

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE  
APPLICATION OF DEUEL HARVEST  
WIND ENERGY LLC FOR A PERMIT  
OF A WIND ENERGY FACILITY AND  
A 345-KV TRANSMISSION LINE IN  
DEUEL COUNTY

APPLICANT'S SUPPLEMENTAL  
RESPONSES TO INTERVENOR  
CHRISTINA KILBY'S FIRST SET OF  
DATA REQUESTS

EL18-053

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Below, please find Applicant's supplemental responses to Intervenor Christina Kilby's first set of data requests.

- 1-7) Produce all written communications, electronic or otherwise, between Deuel Harvest, its affiliates, agents or sub-contractors and any Deuel County official or employee in the last 12 years.**

Lisa Agrimonti: Deuel Harvest objects to this request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, overly broad, and unduly burdensome. In addition, Ms. Kilby has access to electronic communications Deuel Harvest had with Deuel County through her role as pro hac vice co-counsel in the Deuel County circuit court appeal, Docket No. 19CIV18-000019.

Deuel Harvest's Supplemental Response by Michael Svedeman: At the Commission hearing, Deuel Harvest understands Ms. Kilby limited this request to written communications occurring after the close of discovery in 19CIV18-000019. Responsive communications are available at the following link: <https://fredriksonandbyron.sharefile.com/d-s5af3189369942bcb>

- 1-8) Explain John Knight's role with the Project, including but not limited to any payment, commission, gift arrangement he has with Deuel Harvest or any of Deuel Harvest's affiliates, employees, agents, or contractors.**

Lisa Agrimonti: Deuel Harvest objects to this request as not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding the foregoing objection, Deuel Harvest has not made any payment, gift, or commission to Mr. Knight.

Deuel Harvest's Supplemental Response by Michael Svedeman: John Knight has no role in the Project. Deuel Harvest denies that there has been any "payment, commission, gift arrangement... with Deuel Harvest or any of Deuel Harvest's affiliates, employees, agents, or contractors."

**1-12) Assuming all turbines are built, how many participating landowners will have a turbine located on their property?**

Michael Svedeman: As described in the Application, Deuel Harvest has identified 124 potential turbine locations, but only up to 112 turbines will be constructed. As such, Deuel Harvest does not currently have a response to this request because the final 112 turbine locations have not been selected.

Deuel Harvest's Supplemental Response by Michael Svedeman: Subject to and without waiving the foregoing objections, although Deuel Harvest will construct up to 112 turbines, Deuel Harvest still has 119 turbine locations under consideration and does not know which locations will be utilized for the Project. For these 119 locations, there would be 45 participating landowners with turbines located on their properties (up to 67 of the turbines could be sited on landowners with mailing addresses in Deuel County, up to 15 could be sited on landowners with mailing addresses in adjacent Grant County, up to 19 could be sited on landowners with mailing addresses in South Dakota outside of Deuel and Grant Counties, and up to 18 turbines could be sited on landowners with mailing addresses outside of South Dakota). There would also be 119 participating landowners that will not have turbines, but will receive payments for their participation or hosting other facilities.

**1-14) How many participating landowners reside outside of Deuel County?**

Lisa Agrimonti: Deuel Harvest objects to this request as unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, Deuel Harvest states that it does not possess the information requested.

Deuel Harvest's Supplemental Response by Michael Svedeman: Deuel Harvest is not able to attest to the legal residence of any landowner. Deuel Harvest does, however, maintain a list of landowner mailing addresses for participating landowners in the Project Area. See response to Request No. 1-12.

**1-15) How many participating landowners reside outside of South Dakota?**

Lisa Agrimonti: Deuel Harvest objects to this request as unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding these objections, Deuel Harvest states that it does not possess the information requested.

Deuel Harvest's Supplemental Response by Michael Svedeman: Deuel Harvest is not able to attest to the legal residence of any landowner. Deuel Harvest does maintain a list of landowner mailing addresses for participating landowners in the Project Area, but it does not ask landowners specifically where they reside. See Response to Request No 1-12.

