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THE PUBLIC UTILITIES COMMISSION

OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE APPLICATION EL19-003
BY CROWNED RIDGE WIND II, LLC FOR
A PERMIT OF A WIND ENERGY FACILITY
IN GRANT AND CODINGTON COUNTIES ORIGINAL

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Transcript of Proceeding
June 25, 2019
9:30 a.m.

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER

COMMISSION STAFF
Karen Cremer
Greg Rislov
Adam de Hueck
Darren Kearney
Patrick Steffensen
Eric Paulson
Kaitlyn Baucom
Joseph Rezac
Brittany Mehlhaff
Lorena Reichert
Deb Gregg
Kaitlyn Baucom

A P P E A R A N C E S

Miles Schumacher and Brian Murphy,
 appearing on behalf of Crowned Ridge Wind II;

A.J. Swanson,
 appearing on behalf of the Intervenors;

Kristen Edwards and Mikal Hanson,
 appearing on behalf of Staff.

Reported By Cheri McComsey Wittler, RPR, CRR
Precision Reporting, 213 S. Main, Onida, South Dakota
cwittler@venturecomm.net

1 The following transcript of proceedings was
2 held in the above-entitled matter at the South Dakota
3 State Capitol, 500 East Capitol Avenue, Pierre,
4 South Dakota, on the 25th day of June, 2019, commencing
5 at 9:30 a.m.

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1 ACTING CHAIR NELSON: EL19-003, In the Matter of
2 the Application of Crowned Ridge Wind, LLC for a Permit
3 of a Wind Energy Facility in Grant and Codington
4 Counties.

5 The question today is shall the Commission grant
6 the Application for party status of Timothy and Linda
7 Lindgren? Or how shall the Commission proceed?

8 And they are represented by A.J. Swanson in
9 their Application. We will go to Mr. Swanson.

10 MR. SWANSON: Thank you, Commissioner.

11 Lindgrens are proposing to intervene as a party
12 for the purpose of really getting -- placing before the
13 Commission, if it's not there already, a copy of the wind
14 farm lease and easement agreement, which I believe has
15 been bantered about before the Commission. I think it
16 was handed by Mrs. Lindgren to a Commission staff
17 member -- I'm hazy on those details -- back in March, and
18 then it came back to her.

19 The whole point of what we would like to
20 establish, frankly, now that their own lease and option
21 has expired, we wish to challenge on the basis of 5.2 of
22 that wind lease and easement agreement, a document that's
23 captioned The Effects Easement.

24 That once Crowned Ridge took the position that
25 they had to have an easement in order to create these

1 certain effects on the farm of the Lindgrens, they still
2 needed -- now that that option agreement no longer
3 pertains, the Lindgren residence, for example, is slated,
4 according to Exhibit A68, I believe the number is, to
5 still receive about 16 hours of shadow flicker a year.

6 And while that's down considerably from the
7 27 hours that was projected initially, it's still going
8 to be a burden on their property. And our position is
9 shadow flicker is a burden. It's tantamount to a
10 servitude, one that requires an easement in favor of he
11 who would benefit, namely Crowned Ridge. And we think
12 the Commission's authority and legal position to create
13 that servitude is in some doubt.

14 Shadow flicker is already part of the
15 stipulation that has been entered into. I forget what
16 that exhibit number is. But, in any event, 30 hours per
17 year maximum seems to be the threshold that's being used.
18 You know, that's traceable back to this NARUC document
19 from 2011, 2013. And it might be a good practice, but
20 it's still not part of the South Dakota Law, in my
21 opinion.

22 And so the Lindgrens wish to become parties for
23 the purposes of at least placing before the Commission
24 Section 5.2, if the not entire wind lease, so that we can
25 hopefully press for a ruling from the Commission on the

1 shadow flicker legal authority to create a servitude
2 issue. And if the Commission doesn't make that ruling,
3 we so wish to have it challenged in a judicial setting.

4 ACTING CHAIR NELSON: Thank you, Mr. Swanson.
5 We will go to Crowned Ridge.

6 MR. SCHUMACHER: Thank you, Commissioner Nelson.
7 Miles Schumacher, Lynn, Jackson, Shultz & Lebrun, on
8 behalf of Crowned Ridge.

9 Crowned Ridge does not oppose this late
10 intervention application provided, however, that it is
11 understood that the procedural schedule and evidentiary
12 are -- that's already been established, that the
13 Intervenors are limited to the record as is in any oral
14 argument, briefing, or other writings, and that it be
15 made clear to Intervenors that they are required to
16 follow the applicable rules and practice regarding
17 confidential information.

18 Thank you.

19 ACTING CHAIR NELSON: Thank you.

20 The other Intervenors in this docket I don't see
21 are represented or on the line today so we will go to
22 Staff.

23 MS. EDWARDS: Thank you. This is Kristen
24 Edwards for Staff. And the existing Intervenors had
25 communicated no objection to the parties.

1 Staff submitted a brief in this matter, and I
2 will say I went into the brief fully expecting to come to
3 a different conclusion; however, we were unable to see
4 any way in which we as Staff were materially prejudiced.
5 Ironically, if they had filed this three weeks ago before
6 the evidentiary hearing, I think we would have come to a
7 different conclusion on prejudice. So we do recommend
8 approval of the intervention.

