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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 GRANT AND CODINGTON COUNTIES

EL19-003  
ORIGINAL

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Transcript of Proceeding  
July 9, 2019  
9:45 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  
Adam de Hueck  
Eric Paulson  
Jon Thurber  
Patrick Steffensen  
Joseph Rezac  
Lorena Reichert  
Darren Kearney  
Brittany Mehlhaff  
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;

David Ganje,  
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 9th day of July, 2019, commencing at  
5 9:45 a.m.

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1           CHAIRMAN HANSON: EL-003, In the Matter of the  
2 Application by Crowned Ridge Wind, LLC for a Permit of a  
3 Wind Energy Facility in Grant and Codington County.

4           The question before the Commission is shall the  
5 Commission, grant, deny, or grant with conditions a  
6 permit for the construction of a wind energy facility to  
7 Crowned Ridge Wind, LLC pursuant to South Dakota Codified  
8 Law 49-41B-25? Or how shall the Commission proceed?

9           We had agreed by order that we would provide the  
10 Applicants 10 minutes, the Intervenors 10, Staff 10, and  
11 then the Applicant 3 minutes for an opportunity to do  
12 some -- I don't want to call it recross. Attempt at  
13 rebuttal, I guess I will say.

14           First I'd like to acknowledge the receipt of the  
15 letter from the U.S. Fish & Wildlife Service and the  
16 Applicant's letter of response to that and Mr. Ganje's  
17 letter in regard -- or motion regarding striking it.

18           They will be filed as part of the docket.  
19 However, these items were not presented during an  
20 evidentiary hearing so all of it is just simply going to  
21 be filed as part of the docket as we do with any  
22 correspondence during the process.

23           There are, of course, portions of the letter  
24 from the U.S. Fish & Wildlife Service that was presented  
25 during the meeting -- during the evidentiary hearing so

1 that obviously exists, but the rest of it is just part of  
2 a communication system so it's not part of the actual  
3 evidence.

4 So Mr. Ganje's Motion to Exclude is not  
5 necessary because it's excluded just by the fact that it  
6 wasn't part of the evidentiary hearing.

7 So we will move then to the oral testimony from  
8 the parties at this time, and the Applicant will have --  
9 you don't have to take all 10 minutes, but you have --  
10 you have 10 minutes.

11 MR. SCHUMACHER: Thank you, Chairman Hanson.  
12 Commissioners, Miles Schumacher, Lynn, Jackson, Shultz &  
13 Lebrun on behalf of Crowned Ridge.

14 The weight of the record in this proceeding  
15 shows that Crowned Ridge has met its burden of proof on  
16 each of the four statutory elements of SDCL 49-41B-22 and  
17 the other applicable requirements of Chapter 49-41B.

18 On the first element of 49-41B-22, the project  
19 will comply with all applicable laws and rules, including  
20 the county setbacks required in Grant and Codington  
21 Counties. Further, Crowned Ridge has agreed to  
22 Condition 1, which requires it to obtain all governmental  
23 permits which reasonably may be required by any  
24 applicable governmental unit. There is no evidence in  
25 the proceedings that the project will not comply with all

1 applicable laws and rules.

2 The Intervenors' proposed Findings of Fact  
3 generally argue that since Crowned Ridge has not yet  
4 submitted certain permits for approvals it is not showing  
5 it will comply with the law. However, there is no  
6 requirement that Crowned Ridge obtain all permits prior  
7 to the close of the record.

8 Crowned Ridge in Section 24 of its Application  
9 listed the applicable permits and approvals, and as has  
10 been done in other recent wind proceedings, Crowned Ridge  
11 will adhere to the requirements of Condition No. 1 and  
12 obtain all required permits for construction and  
13 operation of the project prior to engaging in the  
14 particular activity covered by that permit and will file  
15 those permits with the Commission as part of its  
16 compliance filings. Crowned Ridge has, therefore, met  
17 its burden of proof that it will comply with all  
18 applicable laws and rules.

19 On the second element of SDCL 49-41B-22, the  
20 evidence shows that the project will not pose a threat of  
21 serious injury to the environment nor to the social and  
22 economic condition of the inhabitants or expected  
23 inhabitants in the siting area. Crowned Ridge is  
24 committed to implement numerous and reasonable avoidance  
25 mitigation measures to minimize the impact on the

1 environment. It has conducted consultation with  
2 South Dakota Native American tribes to protect cultural  
3 resources in addition to working with South Dakota SHPO.

4           Intervenors contend that some of Crowned Ridge's  
5 studies are still in process and that it did not study  
6 the Cattle Ridge portion of the project area.

7 Intervenors apparently incorrectly believe that the  
8 environmental and cultural study and protection is a  
9 static process. It is not. It is a dynamic process in  
10 which Crowned Ridge continues to work to ensure that the  
11 environmental and cultural protection of the Crowned  
12 Ridge Project continues throughout the development,  
13 construction, and operation period as was explained by  
14 Witness Sappington at the evidentiary hearing.

15           Witness Sappington also explained that the  
16 Cattle Ridge portion was studied, and she did coordinate  
17 with the appropriate state agencies by providing  
18 shapefiles, which are what the agencies use to understand  
19 impacts, not the two dimensional map, which is the focus  
20 of Intervenors' arguments.

21           The Intervenors raise issues of whether Crowned  
22 Ridge addressed mammals such as the northern [sic] river  
23 otter. Not only did the Application address this but  
24 witness Sappington in her rebuttal addressed the northern  
25 river otter in the context of the project.

1           Staff Witness Kirschenmann also addressed this  
2 mammal stating, "Filing a Storm Water Pollution  
3 Prevention Plan and putting into place practices to  
4 reduce or eliminate sedimentation will help negate  
5 potential negative impacts to northern river otters that  
6 may be entering near the project area." Applicant has  
7 committed to file a Storm Water Pollution Prevention  
8 Plan, including practices to mitigate sedimentation.

9           Among other commitments, Applicant is required  
10 under Condition No. 32 to conduct two years of  
11 independently conducted postconstruction avian and bat  
12 mortality monitoring for the project. The Applicant  
13 committed to file a wildlife conservation strategy, which  
14 includes both direct and indirect effects, as well as the  
15 wildlife mitigation measures set forth in the Application  
16 prior to starting construction.

17           Pursuant to Condition No. 33, the Applicant will  
18 file a Bird and Bat Conservation Strategy again prior to  
19 the start of construction. The evidence again shows the  
20 project will not pose a serious threat of injury to the  
21 environment.

22           Turning to economic impacts, the project will  
23 produce benefits to the community, including the payment  
24 of property taxes, lease payments, temporary jobs for  
25 250 construction workers and 12 permanent workers

1       stationed in South Dakota.

2               Crowned Ridge has also agreed to Conditions  
3 No. 7, 8, and 24 that address impacts on local  
4 communication and transportation systems. It has  
5 provided three studies in Attachment K of its Application  
6 that show the project is expected to have a negligible  
7 effect, if any, on the assessed value of private property  
8 and, therefore, on property taxes.

9               In summary, some of the evidence in this  
10 proceeding and subject to the proposed conditions set  
11 forth in Attachment A of Crowned Ridge's Brief, Crowned  
12 Ridge has met its burden that the project will not pose a  
13 threat of serious injury to the environment, nor to the  
14 social and economic condition of the inhabitants or  
15 expected inhabitants in the siting area.

16               Similarly, the record shows that the project  
17 will not substantially impair the health, safety, or  
18 welfare of the inhabitants. Applicant has appropriately  
19 minimized the sound level produced from the project to no  
20 more than 45 dBA at any nonparticipant's residence and no  
21 more than 50 dBA at any participant residences.

22               Crowned Ridge's sound level also complies with  
23 the ordinances in Codington and Grant Counties, as well  
24 as applying the more restrictive Grant County sound  
25 ordinance for the entire project.

1           The project also complies with Grant and  
2           Codington County ordinances not to produce more than  
3           30 hours of shadow flicker annually with the exception of  
4           one participant that is at approximately 37 hours, and  
5           Crowned Ridge is committed to work with that participant  
6           for a waiver on shadow flicker or curtail the turbine so  
7           that the participant does not experience more than  
8           30 hours annually.

9           The studies that produce the sound and flicker  
10          results use a number of assumptions to produce very  
11          conservative results.

12          Crowned Ridge presented a Ph.D. and medical  
13          doctor, both with many years of relevant experience, that  
14          testified that the project as designed will not  
15          substantially impair the health or welfare of the  
16          inhabitants. There is no evidence to the contrary.

17          Instead, Intervenors argue that Staff Witness  
18          Hessler and Dr. Ollson support the imposition of a 40 dBA  
19          threshold. But a plain reading of the hearing transcript  
20          and exhibits presented shows that Intervenors are wrong.  
21          Neither Mr. Hessler nor Dr. Ollson's past statements or  
22          testimony in this proceeding, unless manipulated beyond  
23          their original intent, can be read to support imposing a  
24          40 dBA threshold for this project.

25          Further, Crowned Ridge worked with Staff to

1 adopt and codify in Condition No. 26 Witness Hessler's  
2 proposal to use alternative turbine sites instead of  
3 primary sites as a way to reduce certain nonparticipant  
4 sound despite the evidence from both doctors that the  
5 project as proposed would not substantially impair the  
6 health or welfare of the inhabitants.

7           Turning to safety, the Applicant will meet or  
8 exceed required setbacks established for safety and also  
9 implement safety practices during construction,  
10 operation, and maintenance, including grounding wind  
11 turbines in accordance with National Electrical Safety  
12 Codes. The Applicant will monitor the operation of the  
13 project 24 hours a day seven days a week through the  
14 Supervisory Control And Data Acquisition System.

15           The Applicant will implement a Storm Water  
16 Pollution Prevention Plan and a Spill Prevention Control  
17 and Countermeasures Plan, part of which will coordinate  
18 with state and local disaster services in the event of  
19 the accidental release of contaminants.

20           Condition No. 40 also requires the Applicant to  
21 use two methods to detect icing conditions on turbine  
22 blades to shut down the turbines when they are  
23 accumulating ice. Thus, the evidence shows that the  
24 project will not substantially impair safety.

25           The record also demonstrates that the proposed

1 project will not unduly interfere with the orderly  
2 development of the region, which is demonstrated by the  
3 granting of conditional use permits for the project by  
4 Grant and Codrington Counties.

5 In support of financial protections for  
6 decommissioning, Crowned Ridge has agreed to establish an  
7 escrow agreement consistent with the Commission's past  
8 rulings. The Applicant does, however, request that the  
9 Applicant be allowed that the escrow agreement be filed  
10 30 days instead of 60 days prior to commencement of  
11 commercial operations so Crowned Ridge has that time to  
12 work with the counties to recognize that the Commission  
13 has taken the lead on decommissioning so that we don't  
14 have duplicative escrow requirements on the project.

