

from LD Vay German Hoon S. 17

WHY DO THE LOCAL OWNERS OF PREVAILING WINDS WANT TO BUILD ANOTHER WIND PROJECT?

Well, one reason is they believe that one of the most important things we can do is provide an excellent education for our children and grandchildren.

Did you know that last year the State increased per student allocation funding by 2% or \$96? The year before was 3.36% or \$155 and over the past 5 years the State increases have averaged 0.442%. This coming year the Tripp-DeMont School District will receive its first new revenue from the Beethoven Wind Farm. It will be an increase of almost \$1,000 per student and it will be paid every year that the wind turbines are there.

As we talked about last week, a 200 megawatt wind energy project in South Dakota creates new tax revenue of \$680,000 annually. This is divided equally between county government and local school districts. For an example, if in the ~~Avon School District~~ a 200 megawatt wind project like Prevailing Winds was built it would increase per student funding by \$1,360 per year, based on this past year's enrollment. Without the Prairie Wind Project to equal that same increase, annual property taxes inside the school district would have to be raised \$3 per acre.

We completely agree that the quality of one's education is not entirely dependent on how much money a school gets, but it sure would be nice to be one of the lucky school districts that could get \$1,000 or more every year for each student and maybe not have to worry about school funding so much...

Thank You for your support.

or by Prevailing Winds, LLC;
ly developed wind energy project.

Yes, we could get a one-time financial return on our investment, but no one is going to get rich off of that.

AVON CLARION

Tyndall Tribune

This is not the last you will hear from Prevailing Winds, in the near future we will be submitting informational articles to the local newspapers and holding open house meetings for those who want to learn more. But, most important, Prevailing Winds, LLC is locally owned by your friends and neighbors.

continue to follow all current state and county regulations, Jurgens said. Regardless of whether it pursues a state permit, the wind farm would need a conditional-use permit from Bon Homme County and a building permit from both Bon Homme and Charles Mix counties.

"The people who finance these projects want to meet those standards," Jurgens said. "They don't want to see things get stalled. Nobody wants to spend this kind of money and have headaches."

Jurgens told the Press & Dakotan at the time that the Prevailing Winds facility would likely stay in the same proposed location because of the favorable winds and terrain.

In addition, he said the investors didn't intend to reduce the size of the Prevailing Winds projects or break it into smaller parts in order to fall below the threshold requiring PUC approval.

Siox Falls attorney Lee Magnuson, representing the wind farm, said Prevailing Winds investors found considerable opposition to the project during the PUC hearing in Avon.

In addition, approximately six dozen individuals and organizations sought status as intervenors in the permitting process. As intervenors, they would hold special rights for participating in the process.

The motion to withdraw the application cited misinformation surrounding the project. The organizers said they plan "to better inform the community on the wind project and allow Prevailing Winds to revisit its options regarding the project."

The investors took the controversy into account in making its decision, Jurgens told the Bon Homme County zoning board last September.

"We don't want to split the community. That's not good for the community," he said at the time. "But (the wind farm) is still out there. Our board is getting out more information on the project."

3-25-15

AVON CLARION

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Revenue proof from master sheet	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Expenditure proof from master sheet	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Ending Fund Balance proof from master sheet	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0

General Fund Detail Sheet

	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	Projected FY 2018	Projected FY 2019	Projected FY 2020	Projected FY 2021	Projected FY 2022
Local Sources										
Ad Valorem Taxes	\$845,858	\$1,011,182	\$980,437	\$899,428	\$978,050	\$758,980	\$742,717	\$723,555	\$699,377	\$675,000
Opt Out Taxes						\$300,000	\$150,000	\$0	\$0	\$0
Mobile Home Taxes	\$2,030	\$1,751	\$1,566	\$214	\$1,500	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Prior Years Taxes	\$3,965	\$4,234	\$11,254	\$3,039	\$0	\$0	\$0	\$0	\$0	\$0
Tax Deeds	\$0	\$568	\$89	\$523	\$0	\$0	\$0	\$0	\$0	\$0
Utility Tax	\$128,274	\$128,189	\$79,707	\$87,697	\$85,000	\$86,275	\$87,569	\$88,883	\$90,216	\$91,500
Penalties & Interest on Tax	\$3,026	\$3,783	\$5,128	\$3,521	\$2,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
Earnings on Investments	\$3,090	\$2,877	\$2,891	\$2,921	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000
Admission Tickets	\$9,640	\$11,431	\$13,054	\$10,885	\$10,000	\$10,000	\$9,800	\$9,604	\$9,412	\$9,200
Other Pupil Activity Income	\$1,573	\$2,691	\$2,106	\$2,401	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000
Local Donation	\$651	\$389	\$782	\$0	\$0	\$0	\$0	\$0	\$0	\$0
LEAs within State	\$0	\$23,453	\$23,732	\$21,045	\$25,055	\$25,055	\$25,055	\$25,055	\$25,055	\$25,055
Medicaid	\$2,230	\$333	\$599	\$1,016	\$0	\$0	\$0	\$0	\$0	\$0
Medicaid Indirect Admin Services	\$15,202	\$17,081	\$5,215	\$2,997	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000	\$3,000
Other Revenues	\$5,242	\$12,035	\$10,033	\$13,050	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000
Total Local Sources	\$1,020,781	\$1,219,996	\$1,136,593	\$1,048,736	\$1,112,605	\$1,194,810	\$1,029,641	\$861,597	\$838,560	\$815,000
Intermediate Sources										
County Apportionment	\$8,961	\$9,462	\$10,436	\$9,247	\$8,000	\$8,120	\$8,242	\$8,366	\$8,491	\$8,613
Revenue in Lieu of Taxes	\$0	\$0	\$0	\$541	\$0	\$0	\$0	\$0	\$0	\$0
Total County Sources	\$8,961	\$9,462	\$10,436	\$9,788	\$8,000	\$8,120	\$8,242	\$8,366	\$8,491	\$8,613
State Sources										
State Aid	\$440,931	\$407,604	\$381,301	\$341,087	\$326,575	\$285,937	\$241,118	\$198,561	\$160,379	\$125,000
Less Other Revenue Equalization							(\$98,555)	(\$133,541)	(\$168,579)	(\$210,000)
Net State Aid	\$0	\$0	\$0	\$0	\$0	\$0	\$142,563	\$65,020	\$0	\$0
State Apportionment	\$12,534	\$13,882	\$17,184	\$16,400	\$16,000	\$15,000	\$15,000	\$15,000	\$15,000	\$15,000
Windfarm Tax	\$0	\$0	\$0	\$75,399	\$112,000	\$113,680	\$115,385	\$117,116	\$118,873	\$120,600
Bank Franchise Tax	\$17,465	\$19,347	\$14,982	\$16,959	\$20,000	\$20,300	\$20,605	\$20,914	\$21,228	\$21,500
Common Core	\$5,375	\$0	\$5,250	\$0	\$0	\$0	\$0	\$0	\$0	\$0
Total State Sources	\$476,305	\$440,832	\$418,717	\$449,845	\$474,575	\$434,917	\$293,553	\$218,050	\$155,101	\$121,500
Federal Sources										

$$112000 \div 162 = 691.00$$

Investment meetings

Adon 2

Menne

Gregory

Wagner

Parkston

Mitchell 1

Yankton 2

Vermillion

Wessington Springs

Oacoma

Madison

Sioux Falls 2

Watertown

Brookings

Platte

Tripp

As far as the people "who may be your friends and neighbors". We are not going to give out their names, they are permitted to have their privacy. But we will share where the project investor are from. Here is a breakdown of where the 30 owners of Prevailing Winds, LLC come from:

- 7 each from Avon and Tripp
- 3 from Springfield
- 2 each from Tyndall and Scotland
- 1 each from Delmont, Lesterville, Menno, Olivet, Sioux Falls, Tabor, Wagner, Dell Rapids and Yankton

And here is the breakdown of the ownership by type of investor:

- 27 individual investors
- 2 South Dakota limited liability companies
- 1 South Dakota limited liability partnership

Because the Beethoven farm is federally defined as a "qualifying facility," NorthWestern had to purchase the power. The rule stems from the Public Utility Regulatory Policies Act of 1978, or PURPA.

