

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

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

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* **INTERVENOR CHRISTINA KILBY'S**
* **RESPONSES TO APPLICANT'S FIRST**
* **SET OF DATA REQUESTS**
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* **EL18-053**
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Below please find Intervenor Christina Kilby's Responses to Applicant's First Set of Data Requests.

1-1) Provide copies of all data requests submitted by PUC staff to you in this proceeding and copies of all responses to those data requests. Provide this information to date and on an ongoing basis.

These will be provided.

1-2) Identify the address of your permanent residence (where you reside).

112 Geneva Blvd.

Burnsville, MN 55306

1-3) Identify all property you own within the vicinity of the Deuel Harvest North Wind Farm ("Project") and the location (by section, township, and range) of such property. Are there any habitable buildings on the property you own?

I do not own the property.

1-4) If you have a residence in the vicinity of the Project, identify whether you live at the residence throughout the entire year and, if not, how many months of the year you reside at the residence.

My family and I stay at the property several times throughout the year.

1-5) Identify how you use your land, including, but not limited to, whether you use your land for agricultural purposes.

I use the property for recreational purposes with my family. It is a quiet and beautiful retreat for us. I have three kids who have grown up in the Twin Cities area. The family property provides a place for my kids to get to experience and enjoy nature and spend time with their grandparents, cousins, and aunts and uncles.

1-6) Identify any sensitive or unique features of your property that you assert would be impacted by the Project.

The peace and quiet, beautiful scenery, variety and abundance of wildlife. There is also a permitted runway on the property that I want to ensure the safe use of for my brother and his family, as well as possibly the rest of our family.

1-7) Describe your concerns regarding the Project.

The size, number and location of turbines in close proximity to our property will destroy the peace, and quiet we currently enjoy at the property. The size, number, and location of the turbines in close proximity will prevent the safe use and enjoyment of the property, because of shadow flicker, noise, infrasound, and risk of ice throw, component liberation and fire.

I am concerned that wildlife in the area who enjoy the trees, protection of the valley, and bodies of water on the property will leave and that there are fewer and fewer areas nearby for them go.

I am concerned about a potential fire from one of the many nearby turbines destroying our property as well as others, and the risk of serious harm to people and wildlife in the area.

I am concerned about disturbance from the construction and operation of the turbines polluting the aquifer and other bodies of water.

I am concerned that people who value the area for its beauty and serenity, or people who simply decide they do not want to live in a county covered with industrial wind turbines will leave, negatively affecting the local economy and property values.

I am very concerned about the noise and infrasound known to be produced by the turbines, and the sleep disturbance, sleep deprivation, stress, and other health problems that have been reported and shown all over the world as a result.

1-8) Describe what mitigation measures would address the concerns you identified in response to Request 1-7 and whether any of the mitigation measures identified by the Applicant in its Application could address any of your concerns.

Because of the distance infrasound can travel, I request a two-mile setback for non-participating landowners, with the option of a waiver. The applicant can negotiate with any landowners who are willing to waive the setback and the project could still be viable. I believe the two-mile setback would adequately address my other concerns. I believe increased setbacks offer the only protection. Landowners should not have to suffer and sacrifice the enjoyment of their property so that Invenergy can maximize its profits.

1-9) Identify any documents, information, education, training, or professional experience you have relied upon to form your opinions concerning the Project. Where you have relied upon documents or other tangible materials, please provide such documents and/or materials.

I have a Bachelor's of Science degree in Psychology and a Juris Doctorate. I am a licensed attorney. For over two years I have been researching wind energy and effects of wind turbines on people and communities.

I have read numerous studies, articles, and personal stories, too many to name or include here. There are too many personal accounts of problems caused by proximity to wind turbines from around the world. I listened to testimony during the Prevailing

Winds evidentiary hearing and heard individuals who are severely affected by living in proximity to wind turbines. I believe there is more than sufficient scientific evidence explaining how *known* effects from turbines (including but not limited to noise, infrasound, flicker, stress) would cause the resulting complaints and health effects for people living in close proximity to industrial wind turbines. It is the applicant's duty to prove these harms will not occur.

1-10) Identify any witnesses, including expert witnesses, you plan to have testify on your behalf. For each witness (including expert witnesses), please provide a resume or statement of qualifications of the witness(es), identify the subject matter regarding which the witness will testify, and identify and provide any exhibits the witness will refer to or introduce.

Unknown at this time.

