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THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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

EL19-003
ORIGINAL

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Transcript of Proceeding
May 9, 2019
9:00 a.m.

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BEFORE THE PUBLIC UTILITIES COMMISSION,
GARY HANSON, CHAIRMAN (via teleconference)
CHRIS NELSON, VICE CHAIRMAN
KRISTIE FIEGEN, COMMISSIONER (via teleconference)

COMMISSION STAFF

Karen Cremer
Greg Rislov
Adam de Hueck
Jon Thurber
Darren Kearney
Eric Paulson
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;

David Ganje,
appearing on behalf of the Intervenors;

Kristen Edwards,
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 9th day of May, 2019, commencing at
5 9:00 a.m.

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1 ACTING CHAIR NELSON: I will call the meeting to
2 order. This is Commissioner Nelson. I'm going to be
3 chairing the meeting today. We have on the phone with us
4 Commissioners Hanson and Fiegen.

5 9:00 a.m., May 9, Capitol Building. We are here
6 in the matter of EL19-003, In The Matter of the
7 Application of Crowned Ridge Wind, LLC for a Permit of
8 a Wind Energy Facility in Grant and Codington
9 Counties.

10 The issue today is shall the Commission grant
11 the Intervenors' Motion to Deny and Dismiss. All the
12 parties have submitted briefs, but I will certainly give
13 the parties time if they've got anything that they need
14 specifically to emphasize from their briefs or any new
15 information, to provide that to us before we go to
16 Commissioner questions.

17 And, with that, we will go to the Intervenor
18 representative, Mr. Ganje.

19 MR. GANJE: Good morning and thank you for
20 entertaining this motion. I'm David Ganje, and I
21 represent the Intervenors. This is a Motion to Deny and
22 Dismiss.

23 The Legislature and Commission have established
24 an orderly course of rules to be followed in the
25 Application process. Those rules require at the

1 Application filing stage that the Applicant provide a
2 description or an explanation of significant aspects of
3 the proposed facility.

4 We believe this Application is not ripe for
5 consideration by the Commission. There's too much
6 wanting in the filed Application, and the process is too
7 far along to allow the Applicant to fill in the gaps
8 later. These gaps are fundamental requirements in the
9 rules.

10 Significant issues I raised in the Motion and
11 the Brief and the Reply Brief go to the elements of an
12 Application. They're not merely guideposts or what we
13 would call guidelines. They're elements. The rules we
14 believe were not followed in the beginning, and we are
15 well past the beginning now. We are in the middle, if
16 not past the middle of the Application process.

17 We believe this Application should not be
18 considered. The Application should be denied and
19 dismissed at this time.

20 The Application describes the purpose of the
21 wind farm, but it does not contain the quality of
22 required information I describe in my motion papers,
23 which are requirements of disclosure and requirements of
24 analysis. These required elements are missing in the
25 Application.

1 Accepting the descriptions found in the
2 Application while ignoring the rule-created legal
3 obligations requiring specific information is the failure
4 of the Application that is the basis for our motion here
5 today.

6 With Commission's indulgence, I'll say a few
7 words about the grounds for the motion and then go a
8 little bit -- a little bit but not too much into the
9 grounds because I believe the grounds are described in
10 the Briefs that we've filed and replies have been made by
11 the Staff and by the Applicant.

12 The Staff agrees with the legal standard for a
13 Motion to Deny and Dismiss that I have described in my
14 Brief. Nobody disputes the legal standards. And they
15 really are that first the Application has to generally
16 conform with the rules regarding the presentation of an
17 Application. That is the physical presentation of the
18 thing that we want to discuss, that's -- the form of the
19 Application is not our objection. We are not criticizing
20 the form as it were.

21 The rules go on to say that a dismissal may
22 occur in an Application which does not provide relevant
23 legal content. In that regard, we do have objections,
24 and that is a good part of the basis of the Motion to
25 Deny and Dismiss.

1 And, further, the legal standards require that
2 an Application can be denied or dismissed if it does not
3 comply with South Dakota energy facility statutes and
4 rules related to permitting a wind energy facility.
5 Again, those are the legal standards, and those we
6 believe have not been fulfilled in this matter.

