

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

**IN THE MATTER OF THE APPLICATION OF
CROWNED RIDGE, LLC FOR A FACILITIES PERMIT TO
CONSTRUCTION 300 MEGAWATT WIND FACILITY**

Docket No. EL19-003

**REBUTTAL TESTIMONY AND EXHIBIT
OF SARAH SAPPINGTON**

May 24, 2019

INTRODUCTION

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Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Sarah Sappington. My business address is 116 North 4th Street, Suite 200, Bismarck, North Dakota, 58501.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by SWCA Environmental Consultants as the Director of the Bismarck SWCA Office.

Q. WHAT ARE YOUR RESPONSIBILITIES?

A. My responsibility was to assist Crowned Ridge Wind, LLC (“CRW”) regarding cultural and environmental resources.

Q. ARE YOU THE SAME SARAH SAPPINGTON WHO SUBMITTED DIRECT TESTIMONY IN THIS PROCEEDING ON APRIL 10, 2019?

A. Yes.

Q. HAS THIS TESTIMONY BEEN PREPARED BY YOU OR UNDER YOUR DIRECT SUPERVISION?

A. Yes.

Q. PLEASE DESCRIBE THE PURPOSE OF YOUR REBUTTAL TESTIMONY.

A. The purpose of my rebuttal testimony is to respond the direct testimonies of Staff witness Paige Olson, Staff witness Tom Kirschenmann, and Intervenors’ proposed conditions as set forth in Staff witness Darren Kearney’s Direct Testimony, Exhibit DK-8.

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State Historic Preservation Office (“SHPO”)

Q. STAFF WITNESS OLSON’S DIRECT TESTIMONY AT PAGE 4, LINES 6-8 STATES THAT “I AM WAITING FOR THE ARCHITECTURAL PROPERTIES SURVEY AND THE SURVEY OF THE REMAINING FACILITIES, SUCH AS, ACCESS ROADS, CRANE PATHS, COLLECTION LINES, O&M FACILITIES, CONCRETE BATCH PLANT AND LAYDOWN AREAS.” WHAT IS THE STATUS OF PROVIDING SHPO THIS INFORMATION?

A. The architectural properties survey report received SHPO concurrence on May 17, 2019, finding that there are no National Register of Historic Places-listed and no State Register of Historic Places-listed architectural properties within 1 mile of project turbines. Additionally no National Register of Historic Places-listed and no State Register of Historic Places-listed architectural properties occur along any additional facilities, such as access roads, crane paths, collection lines, O&M facilities, concrete batch plant, and laydown areas, that would require further reporting. Cultural (archaeological and tribal) resource survey reports for the remaining facilities, such as, access roads, crane paths, collection lines, O&M facilities, concrete batch plant, and laydown areas will be submitted to SHPO at the end of June 2019.

Q. STAFF WITNESS OLSON’S DIRECT TESTIMONY AT PAGES 5 AND 6 RECOMMENDS THE FOLLOWING CONDITION:

THE APPLICANT AGREES TO AVOID DIRECT IMPACTS TO CULTURAL RESOURCES THAT ARE UNEVALUATED, ELIGIBLE FOR OR LISTED IN THE NATIONAL REGISTER OF HISTORIC PLACES (NRHP). WHEN A NRHP UNEVALUATED, ELIGIBLE OR LISTED SITE CANNOT BE AVOIDED, APPLICANT SHALL NOTIFY THE STATE HISTORIC PRESERVATION OFFICE (SHPO) AND THE COMMISSION OF THE REASONS THAT COMPLETE AVOIDANCE CANNOT BE

1 **ACHIEVED IN ORDER TO COORDINATE MINIMIZATION**
2 **AND/OR TREATMENT MEASURES.**

3
4 **DO YOU AGREE WITH THIS CONDITION?**

5 A. It is my understanding that CRW is amendable to this condition.

6 **Q. STAFF WITNESS OLSON’S TESTIMONY AT PAGES 7 AND 8 ALSO**
7 **PROPOSES THE FOLLOWING CONDITION:**

8
9 **THE APPLICANT AGREES TO IMPLEMENT THE AVOIDANCE,**
10 **MINIMIZATION AND MITIGATION MEASURES IDENTIFIED FOR**
11 **TCPS:**

- 12 • **IMPLEMENT STANDARD AVOIDANCE OR RESOURCE**
13 **PROTECTION PRACTICES (E.G., BARRIER FENCING,**
14 **CONTRACTOR TRAINING) WHERE FEASIBLE IN**
15 **COLLABORATION WITH THE SISSETON-WAHPETON OYATE,**
16 **YANKTON SIOUX, ROSEBUD SIOUX AND SPIRIT LAKE THPOS**
17 **AND THE APPLICANT.**
- 18 • **MAKE BEST EFFORT TO IDENTIFY PARTICIPATING**
19 **LANDOWNERS WHO MAY BE WILLING TO WORK WITH THE**
20 **TRIBES ON SITE PRESERVATION, ACCESSIBILITY AND**
21 **PROTECTION OF TCPS ON THEIR PROPERTY.**
- 22 • **CONDUCT SITE REVISITS PRIOR TO CONSTRUCTION.**
- 23
- 24 • **HELP FACILITATE POST-CONSTRUCTION SITE REVISITS FOR**
25 **TRIBES WITH THE LANDOWNERS.**
- 26
- 27 • **IDENTIFY AND IMPLEMENT EDUCATION/INTERPRETATION**
28 **OPPORTUNITIES REGARDING TRIBAL RESOURCE**
29 **PRESERVATION AND/OR NATIVE AMERICAN PERSPECTIVES**
30 **WHICH MAY INCLUDE SENSITIVITY TRAINING WHEN NEEDED.**
31

32 A. It is my understanding that CRW is amendable to this condition. It is consistent with the
33 representations set forth in the CRW Application at Section 18.6.3.1.

