR THE PREVAILING
WIND PARK PROJECT**

**INTERVENORS' RESPONSES TO
APPLICANT'S THIRD SET OF DATA
REQUESTS TO INTERVENORS**

EL 18-026

Intervenors Gregg Hubner, Marsha Hubner, Paul Schoenfelder, and Lisa Schoenfelder ("Intervenors"), through counsel, provide the following Responses to Applicant Prevailing Wind Park, LLC's ("Applicant") Third Set of Data Requests to Intervenors.

2-1) Reference the disclosures for Vickie May, Scott Rueter, Richard Daughtery, Josh Larson, Jerome Powers, Travis Krumvieda, Kevin Andersh in Intervenors' Disclosure of Lay Witnesses dated September 19, 2018 ("Lay Witness Disclosures"):

- a) Generally describe each witness's educational background;**
- b) Generally describe each witness's employment history;**
- c) Identify any other proceedings, hearings, or other actions in which the witness has offered sworn testimony and provide copies of any such written testimony; and**
- d) Identify and provide any exhibits the witness will refer to, sponsor, or introduce.**

RESPONSE:

a) Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors.

b) Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors.

c) Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors.

- d) See Intervenors' Exhibit List.

2-2) Identify the "Hutchinson County Representative" listed as lay witness No. 17.

RESPONSE: Intervenors do not intend to call a Hutchinson County Representative to testify.

2-3) Reference disclosure of Vickie May,

- a) **Has Ms. May sought medical attention for the alleged maladies in the disclosure? If she has sought such medical attention, provide any medical records that would in any way indicate that the maladies resulted from a wind turbine. Prevailing Wind Park is agreeable to entering into a confidentiality agreement and protective order for responsive documents.**
- b) **Provide any measurements of sound levels or shadow flicker at Ms. May's home that Ms. May has in her possession.**

RESPONSE:

a) Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors.

- b) See Exhibit I-5.

2-4) Reference disclosures for Lori Fuerniss and Sherm Fuerniss, have the witnesses sought medical attention for the alleged maladies in the disclosure? If they have sought such medical attention, provide any medical records that would in any way indicate that the maladies resulted from a wind turbine. Prevailing Wind Park is agreeable to entering into a confidentiality agreement and protective order for responsive documents.

RESPONSE: Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors.

2-5) Reference the disclosure for Richard Daugherty, provide copies of any studies or reports relating to shadow flicker at his home.

RESPONSE: Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors. Subject to that objection, Intervenors do not intend to call Richard Daugherty to testify.

- 2-6) Reference the disclosure for Josh Larson, provide any documents relating to the level of sound in Mr. Larson's home caused by the wind turbine located 1,400 from his home and provide any documents relating to the level of background sound in Mr. Larson's home.**

RESPONSE: Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors. Without waiving that objection, Intervenors do not have any such documents.

- 2-7) Reference the disclosure for Mr. Powers:**

- a) Describe, in detail, the alleged ice shedding event, including the date and location of the event.**
- b) Describe in detail, how Mr. Powers measured the distance of ice shedding from the turbine.**
- c) Provide copies of all documents relating to the alleged ice shedding event.**
- d) Has Mr. Powers sought medical attention for the alleged maladies in the disclosure? If so, provide copies of any medical records that would in any way indicate that the maladies resulted from a wind turbine. Prevailing Wind Park is agreeable to entering into a confidentiality agreement and protective order for responsive documents.**
- e) Provide copies of all documents that support Mr. Powers' claim that his pheasant business will lose \$15,000 to \$20,000 per year if the Prevailing Wind Park Project ("Project") is constructed.**
- f) Identify and provide contact information for the 50 customers Mr. Powers spoke to regarding whether they would return to hunt pheasants at his business if the Project is constructed.**
- g) For each of the 50 customers Mr. Powers contacted, state on how many occasions they paid to hunt with Mr. Powers' business.**

RESPONSE: Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors. Without waiving that objection, Intervenors

respond as follows: Mr. Powers has seen ice shards approximately 210 feet¹ from turbine nos. six and nineteen of the Beethoven Wind Farm. He measured that distance with a tape measurer.