7 So I described the dismissal law briefly. And
8 I'll refer to some rules by citation to number, but you
9 folks are more familiar with the citations and the
10 numbers than I am so I beg your indulgence and apologize.
11 I'll use the last numbers of the rules if I discuss a
12 rule so that we don't have to go through all the full
13 description of the rule.

14 But one of the first fundamental rules is 05.
15 And Rule 05 has all the mandatory contents that should be
16 in the Application. Rule 05 is a shall contain type
17 rule, and that is one of the problems we see with the
18 Application.

19 I would also refer to SDCL 49-41B-1, which says
20 that, of course, there shall be an orderly and timely
21 decision-making with regard to the Application and that
22 the Application must provide a minimum adverse effect on
23 the environment and on other interests.

24 We believe that the Application now as it sits
25 doesn't have all of these things and that it would not be

1 appropriate to go forward with the Application. One of
2 the first things I started to discuss was the requirement
3 for the cost of construction, and that's Rule 09. That
4 is a mandatory obligation, and we don't find in the
5 Application any representation of the cost of
6 construction.

7 There is a discussion of the capital costs, but,
8 as I go through in some length in the Briefs, that really
9 doesn't disclose what the cost is. The cost will help
10 the Intervenors and the public and the Commission
11 understand what the size of the physical project will be.
12 What will it cost to make the project, that's not found
13 in the Application.

14 Another missing element of the Application is
15 the reference in Rule 36. And our argument is there is a
16 failure of the Application to include information
17 necessary for a local review committee to make an
18 assessment of what is to go on if the Application is to
19 go forward.

20 Well, there was no local review committee
21 appointed, and there was no report in the Application of
22 information needed for the local review committee to make
23 an assessment. Though -- I refer to Rule 36 of the
24 citing rules. And then the description, of course, of
25 what a local rule committee will entertain is found in

1 49-41B-7.

2 Again, these are things that are required in the
3 Application but are not found in this Application.

4 Another problem with the Application is the
5 failure to describe the distance between turbines. There
6 is a description, of course, in the Application of the
7 turbines, and there is a typical diagram design in one of
8 the appendices -- or actually in two of the appendices, I
9 believe, showing the typical size of the turbine. But
10 the distance between turbines can't be measured if
11 somebody uses a typical size. You need to describe the
12 size that is going to be used in the subject facility.
13 That is one problem.

14 Another problem I discuss is the fact that
15 there's going to be -- the Application itself suggests
16 that the Applicant reserves the right to have 10 percent
17 of the turbines at a lesser distance than he
18 represents -- or than it represents to be the normal
19 distance as described in the Application.

20 But we don't know how many that 10 percent is,
21 and we don't know what the distance will be of that
22 10 percent. The 10 percent anomaly is said to be based
23 on micrositing, and I believe micrositing is represented
24 to have been completed already in this Application but
25 yet the 10 percent and the number and the location of

1 those anomalous turbines that are allowed to be placed at
2 a closer distance than all other turbines in the proposed
3 applications are not found and cannot be determined with
4 reasonable certainty in the Application.

5 Another problem that I raise in the Brief is the
6 description of ownership. That's a very important one
7 for the Intervenors and for the public and for the
8 Commission. The rule -- I believe it is Rule 07 --
9 requires that there be a complete description of the
10 current and the proposed rights of ownership of the
11 proposed facility. That's, again, a mandatory obligation
12 of the Applicant. A complete description. That's clear
13 and understandable, that phrase. And then it says
14 current and proposed rights.

15 Well, we've indicated in the Brief that there is
16 at least one instance of a party which may be, in fact, a
17 subsidiary of one of the related parties to the
18 Applicant, and that party holds a lease -- or a
19 Memorandum of Lease, which I've described in the Brief.
20 That right would allow the development of wind turbine
21 and/or wind turbine equipment on that property owner's
22 site.

23 And that property owner is, in fact, one of the
24 property owners identified within the parameters, that is
25 within the boundary of the proposed site, but we have no

1 description in the Application of who that company is,
2 what their ownership interests are, except that they have
3 an ownership right to develop a wind energy turbine and
4 related equipment. That is a failure of the purpose of a
5 full description.

6 Just it's really important to know who you're
7 dealing with. And the fact that maybe they can assign it
8 later is irrelevant to the requirement that they disclose
9 now who, by complete ownership, are the current or
10 proposed rights of ownership in a proposed facility. Not
11 just the title owner but the proposed owner.