**1-17) Do all of the contracts any individual has signed regarding the Project contain confidentiality agreements?**

Lisa Agrimonti: Deuel Harvest objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence and is vague in its use of "contracts." Deuel Harvest further objects to this request as overly broad and unduly burdensome because it is not limited in time or scope.

Deuel Harvest's Supplemental Response:

Lisa Agrimonti: As with Request 1-17, the scope of "contracts" in this Request is vague. Ms. Kilby notified Deuel Harvest that she would modify her Request to state, "Do all of the contracts signed regarding the Project contain confidentiality clauses." Deuel Harvest maintains its prior objections to this Request. Notwithstanding these objections, Deuel Harvest provides the following response:

Michael Svedeman: Deuel Harvest's standard lease form that was used for the Project contains a limited confidentiality provision, excerpted below. Nothing in the lease form precludes landowners from voicing concerns regarding the Project.

The Parties acknowledge that prior to the execution of this Agreement, neither party may require the other party to maintain the confidentiality of any negotiations or the terms of the Agreement. After the Effective Date, however, both Parties shall maintain in confidence, for the benefit of the other party, all information pertaining to the financial terms of or payments under this Agreement. Neither party will use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of the other party.

Notwithstanding the foregoing, each party may disclose such information to such party's lenders, attorneys, accountants and other advisors; any prospective purchaser or lessee of such party's interests in Property; or pursuant to lawful process, subpoena or court order requiring such disclosure, provided the party making such disclosure advises the party receiving the information of the confidentiality of the information.

**1-21) Identify any Deuel county commissioner or planning or zoning board member that has ever executed any agreement with Deuel Harvest. Provide any such agreement.**

Lisa Agrimonti: Deuel Harvest objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. Notwithstanding this objection, Deuel Harvest states that this information was previously provided to Intervenor as part of Docket No. 19CIV18-000019.

Deuel Harvest's Supplemental Response:

Lisa Agrimonti: Deuel Harvest maintains its prior objections; however, pursuant to April 5, 2019 correspondence, Ms. Kilby modified this Request to seek "all agreements executed since response in 19CIV18-000019." Deuel Harvest maintains its prior objections to this Request. Notwithstanding these objections, Deuel Harvest provides the following supplemental response based on the revised request:

Michael Svedeman: None.

**1-22) Identify all Deuel County lease agreements that have been released, including the landowners and dates of release.**

Lisa Agrimonti: Deuel Harvest objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. This information was previously provided to Intervenor as part of Docket No. 19CIV18-000019.

Deuel Harvest's Supplemental Response:

Lisa Agrimonti: Deuel Harvest maintains its prior objections; however, pursuant to April 5, 2019 correspondence, Ms. Kilby modified this Request to seek "all release since response in 19CIV18-000019." Deuel Harvest maintains its prior objections to this Request. Notwithstanding these objections, Harvest provides the following supplemental response based on the revised request:

Michael Svedeman: None.

**1-23) Identify any agreements other than lease or easements agreements that Invenergy has utilized in the last 12 years.**

Lisa Agrimonti: Deuel Harvest objects to this request as vague, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Deuel Harvest also objected because the request seeks confidential information and there is no confidentiality agreement in place.

Deuel Harvest's Supplemental Response:

Lisa Agrimonti: Deuel Harvest maintains its prior objections and is still unable to determine what Ms. Kilby means by “any agreements other than lease or easement agreements”, and she has not provided any clarification regarding the purpose or scope of her request in her argument. Ms. Kilby clarified that her request sought information regarding whether Deuel County “utilized any sort of ‘good neighbor’ agreement, or incentive agreements for landowners who help in acquiring easement or lease agreements.” Deuel Harvest provides the following supplemental response based on the revised request:

Michael Svedeman: Deuel Harvest has no knowledge of any such agreements.

