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Stephen G. Levy,  
Of Counsel  
Certified as an Elder Law Attorney by the National Elder Law  
Foundation

IN THE MATTER OF THE APPLICATION  
BY CROWNED RIDGE WIND, LLC FOR A  
PERMIT OF A WIND ENERGY FACILITY  
IN GRANT AND CODINGTON COUNTIES

EL19-003

)

Mr. Miles Schumacher  
Representing Crowned Ridge Wind, LLC  
Lynn, Jackson, Shultz and Lebrun, PC 101 N. Minnesota Ave., Ste.  
400 Sioux Falls, SD 57104  
[mschumacher@lynnjackson.com](mailto:mschumacher@lynnjackson.com)

VIA ELECTRONIC DELIVERY

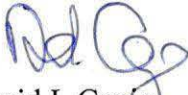
April 25<sup>th</sup> 2019

Mr. Schumacher

Please find enclosed with this the Intervenor's Motion to Deny and Dismiss, the Intervenor's Brief in Support of Motion to Deny and Dismiss, and the Affidavit of Mr. Lynch with Exhibit A. Thank You.

Sincerely,

001957

  
David L Ganje

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

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EL19-003

IN THE MATTER OF THE  
APPLICATION BY CROWN  
RIDGE WIND, LLC FOR A  
PERMIT OF A WIND ENERGY  
FACILITY IN GRANT AND  
CODINGTON COUNTIES

INTERVENORS' MOTION  
TO DENY AND DISMISS

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The Intervenor identified in the Notice of Appearance of the undersigned attorney ("Intervenor"), through the undersigned attorney, hereby move the Public Utilities Commission to deny and dismiss the above entitled Permit Application ("the Application") submitted by the above named Applicant and identified as EL19-003. The basis for this motion is set out in the accompanying Brief in Support of Motion to Deny and Dismiss. The Brief in Support of this Motion to Deny and Dismiss is incorporated into this Motion by reference as if set forth in this Motion in full.

Dated this 25 day of April, 2019.

  
/s/ David L. Ganje  
Ganje Law Offices

17220 N Boswell Blvd

Suite 130L, Sun City, AZ 85373

Web: [lexenergy.net](http://lexenergy.net)

Phone 605 385 0330

[davidganje@ganjelaw.com](mailto:davidganje@ganjelaw.com)

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

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EL 19-003

IN THE MATTER OF THE  
APPLICATION BY CROWN  
RIDGE WIND, LLC FOR A  
PERMIT OF A WIND ENERGY  
FACILITY IN GRANT AND  
CODINGTON COUNTIES

INTERVENORS' BRIEF  
IN SUPPORT OF MOTION TO  
DENY AND DISMISS

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Intervenors respectfully submit this Brief in Support of Intervenors' Motion to Deny and Dismiss by and through the undersigned counsel.

**BACKGROUND AND INTRODUCTION**

The Intervenors respectfully submit this Brief in support of Intervenors' Motion to Deny and Dismiss. Reference in this Brief to "Intervenors" refers to those Intervenors named and identified in the Notice of Appearance of David L Ganje dated and filed in the case on April 16<sup>th</sup>, 2019. Reference to "Applicant" is a reference to the named wind energy facility applicant in the above entitled proceedings EL19-003. Reference to "Application" is a reference the filed application of the Applicant in the above entitled proceedings. Reference to "Project" is a reference to the Applicant's proposed wind energy facility. Reference to "Page" numbers in the Brief is a citation to page numbers found in the filed

Application. References to "Commission" or "PUC" are references to the South Dakota Public Utilities Commission. Reference to "law" is a reference to statutory law, administrative rules, or case law. Applicant filed the above entitled Application in EL19-003 on January 30<sup>th</sup>, 2019. That date is an important date for the Commission to consider when ruling on Intervenor's Motion to Deny and Dismiss. At the time of filing this Motion the Project application procedure is substantially and substantively well underway.