34
35 **Wetlands, Grasslands, and Wildlife**

36
37 **Q. STAFF WITNESS KIRSCHENMANN’S TESTIMONY AT PAGE 7, LINE 21**
38 **THROUGH PAGE 8, LINE 2 STATES THAT TEMPORARY IMPACTS TO**
39 **HABITAT AS A RESULT OF CONSTRUCTION OF THE PROPOSED WIND**

1 **FACILITY CAN BE ADDRESSED BY RESTORATION OF IMPACTS AREAS**
2 **THROUGH GRADING AND RESEEDING. WHAT ACTIVITIES WILL CRW**
3 **CONDUCT TO ADDRESS TEMPORARY IMPACTS TO HABITAT AS A**
4 **RESULT OF CONSTRUCTION?**

5 A. CRW sets forth in its Application (Section 11.3.2.5) a number of measures it will
6 implement to avoid, minimize, and mitigate potential impacts to habitat. These measures
7 include reseeded and revegetating areas temporarily impacted. The Application (in
8 Section 15.2) also explains that during construction, the Applicant will segregate and
9 stockpile topsoil to be re-spread after construction. Therefore, CRW's approach to
10 addressing temporary impacts to habitat is consistent with Staff witness Kirschenmann's
11 recommendations.

12 **Q. STAFF WITNESS KIRSCHENMANN'S TESTIMONY AT PAGE 8, LINES 4-10**
13 **RECOMMENDS THAT PERMANENT LOSS OF GRASSLAND OR WETLAND**
14 **CAN BE ADDRESSED THROUGH RESTORING THE AREA USING NATIVE**
15 **SEED SOURCES. DO YOU AGREE?**

16 A. I agree but perhaps differ as to the timing of such activities. e. CRW acknowledges that
17 limited permanent impacts will occur as a result of the Project, as described in Table
18 11.1.2 of the Application. Permanent impacts include those where newly constructed,
19 impervious surfaces will occur. Therefore, restoring these impacts is not feasible in these
20 areas until such time that the CRW project is decommissioned.

21
22 **Q. STAFF WITNESS KIRSCHENMANN'S TESTIMONY AT PAGE 8, LINES 4-10**
23 **ALSO RECOMMENDS THAT ANY PERMANENT LOSS ACRES OF**
24 **GRASSLAND AND WETLAND BE REPLACED IN CLOSE PROXIMITY TO**
25 **THE PROJECT. DO YOU AGREE?**

26 A. CRW acknowledges the merit of off-site mitigation practices, when warranted. However,
27 CRW has not planned an off-site mitigation plan due to the very limited permanent

1 impacts associated with the project. Impacts to wetlands and grasslands were first
 2 avoided through siting, then minimized through project design. As stated in the
 3 Application, Table 11.1.2, the project is anticipated to result in minimal permanent
 4 impacts as shown below:

5
 6 **Table 11.1.2 Temporary and permanent impacts as a result of the Project**

Land Cover Type¹	Temporary Impacts (acres)	Permanent Impacts (acres)
Agricultural	1,504.01	60.40
Grass/Pasture	558.45	21.48
Developed	40.07	2.37
Other Hay/Non Alfalfa	21.86	1.36
Deciduous Forest	6.53	0.39
Herbaceous Wetlands	1.90	0.04
Fallow/Idle Cropland	1.11	0
Open Water	0.41	0
Barren	0.02	0
Total	2,134.4	86.0

7
 8 Temporary impacts to naturally vegetated areas will be reseeded and revegetated as
 9 described in the Application.

10
 11 **Q. STAFF WITNESS KIRSCHENMANN'S TESTIMONY AT PAGE 8, LINES 17-20**
 12 **CITES THE LOESCH AND SHAFFER/BUHL STUDIES (EXHIBIT TK-2 and**
 13 **EXHIBIT TK-3) AS INDICATING THAT SOME SPECIES WILL NOT USE**
 14 **GRASSLAND AND WETLAND WITHIN A CERTAIN DISTANCE OF A WIND**
 15 **TURBINE. DO YOU AGREE WITH THE FINDINGS IN THESE STUDIES?**

16 **A.** CRW has not had the opportunity to conduct an independent peer review of the specific
 17 studies referenced. However, the Applicant acknowledges that Shaffer and Buhl 2015
 18 study observed that (a) 7 of 9 species were displaced; (b) that one species was unaffected;
 19 and (c) that one species exhibited attraction. Likewise, the Applicant acknowledges that
 20 Loesch et al. 2012 reported a negative displacement effect where some species showed

1 behavioral avoidance. The Application sets forth the indirect impacts that have potential
 2 to occur as a result of the Project. Section 11.1.2, page 51, states “indirect impacts could
 3 include the spread of noxious weed species resulting from construction equipment
 4 introducing seeds into new areas, or erosion or sedimentation due to ground-clearing in
 5 construction areas.” Section 11.3.2.3, page 68, states “Impacts to avian species can be
 6 direct (e.g., turbine strike mortality) or indirect (e.g., loss [or] degradation of habitat).”
 7 Section 11.3.2.4 indicates that “Impacts to bat can be direct (e.g., turbine strike mortality)
 8 or indirect (e.g., loss [or] degradation of habitat).” The Applicant currently is preparing a
 9 Wildlife Conservation Strategy (WCS) that will discuss indirect effects, including
 10 potential for avoidance and displacement, in detail. The WCS will be filed with the
 11 Commission prior to start of construction of the Project and will be implemented during
 12 Project construction and operation.

13
 14 **Q. STAFF WITNESS KIRSCHENMANN’S TESTIMONY AT PAGE 12, LINES 8-13**
 15 **RECOMMENDS THAT CRW AVOID UNTILLED NATIVE PRAIRIE TO THE**
 16 **GREATEST EXTENT POSSIBLE. WILL THE CROWNED WIND PROJECT**
 17 **IMPACT UNTILLED NATIVE PRAIRIE?**

18 **A.** The CRW project will result in permanent impacts to only approximately 22.5 acres of
 19 grass/pasture. CRW avoided native prairie to the greatest extent possible in conjunction
 20 with consideration of landowner preferences, conflicting environmental constraints, and
 21 other local or state requirements or setbacks.