**1-32) What parts of the turbines are recyclable? Please provide supporting evidence.**

Lisa Agrimonti: Deuel Harvest objects to this request as vague and ambiguous and not reasonably calculated to lead to the discovery of admissible evidence.

Deuel Harvest's Supplemental Response by Jeff Kopp: The three main components of the wind turbines included as scrap are the tower, the nacelle, and the rotor. Based on data provided in studies performed by manufacturers of comparable wind turbine technology, Burns & McDonnell has allocated steel, copper, and aluminum composition percentages for each component. A recoverability factor was then applied to each material in the nacelle, tower, and rotor in order to account for recyclable material that cannot be recovered. Unrecoverable scrap and non-recyclable material are included as debris to be hauled to a nearby landfill.

Turbine Weight Breakdown:

<u>Component and Material</u>		<u>GE 2.82 - 127</u>	<u>GE 2.3-116</u>
Tower Steel Salvage Weight	tons	143.5	149.0
Tower Copper Salvage Weight	tons	2.2	2.3
Tower Aluminum Salvage Weight	tons	2.8	2.9
Nacelle Steel Salvage Weight	tons	50.0	50.0
Nacelle Copper Salvage Weight	tons	1.8	1.8
Nacelle Aluminum Salvage Weight	tons	0.7	0.7
Rotor Steel Salvage Weight	tons	29.8	29.8
Rotor Copper Salvage Weight	tons	0.0	0.0
Rotor Aluminum Salvage Weight	tons	0.0	0.0
Total Debris Weight	tons	95.9	86.9

**1-33) Please provide an estimate of the cost to separate recyclable materials from nonrecyclable materials. Provide supporting evidence.**

Lisa Agrimonti: Deuel Harvest objects to this request because it is vague, overly broad, and unduly burdensome. Information concerning decommissioning of the Project was already provided in the Decommissioning Cost Analysis filed as Appendix U to the Application.

Deuel Harvest’s Supplemental Response by Jeff Kopp: Burns & McDonnell included labor for processing turbine components on site which includes activities such as dismantling and cutting. As part of this process, separating recyclable from non-recyclable material will take place. Thus, a specific cost to sort materials was not calculated. However, the total cost of processing turbine components is approximately \$12,700 per turbine.

**1-34) What size of an area is required to dispose of non-recyclable materials from all turbines proposed in the Project?**

Lisa Agrimonti: Deuel Harvest objects to this request because it is vague and not reasonably calculated to lead to the discovery of admissible evidence.

Deuel Harvest's Supplemental Response by Jeff Klopp. No on-site area for disposal is required because all debris is to be disposed of offsite at a landfill. Burns & McDonnell did not calculate the volume or area of the non-recyclable materials because all hauling costs and landfill tipping fees were based on weight. The total weight of non-recyclable materials from the Project is approximately 72,677 tons.

**1-35) Where will the non-recyclable materials from the turbines, including all parts, be disposed?**

Lisa Agrimonti: Deuel Harvest objects to this request because it is premature and not reasonably calculated to lead to the discovery of admissible evidence.

Deuel Harvest's Supplemental Response by Jeff Klopp: For purposes of the decommissioning analysis, non-recyclable materials are included as debris and, therefore, were presumed to be taken to the Brookings Landfill.

**1-37) Provide evidence supporting the estimated 30 year life of the Project.**

Lisa Agrimonti: Deuel Harvest objects to this request as vague regarding its use of the word "supporting." Deuel Harvest further objects to this request as not reasonably calculated to lead to the discovery of admissible evidence.

Deuel Harvest's Response by Michael Svedeman: Deuel Harvest supplements its response as follows:

Michael Svedeman: Deuel Harvest does not claim that each and every Project component will last 30 years without replacement or repair. This Project, like many other wind projects, is planned to operate at least 30 years and this is routine assumption for Invenenergy's projects which is accepted by power purchasers as well as entities who acquire wind projects after development. In addition, the Project will be subject to routine maintenance and inspections so that its operation may be consistent with this timeframe.