The Applicant has failed to follow the law. The Application should be dismissed and denied under the facts, circumstances and law provided in this Motion. The Applicant, among other errors at law, failed to file an application generally in the form and content required by South Dakota law and rules related to a proposed permit for a wind energy facility. SDCL § 49-41B-13 ("An application may be denied ... at the discretion of the [PUC] for ... [f]ailure to file an application generally in the form and content required by this chapter and the rules promulgated thereunder.") Fair notice and the requirements of timely disclosure should not allow an applicant to leave open the possibility that applicant might later establish required facts, impacts or project analysis to comply with state-created directives for the original content of an application. The Application is the window through which the Intervenor may look at the proposed Project. Three preliminary things are mandated by South Dakota law: the form of the application, the content of the application, and the compliance of the application with state law. SDCL § 49-41B-13 (2)

#### **THE LAW OF DENIAL AND DISMISSAL- LEGAL STANDARD**

1. This Motion to Deny and Dismiss is not based upon SDCL § 15-6-12(b). The civil rule 12(b) addresses civil pleadings and civil procedure, not the substantive law related to the Application. A "pleading" under the civil rules requires only, "A short and plain statement



of the claim showing that the pleader is entitled to relief;" 15-6-8(a)(1) A civil pleading may only consist of a couple of pages. This Motion is based upon the South Dakota energy conversion and transmission facilities law and rules. The dismissal statute allows the Commissions to deny and dismiss an application which does not 1.) generally conform to the rules of form regarding the presentation of an application; 2.) an application which does not provide relevant legal content; 3.) and an application which does not comply with South Dakota energy facility statutes and rules related to a wind energy facility. An application for a wind energy facility requires considerable more content and legal compliance than a pleading. An application for a wind energy facility must provide a multitude of disclosure and content information. An application's numerous legal requirements are cited (but not correctly followed) in the two left hand columns found on pages 2 through 9 of the Application. Intervenor's Motion is based on the failure of the Applicant to fulfill the legal requirements described in this Brief.

### **APPLICANT'S FAILURE TO COMPLY – ESTIMATED CONSTRUCTION COST**

2. The wind energy facility application before the PUC must disclose the estimated construction cost of a project. ARSD 20:10:22:09 Estimated construction cost of the project is content that should have been included in the Application. ARSD 20:10:22:05. The Dictionary of Architecture by McGraw-Hill defines construction cost: "The cost of all the construction portions of a project, generally based upon the sum of the construction contracts and other direct construction costs. Not included is compensation for professional services, land, rights-of-way or other cost, specified as the responsibilities of the owner outlined in the contract." The estimated construction cost, required by South Dakota statute and rule, is not in the Application. ARSD 20:10:22:09 SDCL § 49-41B-11 (11) The

Application at page 17 provides a word salad of data about capital costs, and attempts to integrate construction cost within that convoluted word salad. The Applicant's description also conflates things not relevant to construction cost, for example, "... also includes lease acquisition, permitting, engineering, procurement, and construction of turbines, access roads. . ." Page 17 The content requirement is not a fill-in-the-blanks-later rule. This information must be placed in the Application. ARSD 20:10:22:05 And, while the Applicant included much non-relevant data, state law *excludes*, "activities incident to preliminary engineering or environmental studies" from the term "construction." SDCL § 49-41B-2. Capital cost, lease acquisition, permitting, engineering, access roads, supervisory control, data acquisition and project financing – all of which are found in Applicant's description - do not disclose the estimated construction cost of the Project. ARSD 20:10:22:09 SDCL § 49-41B-13 (2)

### **APPLICANT'S FAILURE TO COMPLY – LOCAL REVIEW COMMITTEE**

3. The term "facility" under South Dakota energy law includes "wind energy facility."

49-41B-2 Applicant describes the Project as a "facility" over one hundred times and further describes the Project as an "energy conversion facility" in the Application. The relevant rule for a facility application mandates a local review committee which information must be included in an application: "20:10:22:05. Application contents. The application for a permit for *a facility* shall contain the applicable information specified in. . . 20:10:22:36. . ." (Italics added) Material requirements in a wind energy application for a local review committee are: "20:10:22:36. Additional information in application. The applicant shall also submit as part of the application any additional information necessary for the local review committees to assess the effects of the proposed



facility pursuant to SDCL 49-41B-7.” The Applicant did not provide information necessary for a local review committee to assess the effects of the proposed facility. No local review committee was formed contrary to the law. ARSD 20:10:22:05. A commentator on utility projects, although discussing general utility siting, stated it aptly, “Open planning—A planning process is considered “open” or “transparent” when it solicits the views of interested parties regarding ways to address a specific transmission need. Parties other than utilities are more likely to feel that such a process has respected their interests; it also gives the utility the opportunity to make changes to a plan before committing to it as a formal proposal.”