22
 23 **Table 11.1.2 Temporary and permanent impacts as a result of the Project**
 24

Land Cover Type ¹	Temporary Impacts (acres)	Permanent Impacts (acres)
Agricultural	1,504.01	60.40
Grass/Pasture	558.45	21.48
Developed	40.07	2.37

Other Hay/Non Alfalfa	21.86	1.36
Deciduous Forest	6.53	0.39
Herbaceous Wetlands	1.90	0.04
Fallow/Idle Cropland	1.11	0
Open Water	0.41	0
Barren	0.02	0
Total	2,134.4	86.0

1
2 Untilled native prairie is a subset of the grass/pasture land cover type. The Application,
3 Section 11.3.2.5, describes that CRW sited the project to avoid placing structures, or
4 conducting any activity, on USFWS grassland or USFWS wetland/grassland combination
5 easements. Further, CRW sited the project with overall preference to agricultural areas,
6 disturbed areas, and following landowner preferences. Native prairies were avoided to the
7 extent practical.

8
9 **Q. STAFF WITNESS KIRSCHENMANN'S TESTIMONY AT PAGE 12, LINE 15**
10 **THROUGH PAGE 14, LINE 7 EXPLAINS THAT IT IS CHALLENGING FOR**
11 **THE CROWNED RIDGE PROJECT TO AVOID AN IMPACT ON GRASSLAND**
12 **HABITAT. WHAT IS CRW DOING TO AVOID IMPACTING GRASSLAND**
13 **HABITAT?**

14 A. The Application, Section 11.3.2.5, describes that CRW sited the project to avoid placing
15 structures, or conducting any activity, on USFWS grassland or USFWS
16 wetland/grassland combination easements. Further, CRW sited the project with overall
17 preference to disturbed areas and following landowner preferences.

18
19
20 **Q. STAFF WITNESS KIRSCHENMANN'S TESTIMONY AT PAGE 15, LINE 23**
21 **THROUGH PAGE 16, LINE 3 EXPLAINS THAT IT IS CHALLENGING FOR**

1 **THE CRW PROJECT TO AVOID AN IMPACT ON WETLANDS. WHAT IS**
2 **CROWNED RIDGE DOING TO AVOID IMPACTING WETLANDS?**

3 A. As described in Section 2.1, the Applicant sited facilities to avoid direct impacts to field-
4 verified wetlands to the extent practical. Generally, wind turbines were sited in higher
5 elevation areas and avoided low-lying areas where wetlands are present. Access roads
6 were located to avoid and minimize potential impacts to identified natural resources to
7 the extent practical, while also minimizing impacts to existing field operations to the
8 extent practical. Further, as stated in Section 10.2.2 of the Application, to the extent
9 practicable, impacts to water bodies, wetlands, and aquatic resources were avoided or
10 minimized through the siting process and will be further avoided and minimized through
11 the use of stormwater best management practices (“BMP”) during construction. Impacts
12 to wetlands and waterbodies that may result because of access road construction are
13 minor and will be authorized under United States Army Corps of Engineers (“USACE”)
14 Nationwide Permit (“NWP”) 12 for utility lines and associated facilities in waters of the
15 U.S. Likewise, as described in the Application (Section 10.2.2), collector lines will be
16 sited to avoid intersecting wetland or other waterbodies to the extent practical. Where
17 collector lines must intersect these resources, the Applicant will bore under these features
18 to the extent practical to minimize impacts to the maximum extent feasible. Where any
19 activity must occur in a wetland area, the Applicant will utilize standard construction
20 BMPs to minimize impacts and has designed the project to keep permanent impacts
21 below USACE NWP thresholds.

22
23 Q. **STAFF WITNESS KIRSCHENMANN’S TESTIMONY AT PAGE 16, LINE 13**
24 **EXPLAINS THAT THE PLACEMENT OF TURBINES ON LAND CURRENTLY**
25 **UNDER CULTIVATION WILL HELP MINIMIZE CUMULATIVE IMPACTS**

1 **TO GRASSLANDS AND WETLANDS FROM THE COMBINATION OF CRW**
2 **AND OTHER WIND PROJECTS PROPOSED FOR THE AREA. IS CROWNED**
3 **RIDGE WIND MINIMIZING THE IMPACT ON GRASSLANDS AND**
4 **WETLANDS IN A MANNER THAT WILL THAT HELP REDUCE**
5 **CUMULATIVE IMPACTS?**
6

7 A. Yes. The siting measures described above and in the Application, including avoidance of
8 wetland and grassland habitat to the extent practical, is helping to reduce overall
9 cumulative impacts to these features by avoiding or minimizing impacts to these
10 resources altogether. These approaches also incorporate landowner preferences.
11

12 **Q. STAFF WITNESS KIRSCHENMANN’S TESTIMONY AT PAGE 17, LINES 10-15**
13 **EXPLAINS THAT A STORM WATER POLLUTION PREVENTION PLAN**
14 **(“SWPPP”) AND MITIGATION TO REDUCE OR ELIMINATE**
15 **SEDIMENTATION SHOULD BE IMPLEMENTED TO NEGATE THE**
16 **POTENTIAL IMPACT TO THE NORTHERN RIVER OTTERS. HAS CRW**
17 **AGREED TO IMPLEMENT A SWPPP AND OTHER MITIGATION TO**
18 **ADDRESS THE POTENTIAL IMPACT ON THE NORTHERN RIVER OTTERS?**
19

20 A. It is my understanding CRW has agreed. CRW is aware that northern river otters have the
21 potential to occur in the project area. The Application discusses the northern river otter
22 and its potential to occur in the project area in Sections 11.3.1.3.1 and 11.3.2.2. Section
23 11.3.2.2 of the application states that habitat removal and degradation are the primary
24 potential impacts to the northern river otter, as erosion and siltation can affect water
25 quality, limiting prey availability for northern river otters. Impacts to streams and
26 waterbodies will be avoided to the extent practicable through project design and BMPs,
27 further described in the Application (Section 11.2). As such, impacts to northern river

1 otters are not anticipated to result from the project and therefore, mitigation for impacts
2 to the species is not warranted.

