

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF DEUEL)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

*In the Matter of Special Exception Permit
Application of Crowned Ridge Wind II, LLC
(Deuel County Application WES Sec. 1215)*

GARRY EHLEBRACHT, STEVEN
GREBER, MARY GREBER, RICHARD
RALL, AMY RALL and
LARETTA KRANZ,

Petitioners,

vs.

DEUEL COUNTY PLANNING
COMMISSION, *sitting as* DEUEL
COUNTY BOARD OF ADJUSTMENT, and
CROWNED RIDGE II, LLC,

Respondents.

19CIV18-000061

CROWNED RIDGE
WIND II, LLC'S RESPONSES
TO DISCOVERY REQUESTS TO
RESPONDENT
(First Set, Served March 13, 2019)

COMES NOW RESPONDENT, CROWNED RIDGE WIND II, LLC ("Crowned Ridge"), through its counsel of record, and for its Responses to Request for Discovery Responses to Respondent (First Set), provides as follows:

Discovery by Interrogatory and Other Requests

INT-1: Identify the member or members of Respondent Crowned Ridge Wind II, LLC., or all other Persons in direct or indirect control thereof.

RESPONSE: Crowned Ridge Wind II, LLC (hereinafter "Crowned Ridge"), is an indirect, wholly-owned subsidiary of Next Era Energy Resources, LLC.

INT-2: Identify the Person responding to this Discovery.

RESPONSE: Legal representatives of Crowned Ridge in conjunction with development representatives of Crowned Ridge, Tyler Wilhelm and Jamie Gentile.

INT-3: In certain of the documents comprising the Administrative Record, entitled "Memorandum of Leases and Easements," prepared by one Kevin C. Reive, reference is made to six different leases and easements that are jointly and severally referenced as the "Property Rights" (*see*, for example, Return, Exhibit B, at 514, *Memorandum of Leases and Easements*,

dated June 25, 2008, by and between Doyle T. Busby and Moveda A. Busby, as owner, and Boulevard Associates, LLC, as "Operator"), specifically listing therein the following:

- (1) Turbine Site Lease with Access Rights
- (2) Met Tower Site Lease with Access Rights
- (3) Collection Facilities Lease with Access Rights
- (4) Construction Access Right
- (5) Wind Non-Obstruction Easement
- (6) Noise Easement.

As to each of the six listed easements or leases, state whether:

- (A) The enumerated Property Rights comprise or are provided for in separate and distinct instruments, or, in the alternative, are distinct sections or paragraphs within or of a single instrument.
- (B) If the enumerated Property Rights are within a single instrument, state whether that instrument is entitled "Wind Farm Lease and Easement Agreement," and Identify also the current custodian of such instrument.
- (C) If Your answer to (B) is no, Identify the exact names or titles of the instruments containing the enumerated Property Rights, and the current custodian of each or all such instruments.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. (This objection is made here, and wherever it appears in the responses that follow, because the information sought is beyond the scope of review of the Court on Writ of Certiorari.)

INT-4: In certain of the documents comprising the Administrative Record, entitled "Memorandum of Leases and Easements," prepared by one Mikel Greene, reference is made to eight different leases and easements that are jointly and severally referenced as the "Leases and Easements" (*see*, for example, Return, Exhibit B, at 521, *Memorandum of Leases and Easements*, dated on or about December 11, 2015, by and between Edward J. Raml and Anita M. Raml, as owner, and Boulevard Associates, LLC, as "Operator"), specifically listing the following:

- (1) Turbine Site Lease with Access Rights
- (2) Met Tower Site Lease with Access Rights
- (3) Collection Lease with Access Rights
- (4) Construction Right
- (5) Wind Non-Obstruction Easement
- (6) Effects Easement
- (7) Overhang Right
- (8) Telecommunication Facilities

As to each of the eight listed easements or leases, state whether:

- (A) The enumerated Leases and Easements comprise or are provided for in separate and distinct instruments, or are distinct sections or paragraphs within or of a single instrument.
- (B) If the enumerated Property Rights are within a single instrument, state whether that instrument is entitled "Wind Farm Lease and Easement Agreement," and Identify the current custodian of such instrument.
- (C) If Your answer to (B) is no, Identify the names or titles of the instruments containing the enumerated Property Rights, and the current custodian of such instruments.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-5: Section 1215.03.15.c of the Deuel County Zoning Ordinance, under the heading of "Required Information for Permit," expressly provides as follows: "Copy of easement agreements with landowners." The Administrative Record submitted to the Court, comprising the "Return to Writ of Certiorari," under the oath of Dennis Kanengieter, as chair of the Deuel County Board of Adjustment, dated January 28, 2019, includes, as part of "Exhibit B," many pages comprising documents with landowners. Specifically, the Permit application, embraced within Kanengieter's Exhibit B, included a section labeled Appendix C, "Copies of Memorandum of Easements with landowners," (at Bates Ex. B, p. 31 of 1707, and continuing to page 1599 of 1707). For purposes of INT-5, Identify the Person or Persons, to Your knowledge, having possession of the "easement agreements with landowners."

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge states that Crowned Ridge is in possession of such agreements.

INT-6: Have copies of the "easement agreements with landowners" been provided to the Board of Adjustment or Administrative Officials?

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge states that such agreements were not provided to such officials.

INT-7: If responding to INT-6 in the affirmative, Identify the date and manner in which such copies of "easement agreements with landowners" were provided to the Board of Adjustment or Administrative Officials.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge states that in consideration of its response to INT-6, no further response is required.

INT-8: Identify the manufacturer of the wind turbines You intend or propose to construct within Deuel County under the authority of the Permit, including in Your response the specific model and rated capacity proposed for use and the manufacturer's specifications for the selected model.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge directs Petitioners to the Application for CUP to obtain such information.

INT-9: State Your knowledge or belief concerning (a) the noise (or noise level, in decibels) emitted during operation by the selected model identified by You in response to INT-6, and (b) the source or nature of your knowledge or beliefs.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the terms “noise” and “emitted during operation” are vague and ambiguous.

INT-10: If the manufacturer has published, printed, promulgated or disclosed to You or any Affiliate information concerning noise or noise levels emitted during operation, identify the Document.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects, because the terms “noise,” “noise levels,” and “emitted during operation” are vague and ambiguous.

INT-11: State and describe Your knowledge or belief (and the source or nature of such knowledge or belief) concerning whether variable conditions or changes in weather, wind direction, ambient temperature, humidity levels, or atmospheric conditions affects noise emissions or noise levels from operating wind turbines, whether such affect is to diminish or amplify noise emissions as perceived at a receptor point.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects, because the terms “noise emissions” and “noise levels” are vague and ambiguous and the term “receptor point” is undefined.

INT-12: State whether You or any Affiliate has previously developed, constructed, or operated any wind project (in the United States) using the specific (or comparable) model of wind turbine from the manufacturer named in Your response to INT-8.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge answers “yes.”

INT-13: State whether the manufacturer of the wind turbines, as identified in Your response to INT-8, has published, printed, or promulgated (whether for public use, customer information, as a confidential document, or under a claim of privilege) any Document establishing or recommending a “danger zone,” “keep out area,” or similar exclusion zone for the safety of the public and any personnel called to maintain the wind turbines (herein, “Exclusion Zone”) within a specific circumference of, or the general area near, a wind turbine.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the terms “danger zone,” “keep out area,” and “exclusion zone” are vague and ambiguous.

INT-14: If Your response to INT-13 is in the affirmative, Identify the Document.

RESPONSE: N/A

INT-15: If You Identified a specific or particular Document (or Documents) in response to INT-14, further state when, where or in what manner the Document itself, or the Exclusion Zone referenced therein, was disclosed to the Board of Adjustment or other Administrative Officials.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the term “exclusion zone” is vague and ambiguous.

INT-16: If an Exclusion Zone is known to You (as referenced in INT-13), whether or not established in a Document prepared, published, printed or promulgated by the manufacturer, do any of the roads or highways (constituting statutory highways or other improved roads, accessible to the public for travel and transit), in, near or adjacent to the project described in Your Permit, lay, in whole or in part, within some part of the Exclusion Zone?