1-11) Are you asserting that the Project will negatively impact your property value? If so, provide copies of any appraisals or other valuations that have been conducted for such property within the last ten years.

I believe the market value of all residences located in and around the project will decrease. I do not believe anyone would choose to live near an industrial wind project if given a choice, especially if wanting to live in a quiet rural area.

I know the project will negatively affect the value of our family property. No formal appraisals have been done that I am aware of at this time. But the property will no longer have the desired characteristics it has now. See above responses.

1-12) Identify any communications, written or otherwise, you have had with units, officials, and/or representatives of local, state, and/or federal governments or agencies concerning the Project. a) For any written communications, provide a copy of the communication; and b) For any unwritten communications, provide the date of the communication, the persons involved, and the subject matter of the communication.

Objection. This request seeks information that is overly broad, irrelevant, unduly burdensome, and not limited in time or scope. I have no burden here. Any such communications are irrelevant to this proceeding.

Subject to and without waiving these objections, Prior to the Deuel County permit hearing, I wrote to the County Commissioners and the Board of Adjustment twice voicing concerns about members' conflicts of interest and requested those with conflicts recuse themselves from voting. I received no response and no officials recused themselves.

I submitted written comments to the Board of Adjustment prior to the permit hearing voicing my opposition to the project and my many concerns about the problems the project will bring.

I spoke at the county permit hearing about the ordinance requirements the Board of Adjustment was to find prior to granting a permit.

1-13) With reference to your Application for Party Status, what is your “[p]ersonal interest in land in the project area”? Specify the land in which you assert an interest and describe the interest.

My parents own the property that I am concerned about. My family and I spend a lot of time at the property enjoying the nature and peace and quiet. While my parents also own land in Section 20, Township 116, Range 48, and Section 15, Township 116, Range 49, the property I am most concerned about protecting from the negative effects of this project is that located in the West Half of Section 32, Glenwood Township.

1-14) Please state whether you are acting as an attorney in this PUC proceeding.

No

- 1-15) With respect to your comments at the January 24, 2019 public input meeting:
- a) Identify all facts supporting your claims regarding litigation involving Invenergy in Oregon and New York and produce copies of all documents relating to your claims. **Judge Acosta’s Opinion dated April 28, 2016, in Williams v. Invenergy, Case No. 2:13-CV-01391-AC, available publicly and Complaint, Andre et al v. Invenergy, LLC, (Andre et. Al, attached as CK R DH1 ATT 1).**
 - b) Provide all facts and documents that support your claim regarding “unconscionable contracts”.

I have read a blank contract from Invenergy that John Homan received from an agent of Invenergy for the project. (Blank Contract, attached as CK R DH1 ATT 2). It is very much one-sided in favor of Invenergy. It offers little to no protections for the landowner.

- c) Identify all facts that support your claims regarding Invenergy’s business practices.

Invenergy released three Deuel County officials from lease agreements just prior to their voting on wind related issues. Regarding Mike Dahl, member of the Deuel County Board of Adjustment, who voted to permit Deuel Harvest’s special exception permits:

“Interestingly, Dahl’s agreement was terminated just four days before Dahl and the other members of the Board held a public meeting regarding whether to amend the Ordinance as it related to wind development and whether to impose a suspension on all WES applications.” (Holborn v. Deuel County, Petitioner’s Brief in Support of Petition, p.9, attached as CK R DH1 ATT 3)

“Had Invenergy truly refined its project location, like Dahl claims, certainly Invenergy would have terminated agreements with other landowners at the same time it terminated Dahl’s agreement. But it did not. The most likely explanation is that Dahl and Invenergy wanted Dahl, like DeBoer, to ‘have a voice’ during those Board meetings.” (Holborn v. Deuel County, Petitioner’s Brief in Support of Petition, p.9 FN 4, CK R DH1 ATT 3)

“In fact, the next agreement Invenergy ‘terminated’ was the agreement it had with County Commissioner Lynn Pederson just days before the County Commission began considering whether to amend the wind-specific sections of the Ordinance.” (Holborn v. Deuel County, Petitioner’s Brief in Support of Petition, p.9)

“On December 14, 2017—about a week before Invenergy submitted its Applications to the Board—DeBoer was released from his two agreements with Invenergy.” (Holborn v. Deuel County, Petitioner’s Brief in Support of Petition, p.8)

At the Deuel County permit hearing on Jan. 22, 2018, I heard individuals request that certain turbines be moved to protect the health and safety of their family. Michael Svedeman stated that Invenergy would not move those turbines because people had the right to have those turbines on their property. Some of those families moved away because they do not want to live near the proposed turbines. Now, according to the project map contained in Deuel Harvest’s application to the PUC, those turbines have been removed.