*Transmission Siting and Permitting* by David Meyer The Application does not include an assessment by a local review committee. SDCL § 49-41B-7.

### **APPLICANT’S FAILURE TO COMPLY – DISCLOSURE OF FACILITY STRUCTURES**

4. An applicant is required to disclose the distances between wind turbines in the Project pursuant to subsection (1) of the following Rule. ARSD 20:10:22:33:02 (Rule) The Applicant has not included this information. The “distances between turbines” is not disclosed in the Application as required under subsection (1) of the Rule. Additionally, a meteorological tower is identified in the Application. Page 22 The Applicant has not included information required concerning the tower. The Application did not provide for the width of the tower or disclose the material to be used in the tower pursuant to subsection (11) of the Rule. The Application did not disclose the conductor configuration and size, length of span between structures, and number of circuits per pole or tower for any electric interconnection facilities pursuant to subsection (12) of the Rule. For underground facilities the rule requires a designation of distance between access points, conductor configuration and size, and number

of circuits. The Application did not disclose this information contrary to subsection (13) of the Rule. See Section 22 and 23 of the Application. The foregoing contents must be disclosed in the Application. ARSD 20:10:22:05

#### **APPLICANT'S FAILURE TO COMPLY – UNDERGROUND FACILITIES**

5. The administrative rules require the Applicant disclose interconnection facilities placed underground including the distance between access points, conductor configuration in size, and number of circuits. ARSD 20:10:22:33:02 (13) The Applicant has provided information on depth only. Page 21 The foregoing information must be disclosed in the Application. ARSD 20:10:22:05

#### **APPLICANT'S FAILURE TO COMPLY – SETBACK DISTANCES**

6. The administrative rules require the Applicant provide setback distances from off-site buildings, right-of-ways of public roads, and property lines. ARSD 20:10:22:33:02 (4) The Applicant has not provided this information. The language of the administrative rule provides that information is required of an applicant when filing for a wind siting permit. The foregoing Application information must be disclosed in the Application. ARSD 20:10:22:05

#### **APPLICANT'S FAILURE TO COMPLY – OWNERSHIP**

7. South Dakota statutes and rules require, "The application shall contain a complete description of the current and proposed rights of ownership of the proposed facility. It shall also contain the name of the project manager of the proposed facility." ARSD 20:10:22:07. See also SDCL § 49-41B-11 (7) A "complete description"

is a full and definite identification of the “rights of ownership.” A document related to this Project entitled a “Memorandum of Leases and Easements” was publically filed on 5.21.2015 at Document number 229485 with the Grant County South Dakota Register of Deeds. The document describes a company called Boulevard Associates, LLC as the lessee and also as the “Owner and Operator” of this publically filed wind farm agreement. The Intervenor believe the real estate owner and lessor under this Memorandum of Leases and Easements will allow the owner’s property to host turbines or related activities for the Applicant’s proposed Project. The Application does not identify Boulevard Associates, LLC. Boulevard Associates, LLC is not described in the Application as an owner or operator of property or owner of legal rights related to the Project. The owner and manager of the Project is reported as Crowned Ridge Wind, LLC. Page 14

South Dakota law requires “a complete description of the current and proposed rights of ownership of the proposed facility.” ARSD 20:10:22:07 This content must be included in the Application. ARSD 20:10:22:05 Naming an “owner and manager” alone would be inadequate under the law if there were other rights of ownership. South Dakota siting law demands a “complete description“ of *current and proposed rights of ownership*. The law requires more than naming an owner with legal title to a project, or naming a parent company holding a so-called “indirect” ownership interest. Additionally, giving a general list of so-called affiliated companies without a complete description of current and proposed rights of ownership does not comply with the law. ARSD 20:10:22:07 Under facts in which different companies own the underlying land leases and easements, or different companies own parts of a proposed facility, or if an affiliated company or a subsidiary possess rights of ownership ascribed in an application to the “named owner”, then, these examples do not comply with South Dakota law. A facility application requires “a complete description of the current and proposed rights of ownership of the proposed facility.” ARSD 20:10:22:07



### **APPLICANT'S FAILURE TO COMPLY – ABSENCE OF APPLICANT'S ANALYSIS**

8. South Dakota rules require the Applicant provide a description of the Project's impact on identified subjects. The Applicant did not follow state rules in the Application. ARSD 20:10:22:23.(6) requires a forecast of the impact on landmarks of natural significance. Required information is to include an applicant's plans to coordinate with the local and state office of disaster services in the event of accidental release of contaminants from the proposed facility. The Application is void of discussion of landmarks.