3
4 **Q. STAFF WITNESS KIRSCHENMANN’S TESTIMONY AT PAGE 17, LINE 19**
5 **THROUGH PAGE 18, LINE 2 ASKS THAT CRW ENGAGE THE SOUTH**
6 **DAKOTA DEPARTMENT OF GAME, FISH AND PARKS (“GFP”) IF THE**
7 **“WALK-IN AREA” IS TEMPORARY DISRUPTED DURING CONSTRUCTION.**
8 **DOES CROWNED RIDGE WIND AGREE TO ENGAGE GFP AS REQUESTED?**

9
10 **A. Yes.**

11
12 **Q. STAFF WITNESS KIRSCHENMANN’S TESTIMONY AT PAGE 18, LINES 12-**
13 **20, EXPLAINS THAT THERE ARE NO STATE SET-BACKS FOR THE**
14 **DISTANCE OF WIND TURBINES FROM GAME PRODUCTION AREAS.**
15 **WHAT IS THE SETBACK FOR THE CROWNED RIDGE WIND TURBINES**
16 **FROM THE GAME PRODUCTION AREAS?**

17 **A. Table 13.2.1 of the Application indicates there are 8 game production easements in the**
18 **project area for a total of 3.5 acres. No turbines are located on game production areas.**
19 **The closest turbines to game production areas are CR-28 located 0.24 mile to the south**
20 **and CR-26, located 0.35 mile to the southeast.**

21
22 **Q. STAFF WITNESS KIRSCHENMANN’S TESTIMONY AT PAGE 19, LINE 4**
23 **STATES THAT IF THE FINAL TURBINE LOCATIONS CHANGE, THAT**
24 **COULD CHANGE THE CURRENTLY UNDERSTOOD IMPACT TO THE**
25 **TERRESTRIAL ENVIRONMENT. HAVE THE TURBINE LOCATIONS**
26 **CHANGED FROM THE LOCATIONS FILED IN THE APPLICATION?**

27

1 A. While there have been minor shifts in collector lines, access roads, the siting of turbines,
2 and the use of alternative turbines instead of primary turbines (as set forth in the
3 testimony of CRW witness Wilhelm and Massey) none of these moves change the overall
4 project or impact the terrestrial environment. See Exhibit SS-R-1, which includes maps
5 showing the minor adjustments to project infrastructure.

6
7 **Q. STAFF WITNESS KIRSCHENMANN'S TESTIMONY AT PAGE 20, LINE 1-6**
8 **SUGGESTS THAT TWO YEARS OF POST-CONSTRUCTION AVIAN AND BAT**
9 **MORTALITY MONITORING SHOULD BE CONDUCTED BY CRW. DO YOU**
10 **AGREE WITH THIS SUGGESTION?**

11 A. Yes. Similar to past cases (Crocker Wind, and Dakota Range 1 and 2), CRW is agreeable
12 to a condition that states:

13 Applicant agrees to undertake two years of independently-conducted post-
14 construction avian and bat mortality monitoring for the Project, and to
15 provide a copy of the report to the United States Fish & Wildlife Service
16 (USFWS), the South Dakota Game, Fish, and Parks (SD GF&P), and the
17 Commission. The Applicant will conduct a third year of monitoring
18 independently-conducted post-construction avian and bat mortality
19 monitoring for the Project if results of the first two years exceed other
20 publicly available studies in the region in comparable habitats in
21 coordination with the USFWS and SD GF&P. If the results from the first
22 two years confirm that the Project site is low risk for avian and bat
23 mortality, a third year will not be conducted.

24
25 CRW believes it is important to clearly articulate the objective and rationale for a third
26 year of post-construction mortality monitoring. In this case, the purpose of the first two
27 years is to confirm the site is low risk compared to publicly available data in the region
28 and in comparable habitats. If the site is not low risk, then the Applicant agrees to
29 consider a third year of post-construction mortality monitoring in coordination with the

1 wildlife agencies, unless another course of action or remedy is identified and can be
2 addressed.

3
4 **Q. STAFF WITNESS KIRSCHENMANN'S TESTIMONY AT PAGE 20, LINES 7-14**
5 **RECOMMENDS POST-CONSTRUCTION GROUSE LEK MONITORING OF**
6 **THOSE LEKS THAT ARE LESS THAN 1 MILE FROM THE PROPOSED WIND**
7 **TURBINES. DO YOU AGREE WITH THIS CONDITION?**

8 A. No. Pre-construction grouse lek surveys were conducted for the project or earlier
9 iterations of the project in 2007-2008 and 2016. The South Dakota Game, Fish and Parks
10 provided lek location data to CRW which was considered during Project siting. The
11 Applicant sited the Project to avoid or minimize impacts to grassland communities, and
12 collocated linear project features, such as access roads, collection lines, and crane paths
13 with existing disturbed corridors (e.g., roads, fence rows) to the extent practical in an
14 effort to reduce fragmentation and impacts to grouse leks. The Applicant will avoid
15 construction activities within 2 miles of known leks during the lekking period (March 1
16 to June 30) to minimize impacts to the species.

17
18 **INTERVENORS' PROPOSED CONDITIONS**

19 **Q. THE INTERVENORS' PROPOSED CONDITION 8 (KEARNEY EXHIBIT DK-8)**
20 **THAT REQUIRES "AIR QUALITY MONITORING DURING CONSTRUCTION**
21 **AND THE MONTHS OF MAY THROUGH OCTOBER AFTER**
22 **CONSTRUCTION IS COMPLETE, THROUGHOUT THE LIFE OF THE**
23 **PROJECT." DO YOU AGREE WITH THIS CONDITION?**

24 A. No. As stated in the application in Section 16, the State of South Dakota follows ambient
25 air quality goals and is in attainment for all criteria pollutants, meaning it meets the
26 national standard, as defined under the National Ambient Air Quality Standards

