

**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,)	APPLICANT’S
SOUTH DAKOTA FOR THE SOUTH DEUEL)	RESPONSE TO
WIND PROJECT)	MATTHEW HOLDEN’S
	APPLICATION FOR
	PARTY STATUS

EL24-023

I. INTRODUCTION.

Deuel Harvest Wind Energy South LLC (“South Deuel Wind” or “Applicant”) submits this Response to Matthew Holden’s Application for Party Status. As set forth in more detail below, Applicant takes no position on Mr. Holden’s application. Should the South Dakota Public Utilities Commission (“Commission”) grant the request, however, South Deuel Wind requests that it be re-reviewed in the event the Lake Cochrane Improvement Association (“LCIA”) applies for party status.

II. BACKGROUND.

On June 28, 2024, Applicant submitted a Facility Permit Application to the Commission to construct a wind energy facility and transmission facility in Deuel County, South Dakota (“Project”). On July 9, 2024, the Commission issued a Notice of Application; Order for and Notice of Public Input Meeting; and Notice of Opportunity to Apply for Party Status, in which it scheduled a public input meeting for August 22, 2024, and set the deadline to apply for party status by August 27, 2024.

Subsequently, Mr. Holden submitted two applications for party status. On July 23, 2024, Mr. Holden submitted an application seeking party status serving as representative for the LCIA. Based on a search of LCIA Secretary of State filings, Mr. Holden is the vice president of the

organization. Attachment 1. Mr. Holden has withdrawn that application, and submitted a second application for party status on July 31, 2024. The July 31 application seeks party status for only Mr. Holden as an individual, and is based on the same reasons for party status as the first application, i.e., concern for the potential impact of the Project on the Lake Cochrane Seaplane Base.

The LCIA is currently not a party to the proceeding. However, LCIA has indicated on its public Facebook page that it may also file an application for party status.¹ The LCIA also stated it would submit comments to the Federal Aviation Administration (“FAA”). Attachment 2.

In his individual application, Mr. Holden states that he resides outside of the Project Area, approximately four miles from the Project Area. *See* Matthew Holden Application for Party Status (July 31, 2024). Mr. Holden indicates that his interest in the Project is the “safe aircraft operation at the Lake Cochrane Seaplane Base.” *Id.* Mr. Holden further asks the Commission to “confirm all wind turbine locations respect the Deuel County zoning code,” requests three proposed turbine locations be removed from the Project, and requests that all setbacks from the Lake Cochrane Lake Park District be measured from the lake’s normal high-water line. *Id.*

The Commission has indicated it will consider Mr. Holden’s party status application at its August 13, 2024, Commission meeting. *See* Commission Agenda for the August 13, 2024 meeting.

III. DISCUSSION.

Consistent with ARSD 20:10:01:15.04, which provides that a party may submit an answer to a petition to intervene within 15 days after service of the petition, Applicant submits this Response to Mr. Holden’s Petition.

¹ A screenshot of the LCIA Facebook post dated July 30, 2024, is attached to this Response as Attachment 2.

South Dakota statutes SDCL § 49-41B-17(4) provides that the parties to a proceeding under chapter 49-41B shall include “Any person residing in the area where the facility is proposed to be sited, or any directly interested person, if timely application therefore is made as determined by the commission pursuant to rule. An application for party status in a proceeding under this chapter must contain a detailed statement of the interests and reasons prompting the application.”

Mr. Holden is not within the defined “proposed area to be sited.” While the statute does not define “proposed area to be sited,” SDCL § 49-41B-5.2 requires notice be sent to “the owner of record of any land that is located within one-half mile of the proposed site where the facility is to be constructed.” The definition of “where the facility is to be constructed” is substantially similar to “proposed area to be sited.” Reading these two statutes together leads to the conclusion that the “proposed area to be sited” is the 34,339-acre Project Area as defined in the Application. Because Mr. Holden does not live within the Project Area (or within the broader notice area), he must demonstrate he is a “directly interested party” to be granted party status.

Mr. Holden is an officer of LCIA but it is unclear how Mr. Holden or the LCIA’s participation would inform the record. The FAA is responsible for regulating civil aviation and ensuring safe use of the navigable airspace, and the LCIA intends to submit comments to the FAA. With respect to setbacks from the Lake Cochrane Park District, the Project is designed to and will comply with the three-mile setback in the Deuel County Zoning Ordinance, Section 1215.03(2)(d). South Deuel Wind will be required to obtain building permits for the turbines prior to construction and the Deuel County Zoning Officer will ensure compliance.

If the Commission were to grant Mr. Holden party status and the LCIA subsequently makes timely application for party status, the interests between Mr. Holden and LCIA will substantially overlap. The Applicant believes it would be appropriate under such circumstances, and at such

time, to re-review Mr. Holden's status and evaluate whether he would still have an individual "direct interest" sufficient to maintain party status.

IV. CONCLUSION.

The Applicant appreciates the opportunity to submit this response. Should the Commission grant Mr. Holden's application for party status, the Applicant requests that if LCIA applies to become a party, Mr. Holden's status be re-reviewed at that time to determine whether he retains a direct interest.

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