15 Crowned Ridge also will state that it agrees  
16 with Staff's proposed change to Condition No. 12, which  
17 we received yesterday.

18 In sum, the project has met its burden of proof  
19 to be granted a facilities permit, and Crowned Ridge  
20 would respectfully request that the Commission vote to  
21 grant the permit.

22 Thank you.

23 CHAIRMAN HANSON: Thank you very much. And did  
24 you state your name at the beginning, Mr. Schumacher.

25 MR. SCHUMACHER: I did. And, for the record,

1 Mr. Murphy will cover the rebuttal portion of the  
2 argument.

3 CHAIRMAN HANSON: Thank you.

4 We will then turn to Intervenors. Mr. Ganje.

5 MR. GANJE: Thank you, Mr. Commissioner. This  
6 is David Ganje speaking on behalf of the Intervenors. I  
7 would respectfully refer to the Intervenors' Proposed  
8 Findings of Fact, Conclusions of Law, Intervenors'  
9 Posthearing Brief in this matter for a detailed  
10 discussion of the issues and concern that Intervenors  
11 have.

12 I will state and discuss some of the issues in  
13 my 10 minutes but I won't be able to discuss all of them  
14 of course and I don't know that you would want to  
15 necessarily hear all of them.

16 I would respectfully submit that the Commission  
17 should not consider the evidence submitted in support of  
18 the sound and flicker modeling which does not meet the  
19 test of reliability. When evidence is reliable it is  
20 able to be trusted, and it must be definitive.

21 The disclaimers written in the sound and flicker  
22 studies negate reliability of the evidence. The  
23 disclaimers expressly state in writing that no one should  
24 or can rely on the information provided. I would  
25 respectfully submit that it would be a bad precedent if

1 the disclaimer of liability and the limitation of remedy  
2 given by the sound and flicker expert in this proceeding  
3 were accepted by the Commission. Such a practice would  
4 be greeted with suspicion by the public and the affected  
5 inhabitants. It would be bad public policy to accept  
6 such an unwarranted technical work as the basis for  
7 granting the permit. I discussed in some detail the  
8 disclaimer issue in the paperwork submitted after the  
9 evidentiary hearing.

10 Next I would discuss the Applicant's last  
11 turbine map, which is Exhibit A55. This map is a  
12 confused mix of existing land rights as well as proposed  
13 turbine drops and turbine moves. The map does not  
14 indicate where the moves will be placed, but that is only  
15 part of the problem. That map lists three landowner  
16 parcels inside the project as "pending," and pending  
17 means they don't have agreements.

18 And this is all after the Applicant disclosed  
19 supposed lapsed landowner agreements pursuant to order of  
20 this Commission on Friday, June 7. So what we have here  
21 is an incomplete map and an incomplete project, and we  
22 have an incomplete ability to understand the project,  
23 even though they were required to list all of this stuff  
24 before.

25 Under the Administrative Rules if a wind energy

1 facility is proposed, the Applicant must provide a  
2 disclosure of the setback distances from the property  
3 lines. Setback distances are not found anywhere in the  
4 Application with regard to Grant County property lines.

5 Next I would ask the Commission respectfully to  
6 consider the testimony of Mr. Baker, the Applicant's land  
7 value expert. Land values were really not presented by  
8 the Applicant as required by South Dakota rules.  
9 Mr. Baker did not know or review property values in  
10 Codington and Grant County. He was unfamiliar with the  
11 market and with the values. He did not compare or  
12 understand the consequences of the project on the values  
13 in Grant and Codington County. It's not in the  
14 testimony.

15 Next I would ask the Commission to consider the  
16 fact that Applicant failed to include anywhere in the  
17 Application any overhead maps for use of the public and  
18 the Intervenors to understand better what was going on  
19 with this proposal. There are no overhead maps in this  
20 record.

21 Next I would ask the Commission to consider a  
22 problem with this -- a large problem with this  
23 Application. 15,000 acres known as the Cattle Ridge  
24 portion of the project are unaccounted for under  
25 Applicant's duty to provide environmental studies. This

1 amounts to an area which includes 25 designated and  
2 alternate turbines.

3 Biological impacts were not adequately analyzed.  
4 Applicant did no avian study whatsoever of the Cattle  
5 Ridge portion of the project.

6 Next I would ask the Commission to consider my  
7 objections to the testimony of Ms. Sappington.  
8 Ms. Sappington was allowed to testify to the prior filed  
9 prefiled testimony of Ms. Wells, Kimberly Wells.  
10 Ms. Sappington is an archeologist, and Ms. Wells is a  
11 wildlife biologist specialist. In fact, Ms. Wells'  
12 prefiled testimony asserted numerous conclusions and  
13 opinions that had to do with the impacts on wildlife.  
14 Those are areas that Ms. Sappington should not have been  
15 allowed to testify, and I do not believe the Commission  
16 should consider her testimony as reliable.

17 Next I would address some of the Mr. Hessler  
18 recommendations. Mr. Hessler made a recommendation to  
19 relocate 16 turbines, but the Applicant in reality is  
20 only offering to move six turbines, not the seven some of  
21 the record indicates that they're talking about.

22 Applicant proposes to drop 16 turbines from the  
23 project, but these are not the 16 turbines Hessler  
24 recommends to the Commission. Of the Hessler  
25 recommendation, Applicant only proposes to drop six

1 turbines. And the representation that Applicant will  
2 drop the 16 is again a false presentation to the  
3 Commission.

4 The number of turbines dropped include five  
5 turbine locations with expired leases. Well, they  
6 couldn't use them anyway. They're not dropped. They're  
7 unavailable to the Applicant. And, further, two of the  
8 so-called drop turbines are not related to this project.  
9 The two are a part of a project called Crowned Ridge  
10 No. II. They're turbines that belong to Crowned Ridge  
11 II, not this project.

12 And, further, three of the turbines proposed to  
13 be moved are not related to this project. The three  
14 turbines are part of Crowned Ridge No. II project, again  
15 not this project.

16 10 of the recommended relocations will still be  
17 in place and not moved if this project is approved by the  
18 Commission. And regarding relocation of turbines, at the  
19 end of its case the Applicant still has not disclosed or  
20 chooses not to disclose where it will be relocating  
21 turbines. The 16 relocations are recommended by Witness  
22 Hessler because in his opinion "they are unduly and  
23 unnecessarily affecting nonparticipating residents."

24 This cannot be ignored by the Commission. The  
25 Applicant's several witnesses in this proceeding do not

1 reflect any dispute or any criticism with the  
2 recommendation of Mr. Hessler that 16 turbines should be  
3 relocated.

4 I'll next say a few words about mammal studies.  
5 Applicant has done no mammal studies, even though Staff  
6 Witness Kirschenmann testified that rigorous wildlife  
7 surveys should be completed, and a survey by definition  
8 of Fish & Wildlife includes an inventory and monitoring  
9 at the same time. That was not done.

10 Next I would submit to this Commission with all  
11 respect that this project results in a taking of property  
12 rights, period. Mr. Haley measured sound at residences  
13 rather than at landowners' property lines as required by  
14 the Codington County Ordinance. The record will reflect  
15 that.

16 Next I will suggest that the Applicant is  
17 arguing that no substantial evidence contradicts the  
18 testimony of two of its witnesses, Ollson and McCunney.  
19 That's not true. Staff Witness Hessler indicated 16  
20 times in this hearing, including in his prior writings,  
21 his opinion that 40 dBA should be the sound standard for  
22 a wind farm. And Applicant witness Ollson indicated 10  
23 times in this record, including in his prior writings,  
24 that 40 dBA should be the sound standard for a wind farm.

25 That is evidence and that is substantial

1 evidence and it contradicts any statements made in  
2 support of Applicant's request for a 45 and 50 dBA  
3 standard.

4           Next, a preconstruction sound survey was  
5 recommended by Staff Witness Hessler and, indeed, was  
6 recommended in prior writings by Applicant Witness  
7 Ollson. A preconstruction sound survey is in the best  
8 interest of the community and the inhabitants, yet it has  
9 not been done, and it was not done by the Applicant in  
10 this case.

11           This is an incomplete Application under any  
12 interpretation. I respectfully again refer the  
13 Commission to Intervenors' Proposed Findings of Fact  
14 which lists the incomplete nature of the Application and  
15 detail. There is no full, adequate, and understandable  
16 picture of this Application that's been presented upon  
17 which Intervenors could understand what will happen if  
18 this project is constructed.

19           I would respectfully ask that the Commission  
20 deny the Application and deny granting the permit.

21           Thank you.

22           CHAIRMAN HANSON: Thank you, Mr. Ganje. A  
23 number of interesting points.

24           And we will turn our attention to Staff.  
25 Ms. Edwards.

1 MS. EDWARDS: Thank you. This is Kristen  
2 Edwards for Staff. In our brief we laid out three main  
3 focus areas, the first being the escrow account, the  
4 shadow flicker at receptor No. 10, which is 37 hours, and  
5 the postconstruction lek monitoring.

6 First to speak to the decommissioning escrow  
7 account. Staff's main concern was that any escrow  
8 account established had the protections afforded by  
9 Senate Bill 16 which went into effect on July 1, and this  
10 was discussed in our brief.

11 Based upon the concessions Applicant made in  
12 their brief on page 11, it sounds like we have resolved  
13 this issue. In its brief Applicant asked for two things  
14 regarding the escrow condition; first 30 days, not 60,  
15 and, second, a finding that the escrow will be sufficient  
16 for decommissioning the entire project.

17 The 60 days is just the standard we've asked for  
18 in the past and other companies have had as a condition  
19 on their permits. We don't take any position on either  
20 of those requests from the company, though.

21 One thing I would note, though, is when the  
22 company does file that escrow account if it is within  
23 30 days, they need to be cognizant of the Commission's  
24 schedule because it requires approval before commercial  
25 operation. So they need to be cognizant of the need to

1 get that in front of the Commission and have time to  
2 review it.

3 The only other thing I'd say with respect to the  
4 escrow account is just for the benefit of others in this  
5 room that are dying to know how we review the banks.  
6 When they do file that we'll look into the FDIC has a  
7 website where you can check the financial stabilities of  
8 the bank right down to their return on equity and see how  
9 viable they are, if they've had any failures in the past,  
10 to see where all of their locations are.

11 We do a Westlaw search to see if they have any  
12 red flag lawsuits out there and run a general internet  
13 search to see what their locations look like and make  
14 sure they meet the legal standard for systematic and  
15 continuous contacts in the forum. So all of that will be  
16 done when the escrow account is filed.