1 (“NAAQS”). The nearest Ambient Air Quality Monitoring Site is located in Watertown
2 in Codington County. The primary emission sources within the Project Area include
3 agricultural-related equipment and vehicles traveling along state highways and county
4 roads. In Section 16.2 of the application, temporary impacts to air quality are expected
5 from construction activities that may result in short-term airborne dust/particulate matter
6 from construction equipment and vehicle emissions. Dust from ROW clearing, hauling,
7 and excavation may be generated. These impacts are temporary, and no long-term
8 impacts are anticipated. The Applicant will use standard BMPs to minimize air quality
9 emissions as required by the project Storm Water Pollution Prevention Plan (SWPPP)
10 and/or county haul route permits. After construction has been completed and disturbed
11 areas reclaimed, air emissions will only be associated with operational vehicles as
12 personnel conduct inspections and perform routine maintenance activities and minor dust
13 generated by those vehicles. Air quality effects during construction and in the months of
14 May through October and throughout the life of the project would not result in NAAQS
15 exceedances; therefore, no monitoring would be needed. Air quality monitoring has not
16 been required in previous cases (Dakota Range I and II, Prevailing Wind, and Crocker
17 Wind).

18 **Q. THE INTERVENORS’ PROPOSED CONDITION 10 (KEARNEY EXHIBIT DK-**
19 **8) IS PREMISED ON COTEAU PRAIRIE BRING AN IMPORTANT ASPECT TO**
20 **THE EARTH’S OVERALL ECOSYSTEM, PART OF WHICH IS BEING**
21 **DESTROYED BY THE APPROVAL OF THIS PROJECT.” DO YOU AGREE?**

22 **A.** No. The Project Area lies within three ecoregions, namely the Prairie Coteau Escarpment,
23 the central Prairie Coteau, and the Big Sioux Basin. As shown in the Application, Table

1 11.1.2, the Project is anticipated to result in permanent impacts to 86 acres, which
2 represents less than 0.16% of the Project Area (approximately 53,186 acres). The Prairie
3 Coteau Escarpment, the central Prairie Coteau, and the Big Sioux Basin ecoregions
4 within the Project Area encompasses approximately 53,186 acres. Therefore, the
5 permanent impact to 86 acres within this total area is equal to 0.16% and will be minimal.

6 **Q. THE INTERVENORS' PROPOSED CONDITION 10 (KEARNEY EXHIBIT DK-**
7 **8) WOULD REQUIRE CRW TO "SUBMIT AND FOLLOW A 3 YEAR**
8 **GRASSLAND RECLAMATION PLAN FOR ANY PASTURE, GRASS AND/OR**
9 **NATIVE UNDISTURBED LAND THAT IS DISTURBED DURING THE**
10 **CONSTRUCTION OF THIS PROJECT. DO YOU AGREE WITH THIS**
11 **PROPOSED CONDITION?**

12 A. No. In Table 11.1.2 of the application, temporary impacts to grass/pasture lands is
13 558.45 acres and permanent impacts to grass/pasture lands is 21.48 acres. Temporary
14 impacts will be mitigated through the use of BMPs as described in the project (SWPPP)
15 and the stormwater permit will remain open until all disturbed lands achieve final
16 stabilization and a Notice of Termination is filed with the South Dakota Department of
17 Environment and Natural Resources ("SDDENR"). For example, in temporarily impacted
18 areas that were previously natural (i.e., non-cropland), the Applicant will use native
19 vegetation (weed-free) seed mixes to revegetate disturbed areas to preconstruction
20 conditions where feasible and pending landowner preferences. Where temporary impacts
21 occur, the land will be returned to pre-construction conditions.

22 Also, in past cases (Dakota Range I and II, Prevailing Wind, and Crocker Wind) required
23 the following condition:
24

1 Applicant will repair and restore areas disturbed by construction or
2 maintenance of the Project. Except as otherwise agreed to by the
3 landowner, restoration will include replacement of original pre-
4 construction topsoil or equivalent quality topsoil to its original elevation,
5 contour, and compaction and re-establishment of original vegetation as
6 close thereto as reasonably practical. In order to facilitate compliance with
7 this Permit Condition, Applicant shall:

8 a) Strip topsoil to the actual depth of the topsoil, or as otherwise agreed to
9 by the landowner in writing (e-mail is sufficient), in all areas disturbed by
10 the Project; however, with respect to access roads, Applicant may remove
11 less than the actual depth of topsoil to ensure roads remain low-profile and
12 the contours align with the surrounding area;

13 b) Store topsoil separate from subsoil in order to prevent mixing of the soil
14 types;

15 c) All excess soils generated during the excavation of the turbine
16 foundations shall remain on the same landowner's land, unless the
17 landowner requests, and/or agrees, otherwise; and

18 d) When revegetating non-cultivated grasslands, Applicant shall use a seed
19 mix that is recommended by the Natural Resource Conservation Service
20 (NRCS), or other land management agency, unless otherwise agreed upon
21 with the landowner in writing.

22
23 This condition already protects grasslands by establishing additional control if not
24 already addressed in the Applicant's SWPPP and permit. Therefore, no additional
25 condition is needed to protect grasslands.

26
27 **Q. THE INTERVENORS' PROPOSED CONDITION 10 (KEARNEY**
28 **EXHIBIT DK-8) WOULD REQUIRE CRW TO PROVIDE A DETAILED**
29 **WEED CONTROL PLAN. DO YOU AGREE WITH THIS PROPOSED**
30 **CONDITION?**

31 A. No. As stated in the Application (Section 11.1.1.2), noxious weeds are regulated by State
32 and Federal rules and regulations (SDCL 38-22 and 7 U.S.C. 2801 et seq.; 88 Stat.

1 2148). In previous cases (e.g., Crocker Wind, Prevailing Wind, and Dakota I and II), the
2 Commission conditioned approval on the following: “Applicant shall work closely with
3 landowners or land management agencies, such as the NRCS, to determine a plan to
4 control noxious weeds.” This condition is sufficient, and will ensure CRW coordinates
5 with the appropriate land management agencies to develop a site-specific and effective
6 noxious weed control plan. Therefore, the Commission should not adopt the Intervenor’s
7 condition requiring a detailed weed control plan at this time.

