

Post Hearing Brief of Intervenor John Homan.

Wildlife and Environment:

Invenegy is relying on incomplete studies and surveys done by third parties, hired studies that are not in any way verified by even the principles of Invenegy or by any state or county agency. The studies that Ms Giampoli is allowed to testify to are hearsay at best, unsubstantiated and unverified. In my opinion, Ms Giampoli is not a wildlife expert, nor did she participate in the wildlife studies. Her conclusions should carry no weight, and her testimony should be disregarded.

In many cases they refer to guidelines set by the SD GF&P. To follow only guidelines set by, or communications with a state agency, should not satisfy the applicants burden of proof.

Mr. Kirschenmann's testimony that the state would put state funds into wildlife habitat next to wind turbines, would be totally unreasonable and a waste of taxpayers money. There are studies to confirm that wind projects have a negative affect on waterfowl, other birds and bats, and can be harmful to reproduction of mammals including deer.

The longer a project is in place the more harm to the breeding and nesting of waterfowl. Logic would only carry forward that determination to include all wildlife that is capable of abandoning a hostile environment. I reference the Loesch study.

Ms Giampoli testified that they are still doing studies as they go. For example, the eagle flight path studies have not yet been completed. No mammal inventory study has been done. These are just a couple studies that should have been done before the application was submitted.

The application is still incomplete and premature. For applicant to possibly submit required data later, or even submit it at this stage of the process, denies intervenors due process rights.

In my opinion, the eagle nest north of Lake Alice was purposely overlooked since it was not recognized in any survey or studies. This points to more of the wind company's failure or misrepresentation, and the South Dakota Game Fish and Parks lack of input or oversight. Invenegy did not even communicate with the local Game Fish and Parks conservation officer in the county. As they testified to, their surveys and apparently their studies are limited to so called survey corridors and do not represent in any way, the entire project area.

Neither Ms. Giampoli, nor Mr. Svedeman could give a good explanation of what constitutes a survey corridor.

As finally brought out in testimony, the survey corridor represents a very small portion of the project area and would not be a good representation of the entire project area.

Ms. Giampoli testified that they don't "expect" to impact wetlands and streams, not that they "will not impact wetlands and streams."

She also testified “that if we do identify impacts to streams with the potential to impact species, then we would work with the Fish and Wildlife Services to identify what surveys would be needed!” No other development agreement could ever be so vague!

Mr. Kirschenman testified that “ special care should be made to avoid areas with high concentrations of wetlands.”

Ms. Giamploi testified that 1.7% of the project area is mapped as wetlands or ponds, this is not close to accurate.

She also testified that the area of the Coteau and Prairie Pothole regions are areas that should be given careful consideration to the impact caused by wind power projects, and she did agree with that.

Ms. Giampoli testified that they are siting turbines on only 1/4 of 1% of the 16,000 acres of grasslands in the project area, that is 40 acres, and that is how they are trying to justify the minimization of their impacts to the grasslands. That logic is ridiculous and very misleading.

A large part of this project area is designated as Duck Nesting Habitat by The USDA and should be protected as such from the construction of wind turbine projects. The USDA has invested a lot of taxpayer money to protect these areas, through the CRP programs.

We have owned the property in Section 32 of Glenwood Twp. For 30 years and have been working to develop it for our enjoyment of the quiet rural environment and to enhance the wildlife environment for the surrounding area.

Monighan Creek is a free flowing, spring fed creek that flows through and drains a large part of the project area. Several miles of the creek are within the project footprint. It is a natural haven for and a travel corridor for many species of wildlife, including the flight path of eagles and many other birds of prey. The creeks spring fed assets earns its designation as one of the historical homes to the Northern redbelly dace, a freshwater minnow that is on the states threatened species list.

Our property in section 32 of Glenwood township is directly adjacent to the project and will have a proposed 9 towers within less than 1 mile, and 17 towers within 2 miles. Our property should be protected as an environmentally sensitive area. It is part of a contiguous area of at least 150 acres of trees and shrubs that is a haven for birds and wildlife of all kinds. With the incorporation of Monighan Creek ecosystem, it is a bedroom, a nursery, and a year around refuge for numerous species of wildlife in the region.

This industrial wind tower project would be the worst possible scenario for wildlife throughout the entire project area.

Our numerous lakes, stream, and sloughs that cover this part of the Prairie Coteau and Prairie Pothole region, need to be protected and preserved for future generations.

I am requesting a two mile setback, from the damaging effects of industrial wind turbines, from our, and other, environmentally sensitive areas.

Invenergy cannot meet its' burden of proof of doing no harm to the existing environment, the residents of the area or the orderly development of the county!