**1-38) How often do blades need to be replaced on the proposed turbines? Provide evidence.**

Lisa Agrimonti: Deuel Harvest objects to this request as not reasonably calculated to lead to the discovery of admissible evidence.

Deuel Harvest's Supplemental Response by Jacob Baker: Based on Invenergy's experience, there is a 0.25% chance that a turbine will need a total blade replacement in a given year or a 0.09% chance per year on a per blade basis.

**1-42) Provide all turbine manufacturer information referring to fire risks, fire prevention, fire mitigation and fire control.**

Lisa Agrimonti: Deuel Harvest objects to this request as vague, overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and seeking information not in the custody or control of Deuel Harvest.

Deuel Harvest's Supplemental Response:

Lisa Agrimonti. Deuel Harvest maintains its prior objections to this Request and notes that the Request, by its own language, seeks information that is not in the custody or control of Deuel Harvest. Ms. Kilby clarified that she seeks any information provided by the turbine manufacturer (for the proposed turbines) regarding the danger of fire and any manufacturer recommendations for prevention or mitigation of fire. Deuel Harvest further objects to this request to the extent it seeks confidential information. Notwithstanding these objections, Deuel Harvest provides the following supplemental response:

Jacob Baker: With respect to preventing turbine fires, Deuel Harvest will acquire turbines from reputable suppliers. Turbines are constructed of fiberglass and steel, which are not highly flammable materials. With respect to Project maintenance activities, a rigorous hot works program is adhered to whenever any open flames or heat sources are introduced in a tower. A hot works program is a program to reduce risks associated with an activity, such as welding, which provides an ignition source. All up tower entries require a fire extinguisher be taken up the tower. All employees are trained annually on use. With respect to fire control, Deuel Harvest will coordinate fire emergency plans and hold emergency response drills in the Project Area with local fire departments both before the Project becomes operational and annually thereafter. A copy of Invenergy's Emergency Response Plan template was previously produced as Attachment 2-10 to Intervenor's Request No. 2-10.



**1-44) What flammable materials are used in or contained in the turbines?**

Lisa Agrimonti: Deuel Harvest objects to this request because the specific materials used in turbines are confidential and proprietary.

Jeff Kopp: Subject to and without waiving that objection, none of the material at the site meets the criteria listed in the Resource Conservation and Recovery Act (“RCRA”) to be classified as hazardous material.

Deuel Harvest’s Supplemental Response by Jacob Baker: Turbines are constructed of fiberglass and steel, which are not highly flammable materials. There are various gear oil, hydraulic oils, and greases used in the turbines – these consumables all have low flammability ratings per the National Fire Protection Association code. The specific list of gear oil, hydraulic oils, and greases is below:

First Fill Lubricants:  
Zerex G05 50/50 coolant  
Fuchs Renolin Unisyn CLP 220 gear oil  
Amsoil PTN 320 EP gear oil  
Mobil SHC 460 WT grease  
Mobil SHC 681 grease  
Fuchs Gleitmo 585k grease  
Fuchs Ceplattyn grease  
Klüberplex BEM 41-132 grease  
Mobil DTE 25 hydraulic oil

Annual Maintenance Lubricants:  
Zerex G05 50/50 coolant  
Fuchs Renolin Unisyn CLP 220 gear oil  
Amsoil PTN 320 EP gear oil  
Mobil SHC 460 WT grease  
Mobil SHC 681 grease  
Fuchs Gleitmo 585k grease  
Fuchs Ceplattyn grease  
Klüberplex BEM 41-132 grease  
Mobil DTE 25 hydraulic oil

**1-46) How are turbine fires handled?**

Jacob Baker: Deuel Harvest will coordinate fire emergency plans and hold emergency response drills at the Project with local fire departments both before the Project becomes operational and annually thereafter.

