

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

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

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**MOTION TO COMPEL DEUEL
HARVEST’S RESPONSES AND
PRODUCTION OF DOCUMENTS
EL18-053**

I request the Commission order Deuel Harvest to provide substantive, non-evasive responses to discovery requests addressed below, pursuant to SDCL 15-6-37(a) and order that all responses be provided under oath. Because the information sought in these discovery requests is relevant and discoverable, Deuel Harvest’s objections should be overruled and Deuel Harvest should be directed to provide meaningful answers and to produce documents responsive to the requests. The request, along with Deuel Harvest’s objection and response are provided before my argument addressing each objection and response.

1-7) Produce all written communications, electronic or otherwise, between Deuel Harvest, its affiliates, agents or sub-contractors and any Deuel County official or employee in the last 12 years. Lisa Agrimonti: Deuel Harvest objects to this request as overly broad and not reasonably calculated to lead to the discovery of admissible evidence, overly broad, and unduly burdensome. In addition, Ms. Kilby has access to electronic communications Deuel Harvest had with Deuel County through her role as pro hac vice co-counsel in the Deuel County circuit court appeal, Docket No. 19CIV18-000019.

ARGUMENT

Deuel Harvest has the burden to prove the Project will comply with all applicable rules and laws and is relevant to whether the project will unduly interfere with the orderly development of the area. In addition, I am unable to disclose information not contained in the public record or disclosed by the parties to 19CIV18-000019.

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

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

ARGUMENT

Deuel Harvest failed to respond to whether Mr. Knight has any payment arrangement, commission arrangement, or gift arrangement with Deuel Harvest or any of its affiliates, employees, agents, or contractors, including independent contractors, This question is relevant to whether the Project will comply with all applicable rules and laws and whether the project will unduly interfere with the orderly development of the area.

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

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

ARGUMENT

Deuel Harvest is evading the question. Deuel Harvest is able to provide an answer based on the current configuration and supplement as necessary.

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

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

ARGUMENT

This question is relevant to Deuel Harvest’s claims of economic benefit to Deuel County. This question is not unduly burdensome and is within Deuel Harvest’s capability of determining because Deuel Harvest would only need to refer to the mailing addresses of its participating landowners.

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

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

ARGUMENT

This information is relevant to substantiate Deuel Harvest's claims of economic benefit to the area. This question is not unduly burdensome and is within Deuel Harvest's capability of determining because Deuel Harvest would only need to refer to the mailing addresses of its participating landowners.

1-17) How many individuals have signed agreements with Deuel Harvest?

Lisa Agrimonti: Deuel Harvest objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence and is vague in its use of "agreements." Deuel Harvest further objects to this request as overly broad and unduly burdensome because it is not limited in time or scope. Notwithstanding these objections, see response to Request No. 11.

ARGUMENT

This question is relevant to whether the project will unduly interfere with the orderly development of the area. Individuals who have signed agreements with Deuel Harvest may be prevented from voicing any objection or criticism to the Project now or in the future.

1-18) Do all of the contracts any individual has signed regarding the Project contain confidentiality agreements?

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

ARGUMENT

Deuel Harvest is evading this question. The time and scope of the information requested is limited to the time that Invenergy or Deuel Harvest began acquiring contracts pertaining to the Deuel Harvest project and the present. Deuel Harvest is able to ascertain the meaning of "contracts." This question is not overly broad or unduly burdensome in that the question only requires a "yes" or "no" response.

This question is relevant to whether the project will unduly interfere with the orderly development of the area. Individuals who have signed agreements with Deuel Harvest may be prevented from voicing any objection or criticism to the Project now or in the future.

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

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

ARGUMENT

This question is relevant to whether the Project will comply will all applicable rules and laws and whether it will unduly interfere with the orderly development of the region. In addition, I am unable to disclose information not contained in the public record or disclosed by the parties to 19CIV18-000019.