17 Next the shadow flicker at receptor No. 10,  
18 which is a participating landowner in Codington County.  
19 Right now the way it's modeled, they'll have 37 hours of  
20 shadow flicker, which would either require a waiver or  
21 some sort of mitigation to get it below the 30 hours  
22 required by the county.

23 I would have liked to have known by now whether  
24 or not they were going to get the waiver, but based upon  
25 the statements they just made and those in their briefs,

1 it doesn't sound like they have accomplished that yet,  
2 although they must hope to. It would have been nice to  
3 know at this point whether it's been obtained.  
4 Therefore, Staff recommends a curtailment plan be  
5 submitted and approved by the Commission. That way we  
6 have a firm commitment and know what turbine will be  
7 curtailed, when it will be curtailed, and how it will be  
8 curtailed going into this.

9           Next the lek surveys. Applicant continues to  
10 resist the lek surveys advocated for by Staff and its  
11 witness. As you may recall from Mr. Kirschenmann's  
12 testimony, we are not talking about an extensive or  
13 expensive survey. We are talking about an estimated  
14 15 days of survey effort for a 25-year project.

15           Crowned Ridge chose not to adhere to the  
16 one-mile setback that some other projects have and that  
17 U.S. Fish & Wildlife advocates but that it should comply  
18 with a reasonable alternative, which is Staff's proposed  
19 condition as filed as Exhibit S7.

20           The record supports this condition, and it is  
21 further supported by the lack of any meaningful rebuttal  
22 on the part of the Applicant.

23           In conclusion, we would definitely like to take  
24 a moment to commend the Applicant for working with Staff  
25 with the Hessler seven. It is definitely refreshing to

1 see that willingness to take some mitigation efforts upon  
2 Staff's request.

3           And as far as Condition No. 12 that  
4 Mr. Schumacher just mentioned, we didn't file that in the  
5 docket but it came up and we brought it to Applicant's  
6 attention yesterday that the condition doesn't specify  
7 when the plan should be filed and it seems intuitive that  
8 the cultural studies plan would be filed prior to  
9 commencement of construction. However, it wasn't  
10 specified in the condition that it would be prior to  
11 commencement of construction, and that issue came up with  
12 a different project so we wanted it to just be laid out  
13 in there in Condition No. 12. So we would just ask that  
14 the language prior to commencement of construction be  
15 added to that condition.

16           Thank you.

17           CHAIRMAN HANSON: Thank you very much. And we  
18 will turn to the Applicant for a three-minute rebuttal.

19           MR. MURPHY: Thank you. Brian Murphy on behalf  
20 of Crowned Ridge Wind. I will be brief, and I appreciate  
21 the comments of Staff with regard to the Hessler seven.  
22 But I'll start with the witnesses and Intervenors are  
23 stating their testimony should not be in the evidentiary  
24 record. I thought the Commission was very clear in their  
25 rulings during the evidentiary record that the

1 reliability and weight of those witnesses would be taken  
2 into account and that those objections were overruled. I  
3 did not hear anything new from the Intervenors' argument  
4 or evidence that suggests that the Commission should  
5 change its mind on giving the proper weight to the  
6 witnesses that were presented over the objections  
7 deleting that testimony from the evidentiary record.

8           With regard to the Cattle Ridge Project, the  
9 study of mammals, the avian studies, I would refer the  
10 Commission to page 4 in the Footnote 17 of our brief that  
11 lays out specifically studies that were done for Cattle  
12 Ridge, how they were done, the evidentiary evidence from  
13 our witnesses, how that was communicated to the agencies.  
14 I would also point to our Application in Section 11 that  
15 explains how the avian impacts for the Cattle Ridge  
16 portion was folded into the Application.

17           To me the record is replete with references not  
18 just to the entire project but studies of the entire  
19 project. I would reiterate to what Attorney Schumacher  
20 stated, and it is our solid position that these studies  
21 are not static. They are dynamic, and we have continued  
22 to coordinate with the actions on the entire project area  
23 and will continue to do so throughout the term of this  
24 project.

25           Our conditions go to the entire project area.

1 Our studies have been full and with regard to the entire  
2 project area. I just want -- and I'm happy to answer any  
3 questions along those lines, but I think the record is  
4 clear.

5 With regard to pending landowners, I have the  
6 latest status on those landowners. Happy to share that  
7 with the Commission if that is so desired, but our  
8 position at the evidentiary hearing and today is we have  
9 the land necessary to construct the project. We don't  
10 need those additional landowners to do so.

11 With regard to the lek survey and  
12 postconstruction monitoring, I respect Staff's position.  
13 I also believe that we have indicated in regard to Data  
14 Requests our testimony, specifically our Rebuttal  
15 Testimony, that given the low population of leks in this  
16 area, that setting a precedent of doing postconstruction  
17 monitoring for leks would be one that we could not  
18 support unless ordered upon us.

19 We will obviously do it if it's ordered, but we  
20 don't think the record supports in this area of the state  
21 doing that postconstruction monitoring.

22 Thank you, and we're happy to answer any  
23 questions. We have folks on the phone if you so desire.

24 CHAIRMAN HANSON: Thank you.

25 Questions by Commissioners.

1 Commissioner Nelson.

2 COMMISSIONER NELSON: Thank you.

3 Just a couple. When we left the evidentiary  
4 hearing there was one matter that was still up in the  
5 air, and that was the FAA's determination on five of your  
6 proposed turbines.

7 Can you give us an update on that issue?

8 MR. MURPHY: My understanding is that that still  
9 is in the works and should be done in the next month, but  
10 we don't have it at this time.

11 COMMISSIONER NELSON: And so we can wait a month  
12 to issue our decision then? Is that --

13 MR. MURPHY: We would hope not. But we also  
14 understand we cannot construct those without the  
15 determination of no hazard, and they're in an area we  
16 believe we could, if the Commission grants us a permit,  
17 start construction and at the appropriate time alert the  
18 Commission that we have got that notice of no hazard from  
19 the FAA and continue with construction of those turbines.

20 As we stated at the hearing, we feel very  
21 confident we're going to get it for the reasons that were  
22 stated in the evidentiary record.

23 COMMISSIONER NELSON: Okay. And you kind of  
24 went where my follow-up question was going to go. But I  
25 just want to be very clear that your testimony is you

1 will not construct those turbines unless you have FAA  
2 clearance; is that correct?

3 MR. MURPHY: That is correct.

4 COMMISSIONER NELSON: And my -- if I mapped it  
5 out correctly, one of those turbines you've taken off the  
6 table anyway, and so we're really dealing with just four.  
7 But as long as I have that commitment.

8 The second question deals with what I think is a  
9 discrepancy in one of the sound -- for one of the sound  
10 receptors. And I hope you can clear it up for me. It's  
11 with regard to the Lindgren property, the Timothy  
12 Lindgren property, receptor CR1C37-P.

13 In your Exhibit A59 you indicate, "Noise  
14 compliance below 45 at that particular receptor."  
15 Exhibit A57 indicates that the sound at that receptor is  
16 46.5. And I understand, yeah, this is now a  
17 nonparticipant.

18 Can you help me understand the difference?

19 MR. MURPHY: I can. And I just want to scroll  
20 up to where I have that answer.

21 So with regard to the Lindgren's C37, under the  
22 Hessler proposal that is implemented and you agreed to  
23 that as we have proposed it will go down to 44.8, under  
24 the Hessler proposal. It was -- to your point, it was  
25 without -- without the Hessler proposal it was right on

1 the edge of compliance.

2 COMMISSIONER NELSON: Okay. So my  
3 misunderstanding was I was looking at the wrong column.  
4 And I'm understanding.

5 That, I think, is all the questions I've got at  
6 the moment. Thank you.

7 CHAIRMAN HANSON: Are there any further  
8 questions?

9 Commissioner Fiegen.

10 COMMISSIONER FIEGEN: Thank you, Chairman  
11 Hanson.

12 I'm going to go back to Commissioner Nelson's  
13 question on the Lindgren project. So the Hessler's -- it  
14 was very confusing in the evidentiary hearing, those six  
15 or seven, if they were still alternates or not  
16 alternates. And so when you say this will go down with  
17 the Hessler's project, does the alternate issue -- could  
18 impact that back up?

19 MR. MURPHY: No. And thank you for the  
20 question.

21 As our witness -- or modeling witness Haley  
22 explained, he modeled the project in a way that all the  
23 accumulative impacts of all the alternates at one time  
24 were taken into consideration. So it would not go back  
25 up.

1 COMMISSIONER FIEGEN: Okay. Thank you.

2 I'm going to go to Staff next, and there's a  
3 couple of questions that I have for Staff. And the first  
4 question is Cattle Ridge. And if you guys want to confer  
5 because I know you have lots of wind docket so if you  
6 want to talk together before you answer my question --

7 But it's on Cattle Ridge. It's really hard as a  
8 Commissioner to really figure out if that was studied in  
9 a robust way to protect everything in that area. They  
10 need to submit for the entire project area. And are you  
11 confident that what the Applicant is saying will protect  
12 the entire project area dealing with wildlife and mammals  
13 and et cetera?

14 MS. EDWARDS: I think I'd have to defer that  
15 question to Mr. Kearney if he's available on the line.

16 COMMISSIONER FIEGEN: Sure. And he doesn't get  
17 to confer with the three of you.

18 MR. KEARNEY: This is Darren Kearney for Staff.  
19 Can you hear me all right?

20 COMMISSIONER FIEGEN: We can hear you loud and  
21 clear, Mr. Kearney.

22 MR. KEARNEY: All right. Thank you.

23 I think that for the Cattle Ridge portion of the  
24 project area it is our understanding that the GF&P  
25 reviewed the studies done for the Application and didn't

1 raise any issues to us regarding a lack of study in that  
2 area. So we were comfortable with the Application as it  
3 was filed, given that our expert didn't raise any issues  
4 with that portion of the project area.

5 I guess I'll just leave it at that for now.

6 COMMISSIONER FIEGEN: Okay. So my next  
7 question, during the evidentiary hearing there was a lot  
8 of confusion on how to study leks. And so sometimes we  
9 heard from the Applicant that it could be an aviation  
10 study, but then when Staff witness came on they said, you  
11 know, that is not the same study as a lek study.

12 So are you confident as a Staff that there is  
13 current studies that we can see the leks, and is that --  
14 oh, I printed a Figure 6 on environmental constraints.  
15 It's a map with the yellow dots of the leks and then, of  
16 course, the big pink circle with the bald eagles.