Beethoven generates 79.55 megawatts of power, which is just under the 80-megawatt maximum for a qualifying facility.

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100 m. 100 x

Board member
PREVAILING WINDS Talking Points

Prevailing Winds

From East River Elec

4.

Prevailing Winds, LLC, is proposing a large-scale wind energy project in the area north of Avon, SD. While we do not know the exact details, the project's output may exceed more than 200 megawatts. The project is privately owned and does not have any ownership by, or relationship to, the rural electric cooperatives (other than the project would like to sell its output to the cooperatives).

In December 2016, Prevailing Winds utilized a provision in federal law, as explained later, to require the rural electric cooperatives to engage in a federally-mandated negotiation process.

Cooperative's Position on the Project

Our cooperative typically does not take a stand on the merits of a wind energy project unless it is owned by our cooperative or one of our power suppliers, would impact our cooperative or our power suppliers/transmission partners, or has some other relationship to our cooperative. In the case of Prevailing Winds, there are cooperative members in the region who support the project, and members who oppose the project. In light of this split and the fact that the project is not linked to our cooperative or our power/transmission partners, we are not taking a position on the project.

Any project intending to proceed will need local and sometimes state and federal approvals. These decision-makers are the ones that will determine whether the project has merits and weigh the costs/benefits to the public. Due to the size and nature of the proposed Prevailing Winds project, there likely will be a need to secure local, state, and federal approvals. The responsibility to convince the public, and obtain any governmental approvals, rests with the project and its supporters. We are encouraging proponents and opponents alike to be involved at the county, state, and federal levels and to bring their perspectives to these decision-makers.

Where does the Cooperative's Power Supply Come From?

Our cooperative receives its power from East River Electric Power Cooperative, Inc., based in Madison, SD. East River secures this power, on our behalf, from Western Area Power Administration (utilizing the Missouri River hydroelectric dams to furnish about 18% of the power) and from Basin Electric Power Cooperative in Bismarck, ND (about 82% of the power). Our cooperative, as well as other cooperatives and one municipal electric in this region, owns East River and Basin Electric.

Basin Electric has a diverse power generation portfolio that includes coal, wind, natural gas, nuclear, waste heat, and other renewable and non-renewable resources. To secure the most cost-effective and reliable power supply on behalf of its cooperative members, Basin Electric is constantly evaluating available options for generation and market purchases. In response to political and market dynamics, this now involves careful analysis of wind energy opportunities. And, because wind farms normally produce at less than half of the time, this analysis involves backup resources such as power from natural gas-fired plants or market purchases.

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17.1

*read 50/60
6.3 1.3*

PREVAILING WINDS Talking Points

1 5

Over the last two decades, Basin Electric has significantly increased its renewable energy resources with over 1,800 megawatts of installed wind energy capacity and that number will continue to grow with new wind coming online over the next few years. When you add Basin Electric's renewable resources together with the renewable hydropower output our cooperative receives from Western Area Power Administration, more than 33% of the power delivered to homes and businesses in our service territory comes from renewable resources.

~~Does Prevailing Winds have an Agreement to Sell its Output to the Cooperatives?~~

Yes, in January 2018, Basin Electric entered into a contract to purchase the output of the Prevailing Winds project subject to a number of conditions.

To reach this point, Prevailing Winds utilized a federal law (the Public Utility Regulatory Policies Act or PURPA) in an attempt to sell its wind energy output to the cooperatives in our area. One of the goals of this 1978 law was to encourage the development of renewable energy resources. PURPA applies to all utilities in the United States, and all utilities must comply with it, including our cooperative.

Many think PURPA was intended to assist only smaller renewable projects, and not a large wind farm such as Prevailing Winds, but others believe the law can be utilized by small and large projects alike if certain criteria are met. ~~Once initiated by Prevailing Winds, the PURPA process required our cooperative generation power supplier, Basin Electric, to engage in legally-mandated negotiations with Prevailing Winds. A rather complicated set of federal requirements dictate the pricing terms. In short, the price is compared to Basin Electric's generation costs and market options. This is termed "avoided cost." If Prevailing Winds could meet all the necessary requirements and would accept the federally-determined avoided cost, then we cooperatives must, by federal law, purchase the power unless very limited exceptions exist.~~

As an alternative to a forced sale, the federally-required negotiations can sometimes lead to a private contract between the developer and the utility. In the case at hand, Prevailing Winds and Basin Electric were able to negotiate an agreement. The terms of the contract are confidential, but the price was competitive with other alternatives and Basin Electric managed to secure a number of important safeguards in the agreement that will help protect rural electric cooperative members. With a contract in hand, it is now up to Prevailing Winds to get the project permitted and built.

Many think PURPA is outdated and needs reform. Our cooperative, along with our power suppliers and national association, are encouraging Congress and federal regulators to revisit the 1978 law and determine if its provisions need to be modernized. Until changes are made, Prevailing Winds and other renewable energy developers may legally utilize the law's provisions.

~~X~~ The path so far, in the case of Prevailing Winds, has not been our typical or preferred route, but federal law dictated the course. Regardless of the outcome of the project, you can rest assured that our cooperative and its power supply and transmission partners always keep in mind that our mission is to deliver reliable, affordable power to our member-owners.

Basin Electric Rates Increase

Impact to CME Members to be Determined



Russell Gall
General Manager

Nobody likes to be the bearer of unwelcome news. So, when I got word that Basin Electric's Board of Directors had authorized a rate increase starting August 1st, I knew it was only a matter of time before I'd be writing this article to let our members know what, when and why they, too, would be seeing an electricity price change.

Based in Bismarck, ND, Basin Electric is a cooperative owned by cooperatives, including Charles Mix Electric. Basin is our main supplier of electricity, mostly generated from coal, but also from natural gas, heat recovery, wind, and even a small amount of nuclear power. They are darn good at what they do, and have always demonstrated they have the best interests of the member cooperatives in mind.

In early June, the Basin Electric Board decided that an immediate increase of .7¢ per kWh was needed to make up the financial shortfall which began back in October, 2015. As a member cooperative of Basin, the woes of this financial quagmire will impact Charles Mix Electric, and ultimately, its end-use consumers.

Paul Sukut, Basin Electric CEO and general manager, summed it up like this: "Basin Electric has essentially encountered the perfect storm, and it happened suddenly and rapidly in early October. The cooperative is taking several steps to mitigate the impact, but ultimately, we need the membership's help."

Here are the main reasons given for Basin's request for help:

- *Lower than anticipated member sales.* The wet summer and mild winter of 2015-16 significantly decreased electricity sales that Basin would normally make to its members. Less sales means less revenue.
- *Reduced revenue from non-member sales (surplus sales).* Again, the mild weather resulted in decreased sales to customers outside of the Basin Electric family.
- *Added costs to operate generation facilities. Expenses from wind power cost Basin Electric more to produce electricity.*
- *Generation and transmission investments.* Installation of new gas-fired generators and the construction of new lines in North Dakota have added expenses to Basin's bottom line.

- *Reduced revenue support from non-electric or subsidiary businesses, specifically Dakota Gasification Company (DGC).* This is the biggie. Due to the drop in all the commodity prices, including natural gas and oil prices, the DGC plant, owned by Basin Electric, is presently losing money, especially since it is heavily dependent on sale of natural gas.

Since the reduced revenue from DGS is the biggest issue, I'll cover that a bit more. Revenue from DGC has typically contributed financial support to Basin Electric. In fact, it is estimated that DGC typically has a benefit of \$78 million per year to Basin Electric and its membership. This includes fuel supply, power supply, shared facilities and other miscellaneous benefits. That means that DGC profits have benefited every member of Charles Mix Electric in the past. However, with depressed commodity prices, DGC was unable to provide this same level of support in 2016. This is where Basin needs help from its members. As markets rebound over the next year or so those benefits will return to the members to help keep future rate increases at bay.

On the bright side, there is expected to be a slight decrease in the cost of power received from Western Area Power Administration (WAPA) starting in 2017. This will provide some relief, but since the amount of power received from the dams is only 27% of our total power supply, it cannot eclipse the overall increase from Basin.