The issue of the Protection for Homan Field:

We have the permit for our landing strip and have FAA approval. The permit was applied for in March 2017, before there were any wind towers, permits for wind towers, or any project layouts.

The neighboring property of Mr. Darold Hunt, was not under contract with Invenergy at that time. Our permit for the landing strip was approved by the zoning board July, 2017, There was no wind project permit or even an application at that time.

Invenergy's representative and attorneys attended meetings in opposition to our landing strip permit. Their attendance is noted in the minutes of these meetings. Their participation in requiring a letter of assurance is noted in emails with states attorney John Knight, and was testified to in depositions in the Holborn v. Deuel County Board of Adjustments court case.

Mr Svedeman testified that Invenergy did sign a contract with Darold Hunt, the adjacent property owner to the west of our property in section 32 of Glenwood township. The contract was negotiated by John Knight, he was at the same time acting as Deuel County States Attorney, who was advising the zoning board during the permit application for our landing strip and advising the County Commissioners through wind project setbacks proceedings!

Invenergy has failed to remove or relocate any wind turbines from the adjacent property sites thus preventing the safe usage of our landing strip. They have relocated towers in the proposed project for many other reasons.

At the current time, Invenergy has no valid county permit for the project. Invenergys county permit is currently void due to a conflict of interest lawsuit and ruling that the permit is void.

During the January 22, 2018 county permit hearing Mr. Svedeman and attorneys representing Invenergy, observed the zoning board members refuse to require any towers to be moved to allow for safe usage of our landing strip, and denied protection for our permitted landing strip, because of the letter of assurance that I had been required to sign, a letter of assurance that had input by and the support of attorneys representing Invenergy. We have record of communication between John Knight and Lise Agrimonti concerning the letter of assurance.

As further evidence of the issues at the county level, which I will refer to as the corruption of the processes, the wording in the letter of assurance, to which we agreed, submitted as exhibit JH19, at the evidentiary hearing, was changed to the wording that is written on the issued permit. That permit is submitted as JH 27 at the evidentiary hearing. Those changes were made by the Deuel County Zoning officer, Jodi Theisen, we presume. We have asked that the wording be corrected to accurately reflect the wording of the letter of assurance that we had signed and dated at the zoning board meeting.

Ms Theisen has a wind easement contract with Invenergy. She is also the zoning officer that is now interpreting the county wind ordinances, and has accepted the

newly applied for permit for the Deuel Harvest North wind project. She is the officer that has been asked by Invenergy to interpret the Lake Alice setback ordinance and the question about the county ordinance which requires the 6 month waiting period to be able to reapply for a special exception permit that has been denied. The Deuel County ordinance [504.8] requires a 6 month waiting period from the last action on the permit. The ruling, that confirmed denied of the permit, was confirmed by the Circuit Court on or about April 3, 2019.

Invenergy has been involved in both of these issues, my landing strip hearings and the county setback ordinances. They should also be aware of the 6 month waiting period ordinance.

At the January 24, 2019 PUC public input meeting in Clear Lake, Mr. Svedeman stated that further setbacks, that would have allowed for the safe usage of our landing strip, would have a negative affect on participating landowners adjacent to Homan's property, and therefore Invenergy would not remove or relocate any wind turbines. Invenergy did not have a contract with the neighboring landowner, Darold Hunt, at the time of the application for the landing strip.

I am requesting a setback of 1 mile to the west of our landing strip to provide for the safe usage of it by our family and others that will be allowed to use the landing strip for any required purpose, as well as being available for use in case of emergencies.

If towers are not moved to allow safe use of our landing strip, I am requesting that the PUC deny the Deuel Harvest North application because of my due process rights and because the project does not allow for safe and orderly development of the county, and does not protect the current permitted usage of our property and the health and welfare of existing county landowners.

Mr Svedeman:

I believe that Mr. Svedeman does not have the expertise to be project manager of a project like this. He seems to be very uninformed on many issues that would be important to the safe and orderly completion of the project. He was not familiar with many aspects of the tower operations or working of the mechanisms or even the safety concerns of the operations. Also not familiar with emergency response plans of the project. He Testified that the company does not have any plan for compiling, tracking, managing or responding to public complaints to issues as noise, shadow flicker, wildlife destruction or health issues that may be caused by the operation of the wind towers.

The company at the time of testimony, had not yet addressed the issue of installing ADLS lighting systems, which they had agreed to do.

He could not tell us what was meant by the survey corridor in relations to wildlife or environmental aspects of the project. It is a term that is used many times in the application.

He has very little knowledge of any aspect of the decommissioning costs which would be a very significant issue in approval of the project.