17 Are you confident that that has been studied in  
18 a robust way and that can protect that area -- that will  
19 be protected with that one-third of a mile instead of a  
20 mile?

21 MR. KEARNEY: This is Darren Kearney for Staff  
22 again. I think that the lek data is a little dated in  
23 some respects as far as when they did the original lek  
24 surveys and then the follow-up studies.

25 The Avian Use Studies that were completed

1 recently were not true lek studies based on Staff's  
2 understanding of how those studies are completed versus a  
3 lek study. We would have liked to have seen more current  
4 lek studies. However, those were not done, I don't  
5 think. Or if they were, they were incorporated in the  
6 Avian Use Studies and not properly accounted for in the  
7 methodology.

8 But, in any event, I think that that's the  
9 genesis for this recommended condition from the GF&P as  
10 to monitor leks that are in the area that are less than  
11 one mile from the turbines to see if there are any  
12 impacts on them.

13 So we know that there could be leks in the area.  
14 We don't know exactly where at this point in time. We  
15 have some general locations based on the earlier lek  
16 studies, and Staff would ask the Commission to require  
17 lek monitoring on any that are found within one mile of a  
18 turbine.

19 COMMISSIONER FIEGEN: Okay. I'm going to come  
20 back and ask you a question about mitigation if they see  
21 that there's issues in the future, if there's a  
22 mitigation agreement to that season, breeding season.  
23 I'm going to come back to you, Mr. Kearney, on that, but  
24 I'm going to go actually to the Applicant.

25 So today when you gave your oral arguments you

1 talked about a dynamic study instead of a static study.  
2 So when you talk about dynamic, as you can tell at the  
3 evidentiary hearing and today, Commissioners and actually  
4 the -- or one Commissioner and the Staff are concerned  
5 about your lek study being outdated, and GF&P said that  
6 too.

7 So you had time this spring, I mean, during the  
8 mating season to continue that. Did you continue that  
9 and made it dynamic or -- tell me what "dynamic" means  
10 dealing with leks.

11 MR. MURPHY: With leks. And I would ask your  
12 permission to bring in one of the experts who could  
13 better answer that than myself. And, Kim or Sarah,  
14 whoever is in the best position to provide the answer to  
15 that question, I would ask you to do so.

16 You may be on mute.

17 COMMISSIONER FIEGEN: They need to confer;  
18 right? Figure out who's going to talk?

19 MS. WELLS: My apologies. I was on mute.

20 Sarah, would you like to take that?

21 MS. SAPPINGTON: Sure. So as far as the Avian  
22 Use Survey, there was question on that. The Avian Use  
23 Survey covers leks. It wasn't a lek survey. But, again,  
24 our folks that go out, the avian experts who go out and  
25 do these surveys, do listen for leks while they are out

1 there as well. So just wanted to make note of that.

2 As far as any other studies that were done,  
3 there were previous studies done as noted in the  
4 Application.

5 COMMISSIONER FIEGEN: Okay. That's about as  
6 vague as I -- I mean, that's terribly vague. Because you  
7 heard from GF&P that the aviation studies is not a lek  
8 study, and you cannot hardly determine a robust lek study  
9 through an aviation study.

10 So when I read the briefs of the Applicant they  
11 continue to tell the Commission in their brief that the  
12 aviation study is a lek study, but the expert of the  
13 Staff says no. So I'm -- you know, I just become  
14 frustrated when I read both sides and who is the expert  
15 and who can I put the evidence and the weight on.

16 So, Applicant, I'm going to give you another  
17 bite at the apple here, and then I'm going to go to  
18 Staff.

19 MR. MURPHY: Thank you. And I'll go back to --  
20 and it's my words that it's dynamic and not static. And  
21 I would ask Sarah or Kim to weigh in, I think, more  
22 directly on your question.

23 So let's assume we get a permit. We're getting  
24 ready for construction. We're finalizing not only  
25 certain strategies around wildlife, but we're out there

1 surveying, doing more specific understanding of where  
2 we're constructing.

3 I think the Commissioner's question is during  
4 that period of time are our studies open? Are our  
5 studies going to count leks? Are we going to make sure  
6 that our commitment, for example, to not construct within  
7 a certain distance of leks is abided by?

8 Sarah, if you understand -- hopefully you  
9 understand my question. When I say "dynamic" it means  
10 that we are open with that study; if we find an issue,  
11 we're not going to ignore it. We're going as to fold it  
12 into our commitments and our practices.

13 MS. WELLS: So this is Kim Wells. I can take  
14 that. I think there may be some confusion in how a lek  
15 study is done.

16 So, in short, a lek study is done during the  
17 lekking season, which is approximately March or April to  
18 June or July. One of two methods or often in  
19 combination.

20 You count birds at leks because they  
21 concentrate, and that's the easiest time to locate them  
22 when they're localizing during that season. You can do  
23 that on the ground, meaning you drive around where  
24 there's access, or you can do that from the air via an  
25 airplane, a helicopter, or a fixed wing or both. Depends

1 on your access in the situation.

2 So I don't believe there's any issue here with  
3 whether we conducted an appropriate lek survey. We've  
4 done so in the last couple of years, as well as had prior  
5 surveys done that were appropriate. We also supplemented  
6 that with a query of the state agency's data on leks,  
7 which is a database they maintain to help supplemental  
8 information on leks, which is a similar thing to what we  
9 do with eagle nests.

10 So, in short, our position as the Applicant is  
11 that we have done appropriate surveys, and I wonder if  
12 there may be some confusion on what a lek survey is or  
13 how it is done. And we're happy to provide more details.

14 COMMISSIONER FIEGEN: So I'm going to go to  
15 Staff next.

16 Certainly there were some questions during the  
17 evidentiary hearing, and you just heard the Applicant say  
18 they did a lek study in the last couple of years. And my  
19 recollection is that was not necessarily a focused lek  
20 study, but the focused lek study is back in -- my memory  
21 is going to be not the best, but I thought it was  
22 2007-2008.

23 So, Staff, tell me about your understanding of a  
24 lek study if it is appropriate, and then I'm going to  
25 come back to that question. And let's stay there, and

1 then I'm going to come back to my next question.

2 Staff.

3 MR. KEARNEY: This is Darren Kearney for Staff.

4 You're correct that studies were done in '07 and  
5 '08. For some reason I'm also recalling that a study was  
6 done after that, I want to say around 2016, but the  
7 Applicant would need to confirm that. I don't recall  
8 exactly where I'm getting that date from, but I want to  
9 say that a study has been done after the 2007, 2008 time  
10 frame.

11 The most current studies that were done in the  
12 project area were the Avian Use Surveys, which are point  
13 count surveys. And in those methods nowhere did Staff  
14 find an explanation of using fixed wing aircraft or  
15 helicopters or driving the project area to document and  
16 count the number of birds at leks.

17 That is why we're concerned that, you know, the  
18 Avian Use Surveys may not account for all the leks -- or  
19 may not be representative of the leks in the project  
20 area. So that's kind of where we came up with our  
21 position for requiring postconstruction lek monitoring.

22 COMMISSIONER FIEGEN: Okay. Now I'm going to  
23 ask you the question about this postconstruction  
24 monitoring.

25 So if we see impacts during the breeding season

1 on these leks that the company -- if the permit is given  
2 today, they're asking to make it one-third of a mile  
3 instead of Game, Fish & Parks, which is an expert in the  
4 field is suggesting a mile.

5 So what happens if you see negative impact on  
6 those leks? Are you going to bring it back to us and  
7 we'll have a mitigation where they will have to shut off  
8 certain hours of the day or certain times of the year, or  
9 what will we be looking at?

10 MR. KEARNEY: The lek monitoring is a data  
11 gathering condition, and with the data that they collect,  
12 the GF&P can use that to inform future siting decisions  
13 as to whether or not one mile of buffer is correct,  
14 three-tenths of a mile buffer is correct. So the main  
15 reason for that postconstruction monitoring condition is  
16 for future siting decisions and kind of the adding to the  
17 scientific knowledge about wind turbine operations on  
18 leks.

19 With that said, if there are results that show  
20 there are impacts to leks during operations, they could  
21 incorporate some operational changes into their wildlife  
22 conservation strategy, which is similar to what's done  
23 for bird and bat mortality monitoring.

24 For bird and bat mortality monitoring if there  
25 are certain turbines that have higher levels of mortality

1 than expected, then the Applicant will work with the  
2 developer -- or the GF&P or Fish & Wildlife Service to  
3 come up with possible operational changes to the  
4 turbines.

5 That's all done outside of the Commission's  
6 purview and between the GF&P, Fish & Wildlife, and the  
7 Applicant. Staff was envisioning a similar process here  
8 where, you know, the GF&P could review the results of the  
9 lek monitoring survey and say we think that this turbine  
10 could potentially be impacting this lek. Would you be  
11 willing to do any operational measures, you know, shut  
12 the turbine off, curtail the turbine for three hours in  
13 the morning during this period during the lekking season  
14 and work it out that way without review from the  
15 Commission, as is done for the avian bird and bat  
16 mortality monitoring.

17 COMMISSIONER FIEGEN: So I'm going to go to the  
18 Applicant next then. Are you willing to work with Game,  
19 Fish & Parks like you do with bird and bat mortality  
20 studies on the lek studies? Help us understand as a  
21 Commission how comfortable -- I'll decide that later  
22 after you state -- make your statement.

23 Thank you.

24 MS. WELLS: Sure. This is Kim Wells with the  
25 Applicant. We have committed to continue working with

1 the State and will continue to do so. I think there's  
2 some confusion in what the different avian studies are  
3 for that I could clear up.

4 So general Avian Use Studies are a point count,  
5 which means that they fix points that are -- there's a  
6 system of points that are distributed throughout the  
7 whole site. Those don't target leks. So I think there's  
8 some confusion about which avian species are targeted by  
9 which surveys because leks or grouse generally occur in  
10 prairie habitat, which is why you map out suitable  
11 prairie habitat and then you look for leks where you  
12 count them down.

13 So the lek surveys are what we target for  
14 detecting leks. That is different than the avian point  
15 counts, which are to characterize all bird game  
16 throughout the site. So I just wanted to make that clear  
17 because I hear some confusion.

18 So to return to the point, as we have described  
19 in our Application and our materials, we believe there is  
20 no peer-reviewed evidence in the Dakotas that actually  
21 suggests there is displacement or avoidance behavior by  
22 grouse species, sharp-tailed grouse in particular, which  
23 is what we're talking about here.