12 On a somewhat related issue, I discuss the fact
13 that with regard to the wind leases or wind easements
14 with private landowners there's also a problem because
15 there is no failure to disclose or to represent in the
16 Application what the relevant and material terms are of
17 those private leases and easements and how they will
18 affect present land use, how they will affect the land
19 use ordinances and rules that are in effect by two
20 different counties because this Application covers two
21 different counties, I believe, Codrington and Grant
22 County.

23 And there's a failure to represent whether the
24 private lease and easement terms will preempt local
25 controls. So, again, these are mandatory disclosure

1 requirements in our interpretation of the rules, and I'm
2 referring here to Rule 19. And these requirements are
3 "shall provide" obligations. And the fact that they're
4 supposed to discuss the manner in which they shall
5 comply. These are important issues that we don't find in
6 the Application.

7 I would also respectfully indulge a bit more of
8 the Commission's time and discuss the issue -- so-called
9 common issue of mammals, which is described in my first
10 Brief and then in my Reply Brief. Our position is that
11 there is a failure to provide adequate information on the
12 effect of the proposed facility on terrestrial
13 ecosystems, and there is a failure to properly quantify
14 species in detail and plan measures to ameliorate any
15 negative biological impacts. I'm referring here to
16 Rule 13 and Rule 16.

17 Which, again, these are mandatory provisions of
18 an Application. And the relevant words of the rules say
19 that one -- that is, the Application shall calculate
20 these matters and that an analysis of the impact shall be
21 provided.

22 In the Reply Brief I give some more details.
23 For example, I believe it's on paragraph 28 of my Reply
24 Brief discussing in details the shortcoming of the
25 Application and the failure to analyze the problem with

1 regard to otters, which have been located and are
2 identified as a species within the area of the proposed
3 project.

4 And the problem is the obligation -- in the
5 Application -- by the Applicant is that they have to
6 quantify. They have to analyze the impact, and they have
7 to discuss the plan measures based on the current
8 information provided that they should have. And we
9 believe that they don't have current information and
10 didn't have current information particularly with regard
11 to the mammals -- particularly with regard to otters, I
12 should say. And I argue that point particularly on
13 paragraphs, I believe, 29 of my Reply Brief, which is an
14 important issue.

15 One other important issue I would bring to the
16 attention of the Commission is the requirement of safety
17 plans. I believe that 23 Subsection 6 in 40 CFR
18 Part 112.7 require these safety plans. There is a
19 failure to include adequate plans to coordinate with
20 disaster services in the event of an accidental release
21 of contaminants. And there's a failure to provide a
22 specific written SPCC plan in the Application.

23 Now I certainly can see that there's reference
24 to the SPCC rules in the Application plan, that they
25 discuss that, but they don't provide the plan so we don't

1 know what they're doing with regard to that plan because
2 it hasn't been provided. Again, these are discussed --
3 these issues are discussed in more detail in the two
4 briefs that I have filed so in that regard I won't
5 belabor the argument further and stop at that point and
6 entertain any questions or comments.

7 ACTING CHAIR NELSON: Thank you, Mr. Ganje.

8 I think we'll take the other parties before we
9 go to questions. And so, with that, I will turn to
10 Crowned Ridge.

11 MR. SCHUMACHER: Thank you, Commissioner Nelson.

12 Commissioners, this is Miles Schumacher from
13 Lynn, Jackson, Shultz & Lebrun in Sioux Falls on behalf
14 of Crowned Ridge Wind, LLC. I have with me co-counsel
15 Brian Murphy from NextEra. Brian represents project
16 entities before Public Utilities Commission across the
17 U.S. and Canada.

18 We believe that adequate responses have been
19 made in the Applicant's Brief and will address very
20 briefly the points risen by Intervenors this morning.

21 We'd like to point out that much of what
22 Intervenors argue amounts to a factual dispute over
23 whether or not the content in the Application meets
24 really his expectations as to what should be included,
25 that generally the Application, as is required by the

1 statute, generally conforms in form and content to the
2 requirements of the statutes and rules.

3 And the standard is not that every conceivable
4 detail be addressed, but that the content generally
5 conform with the requirements.

6 The Intervenors' arguments do not establish a
7 failure generally to meet the requirements. It's only as
8 to their interpretation as to specific content.