### **APPLICANT'S FAILURE TO COMPLY – APPLICANT'S BURDEN OF PROOF**

9. At the time of filing this Motion, the Project application procedure is substantially and substantively well underway. We are not in the beginning stages of the Application proceedings. The Applicant has not, and has shown it cannot, meet its burden of proof in order to gain approval or go forward with the Application. SDCL § 49-41B-22 By way of illustration the Application states, "Mammal inventories have not been completed for the project." Page 53 This provides no analysis of the impact of construction and operation of the facility on the terrestrial biotic environment. An absence of a mammal inventory fails to comply with ARSD 20:10:22:16 The Applicant must provide information on the effect of the proposed facility on terrestrial ecosystems as well as provide an analysis of the impact of the construction and operation of the facility. ARSD 20:10:22:16 SDCL § 49-41B-11(11) The "biotic environment" as that phrase is used in the above-cited South Dakota rule comprises of living things which interact with each other. The term includes fauna such as foxes, beavers and burrowing animals. The Application does not provide an analysis of the impact

of the construction and operation of the facility on these South Dakota animals. Applicant included various letters and communications with government agencies discussing flora and fauna. Providing such information in an Application does not however satisfy Applicant's burden (not a government agency's burden) of showing the "effect of the proposed facility" and, further, it does not satisfy the Applicant's regulatory burden to provide an "analysis of the impact." ARSD 20:10:22:16 The foregoing information must be disclosed in the Application. ARSD 20:10:22:05

SDCL 49-41B-22 describes Applicant's burden of proof. Applicant expressly represents that its Application "establishes that" the Application itself has met that burden. Page 117 For an applicant to possibly submit required data later, or even submit it at the current stage in the process, denies the Intervenor's due process of the law and violates Intervenor's South Dakota and United States rights to due process of the law.

An applicant negotiates turbine leases and easements when dealing with non-government real property. An applicant by negotiating strategy would want as much flexibility as possible concerning use of any leased land or land to be placed under easement. An applicant by negotiating strategy would want to minimize the extent to which it will be required to obtain approvals. In EL 19-003 the Application failed to include material representations regarding the terms and conditions of private landowner turbine easements or leases and related landowner construction easements or leases. Such Applicant representations need not reveal "confidential" information, but rather without Applicant's representations on the impact of the specific terms and conditions of participating agreements on the Project, the Applicant has not met its Application burden in this matter. And has not provided information necessary for an application. The terms and conditions in turbine leases and easements signed by participating landowners should be in the Application to meet the Applicant's burden on the issues of any possible injury to the environment, and to



determine potential harm to social and economic conditions of participating landowners as well as to the affected Project area. SDCL 49-41B-22.(2) and (3) The Application should show that the construction, operations and use terms and conditions contained in agreements do not waive local use ordinances, or cause the risks described. This information should have been in the contents of the Application. ARSD 20:10:22:13 ARSD 20:10:22:14 ARSD 20:10:22:19 ARSD 20:10:22:5.


### **APPLICANT'S FAILURE TO COMPLY –NO DUE PROCESS OF THE LAW**

10. Intervenor, by statute and following the PUC's order granting them party status, are parties to this proceeding. SDCL § 49-41 B-17. As parties, Intervenor "are accorded procedural rights that are consonant with due process." *Application of Union Carbide Corp.*, 308 N.W.2d 753, 758 (S.D. 1981). "The constitutional guaranty of due process of law applies to, and must be observed in, administrative as well as judicial proceedings, particularly where such proceedings are specifically classified as judicial or quasi-judicial in nature." *Id.* "Due process requires notice and the right to be heard in a meaningful time and manner." *State v. Fifteen Impounded Cats*, 785 N.W.2d 272,282. To be heard in a meaningful matter requires a fair hearing such that "even the probability of unfairness" should be avoided. *Strain v. Rapid City School Bd.*, 447 N.W.2d 332,336 (S.D. 1989). It is respectfully submitted that based upon this Brief and the law cited, the PUC should deny the Application. SDCL § 49-41B-13 ("An application may be denied ... at the discretion of the [PUC] for ...[f]ailure to file an application generally in the form and content required by this chapter and the rules promulgated thereunder.")