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the term “exclusion zone” is vague and ambiguous.

INT-17: If Your response to INT-16 is in the affirmative, Identify those points and places of travel and transit upon statutory highways or other improved roads, lying within the Exclusion Zone as to any one or more wind turbines You intend to construct under and in accordance with the Permit.

RESPONSE: N/A.

INT-18: State whether You or any Affiliate have knowledge or understanding of low-frequency sound, sometimes referred to as “Infrasound.”

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-19: To Your knowledge or belief, do wind turbines, while operating, produce Infrasound?

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-20: If Your response to INT-19 is in the affirmative, state also Your knowledge or belief, and the source of any such knowledge or belief, concerning whether variable conditions or changes in weather or atmospheric conditions affects Infrasound arising from wind turbine operations.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-21: To Your knowledge or belief, is there any health risk to humans from exposure to Infrasound?

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-22: Identify all expert witnesses, peer-reviewed articles or other opinions You intend to rely on to support the veracity of Your response to INT-21.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-23: Have You or any Affiliate been sued (whether in state, federal or tribal courts), by Persons within the United States, for any loss or damage to property (or claimed loss or damage to property, including market value loss) or any personal injury (or claimed personal injury) arising from exposure to either audible noise emitted by wind turbines, or Infrasound associated with the operation of wind turbines?

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-24: If Your response to INT-23 is in the affirmative, Identify the litigation and current status (identify venue, case or file number, counsel of record, and if no longer pending, date and nature of final disposition by the Court).

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-25: Identify all proposed wind turbine sites, which, by reason of the Permit, You intend to develop and construct within a 1-mile radius of Goodwin, South Dakota.

RESPONSE: Crowned Ridge directs Petitioners to the record in this case to obtain such information.

INT-26: Each of the six Petitioners in this matter lives near, but outside the town limits of, Goodwin, each having also a Goodwin address. Identify all proposed wind turbine sites, which, by reason of the Permit, You intend to develop and construct within a 1-mile radius of the residences of each Petitioner.

RESPONSE: Crowned Ridge directs Petitioners to the record in this case to obtain such information.

INT-27: Under Section 1215.03.13.b, Deuel County Zoning Ordinance, as amended, such provisions, adopted in or about 2016, provide "(l)imit for allowable shadow flicker at existing residences to no more than 30 hours annually." As to these provisions, and the application thereof to this Permit, state or respond as follows:

- (a) Did You or any of Your Affiliates have the wind project presently known as Crowned Ridge, as described in the Permit, under planning, design or consideration at any time prior to 2016?
- (b) If Your response to (a) is in the affirmative, identify the date or year when planning or other actions for development approval commenced.
- (c) Did You or Your Affiliates promote or advocate (by means of Communications with Administrative Officials) for Deuel County's adoption, by amendment of the zoning ordinance, of the specific or any similar shadow flicker provisions as quoted above?
- (d) Does shadow flicker, according to any study conducted at Your request, affect or touch and concern the residences of any of the Petitioners?
- (e) If Your response to (d) is in the affirmative, Identify with specificity which residences and the anticipated annual duration thereof.
- (f) Have You or any Affiliates been sued, by Persons within the United States, for any loss or damage to property (or claimed loss or damage to property, including market value loss) or any personal injury (or claimed personal injury) arising from exposure to shadow flicker arising from a wind development similar to the project described in the Permit?
- (g) If Your response to (f) is in the affirmative, Identify the litigation and current status (providing also the matters or details specified in INT-24).

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

INT-28: Is any part or portion of the real properties owned by one or more of the Petitioners, proximate or adjacent to the wind project described in Your Permit, and included within an area otherwise comprising an Exclusion Zone (if an Exclusion Zone, as referenced in INT-13, is known to You by reason of guidance by the manufacturer, or based on Your own knowledge or operating practices) applicable to one or more of the wind turbines You propose to construct in accordance with the Permit?

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the term "exclusion zone" is vague and ambiguous.

INT-29: If Your response to INT-28 is in the affirmative, Identify those specific portions or parts of real properties, now known or believed by You to be owned by one or more of the Petitioners, included within an area otherwise comprising an Exclusion Zone, as is referenced in INT-13.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the term “exclusion zone” is vague and ambiguous.