The increase from Basin resulted in a 13% power cost increase to East River Electric starting August 1st. Fortunately, the frugal efforts of East River Electric's and CME's directors have delayed the impact of the increase until January of 2017.

How this rate change will affect you, the end consumers of Charles Mix Electric, is yet to be determined. CME's employee and Board of Directors are studying costs to the co-op to determine the magnitude of the price change to our members. It should be expected that a rate adjustment will be in place starting January 1st 2017.

As always, we like to keep our members informed of issues that will affect them, and will continue to do so over the next few months.

Prevailing Winds' projects would provide energy at a cost savings, Hornstra said.

"The cost of the energy, capacity and renewable energy credits offered by Prevailing Winds' subsidiaries to the cooperatives is less than half the price of what the cooperatives are currently paying

How this will affect you has yet to be determined. A rate adjustment is expected for CME members beginning Jan 1st, 2017.

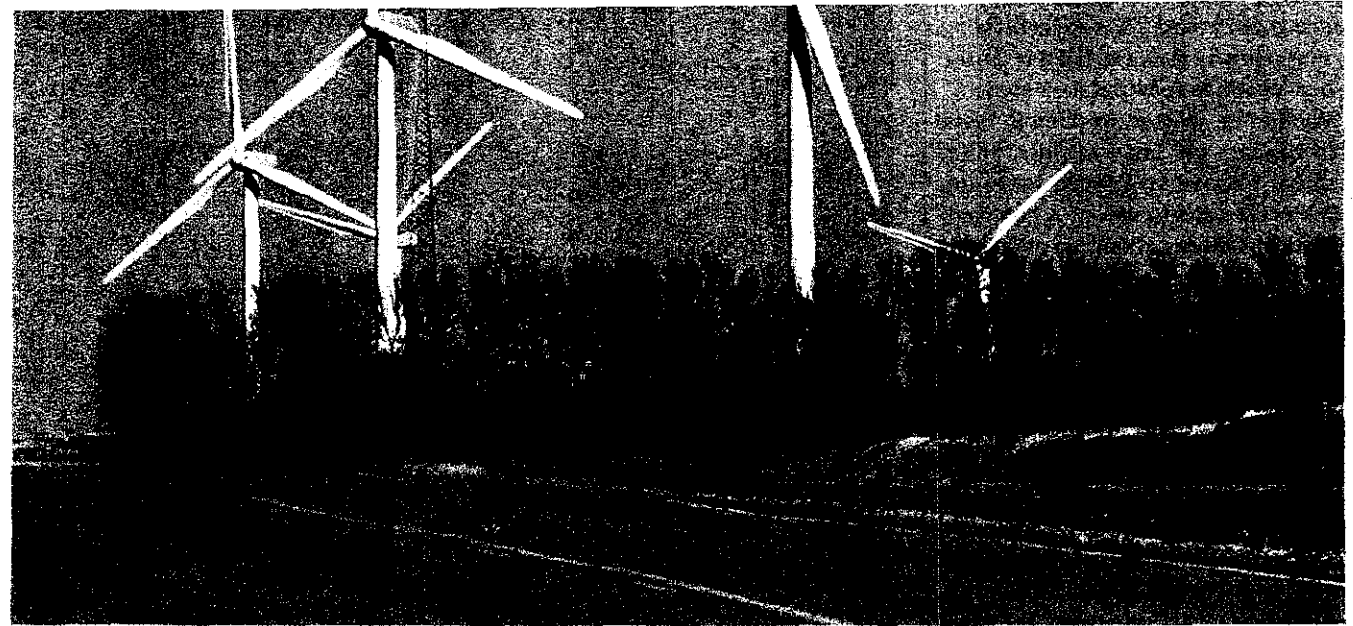
I WAS JUST reading your commentary on wind and other rural development projects ("No wind development signs are a bad sign of the times in the Dakotas," June 2017, Page 10, and online at bit.ly/wind-development) and I had to weigh in.

First, I am not anti-wind, but I believe we need to site wind development in the least-impacted areas for wildlife, historical [places], tourism, natural resources and the beauty of North Dakota. North Dakota currently has some 3,000 megawatts of wind developed. It also has some 6,000 MW more approved through the Public Service Commission. This will make a huge change in the landscape of North Dakota. You currently cannot drive from Bismarck to Dickinson or Bismarck to Minot without seeing wind generators the whole trip.

You can say this is great as it brings in dollars in tax revenue and to landowners. This is true, and I understand that, but here are my concerns with the Burly wind farm.

It is sited south of Bismarck on the most beautiful Missouri River hills. It is between the Missouri River, the Long Lake National Wildlife Refuge, the McKenzie Slough and the Dutton Slough wildlife area. This area is prime grassland nesting area and the flyway for the endangered whooping crane as well as bald and golden eagles. This area is also home to a very historical area and Native American history. Gen. Alfred Sully camped a winter in the area in the Sioux campaign. Sitting Bull was captured and kept in a barn still standing in the Glencoe Church area. This is along the famous Lewis and Clark Trail.

PNE Wind from Germany, which is developing the wind farm, proposes turbines that are 700 feet tall from their bases to the tips of their blades. These turbines will sit on the hills that are 200 to 400 feet high.



That means the towers will be over 1,000 feet high. The state capitol — the icon of height in North Dakota — is only some 243 feet tall. These turbines will be seen for miles and miles.

PNE has never owned a wind farm in the U.S. It developed many in Germany, but Germany has found out wind is not stable and is cutting back on wind and developing coal generation. PNE has publicly stated it has no intent to own the wind farm. It will only break ground and try to sell it to another wind company, receive the tax credits, sell them to General Electric, which makes wind generators, and head back to Germany with the money.

Basin Electric, which supplies much of the rural electric power in the area, publicly stated at the Legislature that if we become any more dependent on wind, we will black out at some point as it is not stable. They are very concerned.

My point is this is not as simple as it seems. You said we need to be for some-

thing. My family and I couldn't agree with you more! My kids went off to college in different parts of the country and were educated and worked and gained experience. They missed the beauty and wide-open space of North Dakota and the life agriculture can offer. They came back and worked hard to build niches around ag in hunting and tourism. In these we spread a positive message to consumers about agriculture and regenerating our land and wildlife. We are working on a beef niche as well to fit in with having all family members involved. These are not easy, and they just don't happen! You work hard, and everything doesn't always work out, but that is the American dream!

We have had people at the ranch from all 50 states and some 35 foreign countries for various events. We ask: If the skyline is filled with wind towers, would you come back? They usually say "probably not"! They love the night sky with stars and the northern lights are the most beautiful natural show ever. Red blinking lights

