

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

**IN THE MATTER OF THE APPLICATION
OF FLYING COW WIND, LLC FOR A
FACILITY PERMIT TO CONSTRUCT A
345-KV TRANSMISSION LINE AND
ASSOCIATED FACILITIES IN DEUEL
COUNTY**

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**STAFF’S RESPONSE TO
MOTION TO EXTEND
DEADLINE FOR COMMISSION
ACTION**

EL18-045

COMES NOW Commission Staff (Staff) and hereby files this Response to Applicant’s Motion to Extend Deadline for Commission Action.

On July 31, 2019, Flying Cow Wind, LLC (Flying Cow Wind) filed a Motion to Extend the Deadline of this docket, pursuant to SDCL 49-41B-24.1, which gives the Commission authority to extend the one-year deadline upon request of the applicant. Staff’s position, as set forth below, requests that Flying Cow Wind’s Motion for a six-month extension be granted, establishing a new deadline of April 24, 2020.

The Applicant indicated in its motion that it is unlikely that they can verify the application material necessary to finalize this docket by the present October 24, 2019 deadline. This leaves the applicant with two options: either request to withdraw the application and refile the same application, or request the Commission grant an extension to the statutory deadline pursuant to SDCL 49-41B-24.1. Upon initial review of the request, Staff considered whether SDCL 49-41B-24.1 could be applied to this docket since the statute was not effective until July 1, 2019. Because Flying Cow Wind’s filed its Application prior to the effective date of this statute, an argument could be made that applying this statute is prohibited as a retroactive application of a statute.

However, Staff believes that the application of 49-41B-24.1 is appropriate in this case. The South Dakota Supreme Court has repeatedly held that despite the general rule against retroactive application, statutes that are procedural in nature can be applied retroactively. See *In re Engels*, 687 NW2d 30 (S.D. 2004); *Dahl v. Sittner*, 474 N.W.2d 897, 901 (S.D.1991); *Tischler v. United Parcel Service*, 552 N.W.2d 597 (S.D. 1996), 608; *Schultz v. Jibben*, 513 NW2d 923 (S.D. 1994).

In this case, granting an extension pursuant to SDCL 49-41B-24.1 is merely a procedural matter and Staff cannot perceive that this statute alters a substantive right of either party, nor would an extension unduly prejudice the public. Granting the extension would also provide for internal efficiencies and save Staff time and resources

Given that there are no intervenors in this docket and that there has been no indication that the Applicant intends to make significant changes to the filing, Staff does support the Applicant's motion for a six-month extension, establishing a new deadline of April 24, 2020, for this docket.

WHEREFORE, Staff respectfully requests the Commission grant the Applicant's request, and establish a new deadline of April 24, 2020 for this docket.

Dated this 29th day of August 2019.



Amanda M. Reiss
Staff Attorney
South Dakota Public Utilities Commission
500 East Capitol Avenue
Pierre, SD 57501
Phone (605)773-3201
Amanda.reiss@state.sd.us