9 I'll address the specific points that he raised
10 in his argument this morning. First with regard to
11 construction costs, the estimated construction cost is
12 provided in the Application in Section 5.2. Details are
13 provided as to what is included in our estimate of
14 construction costs. The rules and the statutes do not
15 dictate what is included in that. The definition in the
16 code goes to 49-41B-4 regarding the construction
17 activities that are prohibited prior to obtaining a
18 permit.

19 Intervenors are arguing that the definition of
20 construction is the same as construction cost. We would
21 maintain that those are two different things. We have a
22 definition of construction for the purpose of determining
23 what is prohibited in the until a permit is issued. On
24 the other hand, we have construction costs that is
25 utilized by the Commission in estimating the filing fee.

1 And we have met that obligation and have set out, again,
2 the content of the estimates so that the Commission has
3 before it the information required under the statutes.

4 With regard to the local review committee, this
5 inquiry has to start with 49-41B-5 regarding Notice of
6 Intent because it is the Notice of Intent process that
7 triggers the local review committee. By definition, a
8 wind project is not included in the projects that require
9 a Notice of Intent, and specifically under 41B-6 it is
10 excluded by definition as far as what requires the local
11 review committee process.

12 41B-10, in fact, states that the local review
13 committee has up to seven months to file its findings.
14 Well, you can't have a seven-month local review process
15 on a six-month Application process. So it just doesn't
16 make any sense under our statutes to require an Applicant
17 to include the local review committee requirements in its
18 Application because it clearly does not apply under the
19 statutes.

20 The next point raised in Intervenors' argument
21 is the lack of specificity in the description of the
22 facility structures. Section 6.1 in Figures 4A and 4B
23 provide the detail that demonstrate the size and height
24 of the turbines. There is sufficient information in the
25 Application in the siting maps to demonstrate the

1 distance between turbines. There is no greater
2 specificity than that required in the rules and the
3 statutes. The Application again generally meets the
4 requirements.

5 With regard to ownership, this is a nonissue.
6 Boulevard is strictly a leasing entity. It does no
7 construction. It does no ownership of projects. The
8 practice is to have the leasing entity secure and obtain
9 leases that are assigned to the project entity, Crowned
10 Ridge Wind, which is identified as the owner
11 appropriately in the Application.

12 There is no ongoing ownership by Boulevard and
13 really no need under the rules or statutes to disclose
14 the fact that Boulevard obtained a lease. That does not
15 translate into Boulevard being an owner or being the
16 party that developed -- you know, constructs the project.

17 Intervenors next argue about the mammal
18 inventory. The Application discloses that the
19 appropriate agencies were consulted, that the available
20 literature was consulted in determining which species
21 need to be specifically dealt with in the terrestrial
22 biotic environment here. The agencies consulted and the
23 available literature did not specify any of the
24 additional species that Intervenors are arguing about
25 today.

1 The rules simply do not require the Applicant to
2 list every conceivable animal and plant that exists on
3 the planet and provide them with treatment. It requires
4 us to consult the agencies, review the literature, work
5 on the information that's available, and disclose the
6 plan that meets the requirements disclosed by those
7 agencies in the literature.

8 Again, the process disclosed in the Application
9 meets the requirements of generally meeting the form and
10 content required under the statutes.

11 With regard to the landowner easements and
12 leases, this has never been and is not a requirement of
13 the Application that we include a copy of the landowner
14 lease and easement. The Application otherwise addresses
15 the process and the information required in the rules and
16 statutes that they've identified, but there is no
17 requirement and it has not been the practice to include a
18 copy of the lease and easement as part of the
19 Application.

20 Clearly, it is available to Staff in response to
21 Data Requests. It's provided -- because it is a private
22 contract between parties that are not part of this
23 proceeding, those being the individual landowners, it is
24 generally afforded confidential status in the process and
25 is not a part of the Application and part of the public

1 record.

2 With regard to safety plans, once again, this is
3 addressed as required by the rules and statutes in
4 general terms in the Application. The Storm Water
5 Protection [sic] Plan and other details are part of the
6 preconstruction compliance filings with the Commission
7 and not part of what's filed with the Application.

8 The Storm Water Prevention Plan is developed as
9 the initial part of the construction phase of the
10 process. And the practice in applications
11 contemporaneous with this one that have been approved
12 with the Commission, this is done as part of the
13 compliance filing, not part of the initial -- of the
14 Application filing.