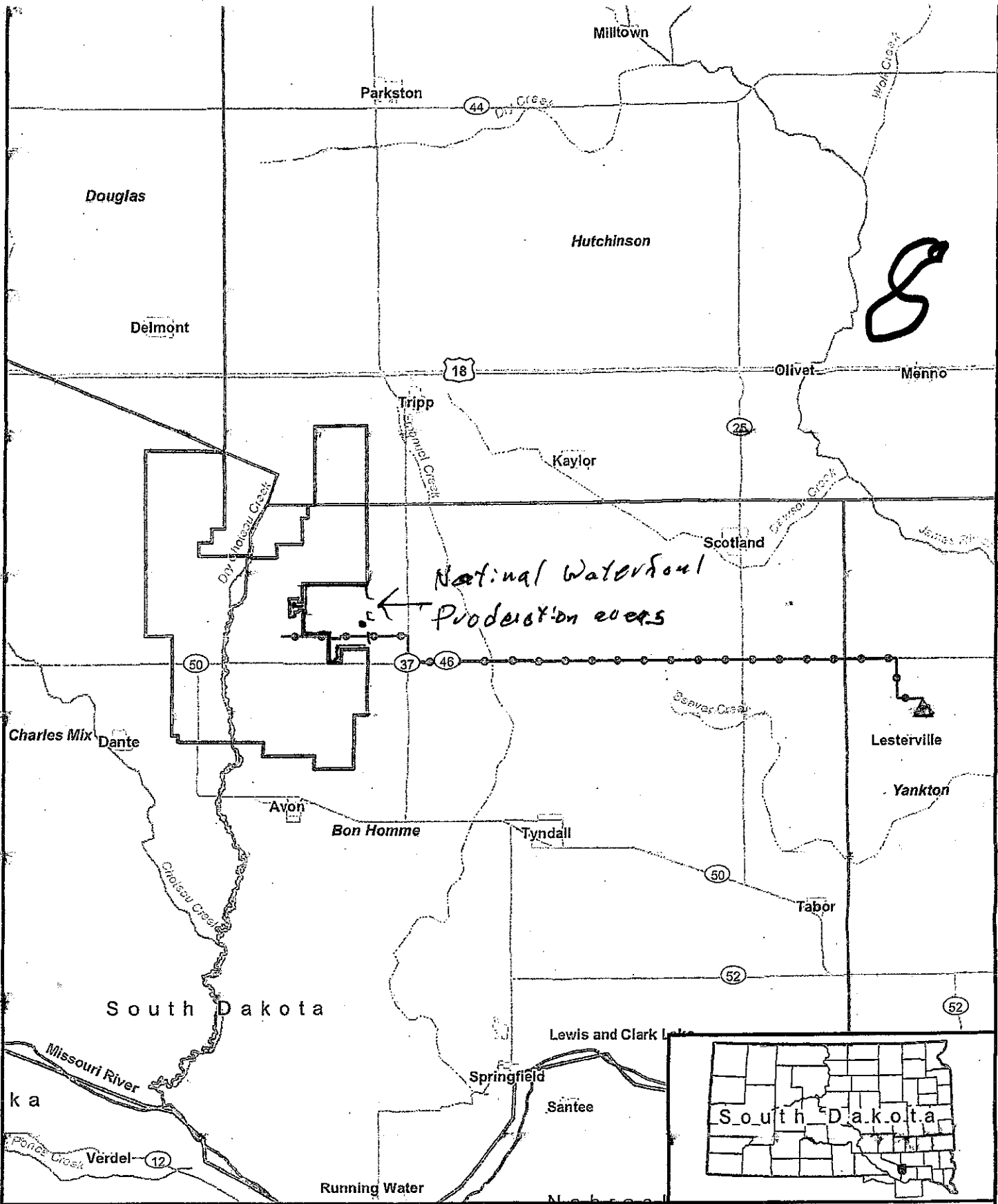
[on wind turbines] polluting the night sky will ruin that!

My kids worked hard to build a positive business that promotes North Dakota and agriculture. Adding heavily subsidized wind towers to the landscape will hurt their business and forever change the beautiful view from south Bismarck and the Missouri River. It is a shame these projects tear a community in half. Most folks who live here are opposed. The absentee landowners, older folks with kids coming back and a couple of folks with financial problems are the ones for

I appreciate what you do for the community. I just want to show you there is a much bigger picture on wind development than meets the eye.

Doan is the principal partner in Black Leg Ranch and Rolling Plains Adventure. Sterling, N.D. Black Leg Ranch is a working grain and cattle ranch, and Rolling Plains Adventure is an agritourism enterprise that hosts hunts, retreats, reunions and other events at the ranch.

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Project Area Under Consideration

Transmission Gen-Tie Line

WAPA Urica Junction Substation

NORTH

5 2.5 0 5 Miles

South Dakota

Project Location Map
Prevailing Wind Park
Wind Generation Facility



9

Harris Iowa June 2017

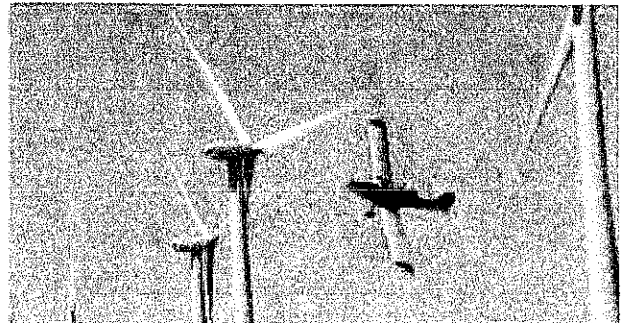
Wind Turbines Could Cause Farmers to Lose the Advantages of Aerial Spraying...

An Ag Pilot Could Lose a Lot More.

Aerial spraying, or "crop dusting," gets more challenging with every wind turbine project erected on America's farmland.

Ag pilots have been injured and, sadly, even killed in incidents involving wind turbines and related meteorological towers. The result has been expensive litigation and landowner liability.

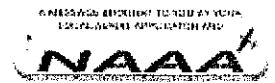
Landowners are being asked to make crucial decisions that will impact farmers and their neighbors for years to come. Ag aircraft can treat large areas of land quickly and safely, and may be the only option for treating crops when wet fields, intense insect infestations or dense crop foliage exist. The presence of wind turbines can restrict and, in many cases, eliminate the option of aerial application.



Be sure to consider all the facts before "green lighting" a wind energy installation on your land.

Learn Before You Lease

Learn more at
AgAviation.org/towers



Official: Prevailing Winds Park A 'Go'

New Wind Farm To Be Constructed In Avon And Tripp Areas

BY RANDY DOCKENDORF
randy.dockendorf@yankton.net

AVON — During the last two days, the final pieces have fallen into place for a proposed 200-megawatt wind farm in the Avon-Tripp area, the project developers say.

The Prevailing Wind Park project will cost an estimated \$240 million. The wind farm will consist of up to 100 turbines located in Charles Mix, Bon Homme and Hutchinson counties.

"This project is a 'go' for us," said Prevail-

ing Winds LLC board member Erik Johnson. "At best case, we hope to start construction within 9 to 18 months and be finished in spring 2019."

Two major developments came together at once, Johnson told the *Press & Dakotan*. "We got final notice (Monday) from the Southwest Power Pool that we can put in the 200 megawatts (on the transmission line). But there is much less that needs to be mitigated than originally thought," he said.

WIND | PAGE 3

Wind

From Page 1

"Because of that, we can bid the power for less. Late (Monday), we reached an agreement with someone who wants to buy the power. We have a closing date during the first half of January."

However, Johnson declined to name the power purchaser or the type of operator.

"The agreement has been closed, and the company buying the power wants the press release to come out in the middle of January," he said.

The operation requires a three-way partnership, Johnson said.

"As the developers, Prevailing Winds works with permits, interconnections and power purchase agreements, and we arrange the financing," he said. "We sell the development plan to a power company, in this case sPower (Sustainable Power Group), and they execute the plan. And now we have the purchaser of the power who will be announced."

Prevailing Winds is also moving quickly into meeting another target, Johnson said.

"We have now surpassed 30,000 acres leased for the project," he said. "To make it really cost effective, we

would need to be in the range of 33,000 to 35,000 acres. We would have 40,000 acres if we had everything we needed, but we can move ahead with what we have so far."

Johnson believes the developers may come very close to hitting the 40,000 acres.

"We have a number of fence sitters who are waiting to see," he said. "But since this is a real thing that is happening, we expect to start seeing more commitments later this week and into next week."

B&H Wind developed the Beethoven wind farm located in about the same area. The Prevailing Winds developers include many of the same individuals, but the two wind farms are different projects.

"The Prevailing Wind Park turbines will be located to the east, west and south of the Beethoven wind farm, in the Avon and Tripp area," Johnson said.

"The FERC (Federal Energy Regulatory Commission) requires a one-mile setback between wind facilities. None of the new turbines are within one mile of an existing Beethoven wind turbine."

This week, Prevailing Winds president Ronnie Hornstra and Johnson met with the Bon Homme County

planning and zoning board on Monday and the Bon Homme County commissioners on Tuesday.

"We met with the Bon Homme County Commission at their regular meeting," Johnson said. "Ronnie gave a presentation on the progress we're making, and we answered their questions and concerns."

At Tuesday's meeting, the commissioners voted to keep the current wind ordinance by a vote of three in favor, one opposed and one abstaining, according to Auditor Tammy Brunken.

The breakdown on the commissioners' votes wasn't immediately available.

The B&H and Prairie Winds developers have followed a long regulatory process, Johnson said.

"First, you need the environmental studies from state and federal agencies, to see if there is any potential harm for threatened or endangered species of animals or birds," he said.

"You need to have extensive wind data with meteorological (MET) towers. We've had five towers in place, and we've had very good wind indications. We've also had five MET towers in place since 2009, even before these latest ones, giving us a record of those wind speeds."