24 So the ask was to consider looking for an effect  
25 that has not actually been detected in the peer-reviewed

1 literature. So we are not unwilling to do that; however,  
2 we want to be clear on the record that the peer-reviewed  
3 evidence does not support or demonstrate that such an  
4 effect has been common. That does not mean that may not  
5 occur, but there's certainly not evidence in the record  
6 to support that.

7           Second, one of the reasons we've had concerns  
8 with the postconstruction lek monitoring is because it's  
9 been a little confusing to us to understand what the  
10 purpose and the objective is for that.

11           In the absence of clear peer-reviewed evidence  
12 suggesting there's an impact, there's not a clear  
13 rationale for us to demonstrate what problem or issue we  
14 are trying to solve. We are certainly willing to look at  
15 those leks within a mile of certain types of  
16 infrastructure and document existing patterns of  
17 disturbance, which there are several.

18           We have several leks that are in close proximity  
19 to roads and other features that suggest some of those  
20 existing human associated disturbances have not deterred  
21 the species from lekking or behaving.

22           So, in summary, we're happy to further consult  
23 and work with the State. We believe there's an absence  
24 of peer-reviewed literature in the Dakotas supporting any  
25 avoidance or displacement impacts and are certainly

1 willing to continue working with the Commission and the  
2 state agency if this is a condition required of our  
3 permit.

4 COMMISSIONER FIEGEN: Thank you.

5 Mr. Chairman, I'm going to take a rest and give  
6 the mic. over to you for a few minutes.

7 MS. EDWARDS: Can I just -- this is Kristen  
8 Edwards of Staff. Can I just -- no? Thank you.

9 I'll just interject that while Mr. Kearney's  
10 done an excellent job of answering questions on the fly,  
11 we now also have GF&P on the phone.

12 CHAIRMAN HANSON: Also have whom?

13 MS. EDWARDS: A representative from Game, Fish &  
14 Parks.

15 CHAIRMAN HANSON: With whooping cranes -- thank  
16 you.

17 Commissioner Fiegen, I cannot tell you how much  
18 adrenaline and excitement I have when I hear you as such  
19 a strong proponent for wildlife and leks.

20 Staff, I am prepared to make motions to add all  
21 of the recommendations, leks, shadow flicker, and  
22 decommissioning, and you gave us some -- in relationship  
23 to the Staff's suggestions. And I am wondering --

24 You were talking about decommissioning. It  
25 sounded as if you were backing off on some of the

1 recommendations that you had. Did I infer something  
2 incorrectly?

3 MS. EDWARDS: I don't believe that we backed off  
4 on any of the recommendations that we have. I think  
5 Crowned Ridge agreed to all of our recommendations with  
6 the exception of our standard condition that the  
7 decommissioning plan be filed for approval within  
8 60 days.

9 They asked for 30 days, and we don't take a  
10 position on that. Otherwise, we would ask that the  
11 decommissioning condition be the same as it has been for  
12 all recent Applicants.

13 CHAIRMAN HANSON: Thank you.

14 On Exhibit A63 -- and this is for anyone who  
15 would like to answer. It's not a difficult question, but  
16 I have a -- I assume some other parties have motions as  
17 well in this regard, to add -- Exhibit A63 supplant I  
18 believe it's 26 or something with that.

19 On item -- on Sub B of that A63 exhibit, the  
20 last sentence states, "The results from these tests may  
21 be used to make up for any shortfall in collecting 10  
22 samples measured when the ground level wind speed is  
23 low."

24 "Low" is a really ambiguous term for me. So I'm  
25 wondering -- I would prefer to have something definitive

1 in place of that. So I'm looking for recommendations  
2 from all of the parties on that.

3 MR. MURPHY: Chairman Hanson, if I'm  
4 understanding your question correctly, you're looking for  
5 wind speed and miles per hour, something along those  
6 lines?

7 CHAIRMAN HANSON: Yes.

8 MR. MURPHY: I'm just trying to go back to our  
9 conversations around this condition with Mr. Hessler and  
10 our witness who is currently on vacation.

11 We could try to reach that. I would defer to  
12 their expertise. I mean, I do have the ability to get  
13 our expert on the phone to know what that wind speed  
14 would be.

15 MS. EDWARDS: I think that at least in previous  
16 dockets when we've talked about low wind speed, it's been  
17 less than 10 meters per second. Unless Mr. Kearney wants  
18 to correct me or Mr. Thurber.

19 CHAIRMAN HANSON: I'd be curious to hear  
20 Mr. Thurber and Mr. Kearney and then certainly our panel  
21 expert.

22 MS. EDWARDS: Mr. Thurber is going to look it  
23 up.

24 It was from docket EL18-053 is where that  
25 discussion took place. So Mr. Thurber is just going to

1 double-check.

2 COMMISSIONER NELSON: I'm going to weigh in here  
3 with what I think my understanding is. In the middle of  
4 that paragraph it talks about doing the test when you're  
5 under full power. And that's obviously what we want  
6 because that's going to be the maximum noise production.

7 And so the last sentence that Chairman Hanson  
8 referred to is if during these 14 days you don't get  
9 enough valid tests under full power, meaning the wind  
10 speed is lower than what is required for full power, then  
11 you go to this alternate sample collection.

12 And so I guess if we need a wind speed in there,  
13 it's whatever wind speed it is to generate full power  
14 production. But I think since full power is spelled out  
15 up above, it's clear to me anyway.

16 CHAIRMAN HANSON: Still ambiguous, except if  
17 that is the case, then I will be making a motion to state  
18 lower than full power. So I'll look to the parties. And  
19 I see a lot of heads nodding, but I don't hear anything  
20 on the record.

21 MS. EDWARDS: Staff would agree with that.

22 MR. MURPHY: The Applicant agrees with that.

23 CHAIRMAN HANSON: All right. Thank you very  
24 much.

25 And I'll turn back to my fellow Commissioners to

1 see if they had any questions at this time.

2 Hearing none -- one moment.

3 Hearing no further questions, I will look for a  
4 motion, and I would like a main motion that we can work  
5 from to make motions to add amendments.

6 COMMISSIONER NELSON: Mr. Chairman.

7 CHAIRMAN HANSON: Mr. -- excuse me.

8 Commissioner Nelson.

9 COMMISSIONER NELSON: In EL19-003, I move that  
10 the Commission grant the permit for construction of a  
11 wind energy facility to Crowned Ridge Wind, LLC pursuant  
12 to SDCL 49-41B-25 with conditions as provided in this  
13 document (indicating).

14 And when I say "this document," that is Tina's  
15 cue to place it on our website and to e-mail it to all of  
16 the parties, and I've got copies here for whoever wants  
17 them. And once Tina's got that posted -- and I'm sure  
18 there's probably some out there. Certainly the Applicant  
19 needs a copy.

20 (Discussion off the record.)

21 CHAIRMAN HANSON: I have a question on this, and  
22 then we'll take a break for Cheri and for the rest of us  
23 so that we can do some digesting here.

24 You're adopting Exhibit A61, and then you're  
25 adding a variety of amendments to that. And I assume

1 these are all of the amendments that --

2 COMMISSIONER NELSON: Well, all except for the  
3 reference this morning to a change needed in No. 12. And  
4 I am prepared to add that when we have discussion.

5 CHAIRMAN HANSON: All right. We will take a  
6 break to 10:30. Excuse me --

7 COMMISSIONER FIEGEN: Does he want to speak at  
8 all on some of the changes that he has made, or do you  
9 want us to digest it? I don't know if you want to do a  
10 recap, or should we just go through it?

11 COMMISSIONER NELSON: I'm assuming we probably  
12 need to make sure it's out on the website before I do any  
13 discussion.

14 MS. EDWARDS: It is.

15 COMMISSIONER NELSON: Okay. I'm told it's there  
16 so --

17 CHAIRMAN HANSON: It just arrived.

18 COMMISSIONER FIEGEN: I don't really want to do  
19 discussion necessarily. I just thought it would be easy  
20 to do a one-minute recap. But that's okay. I'll just  
21 start studying.

22 CHAIRMAN HANSON: Well, unless you have some  
23 questions that you want to ask.

24 COMMISSIONER FIEGEN: I have no idea yet.

25 CHAIRMAN HANSON: Okay. We'll be off the record

1 for a moment.

2 (Discussion off the record.)

3 CHAIRMAN HANSON: Commissioner Nelson, on the  
4 description that you have regarding decommissioning  
5 information, is this identical to what the Staff's  
6 recommendation is, or is this --

7 COMMISSIONER NELSON: No. There are two changes  
8 in this from the decommissioning provisions that we have  
9 utilized in the past.

10 The first change is in the first line where I  
11 have changed 60 days to 30 days, and that is at the  
12 Applicant's request. And I think Staff did an adequate  
13 job of explaining that within those 30 days Staff has to  
14 have time to review the escrow agreement and get it in  
15 front of us for approval. And so the burden, if we go to  
16 30 days, is on the Applicant to make sure that can all  
17 happen. I'm willing to accommodate them on that.

18 The second change is found under Sub F. In  
19 another hearing that we had very recently there was  
20 concern about bank stability. And in an effort to make  
21 sure that these funds are being put into banks that are  
22 regulated within the State of South Dakota I've made a  
23 change from what we have typically had here, and this  
24 change says that the escrow account agent shall be a  
25 South Dakota chartered state bank or a nationally

1 chartered bank with an office located in South Dakota.

2 And that change means that the bank must then be  
3 regulated by South Dakota regulators as opposed to a  
4 regulator in another state or federal bank regulators.

5 CHAIRMAN HANSON: And on the first portion,  
6 No. 1, for simplicity, does that include all of these  
7 suggestions from Attorney Cremer?

8 COMMISSIONER NELSON: I believe A, B, C, and D I  
9 believe the answer is yes. And she is shaking her head  
10 yes.

11 CHAIRMAN HANSON: Okay.

12 COMMISSIONER NELSON: Those are mostly typos  
13 except for C, which is obviously a replacement utilizing  
14 the new Exhibit A63, which is the sound measurement  
15 protocol.

16 CHAIRMAN HANSON: Correct. Okay. Thank you.

17 Any further questions on this motion at this  
18 juncture?

19 We will take a -- let's do a 15-minute. And  
20 that clock is not correct. So it will be 11:30 when we  
21 resume.

22 (A short recess is taken.)

23 CHAIRMAN HANSON: We will resume the hearing in  
24 Docket EL19-003. Where we left was a motion by Nelson to  
25 adopt Exhibit A61 with amendments that had been -- well,

1 I'll let you explain it. It is far easier to follow than  
2 what it appears when it first landed on our desks.

3 Mr. Nelson. Commissioner Nelson.

4 COMMISSIONER NELSON: If I might, I will readily  
5 admit that Mr. Ganje makes a very valid point in that  
6 this particular docket has been probably one of the most  
7 difficult for us to get a firm understanding of where  
8 particular turbines are going to be, what the impacts are  
9 going to be on specific locations. It's been a grind to  
10 get where we are today.

