



Malters, Shepherd & Von Holtum

Attorneys at Law

727 Oxford Street
P.O. Box 517
Worthington, Minnesota 56187-0517
Tel. (507) 376-4166
Fax (507) 376-6359
www.msvlawoffice.com

November 22, 2022

James E. Malters †*

Mark W. Shepherd

David R. Von Holtum
(1936-2009)

Gretchen P. Simonich
Paralegal

Abby Schutte
Paralegal

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

RE: IN THE MATTER OF THE APPLICATION BY NORTH BEND WIND PROJECT, LLC
FOR A PERMIT TO CONSTRUCT AND OPERATE THE NORTH BEND WIND
PROJECT IN HYDE COUNTY AND HUGHES COUNTY, SOUTH DAKOTA
EL21-018

Dear Ms. Reiss:

I am following up after our conversation regarding the scope of the hearing on December 13th, and the hearing on December 6th to address the issues of the scope of the hearing.

I believe that S.D. Codified Laws § 49-41B-22 provides the template for determining the scope of the December 13th hearing.

If the Court should make a determination that the Hughes County Board of Adjustment did not comply with due process and remand for another hearing, Subdivision 1 of S.D. Codified Laws § 49-41B-22 will not have been satisfied. If the court rejects the due process arguments then Subdivision 1 is met.

If the granting of the special use permit is valid, then Subdivision 2 of S.D. Codified Laws § 49-41B-22 is also met. If the matter is remanded for another hearing, then the scope of the hearing before the PUC needs to address the issues contained in Subdivision 2.

Subdivision 3 of S.D. Codified Laws § 49-41B-22 states that, "[t]he facility will not substantially impair the health, safety or welfare of the inhabitants[.]" Subdivision 3 needs to be addressed regardless of the issuance or validity of the special use permit. Subdivision 3 is still to be reviewed by the PUC whether or not there is a special use permit.

Subdivision 4 of S.D. Codified Laws § 49-41B-22 stands or falls on the validity of the special use permit.

I can provide a more extensive legal argument should you request it.

Sincerely yours,

/s/ **James E. Malters**

JAMES E. MALTERS
For the Firm

JEM/as

cc: Ms. Patricia Van Gerpen, Mr. Darren Kearney, Mr. Jon Thurber, Mr. Brett Koenecke, Ms. Marilyn Ring, Mr. Thomas Oliva, Mr. Aaron P. Scheibe, Mr. Anthony Crutch, clients

† Senior Civil Trial Specialist
Certified by the Minnesota
State Bar Association

* Also admitted in South
Dakota and Iowa