The Western Area Power Administration (WAPA), a federal regulatory agency, held an open house last week in Tripp as part of the environmental permit process for Prairie Wind Park.

Prairie Winds developers will also work with other entities, Johnson said.

"We'll get all the permits required by the state and counties," he said. "Some permits take time, others go quickly."

He commended District III Planning and Development office in Yankton, particularly Brian McGinnis, for assistance with the project.

Johnson pointed to the improving wind technology, with the local turbines running about 48 percent of what is considered total 24/7 efficiency — up from 46 percent three years ago.

While things fell together quickly for the Prevailing Wind Park, the process has been long in coming, Johnson said.

"In March, it will have been three years of work on the project. Power transmission systems are really complicated activities," he said.

"As of now, our timeline isn't complete, but we're optimistic that we will be moving along during the next few months."

Follow @RDockendorf on Twitter.

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is the last -
Mitigation
Information

CHAPTER 49-22
ENERGY CONVERSION AND TRANSMISSION FACILITY SITING ACT

49-22-01. Short title.

Repealed by S.L. 2017, ch. 328, § 27.

49-22-02. Statement of policy.

The legislative assembly finds that the construction of energy conversion facilities and transmission facilities affects the environment and the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility or transmission facility shall be located, constructed, and operated within this state without a certificate of site compatibility or a route permit acquired pursuant to this chapter. The legislative assembly hereby declares it to be the policy of this state to site energy conversion facilities and to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources. In accordance with this policy, sites and routes shall be chosen which minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

49-22-03. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Certificate" means the certificate of site compatibility or the certificate of corridor compatibility issued under this chapter.
2. "Commission" means the North Dakota public service commission.
3. "Construction" includes any clearing of land, excavation, or other action that would affect the environment of the site after April 9, 1975, but does not include activities:
 - a. Conducted wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter, or on which a facility was constructed before April 9, 1975, if:
 - (1) The activities are for the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 or 12 of this section and the activities are:
 - (a) Within the geographic boundaries of a previously issued certificate or permit;
 - (b) For an electric energy conversion facility constructed before April 9, 1975, within the geographic location on which the facility was built; or
 - (c) For an electric transmission facility constructed before April 9, 1975, within a width of three hundred fifty feet [106.68 meters] on either side of the centerline;
 - (2) Except as provided in subdivision b, the activities do not affect any known exclusion or avoidance area;
 - (3) The activities are for the construction:
 - (a) Of a new electric energy conversion facility;
 - (b) Of a new electric transmission facility;
 - (c) To improve the existing electric energy conversion facility or electric transmission facility; or
 - (d) To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (4) Before conducting any activities, the utility certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion or avoidance area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;

- [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.
 - b. Otherwise qualifying for exclusion under subdivision a, except that the activities are expected to affect a known avoidance area and the utility before conducting any activities:
 - (1) Certifies in writing to the commission that:
 - (a) The activities will not affect any known exclusion area;
 - (b) The activities are for the construction:
 - [1] Of a new electric energy conversion facility;
 - [2] Of a new electric transmission facility;
 - [3] To improve the existing electric energy conversion facility or electric transmission facility; or
 - [4] To increase or decrease the capacity of the existing electric energy conversion facility or electric transmission facility; and
 - (c) The utility will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility;
 - (2) Notifies the commission in writing that the activities are expected to impact an avoidance area and provides information on the specific avoidance area expected to be impacted and the reasons why impact cannot be avoided; and
 - (3) Receives the commission's written approval for the impact to the avoidance area, based on a determination that there is no reasonable alternative to the expected impact. If the commission does not approve impacting the avoidance area, the utility must obtain siting authority under this chapter for the affected portion of the site or route. If the commission fails to act on the notification required by this subdivision within thirty days of the utility's filing the notification, the impact to the avoidance area is deemed approved.
 - c. Incident to preliminary engineering or environmental studies.
4. "Corridor" means the area of land in which a designated route may be established for an electric transmission facility.
 5. "Electric energy conversion facility" means any plant, addition, or combination of plant and addition, designed for or capable of:
 - a. Generation by wind energy conversion exceeding one-half megawatt of electricity; or
 - b. Generation by any means other than wind energy conversion exceeding fifty megawatts of electricity.
 6. "Electric transmission facility" means an electric transmission line and associated facilities with a design in excess of one hundred fifteen kilovolts. "Electric transmission facility" does not include:
 - a. A temporary electric transmission line loop that is:
 - (1) Connected and adjacent to an existing electric transmission facility that was sited under this chapter;
 - (2) Within the corridor of the sited facility and does not cross known exclusion or avoidance areas; and
 - (3) In place for less than one year; or
 - b. An electric transmission line that is less than one mile [1.61 kilometers] long.
 7. "Facility" means an electric energy conversion facility, electric transmission facility, or both.

8. "Permit" means the permit for the construction of an electric transmission facility within a designated corridor issued under this chapter.
9. "Person" includes any individual, firm, association, partnership, cooperative, corporation, limited liability company, or any department, agency, or instrumentality of a state or of the federal government, or any subdivision thereof.
10. "Power emergency" means an electric transmission line and associated facilities that have been damaged or destroyed by natural or manmade causes resulting in a loss of power supply to consumers of the power.
11. "Road use agreement" means permits required for extraordinary road use, road access points, approach or road crossings, public right-of-way setbacks, building rules, physical addressing, dust control measures, or road maintenance and any repair mitigation plans.
12. "Route" means the location of an electric transmission facility within a designated corridor.
13. "Site" means the location of an electric energy conversion facility.
14. "Utility" means any person engaged in and controlling the electric generation, the transmission of electric energy, or the transmission of water from or to any electric energy conversion facility.

49-22-04. Ten-year plans - Contents.

Each utility that owns or operates, or plans within the next ten years to own, operate, or start construction on any facility shall develop a ten-year plan as specified in this section and submit the plan to the commission. Each utility shall file an updated plan on or before July first of each even-numbered year after the year of its initial submission. The ten-year plan may be appropriate portions of a single regional plan or may be jointly prepared and submitted by two or more utilities and must contain the following information:

1. A description of the general location, size, and type of all facilities to be owned or operated by the utility during the ensuing ten years, as well as those facilities to be removed from service during the ten-year period.
2. An identification of the location of the tentative preferred site for all electric energy conversion facilities and the tentative location of all electric transmission facilities on which construction is intended to be commenced within the ensuing five years and such other information as may be required by the commission. The site and corridor identification shall be made in compliance with the criteria published by the commission pursuant to section 49-22-05.1.
3. A description of the efforts by the utility to coordinate the plan with other utilities so as to provide a coordinated regional plan for meeting the utility needs of the region.
4. A description of the efforts to involve environmental protection and land-use planning agencies in the planning process, as well as other efforts to identify and minimize environmental problems at the earliest possible stage in the planning process.
5. A statement of the projected demand for the service rendered by the utility for the ensuing ten years and the underlying assumptions for the projection, with that information being as geographically specific as possible, and a description of the manner and extent to which the utility will meet the projected demands.
6. Any other relevant information as may be requested by the commission. Upon receipt of the ten-year plans the commission shall proceed to assess the impact of the development proposed within the state to ensure that energy conversion facilities and transmission facilities will be sited in an orderly manner compatible with environmental preservation and efficient use of resources.

49-22-05. Inventory of potential sites - Criteria - Public hearings.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-05.1. Exclusion and avoidance areas - Criteria.

1. The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of impacts and policies or practices which may be considered in the evaluation and designation process.
2. Except for electric transmission lines in existence before July 1, 1983, areas within five hundred feet [152.4 meters] of an inhabited rural residence must be designated avoidance areas. This criterion does not apply to a water pipeline. The five hundred foot [152.4 meter] avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing.
3. Areas less than one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner and less than three times the height of the turbine or more from an inhabited rural residence of a nonparticipating landowner, must be excluded in the consideration of a site for a wind energy conversion area, unless a variance is granted. The commission may grant a variance if an authorized representative or agent of the permittee, the nonparticipating landowner, and affected parties with associated wind rights file a written agreement expressing the support of all parties for a variance to reduce the setback requirement in this subsection. A nonparticipating landowner is a landowner that has not signed a wind option or an easement agreement with the permittee of the wind energy conversion facility as defined in chapter 17-04. A local zoning authority may require setback distances greater than those required under this subsection. For purposes of this subsection, "height of the turbine" means the distance from the base of the wind turbine to the turbine blade tip when it is in its highest position.