The Invenergy application has the cost of decommissioning at approximately \$29,000 per tower. Mr. Svedeman has no idea of the actual costs of decommissioning. A project manager should know the approximate cost of crane service etc, which he testified that he did not. Mr. Svedeman was not familiar with the cost but testified that he was standing behind those numbers. He was not familiar with the foundation design or the decommissioning of the foundations or the cost of it.

Mr. Svedeman testified that the Invenergy company does not have a way of keeping track of complaints from wind projects and normally does not keep track of that information. But then he testified that they have little or no complaints from their projects. If Invenergy does not keep track, naturally you would not have complaints to report.

Mr. Svedeman testified that Invenergy controls no rights over non-participants properties, but GE published safety zones exceed the 550' setbacks from public roads and non-participants property lines. Therefore they would be infringing on the rights of property owners to use their own property in a safe manner to which they would be accustomed too.

Therefore Invenergy is not meeting the burden that the project will not substantially impair the health, safety, or welfare of the inhabitants.

I feel that Mr. Svedeman did not answer accurately many of the questions that were asked of him by Ms. Kilby, especially concerning contract and procedural issues, He was assisted in not answering by the Invenergy attorneys on many occasions.

Mr. Svedeman also testified that the current tower locations, in relation to Homan Field, would provide setbacks that would be safe for usage of the landing strip. He has no experience or expertise to make that determination or statement.

Mr. Svedemans' testimony that he understood Deuel County ordinance to read that "a business was a structure" should be in question and I believe he was misleading in his interpretation. At the time of the county application, the county ordinance did not describe a business as a structure. That interpretation was changed by the zoning board at and after the permit hearing of 1/22/18.

In regards to Mr. Svedemans' testimony about moving 5 turbines because of houses being built in the project. They agreed to move towers for homes that were built after they had secured the county permit, but they refuse to move towers to accommodate the Homan Field landing strip which was permitted before they had applied for the tower project permit.

The Homan Field permit was applied for even before the affected Darold Hunt property was leased for the project.

Mr. Svedeman testified that he wanted to be completely accurate about the ordinances of Deuel County, but that changed when it did not fit with Invenergy's agenda in regards to setbacks from Lake Alice.

Homan Field: Safety Issues

In Mr. Doyles' testimony, he testified on the safety of flying small airplanes in close proximity to 500' industrial wind turbines.

He was not a pilot or a trained engineer in wind issues or wind turbulence from wind towers or any kind of wind turbulence. He was not familiar with it or had any base from which to testify on it.

He had no knowledge of the effects of wind tower turbulence or what the affects were of multiple turbines.

Mr. Rice, from California, was a pilot of military aircraft, with heavier weights and far more horse power than small private airplanes. He testified that he had no experience in flying small class A airplanes and therefore would have no experience in flying thru air turbulence from wind towers in small aircraft. His testimony in this case would not be relevant in regards to turbulence. He did testify that as a military pilot, he was allowed to fly no closer than 2,000' from a wind turbine, and that he had done so, but did not know the height of the towers. He did not testify to his speed or altitude at the time, or if he flew past upwind or down wind of the turbine, which upwind of the turbine would have no turbulence. But he did testify later, when asked the height of the wind towers, that they were around 499', how amazing is that, that he knew the height of those wind turbines, quite a coincidence that those were the same height of the towers as in this project.

His last minutes testimony in the closing hours of the hearing, did not give the interveners the opportunity to do any research on him or prepare for a complete or quality examination.

I feel this violates our due process rights.

The safe usage of Homan Field is one of my utmost concerns in this situation.

This has been in the planning stage for many years and it is finally at the point that I and my family are in the position to accomplish our dream of the use of the landing strip and the use of our property as we had planned for years.

Garrett Homan, as a pilot has been hoping for and planning for this for many years. He and his family are finally in the position to fulfill the dream of flying his family, and others of our family, in and out of our farm and its' unique settings.

Now Garrett's son and others are also interested in flying small planes and even ultra lights.

We have other friends and associations that are also interested in using the landing strip.

Now is our only chance to protect the use of the landing strip, before industrial wind towers are built too close to our property and render the landing strip useless.

We would lose out to the greed of industrial wind companies that don't seem to care about any on the rural residents of Deuel County and will not be living with the fallout and aftermath of these wind projects.

Noise and sound concerns:

Why are industrial wind turbine projects the only industry or business that would be allowed to put any kind of continuous noise and light pollution on neighboring properties and residents and get away with it? Under no other circumstances would that be allowed from anyone or from any other industry.