### **CONCLUSION**

11. Intervenor respectfully move that the PUC deny and dismiss the Application in this matter based upon the law and argument presented in this Motion. The Commission has an established and orderly course of rules to be followed in the application process. It would be error to not follow the process. And to allow the Applicant to amend significant content requirements, as well as substantive legal requirements, because of Applicant's own failures in filing an application would misapply the purpose of the statute permitting amendment. The Application on its face fails to comply with applicable laws and rules. Further, the Applicant is not able to establish its burden of proof including the fact that the Project will not pose a threat of serious injury to the environment. Further, the Application fails to comply with required application form and content and fails to comply with South Dakota law as well as the rules of the Commission all as addressed in this Brief.

Dated the 25 day of April, 2019.

  
/s/ David L. Ganje  
Ganje Law Offices

17220 N Boswell Blvd Suite 130L, Sun City, AZ  
85373

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Phone 605 385 0330

[davidganje@ganjelaw.com](mailto:davidganje@ganjelaw.com)

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

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EL19-003

IN THE MATTER OF THE  
APPLICATION BY CROWNED  
RIDGE WIND, LLC FOR A  
PERMIT OF A WIND ENERGY  
FACILITY IN GRANT AND  
CODINGTON COUNTIES

AFFIDAVIT

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State of South Dakota

County of Codington

Patrick Lynch being first duly sworn upon oath, states and alleges as follows:

1. The undersigned affiant is an Intervenor in this matter and provides this affidavit to the Public Utilities Commission on information and belief and in support of the Intervenor's Motion to Deny and Dismiss the above entitled proceedings. Capitalized terms used to describe matters in this affidavit are the terms as defined in the beginning of Intervenor's Brief in Support of Intervenor's Motion to Deny and Dismiss.

2. Applicant submitted its Application in EL19-003 on January 30<sup>th</sup>, 2019. That date is an important date for the Commission to consider when ruling on Intervenor's Motion to Deny and Dismiss.
3. An estimated construction cost is not in the Application.
4. The Application at page 17 provides a word salad of things discussing capital costs and attempts to integrate construction cost in that word salad. The description in the Application also confuses things not related to construction cost, for example, "... also includes lease acquisition, permitting, engineering, procurement, and construction of turbines, access roads. . ." Page 17
5. The Applicant in this matter has not submitted information necessary for a local review committee to assess the effects of the Project. No such committee was formed.
6. The "distances between turbines" is not disclosed in the Application.
7. A Met tower is identified in the Application. Page 22 The Applicant has not included information required regarding the tower. The Application does not provide for the width of the tower.
8. The Application also does not disclose conductor configuration and size, length of span between structures, and number of circuits per pole or tower for any electric interconnection facilities. And the Application does not have a designation of distance between access points, conductor configuration and size, and number of circuits on underground equipment. The Application does not disclose this information.
9. The Applicant does not disclose interconnection facilities placed underground



including the distance between access points, conductor configuration in size, and number of circuits. The Applicant has provided underground information on depth only. Page 21

10. The Applicant does not provide setback distances from off-site buildings, right-of-ways of public roads, and property lines in the Application.
11. A document related to this Project identified as a "Memorandum of Leases and Easements" was publicly filed on 5.21.2015 as Document number 229485 with the Grant County South Dakota Register of Deeds. The document identifies a company called Boulevard Associates, LLC as the lessee and also as the "Owner and Operator" of the filed wind farm lease and easement agreement. The Intervenor believe the real estate owner and lessor under this Memorandum of Leases and Easements will provide property to host turbines or related activities regarding the Applicant's proposed Project. The Application does not identify or provide a disclosure regarding a company identified as Boulevard Associates, LLC. Boulevard Associates, LLC is not identified in the Application as an owner or operator of property or of legal rights related to the Project. The owner and manager of the Project is identified as Crowned Ridge Wind, LLC. Page 14 A copy of the Memorandum of Leases is attached to this affidavit as Exhibit A.
12. The Application contains no description of easement or wind tower lease- holding companies and their relationship, if any, with the Applicant.
13. The Application does not provide a forecast of the impact on landmarks of natural significance. The Application is void of discussion of landmarks.