49-22-06. Facility development plans.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-07. Certificate of site compatibility or route permit required.

1. A utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications.
2. If a power emergency exists which necessitates the relocation of a portion of an electric transmission line and associated facilities from the designated route, the owner of the line shall give telephonic notice to the commission in advance of the relocation. The line may then be relocated to restore power as soon as practicable. After the line has been relocated, the owner shall file with the commission a request to approve the relocated route.

49-22-07.1. Letter of intent prior to construction.

Repealed by S.L. 2013, ch. 365, § 3.

49-22-07.2. Waiver of procedures and time schedules.

Any utility which proposes to construct an electric energy conversion facility or an electric transmission facility within the state may make an application to the commission for a waiver of any of the procedures or time schedules set forth in this chapter or in the rules adopted pursuant to this chapter. The commission, after hearing and upon a finding that the proposed facility is of such length, design, location, or purpose that it will produce minimal adverse effects, or, after hearing and upon a finding that a demonstrable emergency exists which requires immediate construction and that adherence to the procedures and time schedules would

jeopardize the utility's system, may issue an order waiving specified procedures and time schedules required by this chapter or by the rules adopted pursuant to this chapter, including, but not limited to, applications, notices, and hearings, and may forthwith issue a certificate of site compatibility, a certificate of corridor compatibility, or a route permit, with such conditions as the commission may require.

49-22-08. Application for a certificate - Notice of filing - Amendment - Designation of a site or corridor.

1. An application for a certificate must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the size and type of facility.
 - b. A summary of any studies which have been made of the environmental impact of the facility.
 - c. A statement explaining the need for the facility.
 - d. An identification of the location of the preferred site for any electric energy conversion facility.
 - e. An identification of the location of the preferred corridor for any electric transmission facility.
 - f. A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility.
 - g. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - h. An evaluation of the proposed site or corridor with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - i. Such other information as the applicant may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the site or corridor is proposed to be located.
3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
4. An application for an amendment of a certificate shall be in such form and contain such information as the commission shall prescribe.
5. The commission may designate a site or corridor for a proposed facility following the study and hearings provided for in this chapter. Any designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application for a certificate of site compatibility or no later than three months after the filing of a completed application for a certificate of corridor compatibility. The time for designation of a site or corridor may be extended by the commission for just cause. The failure of the commission to act within the time limits provided in this section shall not operate to divest the commission of jurisdiction in any certification proceeding. The commission shall indicate the reasons for any refusal of designation. Upon designation of a site or corridor, the commission shall issue a certificate of site compatibility or a certificate of corridor compatibility with such terms, conditions, or modifications deemed necessary.

49-22-08.1. Application for a permit - Notice of filing - Amendment - Designation of a route.

1. An application for a route permit for an electric transmission facility within a designated corridor must be filed no later than two years after the issuance of the certificate and must be in such form as the commission may prescribe, containing the following information:
 - a. A description of the type, size, and design of the proposed facility.
 - b. A description of the location of the proposed facility.
 - c. An evaluation of the proposed route with regard to the applicable considerations set out in section 49-22-09 and the criteria established pursuant to section 49-22-05.1.
 - d. A description of mitigative measures that will be taken to minimize all foreseen adverse impacts resulting from the location, construction, and operation of the proposed facility.
 - e. A description of the right-of-way preparation and construction and reclamation procedures.
 - f. A statement setting forth the manner in which:
 - (1) The utility will inform affected landowners of easement acquisition, and necessary easement conditions and restrictions.
 - (2) The utility will compensate landowners for easements, without reference to the actual consideration to be paid.
 - g. Such other information as the utility may consider relevant or the commission may require.
2. After determining that the application is complete, the commission shall serve a notice of filing of the application on such persons and agencies that the commission may deem appropriate and shall publish a notice of filing of the application in the official newspaper of each county in which any portion of the designated corridor is located.
3. A copy of the application shall be furnished to any person or agency, upon request to the commission within thirty days of either service or publication of the notice of filing.
4. An application for an amendment of a permit shall be in such form and contain such information as the commission shall prescribe.
5. The commission shall designate a route for the construction of an electric transmission facility following the study and hearings provided for in this chapter. This designation shall be made in accordance with the evidence presented at the hearings, an evaluation of the information provided in the application, the criteria established pursuant to section 49-22-05.1, and the considerations set out in section 49-22-09 in a finding with reasons for the designation, and shall be made in a timely manner no later than six months after the filing of a completed application. The time for designation of a route may be extended by the commission for just cause. The failure of the commission to act within the time limit provided in this section shall not operate to divest the commission of jurisdiction in any permit proceeding. Upon designation of a route the commission shall issue a permit to the applicant with such terms, conditions, or modifications deemed necessary.

49-22-08.2. Combining application.

A utility may file a separate application for a certificate or a permit, or combined into one application.

49-22-09. Factors to be considered in evaluating applications and designation of sites, corridors, and routes.

The commission shall be guided by, but is not limited to, the following considerations, where applicable, to aid the evaluation and designation of sites, corridors, and routes:

1. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.

2. The effects of new electric energy conversion and electric transmission technologies and systems designed to minimize adverse environmental effects.
3. The potential for beneficial uses of waste energy from a proposed electric energy conversion facility.
4. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.
5. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
6. Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
7. The direct and indirect economic impacts of the proposed facility.
8. Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
9. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
10. The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.
11. Problems raised by federal agencies, other state agencies, and local entities.

49-22-09.1. Approval of hydroelectric transmission facilities by legislative assembly required.

After compliance with the applicable requirements of this chapter, any hydroelectric transmission facility that transmits hydroelectric power produced outside the United States, and which crosses any portion of this state, must have the approval of the legislative assembly by concurrent resolution. A person may not begin construction of a hydroelectric transmission facility in this state which transmits hydroelectric power produced outside the United States, or exercise the right of eminent domain in connection with such construction, without first having complied with this chapter and obtained the approval of the legislative assembly. This section does not apply to any electric transmission facility for which a route permit and certificate of corridor compatibility has been issued prior to July 1, 1985, or any extension thereof issued after July 1, 1985.

49-22-10. Designation of sites and corridors.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-11. Approval of a specific transmission facility route within a designated corridor.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-12. Emergency certification.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-12.1. Emergency certification.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-13. Public hearings - Notice.

1. The commission shall hold a public hearing in each county in which any portion of a site, corridor, or route is proposed to be located in an application for a certificate or a permit. At the public hearing, any person may present testimony or evidence relating to the information provided in the application, the criteria developed pursuant to section 49-22-05.1, and the factors to be considered pursuant to section 49-22-09. When more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties. A hearing for any county shall not be consolidated if five or more affected landowners in such county file a petition with the commission within ten days of the publication of the notice of hearing.

2. The commission shall not be required to hold a public hearing on an application for the transfer of a certificate or a permit, or an application for a waiver of procedures and time schedules, but shall publish a notice of opportunity for a public hearing in the official newspaper of each county in which any portion of the facility or the proposed site, corridor, or route is located. If requested by any interested person and good cause has been shown therefor, the commission shall hold a public hearing. Where more than one county is involved, the commission may hold a consolidated hearing in one or more of the affected counties.
3. One or more public hearings shall be held at a location or locations determined by the commission concerning the following matters:
 - a. A substantial or material change in the criteria established pursuant to section 49-22-05.1.
 - b. A substantial or material change in the rules adopted pursuant to section 49-22-18.
 - c. The revocation or suspension of a certificate or permit.
4. Notice of a public hearing shall be given by the commission by service on such persons and agencies that the commission may deem appropriate and twice by publication, once at least twenty days prior to such hearing and a second time within twenty days prior to such hearing. Notice of a public hearing and notice of opportunity for a public hearing on an application for a certificate, a permit, a transfer, or a waiver shall be given at the expense of the applicant. In an emergency the commission, in its discretion, may notice a hearing upon less than twenty days.