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

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

ARGUMENT

This question is relevant to whether the Project will comply will all applicable rules and laws and whether it will unduly interfere with the orderly development of the region. This information is relevant to whether the project will pose a threat of serious injury to the social condition of inhabitants or expected inhabitants in the siting area. In addition, I am unable to disclose information not contained in the public record or disclosed by the parties to 19CIV18-000019.

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

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

objected because the request seeks confidential information and there is no confidentiality agreement in place.

ARGUMENT

This question is relevant to whether the project will unduly interfere with the orderly development of the region. This question is not overly broad or unduly burdensome because the question asks Deuel Harvest to identify the types of agreements other than lease or easement agreements. The question does not ask Deuel Harvest to provide the agreements.

1-31) Has any, employee, representative, or agent of Deuel Harvest or Invenergy attended or participated in a hearing or meeting of the Deuel County Commission, Deuel County Board of Adjustment, or Deuel County Planning and Zoning where a county official present was under contract with Deuel Harvest or Invenergy? If so, please provide date of said meeting or hearing.

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

ARGUMENT

This question is relevant to whether Deuel Harvest will comply with all applicable laws and rules and whether Deuel Harvest will unduly interfere with the orderly development of the region, or pose a threat of serious injury to the social condition of the inhabitants.

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

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

ARGUMENT

This information is relevant to determining whether the Project will pose a threat of serious injury to the environment. This question is also relevant to Deuel Harvest's estimated cost of decommissioning.

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

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

ARGUMENT

This information is relevant to substantiate the estimated decommissioning cost provided by Deuel Harvest.

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

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

ARGUMENT

This information is relevant to determining whether the Project will pose a threat of serious injury to the environment, or will substantially impair the welfare of the inhabitants. This question is also relevant to substantiate the estimated costs of decommissioning provided by Deuel Harvest.

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

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

ARGUMENT

This information is relevant to determining whether the Project will pose a threat of serious injury to the environment, or will substantially impair the welfare of the inhabitants. This information is also relevant to the estimated cost of decommissioning the Project.

1-36) What is the lifetime of the proposed turbines? Provide evidence to support this claim.

Michael Svedeman: As noted in Section 19.0 of the Application, the life of the Project is anticipated to be 30 years and Deuel Harvest may extend the life of the Project.

ARGUMENT

Deuel Harvest fails to provide evidence supporting its claim that the lifetime of the turbines is 30 years. This information is relevant to substantiate Deuel Harvest's claim.

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

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

ARGUMENT

The information requested is relevant to substantiate the claim made by Deuel Harvest.

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

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

ARGUMENT

The blades needing to be replaced will need to be disposed of. This information is relevant to determining whether the Project will pose a threat of serious injury to the environment. It is also relevant to the welfare of the inhabitants.

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

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

ARGUMENT

This information is relevant to determining whether the Project will pose a threat of serious injury to the environment, or will substantially impair the safety or welfare of the inhabitants.

1-43) What is the chance of fire in a turbine in a year? Provide evidence.

Jacob Baker: Turbine fires are rare. Invenergy has experienced a fire at one turbine in its fleet in approximately 15 years of owning and operating wind projects. At this time, Invenergy operates over 4,800 MW of wind turbines. Invenergy staff and local emergency responders responded to the incident, and the fire extinguished on its own. There were no injuries or property damage as a result of this incident. The fire occurred in 2013 at the Forward Energy Wind Center, which was

constructed in 2008 and is located in Dodge and Fond du Lac counties, Wisconsin. A new nacelle, hub, and blade set were installed, and the turbine was returned to service.

ANSWER

Deuel Harvest did not provide evidence as requested, nor answer the question regarding the chances of fire.

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

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

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

ARGUMENT

This information is relevant to determining whether the Project will pose a threat of serious injury to the environment, or will substantially impair the safety or welfare of the inhabitants.

1-45) Did Invenergy disclose the flammable chemicals or flammable materials contained in the wind turbines to the Deuel County Board of Adjustment at the time of Invenergy’s special exception permit application? Provide evidence.