11 That said, I can say today that I do have a good  
12 understanding of where the turbines are going to be, what  
13 the impacts are going to be to the various areas of the  
14 proposed project.

15 As talked about, we still have these FAA  
16 determinations. But we also understand if those turbines  
17 aren't used, we know where the alternative turbines are.

18 One of the other things, and Staff already made  
19 note of this, but the fact that the Applicant agreed to  
20 drop those seven turbines and the particular impact that  
21 that had on at least two of the Intervenors, a very  
22 positive impact on the noise level of the residences of  
23 two of the Intervenors I think is substantial. And  
24 having considered all of that and considered all of the  
25 evidence that's been presented, I believe that the

1 Applicant has met the burden required in state law to  
2 obtain a permit.

3 And as I say in every one of these hearings and  
4 meetings, it is not for us to make a judgment on whether  
5 wind energy is good or bad, but it is our job to make a  
6 judgment on whether or not the Applicant has met the  
7 burden in state law. And I believe they do, provided  
8 that the conditions I've proposed are attached to the  
9 permit. And let me speak just briefly to those.

10 I am proposing we adopt A6-1, which is the  
11 conditions that both Staff and the company agreed to,  
12 with some very minor grammatical amendments to those.

13 Also including the amendment to No. 12 that was  
14 talked about here today requiring that document to be  
15 filed prior to construction. And then adding the  
16 decommissioning escrow account so that we are assured  
17 that there will be proper funds available at the time of  
18 decommissioning and that those funds will be properly  
19 taken care of between now and then.

20 With that, Mr. Chairman, I'd be happy to answer  
21 any questions on the motion, if there are any.

22 CHAIRMAN HANSON: Thank you.

23 The motion is, in essence, easily understood  
24 from the standpoint of what it accomplishes. I think  
25 everyone has spent a considerable amount of time on

1 Exhibit A61 and the first changes, just eliminating not  
2 for -- the second is paragraph 22, the first sentence,  
3 deleting the word "adjustment" and making a correction  
4 there.

5 Most of us were anticipating the motion deleting  
6 paragraph 26 and supplanting it with A63. And paragraph  
7 29A, delete 9-1. Make it accurate as 13.1.2. So we  
8 appreciate that very much.

9 And I was prepared to make a motion as well  
10 pertaining to the decommissioning so I appreciate what  
11 you did there.

12 The escrow account, making that specific the way  
13 that you do is appreciated as well.

14 30 days, I struggle with. I think that our  
15 process that we've had in the past being 60 days, I was  
16 anticipating making a compromise of 45, but I'm still  
17 teetering towards 60 days because I really struggle with  
18 the amount of time -- we all know how much our Staff has  
19 to do, and somewhat that's -- it just makes sense to  
20 continue to be -- to have all of our work synchronized  
21 there.

22 I will -- we have a motion to amend, and I think  
23 the first thing to do is to -- well, we made it a main  
24 motion.

25 COMMISSIONER NELSON: Correct. It is a main

1 motion at this point.

2 CHAIRMAN HANSON: So we don't -- even though it  
3 amends A61, it is a main motion.

4 So at this time I was going to make a motion on  
5 leks. However --

6 COMMISSIONER FIEGEN: You can make it.

7 CHAIRMAN HANSON: Commissioner Fiegen is going  
8 to make it.

9 COMMISSIONER FIEGEN: Well, I will if you don't.  
10 Counting on you.

11 CHAIRMAN HANSON: You sounded passionate. I  
12 thought you would pursue it.

13 If not, then I will pursue one other small  
14 motion first, and that's what I had discussed earlier on  
15 the Exhibit A63 that you show in 1C in deleting  
16 paragraph 26 and replacing it with Exhibit A63.

17 On Subsection B I would -- at the very last  
18 sentence, the last word is "low." I would strike "low"  
19 and insert "lower than full power." And that is the  
20 motion to amend. Since I discussed it earlier, I won't  
21 discuss it at this time.

22 MR. KEARNEY: This is Darren for Staff. Can I  
23 interject here for a second?

24 CHAIRMAN HANSON: Yes. Absolutely, Darren.  
25 Thank you.

1 MR. KEARNEY: For that sound condition, the wind  
2 speed is referenced in Subpart E of the condition. And  
3 so essentially I think what you're looking for where you  
4 quantify what "low" means can be found in subpart E2.

5 CHAIRMAN HANSON: E2 you say?

6 MR. KEARNEY: Yes. Of the sound condition.

7 CHAIRMAN HANSON: As Caesar said, "et tu?"

8 Discard those samples measured with 10-minute  
9 average ground wind speeds greater than 5. Is greater  
10 than 5.

11 MR. KEARNEY: So what Subpart B says is that if  
12 you don't get enough readings when the ground level wind  
13 speed is 5 meters per second or less and the wind  
14 turbines are operating at full output, then you use the  
15 10 on/off test, which the wind speed doesn't really  
16 matter because you're doing an on/off turbine shutdown  
17 test.

18 So if you want to quantify the wind speed in the  
19 last sentence of Subpart B, it would be the results from  
20 these tests may be used to make up for any shortfall in  
21 collecting 10 samples measured when the ground level wind  
22 speed is less than 5 meters per second. Less than or  
23 equal to 5 meters per second.

24 CHAIRMAN HANSON: So you're suggesting that  
25 verbiage at the end of B?

1 MR. KEARNEY: Correct. If you want to amend  
2 Subpart B to specify what low means.

3 Low means less than or equal to 5 meters per  
4 second.

5 COMMISSIONER NELSON: And, Darren, would you  
6 also include that being during a 10-minute average  
7 ground -- 10-minute average ground speed?

8 MR. KEARNEY: Yeah. Because then it would tie  
9 it in to what Subpart E says. So yes.

10 CHAIRMAN HANSON: Well, Darren, I would like you  
11 to repeat how you would -- I have it in my mind, but I'd  
12 like you to repeat what would be placed at the end of I  
13 believe it's -- starts with "ground level wind speed is."

14 MR. KEARNEY: So I would strike "ground level  
15 wind speed is low," and then put in "10-minute average  
16 ground wind speed is less than or equal to 5 meters per  
17 second."

18 CHAIRMAN HANSON: Thank you very much, Darren.  
19 Appreciate your participation here.

20 That is my motion.

21 MR. KEARNEY: Sorry. I just wanted to make sure  
22 that makes sense to everybody, what I just stated.

23 CHAIRMAN HANSON: Any questions?

24 COMMISSIONER FIEGEN: So your motion is to  
25 include A63 and Exhibit A61; correct? And then amend --

1           CHAIRMAN HANSON: A63 is already part of the  
2 main motion.

3           COMMISSIONER FIEGEN: Oh, okay.

4           CHAIRMAN HANSON: This is simply to amend B.

5           COMMISSIONER FIEGEN: Oh, I see it. I see. I'm  
6 sorry. Thank you for clarifying that.

7           CHAIRMAN HANSON: Sure. Any other question on  
8 the motion?

9           Hearing none, this is on the motion to amend the  
10 main motion.

11           Commissioner Nelson.

12           COMMISSIONER NELSON: Aye.

13           CHAIRMAN HANSON: Commissioner Fiegen.

14           COMMISSIONER FIEGEN: Fiegen votes aye.

15           CHAIRMAN HANSON: Hanson votes aye. The motion  
16 carries.

17           Thank you, Staff, for helping out with that.  
18 Appreciate it.

19           Commissioner Fiegen, do you have one? I have  
20 others.

21           COMMISSIONER FIEGEN: I'm just going to yield to  
22 the Chairman right now, and then we'll see.

23           CHAIRMAN HANSON: Okay. Well, I won't need to  
24 do my decommissioning one because that has been taken  
25 care of with the main motion.

1           I will turn to discussion on the leks. I need  
2 to make the motion before I discuss it. So in Staff's  
3 posthearing brief on EL19-003 they discuss leks, and on  
4 page 8 they show Findings of Fact and suggest conditions  
5 under Exhibit S7. And I move to include those  
6 paragraphs 1, 2, 3, and 4 in the Findings of Fact and  
7 the -- and to incorporate the conclusions in the proposed  
8 permit -- in the permit conditions.

9           I would also add that -- I have to explain this  
10 as I do it. The discussion pertaining to -- well, I'll  
11 just state that I also intend to -- I do not have it in  
12 writing, that the -- the study would be on the ground,  
13 that it would be an independent study, and it would be  
14 approved by the Commission. And I will discuss the  
15 motion then.

16           The reason I added the independent study on the  
17 ground approved by the Commission is that during the  
18 presentation and questions, the answers by the folks on  
19 the phone from the Applicant, I felt an uneasiness from  
20 the standpoint of having -- I certainly don't think we  
21 should be using helicopters or airplanes for this sort of  
22 thing, and I had an uneasiness about their devotion to  
23 doing it properly. So I want to have the Commission make  
24 the -- make that decision.

25           I found all of the brief by Staff to be

1 compelling: The decommissioning, the leks, the entirety  
2 of it. The record clearly shows -- I'm not going to read  
3 everything that the Commission -- or at that time Staff  
4 wrote, but as one goes through it, they, I think, refuted  
5 everything that Crowned Ridge had testified to from the  
6 standpoint of positions that they had in opposition.

7 The fact that the Applicant is unaware of  
8 empirical peer-reviewed data that was orally argued and  
9 was part of their testimony is actually -- actually  
10 supports and gives reason to pursue this.

11 There's a tremendous opportunity to collect  
12 important scientific data. We have an exceptional and  
13 unique opportunity here to provide scientific information  
14 for a wildlife study. The fact that we don't have that  
15 information clearly says that if you have that  
16 opportunity to do it, we should pursue it, and  
17 information here could be helpful for future projects in  
18 South Dakota and elsewhere across the -- certainly across  
19 the United States, the Plains and I'm not certain where  
20 else. But certainly it would be valuable information.

21 It's not a new concept, as argued by Staff, to  
22 Crowned Ridge because they're already doing some similar  
23 bat mortality. But I would not have them pursue this. I  
24 would have it an independent study. And certainly the  
25 testimony that was provided shows that it's not expensive

1 to do. So from that standpoint I'd just --

2 And on Commissioner Fiegen's points that she  
3 made earlier, it just seems to make a great deal of sense  
4 for us to pursue that. It's a tremendous opportunity for  
5 us to pursue it, and I agree with Staff's  
6 recommendations.