49-22-14. Advisory committees - Appointment - Compensation.

The commission may appoint one or more advisory committees to assist it in carrying out its duties under this chapter. Committees appointed to evaluate sites or corridors considered for designation must be composed of as many persons as may be appointed by the commission, but must include a majority of public representatives; at least one representative from the state department of agriculture, a public or municipally owned utility, a private investor-owned utility, and a cooperatively owned utility; and one representative from each county and city in which an electric energy conversion facility or electric transmission facility is proposed to be located. Members of advisory committees are entitled to be reimbursed, within the limits of legislative appropriations, for any necessary expenses in the amounts provided by law for state officials.

49-22-14.1. Cooperation with state and federal agencies and political subdivisions.

The commission may, and is encouraged to, cooperate with and receive and exchange technical information and assistance from and with any department, agency, or officer of any state or of the federal government to eliminate duplication of effort, to establish a common database, or for any other purpose relating to the provisions of this chapter and in furtherance of the statement of policy contained herein. The commission shall cooperate and exchange technical information with directly impacted political subdivisions as outlined in subsection 2 of section 49-22-16.

49-22-15. Public participation - Meetings - Records.

Repealed by S.L. 1979, ch. 504, § 15.

49-22-16. Effect of issuance of certificate or permit - Local land use, zoning, or building rules, regulations, or ordinances - State agency rules.

1. The issuance of a certificate of site compatibility or a route permit shall, subject to subsections 2 and 3, be the sole site or route approval required to be obtained by the utility.
2. a. A certificate of site compatibility for an electric energy conversion facility may not supersede or preempt any local land use, zoning, or building rules, regulations, or ordinances and no site may be designated which violates local land use, zoning, or building rules, regulations, or ordinances.

- b. Except as provided in this section, a permit for the construction of a gas or liquid or electric transmission facility within a designated corridor supersedes and preempts any local land use or zoning regulations.
 - c. Before a gas or liquid transmission facility is approved, the commission shall require the applicant to comply with the road use agreements of the impacted political subdivision. A permit may supersede and preempt the requirements of a political subdivision if the applicant shows by a preponderance of the evidence the regulations or ordinances are unreasonably restrictive in view of existing technology, factors of cost or economics, or needs of consumers regardless of their location, or are in direct conflict with state or federal laws or rules.
 - d. When an application for a certificate for a gas or liquid transmission facility is filed, the commission shall notify the townships with retained zoning authority, cities, and counties in which any part of the proposed corridor is located. The commission may not schedule a public hearing sooner than forty-five days from the date notification is sent by mail or electronic mail. Upon notification, a political subdivision shall provide a listing to the commission of all local requirements identified under this subsection. The requirements must be filed at least ten days before the hearing or the requirements are superseded and preempted.
 - e. An applicant shall comply with all local requirements provided to the commission pursuant to subdivision d, which are not otherwise superseded by the commission.
3. Utilities subject to this chapter shall obtain state permits that may be required to construct and operate electric energy conversion facilities and electric transmission facilities. A state agency in processing a utility's facility permit application shall be bound to the decisions of the commission with respect to the site designation for the electric energy conversion facility or the corridor or route designation for the electric transmission facility and with respect to other matters for which authority has been granted to the commission by this chapter.
 4. No site or route shall be designated which violates the rules of any state agency. A state agency with jurisdiction over any aspect of a proposed facility shall present the position of the agency at the public hearing on an application for a certificate, a permit, or a waiver, which position shall clearly state whether the site, corridor, or route being considered for designation will be in compliance with such agency's rules. For purposes of this chapter it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such agency fails to present its position on the proposed site, corridor, or route at the appropriate public hearing.

49-22-16.1. Unfair tactics in acquiring land or easements for a facility - Court action - Cancellation of easement - Penalty.

1. Any person employed by a public utility to acquire easements for a facility subject to this chapter shall not use any harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics to induce the owner of the land to be affected by the facility to grant or agree to any easements.
2. If at least five landowners aggrieved by the conduct of a person or persons, acting on behalf of the same utility, acquiring easements for a site or route of a facility allege use of harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics by the person or persons acquiring or attempting to acquire the easement, an action may be brought in the appropriate district court.
3. Upon a determination by the court that the person or persons employed by the utility used harassment, threat, intimidation, misrepresentation, deception, fraud, or other unfair tactics in acquiring or attempting to acquire an easement from at least five separate landowners, the court shall, by order, declare the easements void and may order any compensation paid therefor returned to the offending utility, or allow the landowner to retain such compensation, or award to the landowner up to three times the amount of the compensation involved as damages, punitive or compensatory. The

court shall award costs and reasonable attorney's fees to the plaintiffs when the court rules in favor of the plaintiffs.

4. Upon a determination by the court that the utility involved did knowingly allow, encourage, or operate in active consort or participation with such person or persons utilizing such unfair tactic, the court shall cause a copy of its memorandum opinion or order to be filed with the commission.
5. Upon receiving a copy of a memorandum opinion or order issued by a district court pursuant to this section, the commission may revoke or suspend the permit issued with respect to the route affecting the aggrieved landowners. If a permit has not been issued with respect to a site or route affecting the aggrieved landowners, the commission may refuse to issue a permit for such portion of the route.

49-22-16.2. Easements for a facility - Terms.

Any easement for an electric transmission facility as defined in this chapter acquired contractually by a utility after July 1, 1979, shall give the landowner the option of receiving a single sum payment for the easement or receiving payment in annual installments of equal amounts including interest on the outstanding balance to be paid by the utility at a rate equal to the average rate paid during that year by the Bank of North Dakota on a certificate of deposit in an amount equal to the outstanding balance. The first annual installments shall be prorated to July first and all following annual installments shall fall due on July first. The option provided herein shall not apply to any easement providing for compensation of less than five thousand dollars. In the event the landowner elects to receive the compensation in annual payments, the benefits unpaid at the time of sale of the real estate to which the easement attaches shall accrue to the purchaser of said real estate thereafter. The utility right-of-way agent shall inform the property owner of the owner's option to choose annual installments.

49-22-16.3. Route adjustment before or during construction for gas or liquid transmission line.

Repealed by S.L. 2017, ch. 328, § 27.

49-22-16.4. Light-mitigating technology system - Rules.

1. The commission shall adopt rules by January 1, 2019, relating to the implementation of light-mitigating technology systems on wind energy conversion facilities. The rules must be consistent with the federal aviation administration regulations [14 CFR 1.1 et seq.] and must include service and maintenance requirements, safety standards, and lighting system requirements.
2. By December 31, 2019, every wind energy conversion facility for which the commission issued a certificate of site compatibility after June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with rules adopted by the commission.
3. By December 31, 2021, every wind energy conversion facility for which the commission issued a certificate of site compatibility before June 5, 2016, must be equipped with a functioning light-mitigating technology system that complies with the rules adopted by the commission. After public hearing, the commission may grant an extension of time based on technical or economic feasibility considerations.
4. Any costs associated with the implementation, operation, and maintenance of light-mitigating technology systems are the sole responsibility of the wind energy conversion facility owner.

49-22-17. Improvement of sites or locations.

Utilities that have acquired an electric energy conversion facility site or electric transmission line route in accordance with the provisions of this chapter may proceed to construct or improve such site or route for the intended purposes at any time, subject to subsections 2 and 3 of section 49-22-16; provided, that if such construction and improvement commences more than four years after a certificate or permit for the site or route has been issued, then the utility must

certify to the commission that such site or route continues to meet the conditions upon which the certificate of site compatibility or electric transmission facility construction permit was issued.

49-22-18. Rules and regulations.

The commission shall adopt rules and regulations in conformity with the provisions of this chapter and to prescribe methods and procedures required therewith.

49-22-19. Hearing - Judicial review.

Any party aggrieved by the issuance of a certificate of site compatibility or electric transmission facility construction permit from the commission, certification of continuing suitability filed by a utility with the commission, or promulgation of a final order by the commission, may request a rehearing by the commission. The hearing must be conducted pursuant to chapter 28-32. There is a right of appeal to the district court from any adverse ruling by the commission.

49-22-20. Revocation or suspension of certificate or permit.