Deuel Harvest's Supplemental Response: Deuel Harvest is unable to discern what additional information Ms. Kilby seeks and thus maintains its prior response to this Request, which explains that Deuel Harvest will coordinate with local emergency response services in the unlikely event of a turbine fire. Notwithstanding these objections, Deuel Harvest provides the following supplemental response:

As detailed in Jacob Baker's responses to Intervenor's Request No. 2-10, Deuel Harvest will utilize a site specific emergency response plan. In addition, each site manager engages with the local Emergency Medical Services ("EMS") and sets up a time and place with the Fire Chief where a simulated emergency will take place for any number of items. On the day of the drill, during normal day-to-day activities, the site manager will announce over the radio that a fire is in progress at XX turbine and that a drill is in progress. The technicians in the field will place a call to the local EMS. The technicians and site manager will head to the effected turbine and setup direction points to help guide EMS to the turbine (turbine GPS coordinates are always shared with local EMS too). Once EMS is on the scene, the Fire Chief and site manager give instruction on the situation and run through several simulations (ground fire, debris falling, public onlookers, etc.) and how each party will respond to a given situation. After the drill is completed, a debrief is given to the entire Fire Department and Site team – reviewing lessons learned and observations made by the Fire Chief and site manager during the drill. During the initial site startup the drills and training will be conducted by the Regional Environmental Health and Safety ("EHS") Manager, the Regional Director of Operations, and the onsite manager. The current EHS Manager and Regional Director have been involved with numerous drills throughout their careers and have been heavily involved in developing Invenergy's emergency response policies and procedures. Future drills will be initiated by the site manager, with assistance from the EHS Manager.

**1-53) How many of the Deuel County landowners who have signed lease agreements for the project are not getting turbines placed on their property?**

Michael Svedeman: As indicated previously, Deuel Harvest will construct 112 of the 124 turbine locations identified in the Application and does not have a final response to this request at this time.

**KILBY ARGUMENT**

Deuel Harvest is evading this question. Deuel Harvest could respond to the question according to the current configuration and supplement as necessary.

Deuel Harvest's Response: Deuel Harvest maintains its prior response to this Request. Notwithstanding these objections, Deuel Harvest provides the following supplemental response:

Michael Svedeman. Deuel Harvest has not determined which 112 turbines locations will be utilized for the Project. If all 119 turbine locations under consideration were used without any adjustments, there are 164 landowners within the Project Area. See Response to Request No. 1-12.

**1-54) Provide all complaints regarding noise, flicker, health complaints, sleep disturbance, or infrasound that has been submitted to Invenergy or any affiliate, or to any employee or agent of Invenergy or any affiliate in the last 12 years.**

Lisa Agrimonti: Deuel Harvest objects to this request as ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Deuel Harvest's Response by Michael Svedeman: Deuel Harvest's understanding of the Commission's order on April 10, 2019 was that the request is modified to request logged or recorded complaints for the last five years.

Invenergy currently owns 12 wind farms and operates 35 other wind farms in the United States. Invenergy does not maintain a central repository for written complaints and does not otherwise log complaints for its individual projects except for two projects located in New York, for which the state requires the Invenergy entity to maintain an internal database of complaints received. The two projects are subject to litigation – three cases total -- and the associated court complaints summarize the concerns that have been raised. Invenergy has not established complaint recording processes for other projects because the volume of complaints is low and complaints are typically handled as soon as reasonably possible by the specific project employee who receives the complaint. Therefore, Invenergy does not have any additional responsive logs of complaints.