15 And I believe that covers the specific topics
16 that they've commented on. And, once again, the
17 Applicant feels that the form and content of the
18 Application meets the requirements of the statutes and
19 rules in that it is -- certainly generally contains the
20 information that is required under the rules and
21 statutes.

22 ACTING CHAIR NELSON: Thank you, Mr. Schumacher.
23 We will go to Staff.

24 MS. EDWARDS: Thank you. I have no new
25 information beyond what was provided in my Brief so we

1 are available for questions.

2 ACTING CHAIR NELSON: Thank you.

3 With that, we will go to Commissioner questions,
4 and I'm going to go to Commissioner Fiegen first.
5 Questions.

6 COMMISSIONER FIEGEN: No questions.

7 ACTING CHAIR NELSON: Commissioner Hanson.

8 COMMISSIONER HANSON: I don't have any questions
9 either. I think that there was a real good briefing that
10 was provided to us ahead of time, and I appreciate very
11 much -- first ask can you hear me all right now?

12 ACTING CHAIR NELSON: It will work, yes.

13 COMMISSIONER HANSON: Okay. And I think that
14 the dialogue that just transpired was appropriate, and I
15 don't have any questions.

16 Thank you, Acting Chair.

17 ACTING CHAIR NELSON: Thank you. I do have a
18 question for Mr. Schumacher.

19 In regard to this issue of ownership, you
20 indicated it's a nonissue. I'm not convinced of that
21 yet, but I'm going to give you an opportunity to convince
22 me of that.

23 As I read through the memorandum of leases and
24 easements that was filed by the Intervenor it appeared to
25 me that the purpose of that document was to not exercise

1 an option but to establish an option for -- that may turn
2 into something.

3 Could you step through with me, has that option
4 been exercised with certain of the landowners? Step
5 through that entire process with me so I understand where
6 we're at with that.

7 MR. SCHUMACHER: Thank you, Commissioner. I'll
8 defer to Brian Murphy for that who is much more familiar
9 with that process.

10 ACTING CHAIR NELSON: Certainly. Thank you.
11 Mr. Murphy.

12 MR. MURPHY: Thank you for the question. I'll
13 start with the document that was filed. You'll notice it
14 was executed in 2015. So this is a very early stages of
15 development of our process.

16 It is an option. It has not been exercised at
17 this time. The practice would be that if approved by the
18 Commission, this project moves forward, we would transfer
19 the option and underlying easement to Crowned Ridge, and
20 Crowned Ridge either at that time or just before the
21 transfer we would exercise that option.

22 ACTING CHAIR NELSON: If I could stop you --

23 MR. MURPHY: Absolutely.

24 ACTING CHAIR NELSON: -- right there. So the
25 exercising of that option has not taken place.

1 MR. MURPHY: Has not.

2 ACTING CHAIR NELSON: But you don't know whether
3 it's going to take place before it's transferred to
4 Crowned Ridge or after; is that correct?

5 MR. MURPHY: It could be exercised either way,
6 but it wouldn't happen -- let's put it straightly. If
7 the Commission doesn't approve the project, this is
8 not -- there is going to be no ownership. There's going
9 to be no transfer. This is an early development stage.

10 Once the project LLC is developed, then that
11 entity starts entering into the easement. So this is a
12 very early stage option we may or may not need for this
13 project.

14 And, again, it really doesn't become material
15 until we get approval. If there's no approval, we're not
16 going to exercise the option.

17 And, secondly, as we've already stated, the
18 entity that's going to own the project is Crowned Ridge,
19 LLC, you know. And when I read the Intervenor's Brief I
20 thought to myself, I said, you know, should we have
21 explained this? To me it would have been more confusing
22 to say there is an affiliate that has an early stage
23 option underlying easement that will be transferred when
24 the actual -- in my reading of the rule is the interest
25 of the Commission is to know who's going to own the

1 project, who's going to be responsible for ownership,
2 liability, construction, operation, and maintenance of
3 the project. And Boulevard will not be involved in any
4 of that.

5 ACTING CHAIR NELSON: And so from what you've
6 told me, at this point there are no easements; correct?

7 MR. MURPHY: My understanding, and I went and
8 talked to our real estate department who deals
9 specifically with these projects, that we are not in the
10 practice of exercising options unless the project's going
11 forward. And we normally do that 30 days before
12 construction. And we would be in a compliance phase with
13 you all after an approved order when that happens.