A certificate of site compatibility or permit for the construction of an electric transmission facility may be revoked or suspended for:

1. Any material false statement in the application or in accompanying statements or studies required of the applicant.
2. Failure to comply with the certificate or permit or any terms, conditions, or modifications contained therein.
3. Violation of the provisions of this chapter or rules or regulations issued pursuant to this chapter by the commission.
4. A determination by a district court pursuant to section 49-22-16.1.

49-22-21. Penalties.

1. Any person required by this chapter to have a certificate or permit who willfully begins construction of an electric energy conversion facility or electric transmission facility without previously securing a certificate or permit as prescribed by this chapter, or who willfully constructs, operates, or maintains an electric energy conversion facility or electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, and modifications contained therein is guilty of a class A misdemeanor.
2. Any person who willfully violates any regulation issued or approved pursuant to this chapter or who willfully falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this chapter shall be guilty of a class A misdemeanor.
3. Any person who willfully engages in any of the following conduct is subject to a civil penalty of not to exceed ten thousand dollars for each such violation for each day the violations persist, except that the maximum penalty may not exceed two hundred thousand dollars for any related series of violations:
 - a. Begins construction of an electric energy conversion facility or an electric transmission facility without having been issued a certificate or permit pursuant to this chapter.
 - b. Constructs, operates, or maintains an electric energy conversion facility or an electric transmission facility other than in compliance with the certificate or permit and any terms, conditions, or modifications contained therein.
 - c. Violates any provision of this chapter or any rule adopted by the commission pursuant to this chapter.
 - d. Falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained pursuant to a certificate or permit issued pursuant to this chapter.

The civil penalty provided for in this subsection may be compromised by the commission. The amount of the penalty when finally determined or agreed upon in

compromise must be deposited in the general fund and, if not paid, may be recovered in a civil action in the courts of the state.

4. Notwithstanding any other provision of this chapter, the commission, by injunctive procedures, without bond or other undertaking, may proceed against any person who willfully engages in any conduct described in subsection 3. No liability shall accrue to the commission or its authorized representative in proceeding against any person pursuant to this section.

49-22-22. Siting process expense recovery - Deposit in special fund - Continuing appropriation.

1. Every applicant under this chapter shall pay to the commission an application fee:
 - a. An applicant for a certificate of site compatibility shall pay an amount equal to five hundred dollars for each one million dollars of investment in the facility.
 - b. An applicant for a certificate of corridor compatibility shall pay an amount equal to five thousand dollars for each one million dollars of investment in the facility.
 - c. An applicant for a waiver shall pay the amount which would be required for an application for a certificate of site or corridor compatibility for the proposed facility. If a waiver is not granted for a proposed facility, such application fee paid shall be allowed as a credit against fees payable under this section in connection with an application under this chapter for a certificate or permit for the proposed facility.
 - d. An applicant for a transfer of a certificate or permit shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - e. An applicant certifying to the commission under subsection 3 of section 49-22-03 shall pay an amount to be determined by the commission to cover anticipated expenses of processing the application.
 - f. The application fee under subdivision a, b, or c may not be less than ten thousand dollars nor more than one hundred thousand dollars.
2. At the request of the commission and with the approval of the emergency commission, the applicant shall pay such additional fees as are reasonably necessary for completion of the electric energy conversion facility site, electric transmission facility corridor, or electric transmission facility route evaluation and designation process by the commission. The application fee under subsection 1 and any additional fees required of the applicant under this subsection may not exceed an amount equal to one thousand dollars for each one million dollars of investment in a proposed energy conversion facility or ten thousand dollars for each one million dollars of investment in a proposed electric transmission facility.
3. A siting process expense recovery fund is established in the state treasury. The commission shall deposit payments received under subsections 1 and 2 in the siting process expense recovery fund. All moneys deposited in the fund are appropriated on a continuing basis to the commission to pay expenses incurred in the siting process. The commission shall specify the time and method of payment of any fees and shall refund the portion of fees collected under subsections 1 and 2 which exceeds the expenses incurred for the evaluation and designation process.

49-22-23. Transfer.

Repealed by S.L. 1977, ch. 447, § 16.

49-22-24. Safety.

Every utility that owns or operates electric generation of any size for the primary purpose of resale shall comply with the standards of the national electrical safety code in effect at the time of construction of the generation.

South Dakota Public Utilities Commission Information Guide to Siting Energy Conversion & Electric Transmission Facilities

This guide is intended to offer a simple overview of the Public Utilities Commission's process in making a decision to approve or deny the construction of an energy conversion facility, AC/DC conversion facility, wind energy facility, or electric transmission facility in South Dakota. This guide is informational and does not address all situations, variations and exceptions in the siting process and proceedings of the PUC. For additional information, see South Dakota Codified Laws Chapter 49-41B (www.legis.sd.gov/Statutes/Codified_Laws) and South Dakota Administrative Rules Chapter 20:10:22 (www.legis.sd.gov/rules).

PUC Authority

The South Dakota Legislature gave the PUC authority to issue permits for energy conversion, AC/DC conversion, wind energy and electric transmission facilities. An energy conversion facility is a generation facility, other than a wind generation facility, capable of generating 100 megawatts or more of electricity. In considering applications, the commission's primary duty is to ensure the location, construction and operation of the facilities will produce minimal adverse effects on the environment and the citizens. The commission determines these factors based on definitions, standards and references specified in South Dakota Codified Laws and Administrative Rules. For energy conversion facilities, AC/DC conversion facilities and transmission facilities, the PUC has one year from the date of application to make a decision; six months for wind energy facilities.

The commission strives to issue a reasoned decision and conditions where appropriate that uphold the law and discourage a potentially expensive and lengthy appeal process.

In rendering its decision, the commission may grant the permit, deny the permit, or grant the permit with terms, conditions or modifications of the construction, operation or maintenance as the commission finds appropriate and legally within its jurisdiction. The commission does not have authority to change the route or location of a project. The decision of the commission can be appealed to the circuit court and, ultimately, to the South Dakota Supreme Court.

The PUC is not involved in the easement acquisition process that occurs between applicants and landowners. Likewise, the PUC does not have a role in the eminent domain process, which is handled in the circuit court system. Landowners with concerns

about these issues should seek advice from their personal attorney.

Applicant Responsibility

The applicant that seeks the PUC's approval must show its proposed project:

- will comply with all applicable laws and rules;
- will not pose a threat of serious injury to the environment nor to the social or economic condition of inhabitants or expected inhabitants in the siting area;
- will not substantially impair the health, safety or welfare of the inhabitants; and
- will not unduly interfere with the orderly development of the region with due consideration having been given to the views of the governing bodies of affected local units of government.

PUC Staff Role

PUC staff members assigned to work on a siting case typically include one attorney and multiple analysts. Staff attorneys have educational and practical experience in administrative law, trial procedure and business management principles. Staff analysts have expertise in engineering, research and economics. Some of the work the staff does involves reviewing data and evidence submitted by the applicant and intervenors, requesting and analyzing opinions from experts, and questioning the parties. The staff considers the information relative to state laws and rules and presents recommendations to the Public Utilities Commissioners.

Public Involvement

South Dakotans, as well as anyone else with an interest in a siting case, have a variety of ways to stay informed and involved. Read more on back.

Review the electronic docket. A docket is the continually updated collection of documents filed with the commission for a particular case. Dockets are accessible under the Commission Actions tab on the PUC website, www.puc.sd.gov. Dockets are labeled to correspond with their type and filing date. For example, the Prevailing Wind Park wind energy facility docket is EL18-026; EL for electric, 18 for the year 2018 and 026 to indicate it was the 26th electric docket filed with the commission in 2018.

Attend a public input hearing. The PUC will hold a public input hearing on a siting case, with 30 days notice, as physically close as practical to the proposed facility site. At the hearing, the applicant describes its project and the public may ask questions and offer comment. PUC commissioners and staff attend this hearing. The discussion is documented and becomes part of the record.

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.

South Dakota Public Utilities Commission
500 E. Capitol Ave., Pierre, SD 57501
1-800-332-1782; 605-773-3201
www.puc.sd.gov; puc@state.sd.us

07/2018

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Brundage