In addition to the New York litigation, in the past five years, nuisance claims have been brought against Invenergy entities in Oregon and in Quebec, Canada. A list of those cases and a summary of those claims is provided below. The initial pleadings for all lawsuits are available at the following link: <https://fredriksonandbyron.sharefile.com/share/view/se8540b79d6f435aa/fodd9dff-c58e-4641-a173-dfa3e61ace58>

<b>Matter</b>	<b>Summary/Status</b>
<i>Williams v. Invenergy, LLC and Willow Creek Energy, LLC, U.S. District Court, District of Oregon, Case No.: 2:13-CV-01391-AC</i>	Claim for private nuisance based on assertion that subject wind project was out of compliance with relevant noise limit. Case resolved and dismissed in 2016.
<i>LaBranche, et al v. Des Moulins Wind Power L.P., Invenergy Des Moulins LP ULC, Invenergy Des Moulins GP ULC, Invenergy Wind Canada LP Holdings ULC, Invenergy Wind Canada GP Holdings ULC and Hydro-Québec, Quebec Superior Court, District of Frontenac, No. 235-06-000001-148</i>	<p>Class-action claims by landowners in and around wind project in Canada. Plaintiffs assert nuisance-based claims based on traffic, noise, dust, roadway impacts, shadow flicker, “degradation of agricultural setting”, “infestation” of vermin and wild animals, noise and vibration, visual “pollution”, flickering red lights, physical and mental health problems, “deterioration in the social fabric”, and loss of property values.</p> <p>The project has been sold and Invenergy is no longer directly involved.</p>
<i>Rohauer v. Invenergy LLC, Supreme Court of New York No. 46066; Slowinski v. Invenergy LLC, Supreme Court of New York No. 46911; Andre, et al v. Invenergy LLC, Supreme Court of New York No. 46912</i>	<p>Three related actions asserting claims arising from Invenergy’s Orangeville Wind project. Nuisance claims – noise and vibrations, shadow flicker, property values.</p> <p><i>Rohauer v. Invenergy LLC, Supreme Court of New York No. 46066 and Andre, et al v. Invenergy LLC, Supreme Court of New York No. 46912</i> have both been removed to federal court and consolidated for purposes of discovery.</p> <p><i>Slowinski v. Invenergy LLC, Supreme Court of New York No. 46911</i> is still pending in Wyoming County Supreme Court</p>

**1-55) Identify the number of complaints submitted to Invenergy regarding ice being thrown or falling from a turbine. Produce any documents, reports, communications, studies, complaints, or the like related to any such complaint.**

Lisa Agrimonti: Deuel Harvest objects to this request as ambiguous, overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence.

Jacob Baker: Subject to and without waiving those objections, I am aware of one landowner notifying Invenergy of ice throw from a turbine at a Michigan facility.

Deuel Harvest's Response by Jacob Baker: In general, all safety incidents occurring at an facility Invenergy owns or operates are required to be reported by the site manager to their regional operations and management director as well as their regional safety manager. In my roles at Invenergy, I have been informed of these incidents. In my initial response, I noted that a Michigan landowner had reported an ice throw. After the turbines were constructed, the landowner built a new building closer to the building that existing structures. The landowner advised that ice had struck the building, but he did not make any complaint or request for compensation. This occurred several years go and represents the only report made to Invenergy about an Invenergy-owned project.

In February, ice shedding occurred at an Invenergy operated facility in Nebraska. Ice shedding occurred because a parameter in the turbine control software, which is proprietary to the Original Equipment Manufacturer ("OEM") and can only be adjusted by the OEM, that is meant to shut down the turbines when ice is detected, was disabled. Invenergy requested that these parameters be enabled to identify ice and respond with turbine shut downs as appropriate. The parameters were enabled and ice shedding has since been sufficiently mitigated.

**1-59) How many complaints have been made regarding noise caused by any wind energy facility Invenergy or any of Invenergy's affiliates have ever owned, operated, or otherwise been involved with?**

Lisa Agrimonti: See response to Request No. 54.

Deuel Harvest's Supplemental Response by Michael Svedeman: With the five-year limitation imposed by the Commission, this request is duplicative of Request No. 54.

Dated this 11th day of April, 2019

By /s/ Lisa Agrimonti  
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