7 I'll look for any further discussion on the  
8 motion.

9 Commissioner Fiegen.

10 COMMISSIONER FIEGEN: Thank you. I just have a  
11 question, if you'll be -- I'll be supporting your motion,  
12 but I want to know if you'll have another motion or if  
13 you'll -- on working with the GF&P if they find issues  
14 similar to how they work with GF&P on bat and bird  
15 mortality surveys, like Mr. Kearney said.

16 I don't know exactly how that is written, but I  
17 know Mr. Kearney brought that up too. So I don't know if  
18 you're adding that later. And I don't have anything  
19 written down, of course.

20 CHAIRMAN HANSON: In paragraph 3 and paragraph 4  
21 it mentions the South Dakota Game, Fish & Parks several  
22 times. As I read that, I felt that it required the  
23 independent study or whomever does the study to work  
24 closely with Game, Fish & Parks in their recommendations.  
25 But if you see something that --

1           COMMISSIONER FIEGEN: So do you mind if I ask  
2 Staff the question?

3           CHAIRMAN HANSON: Please.

4           COMMISSIONER FIEGEN: So, Staff, are you  
5 comfortable that if these surveys show an issue with  
6 disturbance of leks, that the Applicant is required to  
7 work with GF&P?

8           MS. EDWARDS: I can defer to Mr. Kearney on  
9 this, but it is my understanding that the way the  
10 condition is written as of now if there was a disturbance  
11 found, there is not mitigation. It's just use of that  
12 information for other projects going forward.

13          COMMISSIONER FIEGEN: So I'm going to ask a  
14 question to Mr. Kearney.

15          So does Staff have some language we could use  
16 after maybe we vote on this that there could be some  
17 mitigation -- a process of mitigation working with GF&P?  
18 I think I heard the Applicant say, although it's not  
19 their preference, if the Commission states in their  
20 permit that they need to work with GF&P about these lek  
21 surveys and trying to have mitigation, they would be  
22 willing to. I don't have language for that so --

23          Just for the record, Darren, your attorney,  
24 Kristen Edwards, is talking to the Applicant right now.  
25 So just hang on, Mr. Kearney. I know what it's like

1 sometimes to be on the phone and not see the process in  
2 the room.

3 So I think that Applicant has a green light.  
4 Would you like me to ask you that question?

5 Okay. So you kind of heard the question. Go  
6 ahead, Applicant.

7 MR. MURPHY: The suggestion that I heard from  
8 Staff that I believe we would be agreeable with is to put  
9 a mitigation -- specific mitigation plan together in the  
10 next 90 days and file that with the Commission.

11 COMMISSIONER FIEGEN: So, Mr. Hanson, there's  
12 the answer. So we do probably need to add that to the  
13 permit if you're going to make that a friendly amendment  
14 on yours or if we want to do it later or whatever.

15 CHAIRMAN HANSON: Your preference.

16 COMMISSIONER FIEGEN: I'll take you as a  
17 friendly amendment if you're -- I don't care how you do  
18 it, Mr. Chairman.

19 CHAIRMAN HANSON: I need your positive statement  
20 in order to have it as a motion, as a friendly amendment.

21 COMMISSIONER FIEGEN: So --

22 CHAIRMAN HANSON: Do you want to take it  
23 individual, or do you want to have it part of it? Just  
24 say yes or no.

25 COMMISSIONER FIEGEN: I'll say yes. I'll have

1 it as part of your motion.

2 CHAIRMAN HANSON: All right. Thank you.

3 Further discussion. Commissioner Nelson.

4 COMMISSIONER NELSON: I'm going to resist this  
5 motion. And I want to explain why.

6 I think we all agree there is a dire need for  
7 scientific information in this area. Unfortunately, the  
8 plan that has been laid out does not get us scientific  
9 information.

10 If you'll remember during the hearing, I asked  
11 Mr. Kirschenmann a key question, and that question was  
12 unless you also at the same time analyze a control, you  
13 have no idea what the information you've gathered through  
14 this lek survey is telling you. Okay. So let me explain  
15 that.

16 They do a lek survey, and they don't find  
17 grouse. Do we make an assumption that we don't find  
18 grouse because of the wind turbines? Or is there some  
19 other reason? And unless you have a control in your  
20 study, you don't know the answer to that question. All  
21 you know is there aren't grouse there.

22 And I'm very uncomfortable with us mandating a  
23 study that does not get us solid, scientific information.  
24 And, particularly, if we are then going to use that  
25 information to require the Applicant to do some kind of

1 mitigation when we don't even know what caused the grouse  
2 to not be there.

3           And so if we're going to go down this path,  
4 we've got to make sure that this study actually gets us  
5 scientific information, and the only way to do that is  
6 require that they also study control areas which are  
7 going to be at this point outside of their project area.  
8 And how they get access to that, I have no idea. I mean,  
9 this is -- this is a big deal, and I don't think that we  
10 can answer those particular questions today.

11           Secondly, if you look at where those leks are  
12 located, the two leks that are on nonparticipant property  
13 are a mile away from the nearest turbine. They've met  
14 the GF&P requirement. The remainder of the leks are on  
15 participant property. And I guess I have some faith in  
16 those landowners to make their own decisions whether or  
17 not they were comfortable having turbines close to the  
18 leks on their property or not. But I think the most  
19 important point is in the case of the leks on  
20 nonparticipant property, they're a mile away.

21           And so while, again, we need solid scientific  
22 information in this area, we're begging for it, this  
23 motion I don't believe gets us there.

24           CHAIRMAN HANSON: Thank you. I would take  
25 exception to the fact that it would take absolutely no

1 information and I'll put my faith in an independent  
2 company that studies it and provides us with their  
3 recommendation on how to study it. I think at this  
4 juncture it's premature to assume that there would be  
5 absolutely nothing of information or value to receive  
6 from it. And I think that Crowned Ridge's testimony  
7 itself refuted their own testimony and positions on those  
8 issues.

9 COMMISSIONER NELSON: If I could just ask the  
10 simple question. So if they do the survey and they show  
11 that the grouse aren't there, how do you know what caused  
12 that without having a control in your survey?

13 CHAIRMAN HANSON: As I said, I'll place faith in  
14 an independent, professional group that will make the  
15 study, and they will provide their -- there's many  
16 situations where you go into it not knowing exactly how  
17 they're going to accomplish it, and I'll put my faith in  
18 them.

19 Any further discussion on the motion to amend?

20 COMMISSIONER FIEGEN: Thank you for the  
21 discussion from my fellow Commissioners. It has really  
22 been a frustrating Application.

23 When we had such a limited time of six months  
24 and a very complicated Application it didn't allow us a  
25 lot of flexibility to do some things that I wanted to do.

1 If this would have been a year, the Staff might have had  
2 more time to work with you to figure some of this stuff  
3 out, but we didn't.

4 And so today I have to put my confidence in the  
5 South Dakota Game, Fish & Parks. They testified on this  
6 issue. They briefed me on the issue. I have to put my  
7 confidence in their knowledge of the wildlife of  
8 South Dakota. So I'm going to support the motion.

9 Is it perfect? No. With the amendment of the  
10 mitigation that you will need to also work with Game,  
11 Fish & Parks if there's things seen, that's what I needed  
12 to see today. And without that, I don't know if I would  
13 have supported it.

14 So I appreciate the amendment to the amendment,  
15 and I'll be supported it.

16 CHAIRMAN HANSON: Further discussion on the  
17 motion to amend?

18 Hearing none, on the motion, Commissioner  
19 Nelson.

20 COMMISSIONER NELSON: Nay.

21 CHAIRMAN HANSON: Commissioner Fiegen.

22 COMMISSIONER FIEGEN: Fiegen votes aye.

23 CHAIRMAN HANSON: Hanson votes aye. The motion  
24 carries.

25 Brings us back to the main motion as amended.

1 Any further motions to amend?

2 On the main motion as amended, item 42 states  
3 500 feet from any surrounding building. I would like to  
4 be consistent with our other dockets where we arrived at  
5 558 feet. I know that this is something that will give  
6 us some opportunity for discussion so I move to amend to  
7 558 feet.

8 Discussion on the motion.

9 COMMISSIONER FIEGEN: I just have a question on  
10 the 558.

11 So that was another docket, and I can't  
12 remember, was that Deuel Harvest?

13 CHAIRMAN HANSON: Correct.

14 COMMISSIONER FIEGEN: Okay. And refresh me on  
15 my memory because we've had so many other wind dockets.  
16 Were there others? And how did we come up with that 558  
17 at Deuel Harvest? Or maybe the Staff can refresh my  
18 memory.

19 CHAIRMAN HANSON: Mr. Thurber.

20 MR. THURBER: Thank you.

21 In Deuel Harvest there was some manufacturer  
22 recommendations that we adopted. Subsequently, we got  
23 additional information from the manufacturer that -- a  
24 better definition of what those public use areas was.  
25 And General Electric stated that a public use area isn't

1 defined as a property line.

2 So we implemented that setback for Deuel  
3 Harvest, but then subsequently we have not based on that  
4 additional information we received.

5 CHAIRMAN HANSON: Thank you. I was not aware of  
6 that. Appreciate it.

7 Unfortunately, Staff and Commissioners can't  
8 chat with each other.

9 I'll withdraw the 558 feet. Since Staff and  
10 Commissioners can chat with each other now, tell me about  
11 the 30 day. Because I'm really struggling with going  
12 with 30 since we've done 60 days on all of the items  
13 previously. Changing it from 60 to 30.

14 COMMISSIONER FIEGEN: And that's your escrow  
15 account; right? Or your --

16 CHAIRMAN HANSON: Decommissioning.

17 MS. EDWARDS: I'm thinking.

18 In the past, starting with the Crocker Wind  
19 Farm, EL17-055, there was a requirement that it be filed  
20 for approval within 60 days of commencement of  
21 construction.

22 I guess at this point we've looked at enough of  
23 them I could probably see lowering it. When we looked at  
24 that first one it was a completely new document, and it  
25 took some time and we had to bring it before the

1 Commission and didn't know if maybe we were going to have  
2 to tweak it and come back.

3 I think at this point we've probably looked at  
4 enough of them that it would be a reasonable point in  
5 time to lower that.

6 CHAIRMAN HANSON: Lower it to 30 days as opposed  
7 to -- you understand you're setting a precedent here.  
8 Future ones will be 30.

9 MS. EDWARDS: Right. It depends on when they  
10 commence construction. If they file it in December and  
11 we're gone for the holidays, it does make it a little  
12 tougher. But I do think we can do 30 days. There's  
13 generally about two Commission meetings in there in which  
14 we can get it on the agenda. I think we can make it  
15 work.