9 I'm not going to get into the shadow flicker
10 concerns that Mr. Swanson just enumerated. I think
11 that's a matter for the July 9 meeting.

12 ACTING CHAIR NELSON: Thank you.

13 Mr. Swanson, any rebuttal? Probably don't need
14 it since nobody's arguing against you.

15 Questions from the Commission.

16 Seeing no questions, is there a motion?

17 In EL19-003, I move that the Commission deny the
18 Application for party status of Timothy and Linda
19 Lindgren.

20 Discussion on the motion.

21 Well, this is, I will grant, unusual when it
22 seems everybody is in favor of this particular
23 intervention. But the facts remain, the intervention
24 deadline was months ago. The Lindgrens had ample
25 opportunity to become involved in this docket as

1 Intervenor, just as a number of other lay Intervenor
2 did.

3 The Lindgrens were present at the public input
4 meeting where the deadline was talked about, where the
5 applications for party status were readily available.
6 They could have been filled out and filed that night.

7 They had ample opportunity to become involved in
8 this, and here we are months later and they're seeking to
9 become involved in this process. I just don't think
10 that's healthy for the process to let folks come in at
11 the last minute when they've waived their ability to do
12 it when they should have done it.

13 Additional discussion.

14 COMMISSIONER HANSON: Mr. Chair.

15 ACTING CHAIR NELSON: Yes. Commissioner Hanson.

16 COMMISSIONER HANSON: I will not be supporting
17 the motion.

18 The paramount reasoning that it was expressed in
19 I believe it was -- it may not have been Ms. Edwards's
20 explanation. I read so many of them. Karen's may have
21 wrote about it -- the Supreme Court rulings pertaining to
22 being prejudiced in a matter of this nature and that that
23 is of paramount importance.

24 And since none of the parties believe they were
25 prejudiced, I see no reason not to allow them to have --

1 the Lindgrens to have party status.

2 I really abhor these late filings of this
3 nature. It's so dilatory that it just -- I immediately
4 when I saw it I was going to reject it. But then after
5 reading all of the materials -- and I do agree. You
6 know, Mr. Swanson presents a really unique argument
7 regarding the I'll call it trespass of the flicker onto
8 another property.

9 We've had a number of folks that have brought
10 that to our attention, of course, at every hearing that
11 we've had, and I think this gives us an opportunity to
12 have it finally decided in a judicial -- not that we
13 don't do a quasi-judicial and dot every I and dash every
14 T, but I think that this gives us some opportunity for
15 finality with it. So I will not be supporting that
16 motion.

17 Thank you, Mr. Chair.

18 ACTING CHAIR NELSON: Thank you.

19 Additional discussion?

20 Commissioner Fiegen.

21 COMMISSIONER FIEGEN: So the questions that
22 they're asking us to look at has a very limited record,
23 and I see this in a different judicial setting that we
24 don't have authority on trespassing. So I'm just going
25 to ask for a two-minute break so I can discuss some of

1 our authority with my advisors quick.

2 ACTING CHAIR NELSON: Since you have a very
3 important vote coming up, I think, yes, we will be in
4 recess.

5 COMMISSIONER HANSON: Mr. Chair, could I just
6 say one thing before that recess?

7 ACTING CHAIR NELSON: Yes. Certainly.

8 COMMISSIONER HANSON: It's important to
9 understand that in order for the Lindgrens and
10 Mr. Swanson to examine this particular unique issue that
11 they need to have party status in order to go forward to
12 that opportunity. So that is primarily why I am
13 giving -- allowing party status.

14 Ordinarily, I would say no. But since they're
15 not prejudiced and since no one's prejudiced and since
16 they need to have party status in order for them to bring
17 this to Circuit Court to have it decided, then I'm
18 willing to grant them that party status.

19 Thank you.

20 ACTING CHAIR NELSON: Thank you, Commissioner
21 Hanson. We'll be in recess.

22 (A short recess is taken.)

23 ACTING CHAIR NELSON: We are back in session.
24 Additional discussion.

25 Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Thank you for the time.
2 I'm going to stay with my original vote, and I appreciate
3 all the discussion. Which you guys don't know what it
4 is.

5 ACTING CHAIR NELSON: Exactly. I understand
6 that.

7 Any additional discussion?

8 Hearing none, all those in favor of the Motion
9 to Deny Party Status will vote aye; those opposed, nay.
10 Commissioner Hanson.

11 COMMISSIONER HANSON: No.

12 ACTING CHAIR NELSON: Commissioner Fiegen.

13 COMMISSIONER FIEGEN: Fiegen votes aye.

14 ACTING CHAIR NELSON: Nelson votes aye. Motion
15 carries.

16 (The proceeding is concluded.)

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STATE OF SOUTH DAKOTA)

COUNTY OF SULLY)

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CERTIFICATE

I, CHERI MCCOMSEY WITTLER, a Registered Professional Reporter, Certified Realtime Reporter and Notary Public in and for the State of South Dakota:

DO HEREBY CERTIFY that as the duly-appointed shorthand reporter, I took in shorthand the proceedings had in the above-entitled matter on the 25th day of June, 2019, and that the attached is a true and correct transcription of the proceedings so taken.

Dated at Onida, South Dakota this 9th day of July, 2019.

/s/ Cheri McComsey Wittler
Cheri McComsey Wittler,
Notary Public and
Registered Professional Reporter
Certified Realtime Reporter

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