Mr. Hessler testified that he thought a dba limit of 40 would be a better limit than the now proposed 45 dba. His reason for not recommending 40, is that the project is too far along. I believe that would be the worst possible reason for not protecting the residents of Deuel County. It is an accepted fact that distance, length of setbacks is the best way to protect people from the negative affects of wind turbine noise as well as the affects of infrasound. Infasound has been shown in studies by Steven Cooper, to have a negative affect on peoples health and well being.

Mr. Rand, one of the leading acousticians in the country testified that his recommendation would be to set limits of 35 dba at residences. This is to prevent the negative effects of industrial wind turbines on everyone in too close proximity to wind turbines.

Mr. Rand testifies that a 35 dba level would prevent all annoyance claims and lawsuits. This would allow the wind company to meet its' required burdens. Allowing the project to go forward with the noise levels of 45 dba would almost demand the situation of having noise complaints, sleep deprivation issues, health issues and probable lawsuits.

The testimony from people like Vicki May, that I, and everyone else in attendance, heard in direct testimony at the hearing for the Prevailing Winds project was legitimate and very powerful. That should be considered as expert testimony since she and her husband live through it every day. That should be considered more as expert testimony than the person monitoring noise with a machine on an intermittent, short term basis.

Financial Benefits to Deuel County:

I believe that the applicant is greatly overstating the economic benefits that the project will bring to Deuel County. The company is currently advertising publicly that it will benefit the county at the sum of \$17,000,000. Dollars over the 30 year life of the project. That breaks down to \$566,000 dollars per year,=. \$333,000. To the county, \$133,000. To the townships, 4 townships involved= approx. \$33,000. Per township, \$100,000. To the schools. Those numbers are based on production of 47% of nameplate production, industry results are reported as far less, so these numbers are far less. Approx. 42% of tower contract payments are going to non-residents of Deuel County, so those numbers as benefits to the county are greatly reduced. Mr Svedeman testified that there are no permanent jobs from the project guaranteed to go to the county, so those numbers can not be used in the total as benefits to Deuel County. Therefore, a large part of the stated economic benefits to the county will never be close to the numbers shown in the application and so are very misleading to the county residents, and should be corrected. The application is not complete.

Invenergy: Deuel County

Invenergy's involvement in the corrupt Deuel County process has to be of concern in the permit application. Invenergy knowingly and willfully participated in county setback processes and the permitting process where they knew that board officials had wind contracts with their company. They used those connections to help gain the setbacks and ordinances that they wanted to help maximize their projected profits from the project.

The company, through its' representatives and its' attorney's, sat in on public meetings where board members denied having conflicts of interest or biases concerning the project, and said nothing. Even their standard contracts address the issue of conflict of interest of public board members, and how they need to recuse themselves from decision making. Their conflicts of interest involving Invenergy and other wind companies is now in public record.

The conflicts of interest extends to zoning board members, Deuel County Commissioners, Deuel County States Attorney and the Deuel County Zoning Officer. These individuals all had input in setback ordinances, permit hearings, acceptance of permit application, and interpretation of the ordinances. Invenergy was aware of all of these issues and was complicit in the process.

The totality of Invenergys' involvement in the corruption of the Deuel County voting board members says a lot about the company's practices.

This alone should put Invenergy in the position of unduly interfering with the orderly development of the region and helping to deny the due process rights of the interveners and all residents of Deuel County.

Invenergy is now reapplying for a permit where the original permit is still in question at the South Dakota Supreme Court level. The confusion at the county level, due to Invenergy's involvement in the questionable permit request, again shows their interference with the orderly development of the region.

Final Requests:

If the project is permitted by the PUC, I would ask that the restrictions applied would be considerate of my following recommendations:

I am asking for a noise level of 35 dba at non-participating residences, with the right to waive that limit by the resident.

A tower setback of 1 1/2 miles from non-participants, with the right to waiver.

A noise level of 40 dba at non-participants property lines, to protect property rights and future personal property development, again with a waiver if desired.

A 1600' setback from all property lines and public roads and right of ways for safety buffers due to ice throw and blade failures.

A 2 mile setback from environmentally, highly, sensitive areas.

The concerns would be due to the direct killing of wildlife by the operations of the turbines as well as the abandonment of the area by the wildlife because of the affects of the turbines. The other concern is from fires caused by wind turbines and the impacts of those fires, which cannot be put out or controlled, impacts to the high populations of wildlife and damages to the forested areas.

I request that an ambient sound study be done by an independent group before tower placements are established. This would be needed to prevent future problems. These studies are highly recommended by most respected acousticians.

Date: 5/7/19

/S/ John Homan

John Homan

Intervenor

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