14 Now, with that said, as I think we've explained,
15 if there is an interest in the connection, if there's an
16 interest in how this fits together during the hearing, if
17 the Intervenors or the Commission has questions for our
18 witnesses, we'll be more than happy to answer those
19 questions.

20 ACTING CHAIR NELSON: Thank you. I appreciate
21 your responses.

22 I'm going to go back and just ask -- I have no
23 further questions.

24 Commissioner Hanson or Fiegen, did that prompt
25 anything on your part?

1 COMMISSIONER HANSON: Mr. Chair, I would just
2 ask Mr. Murphy, I think he's answered it as best as he
3 could, but I would like a yes or no on your question.

4 Mr. Murphy, to the best of your knowledge, have
5 you or anyone within your organization exercised any
6 easements at this juncture?

7 MR. MURPHY: For the wind project that's before
8 the Commission in this docket, to the best of my
9 knowledge the answer is no.

10 COMMISSIONER HANSON: Thank you.

11 Thank you, Mr. Chair.

12 MR. GANJE: Mr. Chair, David Ganje speaking.

13 ACTING CHAIR NELSON: Yeah. Let me just check
14 and see. Commissioner Fiegen, do you have any further
15 questions?

16 COMMISSIONER FIEGEN: I think they were
17 answered, and the evidentiary hearing will flush
18 everything out.

19 Thank you.

20 ACTING CHAIR NELSON: Mr. Ganje, did you have
21 something to add?

22 MR. GANJE: May I respectfully reply to the
23 argument of my honorable opposition with regard to the
24 matter of the description of ownership?

25 ACTING CHAIR NELSON: You may briefly, yes.

1 MR. GANJE: Thank you.

2 The rules are very clear because disclosure is
3 needed at the beginning of the Application. That did not
4 occur here.

5 Rule 07 says that the Application shall contain
6 a complete description of the current and the proposed
7 rights of ownership of the proposed facility. The
8 Applicant is indicating that there is a property rights
9 related to this facility, that is the option or easement
10 described in my Briefs, the Boulevard company.

11 This Boulevard company has a legal right and
12 it's a property right and it's a property right to
13 exercise on an option. And it's quite detailed if you've
14 looked at these, and I'm sure that you folks have looked
15 at a lot more of them than I have. But it gives and
16 describes ownership rights.

17 The Applicant was required to describe
18 completely the current and proposed rights of ownership.
19 That would include a description of Boulevard and any
20 other entities so that we would know who these entities
21 are. And that also goes to my argument with regard to
22 representation required of the Applicant regarding the
23 terms of those. Without knowing that, we don't know if
24 they're in compliance at the Application stage with local
25 land use, local ordinances or if they preempt them.

1 That information is not in the Application, and
2 it's in that regard that we believe the Application is
3 faulty.

4 Thank you.

5 ACTING CHAIR NELSON: Thank you.

6 If there are no further Commissioner questions,
7 is there a motion?

8 I will -- in EL19-003, I will move that the
9 Commission deny the Motion to Deny and Dismiss and -- or
10 maybe I should say, however, I do find the Intervenors'
11 argument in relation to ARSD 20:10:22:07 to be
12 persuasive. I do believe that all the ownership
13 interests at the time of the filing of the Application
14 should have been disclosed. And the plans that have been
15 kind of provided to us today I think should have been
16 disclosed in the Application.

17 SDCL 49-41B-13 gives us the option of denying,
18 as has been requested of us, and I've already moved that
19 we will not do that, but I would direct that the --
20 pursuant to that statute that allows us to direct the
21 Application to be amended to include a thorough
22 understanding of all ownership interests would be
23 appropriate.

24 Discussion on the motion.

25 To my colleagues, I apologize. That was a

1 little bit convoluted, but to say succinctly, I would
2 move to deny the motion. I believe that most of the
3 issues that were raised here can be dealt with through
4 the remainder of the process without any injury to the
5 Intervenors.

6 The issue of the local review committee, I
7 absolutely agree that the statute does not require that.
8 It clearly excludes that. That's a nonissue. I do find,
9 however, that these ownership interests should have been
10 disclosed. But I think that could be done by amendment.
11 The statute anticipates that. And I would prefer to
12 handle it through that amendment process expeditiously as
13 opposed to denying the entire Application and restarting
14 the process.