8 **Q. THE INTERVENORS’ PROPOSED CONDITION 10 (KEARNEY**
9 **EXHIBIT DK-8) REQUIRES CRW TO PROVIDE SEED MIX DETAILS**
10 **THAT WILL BE USED TO RECLAIM THE DISTURBANCE. DO YOU**
11 **AGREE WITH THIS CONDITION?**

12 A. No. In past cases (e.g., Crocker Wind, Prevailing Wind, and Dakota I and II), the
13 Commission conditioned approval on the following or similar to the following:
14 “When revegetating non-cultivated grasslands, Applicant shall use a seed mix that
15 is recommended by the Natural Resource Conservation Service (“NRCS”), or
16 other land management agency, unless otherwise agreed upon with the landowner
17 in writing.” Accordingly, the seed mix details will be available in the future, after
18 coordinating with the NRCS, other land management agencies, and landowners.
19 Therefore, the Commission should not adopt the Intervenor’s condition requiring
20 seed mix details at this time.

21 **Q. THE INTERVENORS’ PROPOSED CONDITION 10 (KEARNEY**
22 **EXHIBIT DK-8) WOULD REQUIRE CRW TO WRITE AN ANNUAL**
23 **REPORT THAT IS AVAILABLE TO THE PUBLIC INCLUDING**

1 **PHOTOS OF EACH LOCATION AND A STATUS OF THE**
2 **RECLAMATION PROGRESS. DO YOU AGREE WITH THIS**
3 **PROPOSED CONDITION?**

4 A. No. Reclamation of disturbed lands will be addressed in the SWPPP and the stormwater
5 permit will remain open until all disturbed lands achieve final stabilization and a Notice
6 of Termination is filed with the SDDENR. Annual reports are not required; however,
7 reports detailing the results of each inspection and any necessary corrective actions have
8 to be prepared and retained for three years. Reports can be inspected/viewed by
9 SDDENR at any time.

10
11 **Q. THE INTERVENORS' PROPOSED CONDITION 11 (KEARNEY EXHIBIT DK-**
12 **8) WOULD REQUIRE "ALL OIL OR HAZARDOUS MATERIAL SPILLS**
13 **DURING PRE-CONSTRUCTION, CONSTRUCTION, MAINTENANCE,**
14 **OPERATION AND DECOMMISSIONING SHALL BE REPORTED TO THE**
15 **PUC WITHIN 20 DAYS IN ADDITION TO ANY REQUIRED REPORTING TO**
16 **THE DENR." DO YOU AGREE WITH THIS PROPOSED CONDITION?**

17 A. No. The SWPPP has requirements for oil and hazardous materials spill prevention,
18 response, and reporting during construction and the SPCCP includes preparedness,
19 response, and reporting requirements for oil and hazardous materials spills throughout the
20 active life of the Project. Both plans specify local, state, and federal agencies that have to
21 be notified in the event of a spill or release that could adversely impact surface water,
22 groundwater, human health, or the environment. While the Commission has jurisdiction
23 over pipeline safety and hazardous materials transportation, jurisdiction for releases of oil

1 and hazardous materials to waters of the United States lies with the U.S. EPA, SDDENR,
2 and local emergency management offices.

3 **Q. THE INTERVENORS' PROPOSED CONDITION 16 (KEARNEY EXHIBIT DK-
4 8) WOULD REQUIRE:**

5 **PARTNER WITH THE SOUTH DAKOTA DENR TO IMPLEMENT
6 AND MONITOR TEST WELLS THROUGHOUT THE PROJECT
7 WHICH MUST BE TESTED BEFORE ANY CONSTRUCTION IS
8 COMMENCED AND THEN TESTED MONTHLY DURING
9 CONSTRUCTION AND ANNUALLY THEREAFTER FOR THE
10 LIFE OF THE PROJECT. RESULTS MUST BE MADE
11 AVAILABLE TO THE PUBLIC. WELL TESTING MUST BE
12 COMPLETED BY A THIRD PARTY ORGANIZATION
13 SELECTED BY THE DENR. THE PROJECT AREA IS LOCATED
14 IN A SHALLOW AQUIFER REGION AND IS THEREFORE
15 PRONE TO CONTAMINATION.**

16 **DO YOU AGREE WITH THIS PROPOSED CONDITION?**

17
18 A. No. Potential impacts to surface water and groundwater are mitigated by the use of BMPs
19 during construction, spill prevention procedures, physical controls, and spill response
20 procedures, materials, equipment, and, personnel during operation of the facility as
21 specified in the Project SWPPP and the facility SPCC plans. The SPCC Plan that will be
22 developed for the Project will also specify secondary containment structures, operational
23 requirements, and response procedures and equipment to comply with US EPA
24 regulations for oil pollution prevention (40CFR112).

25 The SDDENR has information available online for the public to access regarding water
26 quality throughout the state. The SDDNER maintains an extensive surface water quality
27 monitoring network of South Dakota Streams including 11 water quality monitoring
28 stations in streams in Codington, Grant, and Deuel Counties. The SDDENR also has a
29 monitoring network to examine the quality of shallow groundwater in 26 aquifers across

1 the state, including the Big Sioux aquifer in Codington and Grant Counties and the
2 Antelope Valley aquifer in Grant County. Groundwater Protection Overlay Districts
3 Ordinances exist in Codington, Grant, and Deuel Counties to protect groundwater within
4 those specific counties. This network regularly and systematically assesses nonpoint
5 source pollution, the current ground water quality, short-term water-quality changes and
6 long-term trends in water.

7 Requiring development, administration, and implementation of a groundwater monitoring
8 program that would provide an assessment of pre-construction groundwater conditions,
9 measure groundwater quality changes during construction, monitor long-term changes in
10 groundwater quality and quantity, and could be used to assess groundwater quality
11 changes throughout the life of the Project is not needed as the State of South Dakota and
12 the counties currently maintain public information on water quality and aquifers in the
13 project area.

