

STATE OF SOUTH DAKOTA



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MARTY J. JACKLEY
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BRENT K. KEMPEMA
CHIEF DEPUTY

April 17, 2025

Wendi Hogan
602 Laura Street
Harrisburg, SD 57032

Drew DeGroot
Lincoln County State's Attorney Office
104 N Main Street, Suite 200
Canton, SD 57013

Re: In the Matter of Open Meeting Complaint 2024-04, Lincoln County Commission
– Lincoln County

Dear Ms. Hogan & Mr. DeGroot,

Enclosed please find proposed Findings of Fact and Conclusions of Law regarding the above referenced matter. You may submit objections to the proposed Findings and Conclusions, or you may propose alternate Findings and Conclusions, no later than the close of business on April 29th. Please submit any objections or proposed Findings or Conclusions to me via email (steven.blair@state.sd.us) or at the address indicated above. Any objections or proposed Findings or Conclusions will be considered at the time the Commission takes final action to adopt Findings and Conclusions in this matter.

The Commission will be holding a meeting on May 2, 2025, and will consider the findings and conclusions. A Notice of Hearing, and proposed agenda, regarding the May 2 meeting are also enclosed. As you can see from the agenda, consideration of the proposed findings and conclusions will begin at 2:00 p.m. mountain time or as soon thereafter as matters may be heard. You are not required to be present for consideration of proposed Findings and Conclusions.

April 17, 2025

Re: In the Matter of Open Meeting Complaint 2024-04, Lincoln County Commission – Lincoln County

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If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "SRB", followed by a long horizontal flourish.

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-04
MEETINGS COMPLAINT AGAINST)	
LINCOLN COUNTY BOARD OF)	FINDINGS OF FACT,
COMMISSIONERS – LINCOLN)	CONCLUSIONS OF LAW, &
COUNTY)	DECSISION

The above captioned matter was heard before the South Dakota Open Meetings Commission (Commission) on November 18, 2024. Complainant, Wendi Hogan appeared personally. The Lincoln County Commission appeared through Lincoln County Deputy State’s Attorney Drew DeGroot. Prior to the hearing, the Commission reviewed the written submissions of the parties as well as any other exhibit, pleading or paper on file herein. Based solely upon the materials submitted, the Commission enters the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. The Commission takes official notice that Lincoln County is a political subdivision of the State of South Dakota created by the Legislature and duly organized and operated according to applicable provisions of South Dakota Codified Law.

2. The Commission further takes notice that the Lincoln County Board of Commissioners is a public body elected pursuant to applicable provisions of state law to govern Lincoln County.

OMC 2024-04
Lincoln County Board of Commissioners
Findings and Conclusions

3. On November 29, 2023, NuGen Energy, LLC hosted an invitation only open house event at the production facility in Marion, South Dakota. The event was organized to provide information why NuGen Energy had partnered with Summit Carbon Solutions.

4. Summit Carbon Solutions has proposed to build a carbon sequestration pipeline across many counties in the eastern portion of South Dakota. The proposal has generated both support and opposition in communities across South Dakota.

5. Prior to the NuGen invitation, the Lincoln County Board of Commissioners had established a Carbon Dioxide Transport and Storage Advisory Committee to review Lincoln County Ordinances as they pertained to pipelines.

6. The Lincoln County Board of Commissioners is comprised of five Commissioners.

7. The invitation was received a day or two before the event by the entire Board of Commissioners. Three Commissioners – a quorum of the Board of Commissioners attended the event. The Board of Commissioners did not post an agenda for the NuGen event or issue a notice of quorum for the event.

8. SDCL 1-25-12(3) defines an “official meeting” of public body to be “any meeting of a quorum of a public body at which official business or public policy is discussed or decided by the public body[.]”

OMC 2024-04
Lincoln County Board of Commissioners
Findings and Conclusions

9. SDCL 1-25-1 requires the official meetings of public bodies to be open to the public, and SDCL 1-25-1.1 requires public bodies to post notice of their official meetings at least twenty-four hours prior to the meeting.

