
From: PUC

Sent: Wednesday, September 10, 2014 12:07 PM

To: [REDACTED]

Subject: FW: Response Letter EL14-061

Mr. Thomas:

Thank you for the response seeking additional information and providing further comment on Black Hills Power's 230-kV transmission line siting docket, EL14-061. You make some interesting suggestions. Your involvement with this type of docket helps to ensure that necessary energy infrastructure is constructed in an orderly manner and impacts the least amount of people as possible. I give serious consideration to all comments and evidence when making a decision on siting dockets, and I know my fellow commissioners do the same.

Response to Your Comments on the Public Notice of Docket EL14-061

I appreciate the mention of your understanding that the commission completed its public notice according to the letter of the law. As such, the commission fulfilled its obligation required by SDCL 49-41B-5.2. The commission is a creature of the legislature and required to act within the parameters of the laws created by the legislature. The law requires and the PUC in turn requires that notification is properly made by the applicant to all property owners affected by the project.

Regarding your specific comment suggesting the commission should have issued a public service announcement regarding the project; the commission processes approximately 200 dockets each year, and although it is not the commission's typical practice to issue media notices for every docket that is brought before the commission, your suggestion is one that I will take into consideration on dockets that may affect citizens who are not likely to be informed otherwise. As a point of information, the media has access to the commission's dockets via our website, www.puc.sd.gov. One state wide news service in particular

continually monitors the activities of the PUC, others on a less regular basis. Additionally, all other members of the media or the public have the option to receive regular communication of the commission's activities by subscribing to any number of electronic listservs including the weekly filing report that lists new dockets filed each week; agendas of commission meetings, which, apart from the listing of action and discussion items the commission will address at the noticed meeting, includes a listing of upcoming meetings and events. I acknowledge the general public probably does not diligently review the commission's website each week; however, information on docketed matters is readily available there should any reporter or other individual take interest in an issue and seek further information. In regards to this docket; there were several news outlets that have run a number of stories.

I understand your point of view that there are additional parties besides landowners that may be interested in this docket. Notice of the public hearing published in the Rapid City Journal attempted to provide information of the project and hearing to others besides landowners, as is the intent of SDCL 49-41B-5.2. Moreover, the PUC provides notice to governing counties and municipalities as well. The Rapid City Journal's website did [post a blog entry about the project on July 2, 2014](#).

I also note that public notice of the Draft Environmental Impact Statement (DEIS) was provided in the Federal Register in order to seek public comment during that process. Black Hills area news outlets reported about the DEIS. For example, the Rapid City Journal posted an [article on the DEIS on Jan. 26, 2014, in their Pierre Review blog](#); BlackHillsNews.com posted an [article on Jan. 23, 2014](#); and KELOLAND.com posted an [article on Jan. 5, 2014](#). KOTA-TV also covered this and posted it online on Jan. 29, 2014, however the station has since removed the article from its website. As you are likely aware, the DEIS was completed by the Bureau of Land Management and the U.S. Forest Service to comply with the National Environmental Policy Act (NEPA). The EIS process provided an initial formal opportunity for interested parties (beyond just landowners) to raise environmental objections to the project. The second formal opportunity to object is in this siting docket.

Response to Your Comments on the Scope of the Commission's Duties

As set forth in [SDCL 49-41B-22](#), Black Hills Power has the burden of proof to establish that: 1) the proposed facility will comply with all applicable laws and rules; 2) the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area; 3) the facility will not substantially impair the health, safety or welfare of the inhabitants; and 4) the facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government. As such, the commission must consider the evidence provided in the docket record pertaining to these criteria.

Should any intervenors believe that Black Hills Power's application/project does not meet one (or all) of these criteria, those intervenors need to submit evidence to the record identifying such so the commission is provided with a complete record. As noted in my earlier email, the commission does not have the authority to determine need for the project nor does the commission have the authority to tell Black Hills Power where to build its transmission line. The commission's duty is to review the evidence submitted by all parties to the record (which may either support or refute these four criteria) and make its decision based on Black Hills Power's burden of proof and the preponderance of evidence.

Response to Your Comments on How a Permit can be Considered when a Final Route is not Determined

The commission expects that companies work hard to accommodate landowner concerns during the siting and permit process. This ultimately causes transmission routes to change slightly from the originally filed application as new issues are brought to light by the public during these processes. The commission expects Black Hills Power to file route amendments and a final proposed route before the evidentiary hearing so the commission will know the final route before making its decision. However, the commission also understands that routes may change even after the permit is issued and, thus, typically includes a condition in siting orders that requires major route changes to be approved by the commission even after permit issuance.

In past dockets, the commission has required transmission projects to be re-noticed and held a second public hearing if landowners not originally noticed of the project are impacted as a result of route changes. It has been the commission's position that route changes occurring throughout the permitting process are only permit amendments and do not require new permit applications to be filed. Moreover, there is no statutory requirement that identifies the six-month time period for the commission to make its decision to be started over again for route changes. In fact, the purpose of the six-month requirement is to ensure permits are issued to applicants in timely manner and the commission can even make its decision any time after the required public hearings, and evidentiary hearings if applicable, are held. However, it typically takes the entire time period allowed by statute for the commission to make its decision due to the complex nature of these siting dockets.

Hopefully you find the information included herein useful and that it addresses your concerns. Please note that I provided hyperlinks to the news articles and statutes referenced within the body of the letter. The full links to the articles and statutes are also listed below. Finally, a copy of your comments and my response will be filed in the electronic docket at:

<http://www.puc.sd.gov/Dockets/Electric/2014/el14-061comments.aspx> .

Sincerely,

Gary

Pierre Review blog, Rapid City Journal on BHP's PUC Permit Application – July 2, 2014:

http://rapidcityjournal.com/blog/pierre-review/bhp-wants-to-add-major-transmission-line-into-rc/article_66805aee-01f7-11e4-9818-0019bb2963f4.html

Rapid City Journal Article on DEIS – Jan. 26, 2014:

http://rapidcityjournal.com/news/local/forest-service-hosting-transmission-line-discussion-in-newcastle/article_f5e8755d-8b1d-54b0-93a5-60af58afa1fa.html

BlackHillsNews.com posting on DEIS – Jan. 23, 2014:

<http://blackhillsnews.com/?p=news&feed=bhfs>

KELOLAND.com posting on DEIS – Jan. 5, 2014:

<http://www.keloland.com/newsdetail.cfm/draft-eis-ready-for-wy-sd-transmission-line/?id=158286>

SDCL 49-41B-22:

http://legis.sd.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=49-41B-22