14 **Q. THE INTERVENORS' PROPOSED CONDITION 17 (KEARNEY EXHIBIT DK-**
15 **8) REQUIRES CRW TO:**

16 **OFFER EACH NON-PARTICIPATING LANDOWNER WITHIN 2**
17 **MILES OF THE BOUNDARY FOOTPRINT A FREE WATER**
18 **WELL TEST FOR EACH WATER WELL ON THEIR PROPERTY**
19 **UP TO \$2,500 PER LANDOWNER. THIS TEST SHALL COVER**
20 **BUT NOT LIMITED TO TURBIDITY, PARTICULATES AND**
21 **BACTERIA. THIS MUST BE COMPLETED BEFORE ANY**
22 **CONSTRUCTION IS COMMENCED AND REIMBURSEMENT**
23 **SHALL BE MADE BY THE APPLICANT WITHIN 30 DAYS OF**
24 **SUBMISSION OF THE RECEIPT TO THE PUC.**
25

26 **DO YOU AGREE WITH THIS CONDITION?**

- 27 A. No. The SDDENR has online information regarding water quality throughout the
28 state readily available for the public to access. The SDDNER maintains an extensive

1 surface water quality monitoring network of South Dakota Streams including 11
2 water quality monitoring stations in streams in Codington, Grant, and Deuel Counties.
3 The SDDENR also has a monitoring network to examine the quality of shallow
4 groundwater in 26 aquifers across the state, including the Big Sioux aquifer in
5 Codington and Grant Counties and the Antelope Valley aquifer in Grant County. This
6 network regularly and systematically assesses nonpoint source pollution, the current
7 ground water quality, short-term water-quality changes and long-term trends in water.
8 Groundwater Protection Overlay Districts Ordinances exist in Codington, Grant and
9 Deuel Counties to protect groundwater within those specific counties.

10 Because the SDDENR maintains publicly available information regarding water
11 quality and aquifers in the project, area, an additional groundwater monitoring
12 program is not necessary.

13
14 **Q. THE INTERVENORS' PROPOSED CONDITION 24 (KEARNEY EXHIBIT DK-**
15 **8) WOULD REQUIRE:**

16 **THE PUC FOR THE LIFE OF THE PROJECT, SHALL REQUIRE**
17 **THE APPLICANT TO MONITOR 24/7 AND REPORT THE DUST**
18 **PARTICULATE MATTER, OZONE AND AIR CARBON DATA**
19 **FOR THE LIFE OF THE PROJECT. THIS REPORT SHALL BE**
20 **COMPILED QUARTERLY THE FINDINGS SHALL BE**
21 **PUBLISHED WITHIN 3 MONTHS OF COMPLETION OF THE**
22 **DUST PARTICULATE REPORT IN THE FOLLOWING PUBLIC**
23 **PUBLICATIONS, FOR THE LIFE OF THE PROJECT: PUBLIC**
24 **OPINION NEWSPAPER IN WATERTOWN, SD, SOUTH SHORE**
25 **GAZETTE IN SOUTH SHORE, SD AND THE GRANT COUNTY**
26 **REVIEW IN MILBANK, SD. THE APPLICANT ADMITS THERE**
27 **IS SOIL DISTURBANCE, OVER 41 MILES OF NEW DIRT**
28 **ROADS, VEHICLES AND EQUIPMENT INVOLVED WITH THIS**
29 **PROJECT.**

30 **DO YOU AGREE WITH THIS PROPOSED CONDITION?**

1 A. No. Exhaust emissions and dust generated from construction equipment and contractor
2 vehicles will be elevated slightly elevated during construction but will diminish to pre-
3 construction levels after construction ends. Dust control BMPs on gravel/soil roads
4 during construction may include enforcing lowered vehicle speed and the use of water
5 and/or soil stabilizers (e.g., magnesium chloride) to suppress dust generation from
6 equipment and vehicles. After construction has been completed and disturbed lands have
7 achieved final stabilization, vehicles will periodically have to access wind turbine tower
8 locations for operational and maintenance activities, but the frequency of these activities
9 and the number of vehicles involved will be minimal. Wind turbines do not emit
10 particulates or other chemicals that could adversely impact air quality within the Project
11 Area.

12
13 **Q. THE INTERVENORS' PROPOSED CONDITION 29 (KEARNEY EXHIBIT DK-**
14 **8) WOULD REQUIRE THE APPLICANT TO DEVELOP A PREDATOR AND**
15 **RODENT MANAGEMENT PLAN. DO YOU AGREE WITH THIS CONDITION?**

16 A. No. The Applicant is developing a WCS for the Project, which as described in the
17 Application will be provided to the SDPUC prior to the start of construction. The
18 Applicant is developing and implementing the WCS in its continued efforts to
19 demonstrate due diligence in avoiding and minimizing impacts to wildlife in association
20 with the development, construction, and operation of the Project. This WCS describes
21 CRW's strategy to address wildlife conservation in all phases of Project development.
22 Therefore, the Commission should not adopt the Intervenor's condition requiring
23 development of a separate predator and rodent management plan.

1 Q. THE INTERVENORS' PROPOSED CONDITION 30 (KEARNEY EXHIBIT DK-
2 8) WOULD REQUIRE:

3 THE APPLICANT SHALL DEVELOP A PLAN TO RENDER AND
4 COMPILE A REPORT THE BIRDS AND BATS KILLED BY
5 TURBINES OR EQUIPMENT OPERATED BY OR CONTRACTED
6 FOR THE APPLICANT. THIS REPORT SHALL CONTAIN BUT
7 NOT LIMITED TO, TIME AND DATE OF DISCOVERY, THE
8 BREED OF BIRD, AND THE SIZE. THIS REPORT SHALL BE
9 REPORTED ANNUALLY AND PUBLISHED IN THE
10 FOLLOWING PUBLIC PUBLICATIONS, FOR THE LIFE OF THE
11 PROJECT: PUBLIC OPINION NEWSPAPER IN WATERTOWN,
12 SD, SOUTH SHORE GAZETTE IN SOUTH SHORE, SD AND THE
13 GRANT COUNTY REVIEW IN MILBANK, SD.