10. SDCL 1-25-1 also creates an exemption to the posting requirement of 1-25-1.1 stating:

For any event hosted by a nongovernmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-1.1 or 1-25-1.3 and shall contain, at a minimum, the date, time, and location of the event.

11. Wendi Hogan submitted an open meetings complaint to the Lincoln County State's Attorney on December 8, 2023. Ms. Hogan alleged that the Board of Commissioner's violated the open meetings laws when a quorum of the Board of Commissioners attended the NuGen Energy event, and no notice of quorum was posted for the event by the Board of Commissioners.

12. On December 21, 2023, the Lincoln County State's Attorney's Office forwarded the complaint to the Commission pursuant to SDCL § 1-25-6.1(3).

13. The Board of Commissioners responded to the complaint by acknowledging that a quorum of the Board of Commissioners was present at the NuGen event but asserting that public policy was not discussed and therefore no violation occurred.

14. Before the Commission, the Board of Commissioners elaborated on their contention that the Commissioners who attended the event were not

certain that public policy specific to Lincoln County – i.e. ordinances or regulations of Lincoln County – would be discussed at the NuGen event. Also, the Board of Commissioners asserted that the individual Commission members were not certain that a quorum of the Board of Commissioners would be at the event.

15. Any Finding of Fact more appropriately labeled as a Conclusion of Law is hereby re-designated as such and incorporated below therein.

CONCLUSIONS OF LAW

1. The Lincoln County Board of Commissioners, as the governing body of Lincoln County, South Dakota, is a public body subject to the open meetings requirements of SDCL ch. 1-25. The Open Meeting Commission has jurisdiction over this matter pursuant to SDCL ch. 1-25.

2. The State open meetings laws require a public body to post formal notice of its official meetings (SDCL 1-25-1.1) or comply with the notice of quorum procedure found in SDCL 1-25-1.

3. The notice of quorum procedure in SDCL 1-25-1 requires three elements: 1) that the event in question be hosted by a nongovernmental entity, 2) that a quorum of the public body be invited, and 3) that public policy of the public body may be discussed.

4. It is uncontested that the NuGen Energy, LLC, is a non-governmental entity. It is also uncontested that a quorum of the Lincoln

OMC 2024-04
Lincoln County Board of Commissioners
Findings and Conclusions

County Board of Commissioners attended the NuGen event on November 29, 2023.

5. Concerning discussion of public policy at a nongovernment event, SDCL 1-25-1 authorizes the use of the notice of quorum when “public policy may be discussed.” (emphasis added). The statute does not require certainty that substantive discussions of public policy will occur. The NuGen Energy event was organized by a nongovernmental organization who had partnered with an entity (Summit Carbon Solutions) that had potential dealings with Lincoln County. It was implied through the invitation that public policy of Lincoln County may be discussed at the event.

6. By allowing a public body to use the notice of quorum procedure for nongovernmental events, rather than post formal notice of an official meeting of the public body, SDCL 1-15-1 also imposes an implied responsibility on the public body to determine if a quorum of its members have been invited to the event, or whether a quorum of the members plan to attend the event.

7. The Commission concludes that by failing to post a notice of quorum for the November 29, 2023, NuGen Energy event, the Lincoln County Board of Commissioners violated the state’s open meetings laws when a quorum of the public body attended the event.

8. Any Conclusion of Law more appropriately labeled as a Finding of Fact is hereby re-designated as such and incorporated above therein.

DECISION

Based upon the foregoing Findings of Fact and Conclusions of Law, the South Dakota Open Meetings Commission hereby **REPRIMANDS** the Lincoln County Board of Commissioners for violating the South Dakota Open Meetings Laws by not posting a notice of quorum for the NuGen Energy event attended by a quorum of the Board of Commissioners.