14. The Applicant's Project information contains no mammal studies, and does not discuss such fauna as the Project's effect on foxes, beavers and burrowing animals.

Patrick Lynch

STATE OF SOUTH DAKOTA)

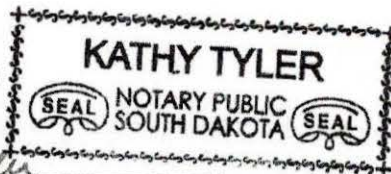
)SS

COUNTY OF Codington)

BE IT KNOWN, that on the 22 day of April 2019, before me, the undersigned officer, personally appeared Patrick Lynch who is to me known to be the person described in and who executed the above and acknowledged the same to be his voluntary act and deed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official hand and seal, the day, month, and year last above written.

(SEAL)



Kathy Tyler

Notary Public

My Commission Expires: 6/25/21

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Filed in - Grant County, Milbank, SD  
Recorded on 5/21/2015 1:05 PM  
Transaction # 1003388

Document # 229405

Book 271

Page 878 (7 pages)

Rec. Fee \$30.00

*Nancy Copeland*

Nancy Copeland, Register of Deeds

Return To:

NEXTERA ENERGY

700 UNIVERSE BLVD.

JUNO BEACH, FL 33408

**PREPARED BY &  
AFTER RECORDING RETURN TO**

Mikel Greene, Esq.

NextEra Energy Resources, LLC

700 Universe Boulevard

Juno Beach, Florida 33408

(561) 304-5934

(This space reserved for recording information)

**MEMORANDUM OF LEASES AND EASEMENTS**

GTV Land & Cattle Co., a/k/a G.T.V. Land and Cattle Company, Inc., a South Dakota corporation ("Owner"), and Boulevard Associates, LLC, a Delaware limited liability company ("Operator"), an affiliate of NextEra Energy Resources, LLC, a Delaware limited liability company. Owner and Operator have entered into that certain Wind Farm Lease and Easement Agreement whereby Owner granted to Operator an exclusive option ("Option") for the following leases and easements (jointly and severally, the "Leases and Easements"):

- (1) Turbine Site Lease with Access Rights
- (2) Met Tower 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

encumbering all or portions of the real property described in **Exhibit A-1** attached hereto and made a part hereof (the "Owner Property").

1. As to the Option, the period during which the Option may be exercised shall begin on the date when both Owner and Operator have executed the Agreement, and shall continue for a period of thirty-six (36) months after such date ("Initial Option Term"). The Initial Option Term may be extended for one twenty-four (24) month extension period ("Extended Option Term"). References herein to the Option Term shall mean the Initial Option Term and, to the extent exercised by Operator, also the Extended Option Term, unless expressly stated otherwise. Operator may exercise the Option by giving written notice to Owner ("Option Notice") at any time during the Option Term.

2. The terms and conditions of the Leases and Easements are as set forth in that

A

certain Wind Farm Lease and Easement Agreement executed by and between the Owner and Operator (the "Agreement");

3. In the event the Option is exercised, the term of the Leases and Easements commences on the date specified by Operator in the Option Notice and terminates fifty (50) years thereafter.

4. As to the Wind Non-Obstruction Easement:

(a) Along with the Option Notice, Operator shall deliver to Owner the description of the real property subject to the Wind Non-Obstruction Easement pursuant to the Agreement, which shall become **Exhibit A-2** to the Agreement.

(b) Along with the Option Notice, Operator shall deliver to Owner the description of the real property benefiting from the Wind Non-Obstruction Easement and the description of the vertical and horizontal angles, expressed in degrees and distances from the Turbine Sites as defined in the Agreement, in which an obstruction to the wind is prohibited or limited, which shall become **Exhibit A-2** to the Agreement.

5. Pursuant to the terms and conditions of the Agreement:

(a) Operator has the exclusive right to use, maintain, capture and convert all of the wind resources on the Owner Property. Any of the Owner's activities, or any grant of rights by Owner to a third party, on Owner Property, as defined in the Agreement or on adjacent property shall not, now or in the future, interfere in any way with the rights of Operator under the Agreement.

