

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

IN THE MATTER OF THE APPLICATION)	
BY PREVAILING WIND PARK, LLC FOR)	STAFF’S RESPONSE TO LATE
A PERMIT OF A WIND ENERGY)	INTERVENTION
FACILITY IN BON HOMME COUNTY,)	
CHARLES MIX COUNTY AND)	EL18-026
HUTCHINSON COUNTY, SOUTH)	
DAKOTA, FOR THE PREVAILING WIND)	

On August 28, 2018, Kelli Pazour filed an application for party status. The deadline for filing applications for party status was July 30, 2018. The deadline is established by ARSD 20:10:22:40. Thus, Ms. Pazour’s application is late-filed.

ARSD 20:10:01:15.05 provides in relevant part that

[a] petition to intervene shall be granted by the commission if the petitioner shows that the petitioner is specifically deemed by statute to be interested in the matter involved, that the petitioner is specifically declared by statute to be an interested party to the proceeding, or that by the outcome of the proceeding the petitioner will be bound and affected either favorably or adversely with respect to an interest peculiar to the petitioner as distinguished from an interest common to the public or to the taxpayers in general.

As a landowner in the project area, Ms. Pazour clearly has a legal interest in the proceeding. However, it is not clear from her application whether her interests are distinguished from the public in general or from other parties already involved in this docket. Thus, Staff looked to the public input hearing transcript for clarification on the issue of unique interest. The relevant excerpt is attached hereto. At the public input hearing on July 12, 2018, Ms. Pazour stated that she has a “ten-year old daughter who lost her hearing due to cancer” and now uses a BAHA. The concern that the sound from the Project will impact her daughter is unique to Ms.

Pazour. However, she is listed to testify as a lay witness for another party regarding this concern.

If this application meets the threshold for a distinguished interest, the next question is whether any party would be unduly prejudiced by the untimeliness of the intervention. The Commission issued a procedural schedule on August 9, 2018. The limited timeline with which we must work to process wind siting applications dictates strict compliance to that timeline. The date for filing prefiled direct testimony has passed. At the time this issue is heard only one week will remain in which to serve discovery requests. Rebuttal testimony is also due eight days after this application is heard. Staff cannot support any adjustment in the procedural schedule and would likely be greatly prejudiced if amendments were made to the procedural schedule. However, so long as Ms. Pazour is required to abide by the existing procedural schedule, the burden of the untimeliness of the application for party status is upon Ms. Pazour, rather than Staff. If the intervention does not affect the current schedule, it is difficult to conceive of how Staff could be prejudiced.

The six-month time frame in which to process a siting application is incredibly burdensome and difficult to work within. For this reason, Staff is very hesitant to set a precedent that the part status deadline need not be adhered to. We work very hard to vet the issues and seek out witnesses based on the issues raised early on. So, it is important for the public to understand that in order for Staff to address an issue, it must be raised in a timely manner.

Assuming the procedural schedule is unchanged, it is unclear whether Ms. Pazour would be more prejudiced by not gaining party status than Staff would be by the late intervention. Staff takes no position.

Dated this 14th day of September 2018.

A handwritten signature in blue ink that reads "Kristen Edwards". The signature is written in a cursive style with a horizontal line underneath it.

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