2-8) Reference the disclosure for Travis Krumvieda:

- a) Identify the wind project in which Travis Krumvieda is a participating landowner;**
- b) Provide a map that shows the existing turbines within 2 miles from Mr. Krumvieda's residence. A marked up Google Earth map or similar would be acceptable;**
- c) Describe the wind project facilities located on and within two miles of Travis Krumvieda's property;**
- d) Provide copies of recorded land records relating to Travis Krumvieda's lease agreement for the wind project.**

RESPONSE: Intervenors object to this request to the extent it seeks information not in the possession, custody, or control of Intervenors. Furthermore, this information is as readily available to the Applicant as it is to Intervenors. Without waiving that objection, Intervenors do not intend to call Travis Krumvieda to testify.

2-9) Reference the disclosure for Kevin Andersh, describe the concerns Mr. Andersh has, if any, regarding the Project.

RESPONSE: Since the Beethoven Wind Farm went operation, Mr. Andersh has had difficulties sleeping due to a vibrating sound in his ears. He resides a little over 2 miles from the nearest turbine. His contact number is 605-384-3472.

2-10) With respect to Vickie May, Scott Rueter, Richard Daughtery, Josh Larson, Jerome Powers, Travis Krumvieda, Kevin Andersh:

- a) Identify whether the lay witness lives at the residence throughout the entire year and, if not, how many months of the year he/she resides at the residence;**
- b) Provide a map that shows the existing turbines within 2 miles from the residence of each lay witness's residence. A marked up Google Earth map or similar would be acceptable;**
- c) To the extent known by the proffered witness, Identify the regulations, including but not limited to state, county and any other applicable**

¹ Intervenors, through counsel, referenced 1,000 feet and 600 feet in the First Amended Disclosure of Lay Witnesses based on a misunderstanding/miscommunication.

regulations, for noise that applied to the existing wind farm in proximity to each lay witness's residence at the time the existing wind farm was permitted;

- d) To the extent known by the proffered witness, identify the regulations, including but not limited to state, county and any other applicable regulations, for shadow flicker that applied to the existing wind farm in proximity to each lay witness's residence at the time the existing wind farm was permitted and built;
- e) To the extent known by the proffered witness, Identify the setbacks, including but not limited to state, county and any other applicable setbacks, that applied to the existing wind farm in proximity to each lay witness's residence at the time the existing wind farm was permitted and built;
- f) If the lay witness will testify regarding property values, provide all records within the last 10 years, including but not limited to studies, reports, and analyses, regarding property values as it relates to the lay witness's property.

RESPONSE: Intervenor object to this request to the extent it seeks information not in the possession, custody, or control of Intervenor. Furthermore, this information is as readily available to the Applicant as it is to Intervenor. Without waiving that objection, Intervenor have printed off Google Maps for certain witnesses, see Exhibit List.

2-11) Provide any documents referred to, related to, or relied upon in Intervenor's responses to this Third Set of Discovery Requests.

RESPONSE: Intervenor object to this request to the extent it calls for the production of work product. Subject to that objection, none.

2-12) Please consider each question ongoing and update answers to the extent that the testimony of Intervenor's Lay Witnesses will be broader than identified in the Lay Witness Disclosures.

RESPONSE: No response necessary.

Dated this 5th day of October, 2018.

DAVENPORT, EVANS, HURWITZ &
SMITH, L.L.P.



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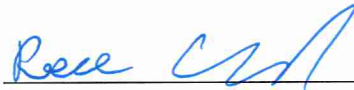
*Attorneys for Intervenors Gregg Hubner,
Marsha Hubner, Paul Schoenfelder and
Lisa Schoenfelder*

CERTIFICATE OF SERVICE

The undersigned, one of the attorneys for Intervenor Gregg C. Hubner, Marsha Hubner, Paul M. Schoenfelder, and Lisa A. Schoenfelder, certifies that a true and correct copy of the **Intervenors' Responses to Applicant's Third Set of Data Requests to Intervenor**, was served on October 5th, 2018, via email, upon the following:

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