15 Additional discussion on the motion.

16 Hearing no --

17 COMMISSIONER HANSON: Mr. Chair.

18 ACTING CHAIR NELSON: Yes. Commissioner Hanson.

19 COMMISSIONER HANSON: I was pausing to allow
20 Commissioner Fiegen to discuss if she wanted to.

21 I appreciate your motion very much. ARSD --
22 well, 07, Rule 07, I'll call it, I have circled as having
23 merit, and I appreciate very much the discussion back and
24 forth on that. And I appreciate your motion pertaining
25 to the requiring completeness of the description.

1 I think that is very pertinent from the
2 standpoint of knowing who is going to be the owner. And
3 I'm always curious is this going to end up being owned by
4 a Chinese consortium or Spanish or wherever is going to
5 be financially gaining from the wind projects in
6 South Dakota.

7 I think Mr. Ganje brings out a number of good
8 points regarding the completeness of applications. Our
9 staff -- frankly, it's been frustrating to me to see the
10 number of Data Requests that staff has to go through.
11 Sometimes extensive processes in obtaining additional
12 information, and that's been our standard operating
13 procedure for some time.

14 And I think that the Intervenors' positions here
15 have brought some -- at least some of my concerns to the
16 forefront, and hopefully applications will be more
17 complete in the future. Because I've been frustrated
18 very much with the challenges that Staff has in obtaining
19 additional information.

20 And, frankly, going through the Data Requests
21 you certainly can obtain the information that is not
22 presented through the Application process. However, the
23 dilatoriness of obtaining the information places the
24 Intervenors at a disadvantage, and that concerns me. I
25 think it places us at a bit of a disadvantage as well,

1 from the standpoint of the number of wind farms that we
2 are engaged with at the present time.

3 So I do very much appreciate this exercise. I
4 think it's valuable for the future of the Commission. I
5 do believe that a lot of the items that were presented
6 will be taken care of through the evidentiary hearing so
7 I don't believe that they constitute at this juncture
8 telling the Applicant -- denying the Applicant, rather,
9 the opportunity to continue to pursue their Application.
10 So I will support the motion.

11 I do agree that the local review committee is
12 not a part -- well, I'm not going to go through all the
13 different arenas because I believe that the Rule 07, as
14 we've been referring to, is the main one that concerns us
15 at this point. But all of the other ones, if they have
16 not yet been answered, certainly need to be answered
17 during the process of the Application and the evidentiary
18 hearing.

19 So thank you very much to you, Mr. Chair, for
20 the motion and to all those who participated and provided
21 this information to us.

22 Thank you.

23 COMMISSIONER NELSON: Commissioner Fiegen,
24 comments.

25 COMMISSIONER FIEGEN: You know, Mr. Chairman or

1 interim Chairman, I appreciate all the Briefs. The
2 Briefs were very thorough, easy to read, and I appreciate
3 the updates this morning. And I believe this is
4 premature, and the evidentiary hearing will iron out a
5 lot of these issues and air out and see where we land
6 during the evidentiary hearing.

7 So thank you, interim Chairman Nelson, and I'll
8 be supporting your motion.

9 ACTING CHAIR NELSON: All those in favor will
10 vote aye; those opposed, nay.

11 Commissioner Fiegen.

12 COMMISSIONER FIEGEN: Fiegen votes aye.

13 ACTING CHAIR NELSON: Commissioner Hanson.

14 COMMISSIONER HANSON: Aye.

15 ACTING CHAIR NELSON: And Nelson votes aye.

16 Motion carries.

17 Is there a motion to adjourn?

18 COMMISSIONER HANSON: Move to adjourn.

19 ACTING CHAIR NELSON: Motion to adjourn by
20 Hanson. All those in favor will vote aye; opposed, nay.

21 Commissioner Fiegen.

22 COMMISSIONER FIEGEN: Fiegen votes aye.

23 ACTING CHAIR NELSON: Commissioner Hanson.

24 COMMISSIONER HANSON: Aye.

25 ACTING CHAIR NELSON: And Nelson votes aye. We

1 are adjourned.