Lisa Agrimonti: Deuel Harvest objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence. See response to Request No. 1-44.

ARGUMENT

This information is relevant to Deuel Harvest’s burden of showing the Project will comply with all applicable rules and laws required by SDCL 49-41B-22 (1) and the burden of providing the manner in which the proposed facility will comply with local ordinances, as required by 20:10:22:19.

1-46) How are turbine fires handled?

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

ARGUMENT

Deuel Harvest failed to respond to the question of how turbine fires are handled.

1-52) Identify specific implications to the project for removing turbines within two miles of the Homan runway.

Lisa Agrimonti: Deuel Harvest objects to this request because its use of the phrase "specific implications to the project" is vague.

Michael Svedeman: Subject to and without waiving that objection, utilizing the map as identified in John Homan Response to Deuel Harvest Request 1-21 and Attachment 3 thereto for the location of the “Homan runway”, removing all turbines within two miles of the grass airstrip on the Homan property would result in the removal of 16 turbines (T105 – T108, T112 – T117, and T119 – T124), with corresponding negative impacts on the landowners on whose properties those turbine locations are proposed and who wish to host Project turbines.

ARGUMENT

The question does not ask for the impact to landowners on whose properties the turbines are proposed. Deuel Harvest failed to respond to the question of how the removal of the turbines would impact the project. This question is relevant to whether the project will substantially impair the safety of inhabitants and is relevant to the compatibility of the project to the area.

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

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

ARGUMENT

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

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

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

ARGUMENT

This question is relevant to whether the Project will substantially impair the health, safety or welfare of the inhabitants. The relevance of this information overrides any inconvenience to Deuel Harvest is providing this information.

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

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

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

ARGUMENT

This information is relevant to whether the Project will substantially impair the health, safety or welfare of the inhabitants. Deuel Harvest has failed to provide the information requested.

1-58) How will any complaints regarding the Project be handled?

Michael Svedeman: Deuel Harvest understands that the Commission has a complaint reporting process and has required that recent wind projects engage a public liaison; Deuel Harvest anticipates that these measures would apply to the Project, as well. With respect to operation of the Project, Deuel Harvest will have a local O&M building with full-time, local staff for the Project to whom local residents could contact with any concerns.

ARGUMENT

Deuel Harvest has failed to answer how it will handle any complaints made. The question does not ask how people can submit complaints.

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

Lisa Agrimonti: See response to Request No. 54.

ARGUMENT

This question is relevant to whether the Project will substantially impair the health, safety or welfare of the inhabitants. The relevance of this information overrides any inconvenience to Deuel Harvest in providing this information.

1-67) State the farthest distance ice has been thrown from a turbine.

Lisa Agrimonti: Deuel Harvest objects to this request to the extent that it seeks information not within the custody or control of Deuel Harvest.

Jacob Baker: See response to Request No. 55. The farthest distance I am aware of ice being thrown from a turbine is 436 feet. The turbine was not enabled with an ice detection system.

ARGUMENT

This question is relevant to whether the Project will substantially impair the health, safety or welfare of the inhabitants. Deuel Harvest has failed to answer the question.

1-68) State the furthest distance for which a blade or piece of blade has been thrown from a turbine.

Lisa Agrimonti: Deuel Harvest objects to this request to the extent that it seeks information not within the custody or control of Deuel Harvest.

Jacob Baker: In the rare event of a blade failure, the blade typically falls to the base of the turbine

ARGUMENT

This question is relevant to whether the Project will substantially impair the health, safety or welfare of the inhabitants. If Deuel Harvest should be aware of this information. Deuel Harvest has failed to answer the question.

CONCLUSION

For all of the reasons stated above, I request the Commission direct Deuel Harvest to provide complete, non-evasive substantive responses to these requests.

Dated: April 3, 2019.

/S/ Christina Kilby

Intervenor
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