I have heard of an individual in Deuel County who was told he was signing a statement acknowledging only that he received a contract, when in fact he was tricked into signing an actual contract with Deuel Harvest.

I have heard of people who were led to believe that my father, John Homan, had signed a contract, when he had not. I have heard additional stories of other people

being lied to about who had signed up with the project. As far as I am aware, these people are not comfortable speaking out about these situations.

I have a letter written by Janna Swanson to the Minneapolis Star Tribune, given to me by Janna Swanson. In it she writes, “In a Palo Alto public meeting about the proposed project one of the lead attorneys, Mike Blazer, brought up charges filed against an expert I merely mentioned in my statement. He did not mention that the charges leveled against said expert were filed by himself and were later dismissed for lack of merit or that he had lost a project in Livingston County, Indiana partially because of this man’s expert testimony.” She went on to say, “ I asked an Invenergy representative in another Palo Alto public meeting why there are so many testimonies, studies, lawsuits, groups, books, documentaries and movies about the negative aspects of Industrial Wind. He turned and said to me ‘They are all lying.’ The local newspaper reported it as ‘fabrications.’” (Swanson Letter, attached as CK R DH1 ATT 4)

There is a video of Mike Blazer, Sr. Vice President and Chief Legal Officer for Invenergy making the statements regarding McCann that Ms. Swanson referred to in her letter referenced above, at www.wind-watch.org/news/2017/10/21/invenergy-yp-slanders-expert-cited-by-activist/. Michael McCann’s letter dated October 20, 2017, to the Palo Alto County Supervisors in response to Blazer’s false and slanderous statements is also attached. (McCann Letter, attached as CK R DH1 ATT 5)

According to the blank Invenergy contract given to John Homan, the agreement requires any landowner who signs to assist in acquiring any necessary permits. It also requires those who sign to fully cooperate with and not interfere in the construction of the project. It contains a grant of additional easements including for electromagnetic, audio, flicker, visual, view, light, noise, vibration, air turbulence, wake, electrical, radio interference, shadow or other effects attributable to the Wind Turbines. It requires confidentiality.

When such a large percentage of a community surrounding a wind project is paid to sign these agreements and then prevented from opposing a project or even required

to assist in acquiring permits, that is a questionable business practice. When so many people are prevented from speaking out about the negative effects, including noise complaints and health complaints, it is then easier for a company and even the entire industry to try to discredit those that do. If these problems were not real, there would be no need for the leases to contain these requirements. I believe this is a questionable business practice.

Other portions of Invenergy's lease I believe show questionable business practices:

- “Owner hereby waives enforcement of any applicable setback requirements respecting the Windpower Facilities....” (Section 9.4)
- Section 10 regarding Assignment.
- According to Section 13, Termination, Invenergy can terminate the agreement at any time, with or without cause. The landowner however can only terminate after seven years of the effective date and only if Invenergy has not commenced construction on or near the property.

A contract cover letter from Invenergy seems to encourage not reading the actual contract. (Invenergy Cover Letter, attached as CK R DH1 ATT 6)

And possibly worst of all, according to Judge Acosta's Decision dated April 28, 2016, in Williams v. Invenergy, Case No. 2:13-CV-01391-AC, “evidence demonstrates that Willow-Creek representatives misrepresented the applicable standards in an attempt to convince them to drop their complaints against Willow Creek.” “[O]ther emails between the consultant and Defendants' representatives tend to support the proposition that Defendants or their consultants manipulated reporting of sound-test data.” “This email suggests that some sound-measurements were collected and analyzed, but Defendants or their agents chose not to report that data because, by their own admission, it was ‘going to give [them] heartburn.’”

Willow Creek continued to operate despite knowledge that there were noise exceedances. (Judge Acosta's Decision dated April 28, 2016, in Williams v. Invenergy, Case No. 2:13-CV-01391-AC)

d) State whether you have personal knowledge of any of the claims you make regarding Invenergy's business practices and if not, identify all persons you believe have personal knowledge.

See above.

e) State whether you have any personal knowledge of the Willow Creek project or the Wyoming County, New York litigation you referenced.

All of the information I have is from public records.

Date: February 28, 2019

/S/ Christina Kilby

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