

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

**IN THE MATTER OF THE
APPLICATION BY DEUEL HARVEST
WIND ENERGY SOUTH LLC FOR
ENERGY FACILITY PERMITS OF A
WIND ENERGY FACILITY AND A 345
KV TRANSMISSION FACILITY IN
DEUEL COUNTY, SOUTH DAKOTA,
FOR THE SOUTH DEUEL WIND
PROJECT**

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**DEUEL HARVEST WIND ENERGY
SOUTH LLC’S POST-HEARING
REPLY BRIEF**

EL24-023

INTRODUCTION

Deuel Harvest Wind Energy South LLC (“South Deuel Wind” or “Applicant”) submits this post-hearing reply brief in support of its Application for Energy Facility Permits (“Application”) to construct and operate its wind energy facility and associated transmission facility in Deuel County (collectively, “Project”). South Dakota Public Utilities Commission (“Commission”) Staff (“Staff”) submitted a post-hearing brief and proposed findings of fact and conclusions of law, and Intervenor Arla Hamann Poindexter submitted a post-hearing brief. South Deuel Wind responds to each in turn.

STAFF POST-HEARING SUBMISSIONS

I. STAFF’S POST-HEARING BRIEF

On February 14, 2025, Staff submitted its post-hearing brief and its proposed findings of fact and conclusions of law. South Deuel Wind appreciates Staff’s submissions in this proceeding. In its briefing, Staff concludes that,

[w]ith the inclusion of the proposed conditions set forth in Exhibit A18,¹ it is Staff's opinion that the Project will not pose a significant threat to the health, safety, welfare, or orderly development of the region or the environment. Therefore, Staff recommends the Commission grant the requested permit, subject to the conditions detailed in Exhibit A18.²

South Deuel Wind agrees with this conclusion and recommendation. Staff also makes the following determinations:

- South Deuel Wind has demonstrated it will comply with all applicable rules and laws pursuant to SDCL 49-41B-22(1);³
- South Deuel Wind has shown by a preponderance of the evidence that the Project will not pose significant harm to the environment pursuant to SDCL 49-41B-22(2);⁴ and
- South Deuel Wind has demonstrated that the Project will not substantially affect the health, safety, or welfare of the inhabitants in the area pursuant to SDCL 49-41B-22(3).⁵

Staff also acknowledges that the Deuel County Board of Adjustment's grant of a conditional use permit for the Project results in a determination as a matter of law that the Project will not threaten the social and economic condition of the inhabitants pursuant to SDCL 49-41B-22(2), or unduly interfere with orderly development of the region pursuant to SDCL 49-41B-22(4),⁶ and that no additional Commission consideration or determination is needed regarding those factors.⁷ Staff also concluded specifically that it had no concerns regarding Project noise, the agreed-upon revised aerial spraying condition, potential impact to the Lake Cochrane Seaplane

¹ Attachment A to South Deuel Wind's post-hearing brief includes the terms and conditions agreed to by Commission Staff in Exhibit A18, supplemented with certain commitments made by South Deuel Wind during the evidentiary hearing. Citations to Attachment A herein refer to the Attachment A filed with South Deuel Wind's post-hearing brief.

² Staff Br. at 14.

³ Staff Br. at 5.

⁴ Staff Br. at 8-9.

⁵ Staff Br. at 13.

⁶ Staff Br. at 9.

⁷ Staff Br. at 9, 13.

Base or concerns presented by Intervenor Lake Cochrane Improvement Association and Matthew Holden, and construction noise and traffic.⁸

South Deuel Wind agrees with Staff's conclusions and agrees that South Deuel Wind has met its burden of proof under SDCL 49-41B-22. South Deuel Wind respectfully requests the Commission grant Energy Facility Permits for the Project in accordance with Attachment A.

II. STAFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Staff's proposed findings of fact and conclusions of law are generally similar to those submitted by South Deuel Wind. While South Deuel Wind largely agrees with Staff's proposed findings and conclusions, South Deuel Wind clarifies two proposed findings noted in Staff's submission.

First, Staff's proposed findings do not address South Deuel Wind's requested turbine model flexibility. South Deuel Wind explained that final turbine models are dependent upon a variety of factors outside of South Deuel Wind's control, which necessitates model flexibility.⁹ As noted in South Deuel Wind's proposed findings, South Deuel Wind has committed to the process outlined in Condition No. 22 of Attachment A for addressing a change in turbine model and demonstrating compliance with all of the conditions of the permits for the Project.¹⁰ South Deuel Wind respectfully requests that the Commission's order reflect this turbine model flexibility.

Second, Staff's Proposed Finding No. 65 regarding impacts to transportation includes additional conditions not contemplated nor agreed upon by Applicant and Staff, and not reflected in Attachment A. Staff includes the requirement that "Applicant will develop a Temporary Traffic

⁸ Staff. Br. at 10-13.

⁹ See South Deuel Wind's Proposed Findings of Fact and Conclusions of Law, at Finding ¶ 15. See also Ex. A1 at 4.2.1 (Application); Ex. A2 at 11-12 (Thompson Direct).

¹⁰ See South Deuel Wind's Proposed Findings of Fact and Conclusions of Law, at Finding ¶ 15; Attachment A at ¶ 22.

Control Plan in accordance with the most recent edition of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.” This requirement goes beyond the road use terms required by Conditions No. 7 and 8 of Attachment A. Applicant requests that the Commission adopt Conditions No. 7 and 8 in Attachment A regarding Applicant’s road use obligations rather than adopt Staff’s new proposal in Proposed Finding No. 65. In doing so, the Commission will ensure that the road use-related needs of Deuel County and the townships will be addressed through these road use agreements rather than through a blanket requirement that may not align with the road use agreements that are reached before construction.

ARLA HAMANN POINDEXTER POST-HEARING SUBMISSION

Ms. Hamann Poindexter submitted a post-hearing brief on February 13, 2025. The environmental and economic concerns noted in Ms. Hamann Poindexter’s brief were addressed during the evidentiary hearing and in South Deuel Wind’s and Staff’s initial post-hearing briefs. As a result, South Deuel Wind will not further address those issues in this reply brief.

In her brief, however, Ms. Hamann Poindexter does resurrect a concern regarding aerial spraying, despite her testimony at the evidentiary hearing that the revised aerial spraying condition alleviated her concern.¹¹ The condition provides:

Applicant will cooperate with agricultural spray applicators who request for South Deuel Wind to temporarily shut down wind turbines as needed to accommodate safe and effective spray operation and application when conditions allow for aerial spraying.¹²

South Deuel Wind believes the revised condition is sufficient and appropriate. The demonstrated absence of any issue related to aerial spraying with the Deuel Harvest North wind project, which has been operational since February 2021, further supports that the Commission should determine

¹¹ Evid. Hrg. Tr. at 172 (Jan. 21, 2025) (Transcript).

¹² Attachment A at ¶ 43.

the revised condition, as Ms. Hamann Poindexter previously acknowledged, adequately addresses aerial spraying concerns.

CONCLUSION

The record demonstrates that South Deuel Wind has met its burden of proof to meet all statutory requirements under SDCL 49-41B-22. This is reflected in the record, Staff’s post-hearing briefing, and the terms and conditions agreed upon between Staff and South Deuel Wind. Accordingly, South Deuel Wind respectfully requests that the Commission grant Energy Facility Permits for the Project on the terms and conditions set forth in Attachment A.

Dated this 21st day of February 2025.

By */s/ Lisa Agrimonti* _____
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