2 (The proceeding is concluded at 9:45 a.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY)

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

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 9th day of
11 May, 2019, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 7th day of
14 June, 2019.

15

16

17

18 /s/ Cheri McComsey Wittler
19 Cheri McComsey Wittler,
20 Notary Public and
21 Registered Professional Reporter
22 Certified Realtime Reporter

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I	7	allows [1] - 25:20 ameliorate [1] - 11:14 amended [1] - 25:21 amendment [2] - 26:10, 26:12 amounts [1] - 13:22 analysis [2] - 4:24, 11:20 analyze [2] - 11:25, 12:6 AND [1] - 1:5 animal [1] - 17:2 anomalous [1] - 9:1 anomaly [1] - 8:22 answer [2] - 22:18, 23:9 answered [4] - 23:2, 23:17, 28:16 anticipates [1] - 26:11 apologize [2] - 6:10, 25:25 appeared [1] - 19:24 appearing [3] - 1:19, 1:21, 1:22 appendices [2] - 8:8 Applicant [15] - 4:1, 4:7, 5:11, 8:16, 9:12, 9:18, 12:5, 15:16, 17:1, 18:17, 24:8, 24:17, 24:22, 28:8 Applicant's [1] - 13:19 APPLICATION [1] - 1:4 Application [78] - 3:7, 3:25, 4:1, 4:4, 4:6, 4:12, 4:16, 4:17, 4:18, 4:20, 4:25, 5:2, 5:4, 5:15, 5:17, 5:19, 5:22, 6:2, 6:16, 6:18, 6:21, 6:22, 6:24, 7:1, 7:5, 7:13, 7:14, 7:16, 7:18, 7:21, 8:3, 8:4, 8:6, 8:15, 8:19, 8:24, 9:4, 10:1, 10:16, 10:20, 11:6, 11:18, 11:19, 11:25, 12:5, 12:22, 12:24, 13:23, 13:25, 14:12, 15:15, 15:18, 15:25, 16:3, 16:11, 16:18, 17:8, 17:13, 17:14, 17:19, 17:25, 18:4, 18:7, 18:14, 18:18, 24:3, 24:5, 24:24, 25:1, 25:2, 25:13, 25:16, 25:21, 26:13, 27:22, 28:9, 28:17 applications [4] - 9:3, 18:10, 27:8, 27:16 apply [1] - 15:18	appointed [2] - 7:21, 31:8 appreciate [8] - 19:10, 22:20, 26:21, 26:23, 26:24, 28:3, 29:1, 29:2 appropriate [4] - 7:1, 16:19, 19:14, 25:23 appropriately [1] - 16:11 approval [2] - 21:15 approve [1] - 21:7 approved [3] - 18:11, 20:17, 22:13 area [1] - 12:2 arenas [1] - 28:13 argue [3] - 12:12, 13:22, 16:17 arguing [2] - 14:19, 16:24 argument [7] - 7:15, 13:5, 14:10, 15:20, 23:23, 24:21, 25:11 arguments [1] - 14:6 ARSD [2] - 25:11, 26:21 aspects [1] - 4:2 assessment [2] - 7:18, 7:23 assign [1] - 10:7 assigned [1] - 16:9 attached [1] - 31:11 attention [1] - 12:16 available [5] - 16:19, 16:23, 17:5, 17:20, 19:1 Avenue [1] - 2:3 aye [8] - 29:10, 29:12, 29:14, 29:15, 29:20, 29:22, 29:24, 29:25	biotic [1] - 16:22 bit [5] - 5:8, 11:7, 26:1, 27:25 boulevard [1] - 16:6 Boulevard [7] - 16:12, 16:14, 16:15, 22:3, 24:10, 24:11, 24:19 boundary [1] - 9:25 Brian [4] - 1:19, 13:15, 20:8 brief [9] - 4:11, 5:14, 9:5, 9:15, 9:19, 11:10, 13:19, 18:25, 21:19 Brief [5] - 4:11, 11:10, 11:22, 11:24, 12:13 briefing [1] - 19:9 briefly [3] - 6:7, 13:20, 23:25 briefs [8] - 3:12, 3:14, 5:10, 7:8, 13:4, 24:10, 29:1, 29:2 bring [1] - 12:15 brings [1] - 27:7 brought [1] - 27:15 Building [1] - 3:5 BY [1] - 1:4
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