16 CHAIRMAN HANSON: I'll turn to Staff. Are you  
17 comfortable too?

18 Okay.

19 All right. That's all the motions to amend that  
20 I have.

21 COMMISSIONER FIEGEN: Mr. Chairman, if I can ask  
22 the Staff a couple of questions on some recommendations  
23 that they had possibly before we permit.

24 CHAIRMAN HANSON: Certainly.

25 COMMISSIONER FIEGEN: And one of the questions

1 that I had is on the shadow flicker of the -- I believe  
2 it was 36 hours and that a waiver hasn't been filed.

3 You suggested possibly putting on a condition  
4 that -- or curtailment plan is placed on this permit  
5 condition and I -- so I'm going to ask you that. Do we  
6 need to do that?

7 Have you been working behind the scenes in the  
8 last half an hour with the Applicant and have found out  
9 that the waiver has been signed? Or where are we at with  
10 that shadow -- I think is it No. 10 or --

11 MS. EDWARDS: Receptor No. 10. Yes. I have no  
12 new information on that. I don't know if Mr. Kearney or  
13 Mr. Thurber have more that they would like to add. I  
14 know that I wanted the plan filed because I wanted to  
15 make sure their curtailment plan wasn't landowner buy  
16 some curtains, you know. So I just wanted more specifics  
17 than that. But I don't know if either of the analysts  
18 have something they'd like to add.

19 MR. KEARNEY: This is Darren Kearney for Staff.  
20 I have nothing further to add, and I think in the brief  
21 it was recommended a condition be attached with the  
22 permit that, you know, absent a waiver then you shall  
23 file a plan for mitigating that shadow flicker on  
24 receptor 10 with the Commission.

25 COMMISSIONER FIEGEN: Do you know what page on

1 the brief? I know I read that too, but just so we can --  
2 before possibly one of us makes a motion, to make sure  
3 that maybe is amended, where that condition is in your  
4 brief. And I'm going to look too. But if you have a  
5 certain page, let me know.

6 MR. KEARNEY: Do not have it off the top of my  
7 head. I'd have to pull it up.

8 CHAIRMAN HANSON: Are you referring to Staff's?

9 COMMISSIONER FIEGEN: Yes.

10 MS. EDWARDS: This is Kristen Edwards for Staff.  
11 That's page 10. The very bottom of page 10, the last  
12 paragraph.

13 COMMISSIONER FIEGEN: So, Mr. Chairman, I move  
14 that we amend the conditions to include Staff's  
15 recommendation on page 10 at the bottom of the page. And  
16 the Findings of Fact also to be included.

17 CHAIRMAN HANSON: Discussion on the motion.

18 COMMISSIONER FIEGEN: I personally think it's a  
19 pretty easy condition for the Applicant to adhere to. It  
20 just gives us knowledge on what's happening there and  
21 gets us an opportunity to understand if you have a waiver  
22 or what your mitigation plan is. So I commend Staff for  
23 bringing that to our attention in the brief.

24 CHAIRMAN HANSON: Thank you.

25 Further discussion on the motion. Commissioner

1 Nelson.

2 COMMISSIONER NELSON: May I ask the Applicant a  
3 question in this regard?

4 CHAIRMAN HANSON: Certainly.

5 COMMISSIONER NELSON: So this receptor 10 is a  
6 participant. Is there not waiver language in their  
7 easement agreement dealing with this?

8 MR. MURPHY: You and I are on the same  
9 wavelength with regard to that. I do know if it was one  
10 of the Boulevard or Crowned Ridge easements, the answer  
11 is yes. If it's the Cattle Ridge that we were  
12 purchasing, I'm not sure the language is as clear.

13 I could find that out. I could report that to  
14 the Commission. And if -- the language in the easements  
15 that we draft is very clear that it is waived, but I  
16 don't have that knowledge at this time which one of the  
17 easements this individual signed or the options they  
18 signed.

19 COMMISSIONER NELSON: Okay. Well, I hear your  
20 answer, but that leaves me with even greater puzzlement  
21 because obviously this has been an issue that's hanging  
22 out there and I'm puzzled you wouldn't have researched  
23 that and know that today.

24 MR. MURPHY: I totally understand, Commissioner.

25 CHAIRMAN HANSON: Commissioner Nelson.

1 COMMISSIONER NELSON: Nothing further.

2 CHAIRMAN HANSON: Okay. Commissioner Fiegen.

3 On the motion to amend, Commissioner Nelson.

4 COMMISSIONER NELSON: Aye.

5 CHAIRMAN HANSON: Commissioner Fiegen.

6 COMMISSIONER FIEGEN: Fiegen votes aye.

7 CHAIRMAN HANSON: Hanson votes aye. Motion

8 carries.

9 COMMISSIONER FIEGEN: I have one more question,  
10 when you're ready.

11 CHAIRMAN HANSON: Go ahead, please.

12 COMMISSIONER FIEGEN: So, Staff, also you stated  
13 in No. 12, the cultural study plan prior to construction.  
14 Have we addressed that yet?

15 MS. EDWARDS: I believe Commissioner Nelson did.

16 COMMISSIONER FIEGEN: Okay. Great. I just  
17 wanted to make sure.

18 Those are my questions, Mr. Chairman.

19 CHAIRMAN HANSON: Is there any further  
20 amendments at this time?

21 Hearing none, is there discussion?

22 I have never been completely comfortable with  
23 any of our wind docket, the orders, the final. There's  
24 always -- regardless of what we do, there's always some  
25 effect on other property owners and the challenges that

1 they face as a result of it. There's that balance  
2 between the rights of the owners of the property to  
3 develop their property, and there's always the right for  
4 quiet enjoyment of the other folks that are going to be  
5 affected in one way.

6 And we go through this process following  
7 evidence that's presented to us and making certain that  
8 we follow the law. It's not like we're legislators where  
9 we vote based upon our -- I don't mean to speak down to  
10 legislators at all, but we have to base everything on  
11 evidence and not our feelings about things. There's no  
12 gut vote here.

13 And we really appreciate the amount of work that  
14 goes into it from the standpoint of an Applicant, as well  
15 as the tremendous challenges that Intervenors have in  
16 trying to, so to speak, catch up.

17 And our Staff, as overworked as they are, have  
18 to go through every "I" and -- people just don't realize  
19 how many -- the volume of these cases and how much they  
20 have to go through, and yet they go through several at  
21 the same time, along with all the other 160 dockets that  
22 we have every year.

23 So I always want to have more time to work with  
24 them. I'm glad that we will have that in the future. At  
25 the same time I look at these, and I struggle with the

1 challenges of shadow flicker and potential ice throw and  
2 the aesthetics and sound and all of those things, and I  
3 really truly believe that we come up with a good product,  
4 a very good product from the standpoint of what we --  
5 what we deal with.

6 And yet there's always going to be those folks  
7 who are experiencing something undesirable themselves.  
8 But the fact is the law is the law, and we've, I think,  
9 done an admirable job of putting it together so that  
10 everyone's protected. And, frankly, it's a renewable  
11 energy that provides a lot of opportunities for our  
12 country, and it does -- as has been presented, a real  
13 opportunity for financial gain for folks in the ag  
14 community that are struggling at times.

15 So I commend my fellow Commissioners for the  
16 passion that they put into these. I know they work very  
17 hard. I've seen them late at night working on them. And  
18 our Staff as well.

19 So thank you to the Applicant, the Intervenors,  
20 and to our Staff for all of what they have put into  
21 this.

22 Commissioner Nelson.

23 COMMISSIONER FIEGEN: Okay. Are you speaking?  
24 I just didn't want you voting yet.

25 COMMISSIONER NELSON: I want to address one of

1 Mr. Ganje's arguments that he made today. And he  
2 indicated that we should not rely upon the projections  
3 that the company submitted in regard to shadow flicker  
4 and sound.

5 And I guess I'd make two statements in regard to  
6 that. First, it's what's been submitted in the record.  
7 Certainly Intervenors could have hired their own expert  
8 and done their own analysis of both of those, and if they  
9 felt that what the company gave us was not accurate, they  
10 could have given us something from their experts. But we  
11 don't have that.

12 But, even more importantly, even if those --  
13 even if Mr. Ganje is right and those estimates are not  
14 accurate, that does not negate the fact that the  
15 Applicant must meet the requirements of the shadow  
16 flicker and the sound limitations. I mean, they take a  
17 gamble that their estimates are right, and if they  
18 aren't, then there's going to be mitigation required down  
19 the road.

20 And I think that's important for all to  
21 remember, that at the end of the day the operational  
22 aspects of this project have to meet the requirements  
23 that we and the counties have established.

24 CHAIRMAN HANSON: Commissioner Fiegen.

25 COMMISSIONER FIEGEN: Thank you. I think my

1 fellow Commissioners have made a lot of great statements  
2 today.

3 This has been a tricky application because of  
4 the footprint. The footprint is a jigsaw puzzle, and so,  
5 therefore, it encompasses a lot of different people and  
6 there are impacts. And so this one has been more  
7 difficult than a rectangle that we have seen before.

8 Like Commissioner Hanson said, everything is  
9 based on facts and evidence. We are quasi-judicial  
10 instead of legislative.

11 We have addressed -- I believe today working  
12 together as three and asking separate questions of other  
13 people, we have addressed a lot of concerns that have  
14 been brought to our attention during the evidentiary  
15 hearing and the briefs. So that was my goal today at the  
16 end of the day that we can have addressed it so it's a  
17 combination that works for the people in that community.

18 I appreciate the turbines that have been moved  
19 because most of the turbines that have been moved there's  
20 been less impact for our Intervenors, and I certainly  
21 appreciate that.

22 So thank you, fellow Commissioners, for working  
23 today. We don't get to talk behind closed doors. We  
24 have to do it all in public. And we've worked hard  
25 today, I think, to have addressed many of the issues in

1 our conditions.

2 Thank you.

3 CHAIRMAN HANSON: Thank you.

4 At this time if there's no further discussion,  
5 this is a vote on the main motion as amended.

6 Commissioner Nelson.

7 COMMISSIONER NELSON: Aye.

8 CHAIRMAN HANSON: Commissioner Fiegen.

9 COMMISSIONER FIEGEN: Fiegen votes aye.

10 CHAIRMAN HANSON: Hanson votes aye. The motion  
11 carries. Thank you all. Travel safe.

12 (The proceeding is concluded at 12:20 p.m.)

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1 STATE OF SOUTH DAKOTA)

2 :SS CERTIFICATE

3 COUNTY OF SULLY )

4

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 July,  
11 2019, and that the attached is a true and correct  
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 25th day of  
14 July, 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

21

22

23

24

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