Decision entered by Commissioners **Sovell (Chair), A. Hoffman, K. Hoffman, Russell, & Smith.**

Dated this _____ day of _____.

SOUTH DAKOTA OPEN MEETINGS COMMISSION

Emily Sovell, Chair

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-04
MEETINGS COMPLAINT AGAINST)	
LINCOLN COUNTY COMMISSION –)	NOTICE OF HEARING
LINCOLN COUNTY)	

TO: Wendi Hogan, 602 Laura Street, Harrisburg, South Dakota 57032; and
Lincoln County Board of Commissioners, attorney Drew DeGroot, Lincoln
County State's Attorney Office, 104 N Main Street, Suite 200, Canton, South
Dakota 57013:

Please take notice that the final action to adopt the Findings of Fact,
Conclusions of Law and Decision regarding the above referenced open meetings
complaint will be held before the South Dakota Open Meetings Commission, at The
Lodge at Deadwood, Cody Room, 100 Pine Crest Drive, Deadwood, South Dakota, on
Friday, May 2, 2025. You are not required to be present, however, if you would like
to be present the hearing will commence at 2:00 P.M. mountain time and proceed in
the order noted in the attached agenda.

Dated this 17th day of April 2025.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN)	OMC 2024-04
MEETINGS COMPLAINT AGAINST)	
LINCOLN COUNTY COMMISSION –)	CERTIFICATE OF SERVICE
LINCOLN COUNTY)	

The undersigned hereby certifies that a true and correct copy of the proposed Findings of Fact, Conclusions of Law, & Decision and Notice of Hearing in the above-captioned matter, were served by United States mail, first class, postage prepaid upon Wendi Hogan, 602 Laura Street, Harrisburg, South Dakota 57032; and Lincoln County Commission attorney, Drew DeGroot, Lincoln County State's Attorney Office, 104 N Main Street, Suite 200, Canton, South Dakota 57013, on this 17th day of April 2025.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

SOUTH DAKOTA OPEN MEETINGS COMMISSION

AGENDA

THE LODGE AT DEADWOOD
CODY ROOM
100 PINE CREST DR.
DEADWOOD, SOUTH DAKOTA

May 2, 2025
2:00 p.m. Mountain Time

1. Approval of the Agenda
2. Public Comment period as per SDCL 1-25-1
3. Approval of the Minutes of February 24, 2025, meetings
4. Consideration of Findings of Fact and Conclusions of Law
 - A. In the Matter of Open Meeting Complaint 2021-02 Bennett County Board of Commissioners
 - B. In the Matter of Open Meeting Complaint 2024-01 Martin City Council
 - C. In the Matter of Open Meeting Complaint 2024-02 Bennett County Board of County Commissioners
 - D. In the Matter of Open Meeting Complaint 2024-03 Piedmont Board of Trustees
 - E. In the Matter of Open Meeting Complaint 2024-04 Lincoln County Commission
 - F. In the Matter of Open Meeting Complaint 2024-05 North Sioux City City Council
 - G. In the Matter of Open Meeting Complaint 2024-06 Carlyle Township
 - H. In the Matter of Open Meeting Complaint 2024-07 Pennington County Board of Commissioners
 - I. In the Matter of Open Meeting Complaint 2024-08 Sturgis City Council
 - J. In the Matter of Open Meeting Complaint 2024-09 City of Lead Commission
 - K. In the Matter of Open Meeting Complaint 2024-10 Green Valley Sanitary District
 - L. In the Matter of Open Meeting Complaint 2024-11 Charles Mix County Commission

M. In the Matter of Open Meeting Complaint 2024-12 Tripp City Council

5. Discussion regarding 2026 Legislative Session
6. Discussion regarding future meeting.

All items are scheduled for 2:00 p.m. Mountain Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Attorney General's Office, 605-773-3215, at least 48 hours before the meeting if you have a disability for which special arrangements must be made.