INT-30: Identify any liability insurance that You, or any Affiliate, is required to maintain, or proposes to maintain, as to any property damage or loss, or personal injury, whether occurring within the Exclusion Zone or otherwise, due to ice throw or the risk of any other physical hazards posed by or arising out of the operation of wind turbines as You propose to develop and construct under the Permit.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the term “exclusion zone” is vague and ambiguous.

INT-31: Identify any operational plans You have developed, along with relevant details of such plans, to mitigate ice throw from wind turbines in the Crowned Ridge wind project within Deuel County.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge refers Petitioners to the ice throw discussion contained in the record in this case.

INT-32: Identify the expected useful life of the wind turbines and installations You propose to develop in Deuel County under and in accord with the Permit.

RESPONSE: Objection. This interrogatory seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge refers Petitioners to the decommissioning section of the record in this case.

DOC-1: Produce a true copy of each written Communication transmitted by You or on Your behalf Relating to the topic referenced in INT-27(c).

RESPONSE: Objection. This request seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge refers Petitioners to the record in this case.

DOC-2: To the extent that such specific Document is not presently a physical part of the Return, Produce a true copy of each such “easement agreement with landowners” as is referenced in Section 1215.03.15.c of the Deuel County Zoning Ordinance.

RESPONSE: Objection. This request seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence.

DOC-3: Produce each Document that describes the extent, nature or means of measuring or determining any applicable “Exclusion Zone,” as is otherwise referenced in INT-13.

RESPONSE: Objection. This request seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the term “exclusion zone” is vague and ambiguous.

DOC-4: Produce each Document that reflects such an “Exclusion Zone,” as referenced in INT-13, as extends also upon any part or portion of a public road or highway as is the subject of INT-17, or also upon any real properties of one or more of the Petitioners, as is the subject of INT-29.

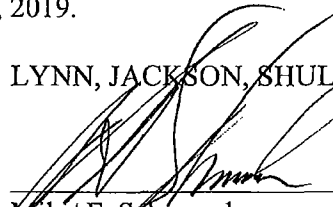
RESPONSE: Objection. This request seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Crowned Ridge further objects because the term “exclusion zone” is vague and ambiguous.

DOC-5: Produce all Communications You have received from any Petitioner in this matter, or which You have transmitted to any Petitioner concerning the Crowned Ridge project or proceedings related to the Permit, including Communications beginning with, or corresponding to, the date or time referenced in INT 27(b).

RESPONSE: Objection. This request seeks information that is irrelevant and is not reasonably calculated to lead to admissible evidence. Without waiving this objection, Crowned Ridge states that it is working on producing the documents that are responsive to this request, and to the extent that such documents are not privileged, will supplement this response when able to do so.

Dated this 12th day of April, 2019.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.



Miles F. Schumacher

Dana Van Beek Palmer

Steven J. Oberg

Attorneys for Respondent Crowned Ridge Wind II, LLC

110 N. Minnesota Avenue, Suite 400

Sioux Falls, SD 57104

Telephone: (605) 332-5999

mschumacher@lynnjackson.com

dpalmer@lynnjackson.com

soberg@lynnjackson.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 12, 2019, I caused the following document:

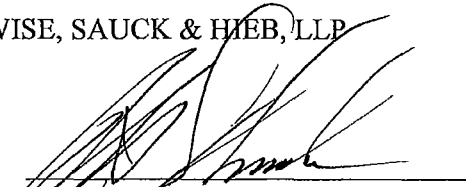
- **CROWNED RIDGE WIND II, LLC'S RESPONSES TO DISCOVERY REQUESTS TO RESPONDENT (First Set, Served March 13, 2019)**

to be served electronically with the Clerk of Court through Odyssey File & Serve, upon the following:

A.J. Swanson
ARVID J. SWANSON, P.C.
aj@ajswanson.com

Jack H. Hieb
RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP
jhieb@rwwsh.com

Zachary W. Peterson
RICHARDSON, WYLY, WISE, SAUCK & HIEB, LLP
zpeterson@rwwsh.com



Miles F. Schumacher