14 DO YOU AGREE WITH THIS PROPOSED CONDITION?

15 A. No. Similar to past cases (Crocker Wind, Prevailing Winds, Dakota I and II), the
16 Applicant generally is agreeable to a condition that states:

17 Applicant agrees to undertake two years of independently-conducted post-
18 construction avian and bat mortality monitoring for the Project, and to
19 provide a copy of the report to the United States Fish & Wildlife Service
20 (USFWS), the South Dakota Game, Fish, and Parks (SD GF&P), and the
21 Commission. The Applicant will conduct a third year of independently-
22 conducted post-construction avian and bat mortality monitoring for the
23 Project if results of the first two years exceed other publicly available
24 studies in the region in comparable habitats in coordination with the
25 USFWS and SD GF&P. If the results from the first two years confirm
26 that the Project site is low risk for avian and bat mortality, a third year will
27 not be conducted.

28 The Applicant believes it is important to clearly articulate the objective and rationale for
29 a third year of post-construction mortality monitoring. In this case, the purpose of the first
30 two years is to confirm the site is low risk compared to publicly available data in the
31 region and in comparable habitats. If the site is not low risk, then the Applicant agrees to
32 consider a third year of post-construction mortality monitoring in coordination with the

1 wildlife agencies, unless another course of action or remedy is identified and can be
2 addressed.

3 Also, past cases (Crocker Wind, Prevailing Wind and Dakota Range 1 and 2) have
4 required the applicant to file a Bird and Bat Conservation Strategy prior to beginning
5 construction of the project. CRW will do this through preparation of a WCS. The WCS
6 describes CRW's strategy to address wildlife conservation in all phases of Project
7 development. As described in the Application, the WCS will be submitted to the SDPUC
8 prior to the start of construction, and will be implemented during construction and
9 operation of the Project." Therefore, the Intervenor's condition is not necessary because
10 the Commission's typical conditions which already appropriately address avian and bat
11 mortality monitoring will be met.

12 **Q. THE INTERVENORS' PROPOSED CONDITION 33 (KEARNEY EXHIBIT DK-
13 8) WOULD REQUIRE:**

14 **THE APPLICANT, FOR THE LIFE OF THE PROJECT, SHALL**
15 **MONITOR AND REPORT ON CHANGES IN SOIL HEALTH**
16 **INCLUDING BUT NOT LIMITED TO CHANGES IN ORGANIC**
17 **MATTER, VEGETATION, MOISTURE, MICROBES, BURYING**
18 **INSECTS, AND MAMMALS. THIS REPORT SHALL BE**
19 **COMPILED ANNUALLY AND SHALL BE REPORTED**
20 **ANNUALLY AND PUBLISHED IN THE FOLLOWING PUBLIC**
21 **PUBLICATIONS, FOR THE LIFE OF THE PROJECT: PUBLIC**
22 **OPINION NEWSPAPER IN WATERTOWN, SD, SOUTH SHORE**
23 **GAZETTE IN SOUTH SHORE, SD AND THE GRANT COUNTY**
24 **REVIEW IN MILBANK, SD.**

25
26 **DO YOU AGREE WITH THIS PROPOSED CONDITION?**

27 A. No. The Application describes multiple environmental studies that have been completed
28 by the Applicant to document baseline conditions and to accurately assess potential

1 impacts of the Project on the environment in accordance with the South Dakota Codified
2 Laws Title 49-41B-11 (11) and South Dakota Administrative Rules Chapter 20:10:22:13.
3 The Applicant has determined that only 86 acres of permanent impacts will result from
4 the Project. This represents less than 0.2% of the 53,186-acre Project Area. Within the
5 Project Area, the Project will result in minimal impacts to soil particularly when
6 compared to existing land uses.

7 In temporarily impacted areas, the Applicant will implement a SWPPP and SPCC Plan to
8 ensure that potential impacts to soil resulting from erosion, sedimentation, spills, or
9 releases are minimized and promptly remediated.

10 **Q. INTERVENOR WITNESS THOMPSON SUBMITTED TESTIMONY**
11 **EXPLAINING THAT HE IS NOT PARTICIPATING IN THE PROJECT. DID**
12 **REMOVAL OF THE THOMPSON PROPERTIES IMPACT THE**
13 **ENVIRONMENTAL MAPS AND IMPACTS?**

14
15 A. I have included as Exhibit SS-R-1 the following maps that show the collector lines no
16 longer located on the Thompson's properties.

17
18 Figure 2 Map – State and Federal Lands
19 Figure 6 Map – Environmental Constraints
20 Figure 7 Map – Constraints
21 Figure 9 Maps a and b -- Surficial Geology and Geology Cross Sections
22 Figure 10 Map – Bedrock
23 Figure 11 Map – Soils
24 Figure 12 Map –Water Resources
25 Figure 13 Map Land Cover

26
27 These are the same maps submitted in the docket on May 23, 2019 that show the re-route
28 of the collector lines off of the Thompson properties. As the maps indicate the re-route
29 does not show any additional environmental impacts associated with the new route for
30 the collector lines.

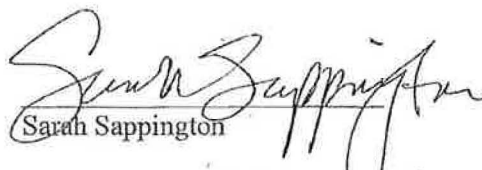
1

2 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

3 **A.** Yes, it does.

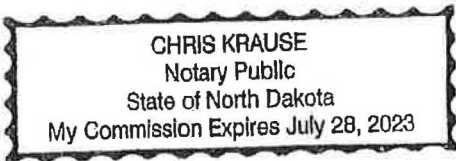
STATE OF NORTH DAKOTA)
) ss
COUNTY OF [INSERT])
 Burleigh

I, Sarah Sappington, being duly sworn on oath, depose and state that I am the witness identified in the foregoing prepared testimony and I am familiar with its contents, and that the facts set forth are true to the best of my knowledge, information and belief.


Sarah Sappington

Subscribed and sworn to before me this 23th day of May, 2019.

SEAL





Notary Public

My Commission Expires July 28, 2023