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Kristen N. Edwards, Staff Attorney
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
Pierre, South Dakota

Re: File 6184-002. •
In re Docket EL19-016, Crowned Ridge Wind II

Dear Counsel:

At this point, I remain unclear whether the Commission, on May 2, acted on the status of my clients (Garry Ehlebracht, *et al.*) as intervening parties – although I am able to read from KELO’s Capitol Bureau site the Commission, at your urging, dismissed the petition, dated April 15. Mercer’s report is wrong in this sense – the petition was not to complain about a wind project, while intending to complain about the lack of applicant’s opening evidentiary submissions on matters deemed important to my clients.

One of the Commissioners is quoted in Mercer’s article as saying “nuisance and trespass issues should be first handled at the county level,” while another was heard to observe “zoning issues covered in the petition should be resolved at the ballot box or in circuit court.” That said, I would wish to inquire of you – for purposes of further direction – as outlined in this letter.

The April 15 petition, *inter alia*, noted the fact the IWT sites, in the main, are within hundreds of feet from property lines and roads, or within a certain “danger zone” or “keep out area” that is believed to be cited in literature published by IWT manufacturers. This fact was neither mentioned nor produced in the Deuel County Board of Adjustment proceedings, and, as you can also see, Applicant’s counsel has no intention of producing it for purposes of the Circuit Court’s review of such proceedings in the pending writ of certiorari case. (Discovery responses having been attached to the petition as Exhibit A.)

The question *de jour* is whether Commission staff will now require Applicant to produce such literature as part of the “health, safety or welfare” inquiry under SDCL 49-41B-22? Or, if I may ask, is this inquiry one merely brushed off as a “zoning issue” or something to be handled at the county level or in circuit court? I really need to determine – soon - the Commission’s intentions and position on this point (the manufacturer’s published cautionary materials being just one of many items of interest), since it informs us in our further arguments and submissions in the pending writ case.

If you, as Commission staff counsel, intend to make inquiry of Applicant on this point (along with many other points that, we would say, are clearly matters to be resolved under the

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tests in SDCL § 49-41B-22), can you so advise us accordingly? Further, will this discovery of what we believe to be essential adjudicative facts be performed openly – with access to all adverse parties – or by means of confidential discovery, shared only with Commission staff and consultants?

I have written this on a Saturday morning, without the essential assistance of my assistant, Janna Severson – unfortunately, as an old lawyer, I am unable to fully maneuver so as to address the Commission’s electronic filing docket on my own. But – I know how to make scans and send emails, and so I have done so this morning – both to you, and to Mr. Schumacher, and then also to my clients in the Goodwin area.

If you will do so, kindly place this item in the electronic docket, along with any response you might deem appropriate.

Thank you.

Very truly yours,
ARVID J. SWANSON P.C.



A.J. Swanson

c: Miles Schumacher, Esq. (via Email Only)
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