(b) The Leases and Easements and any restriction contained in the Agreement shall run with the land affected thereby and are binding upon, and inure to the benefit of the Owner and Operator, its Mortgagees, Assignees, and their respective successor and assigns, heirs, personal representatives, tenants, or persons claiming through them.

(c) The remaining terms and conditions of the Wind Easement, including but not limited to the terms and conditions under which this Wind Non-Obstruction Easement is granted or may be terminated, are as set forth in the Agreement.

6. The address of the Owner is:

GTV Land & Cattle Co.  
Attn: Gerald Grotewold  
1209 33<sup>rd</sup> St. NW  
Watertown, SD ~~57201~~ 57201



The address of the Operator is:

Boulevard Associates, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408-2683  
Attn: Business Manager

7. **Option to Convert.** During the term of the Leases and Easements granted in the Agreement, as may be extended, Owner grants to Operator the option to convert the Leases to Easements, and the Easements to Leases, in Operator's sole discretion. Operator may exercise such option by giving the Owner, thirty (30) days written notice of its intent to exercise such option. The terms and conditions of such converted Easements and Leases shall be the same as the terms and conditions of the original Leases and Easements, including the annual payments as set forth in the Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Owner and Operator have executed this Memorandum effective as of the date first written above.

Owner:

GTV Land & Cattle Co.,  
a South Dakota corporation

By Gerald Grotewold President  
Gerald Grotewold, President

OWNER ACKNOWLEDGEMENT

STATE OF SOUTH DAKOTA     )  
  )ss:  
COUNTY OF FALL RIVER     )

On this the 20<sup>th</sup> day of March, 2015, before me, the undersigned officer, personally appeared Gerald Grotewold, as President of GTV Land & Cattle Co., a South Dakota corporation, who is personally known to me or who subscribed to the foregoing instrument and acknowledged that he executed the same.

In witness whereof I hereunto set my hand and official seal.



Jordan C. Wollschlaeger  
Notary Public  
My Commission Expires: 11-13-2018

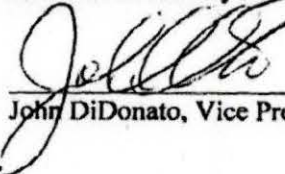


IN WITNESS WHEREOF, the Owner and Operator have executed this Memorandum effective as of the date first written above.

**Operator:**

Boulevard Associates, LLC,  
a Delaware limited liability company.

By:

  
John DiDonato, Vice President

**OPERATOR ACKNOWLEDGEMENT**

STATE OF FLORIDA )

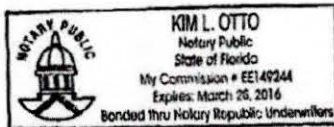
) ss:

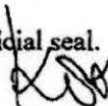
COUNTY OF PALM BEACH )

On this 27 day of April, 2015, before me, the undersigned officer, personally appeared John DiDonato, who acknowledged himself to be the Vice President of Boulevard Associates, LLC and that he, as such Vice President being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the limited liability company by himself as Vice President.

In witness whereof I hereunto set my hand and official seal.

(Seal)



  
Notary Public

My Commission Expires: \_\_\_\_\_

**EXHIBIT A-1**

**Legal Description of Owner Property**

West Half (W½) of Section 33, Township 120 North, Range 51 West of the 5<sup>th</sup> P.M., Grant County, South Dakota.

COPY

**HOLDING PAGE FOR EXHIBIT A-2**

**Legal Description of Wind Non-Obstruction Easement Property and Description of Wind  
Non-Obstruction Easement in Vertical and Horizontal Angles & Legal Description of Real  
Property Benefiting from Wind Non-Obstruction Easement  
To be Delivered with Option Notice**

COPY

**BEFORE THE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE APPLICATION  
BY CROWNED RIDGE WIND, LLC FOR A  
PERMIT OF A WIND ENERGY FACILITY  
IN GRANT AND CODINGTON COUNTIES

EL19-003

**CERTIFICATE OF SERVICE**

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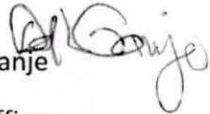
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mschumacher@lynnjackson.com

I hereby certify that true and correct copies of Intervenor's Motion to Deny and Dismiss, Intervenor's Brief in Support of Motion to Deny and Dismiss and Affidavit of Intervenor Patrick Lynch with Exhibit A were served electronically to the parties listed on the 25 day of April, 2019.

/s/ David L Ganje



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