

STATE OF SOUTH DAKOTA)	IN CIRCUIT COURT
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COUNTY OF CODINGTON)	THIRD JUDICIAL CIRCUIT
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IN THE MATTER OF THE APPLICATION BY)	14CIV19-290
CROWNED RIDGE WIND, LLC FOR A)	
PERMIT OF A WIND ENERGY FACILITY)	ISSUES ON APPEAL
IN GRANT AND CODINGTON COUNTIES)	
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COME NOW, The Plaintiffs by and through their attorney, Jared I. Gass, of Brookings, SD, and state the following Issues on Appeal:

1. Whether the South Dakota Public Utilities Commission (hereinafter, "PUC"), exceeded its statutory authority when it permitted NextEra Energy Resources, LLC, a Delaware Corporation, which is not registered to do business in South Dakota, to petition the PUC for a Wind Energy Systems Permit through its wholly-owned, indirect subsidiary, Crowned Ridge Wind, LLC (hereinafter, "Applicant").
2. Whether substantial rights of the Appellants were prejudiced because the administrative findings, inferences, conclusions, or decisions of the PUC were:
 - a. In violation of constitutional or statutory provisions;
 - b. In excess of the statutory authority of the agency;
 - c. Made upon unlawful procedure;
 - d. Affected by other error of law;
 - e. Clearly erroneous in light of the entire evidence and the record; or
 - f. Arbitrary or capricious and characterized by abuse of discretion or clearly unwarranted exercise of discretion.
3. Whether the PUC denied Intervenors and Appellants constitutional rights to due process by considering incomplete and misleading information in arriving at its Final Decision and Order Granting Permit to Construct Facility.
4. Whether the PUC violated Appellant and landowner constitutional rights to due process by granting Applicant a permit to construct facility without Applicant providing a forecast of the impact of the land values of the affected counties, Codington and Grant, including whether values will be adversely impacted by the issuance of the permit.

5. Whether the PUC abused its discretion when it approved the application without substantial evidence by the Applicant that the facility will not substantially impair the health, safety or welfare of the inhabitants of Codington and Grant counties.
6. Whether the PUC violated Intervenor's and Appellants constitutional rights to due process when it failed to enter an Order addressing Intervenor's Second Motion to Deny and Dismiss at the same time it entered its Final Decision and Order Granting Permit to Construct the Facility without separate Findings of Fact and Conclusions of Law.
7. Whether the PUC acted arbitrarily and capriciously when it relied on unreliable applicant witness testimony regarding the substance of the application and the construction of the proposed facility related to shadow flicker and infrasound on property owned by Intervenor's and others within Codington and Grant counties.
8. Whether the PUC acted arbitrarily and capriciously when it failed to consider testimony regarding trespass violations for shadow flicker and infrasound.
9. Whether the PUC abused its discretion and acted arbitrarily and capriciously when it approved the application without substantial evidence that the facilities will not pose a threat of serious injury to the environment or to the social and economic condition of the inhabitants of the project area.
10. Whether the PUC abused its discretion and acted arbitrarily and capriciously by approving the application without an avian study of the completed project area.
11. Whether the PUC exceeded its statutory authority and acted arbitrarily and capriciously when it entered its Final Order and Decision Granting Permit to Construct Facility without applicant having met its burden of proof as follows:
 - a. Applicant did not supply South Dakota Game Fish and Park with an updated report and map concerning 15,500 acres in the northeast area of the project;
 - b. Applicant failed to provide a description of the existing environment, estimates of change, and identify irreversibly changes;
 - c. Applicant failed to provide information to identify and quantify impacts to terrestrial biotic environment including important species, breeding times and places, pathways of migration and plans to ameliorate negative biological impacts;
 - d. Applicant failed to file all data and exhibits.
12. Whether the PUC acted arbitrarily and capriciously when it entered its Final Order and Decision Granting Permit to Construct Facility to an applicant that is not a financially

viable company.

13. Whether the PUC acted arbitrarily and capriciously when it entered its Final Order and Decision Granting Permit to Construct Facility to an applicant that did not prove it has the financial means to complete or meet obligations to ameliorate negative social impacts, would have the ability to make planned measures to ameliorate adverse impacts on land, would take measures to ameliorate negative biological impacts on aquatic ecosystems, and would take measures to ameliorate negative biological impacts.
14. Whether the PUC abused its discretion and acted arbitrarily and capriciously when it entered its Final Order and Decision Granting Permit to Construct Facility to Crowned Ridge Wind, LLC, an entity with no balance sheet or annual profit and loss statements wholly owned by its parent company, NextEra Energy Resources, LLC, a limited liability company not licensed in the State of South Dakota that will not guarantee the performance of any terms and conditions imposed by the PUC.
15. Whether the PUC abused its discretion and acted arbitrarily and capriciously when it approved the permit without applicant or any analysis of the effect of all turbines from the proposed Crowned Ridge Wind project as well as neighboring wind projects in Grant, Codington and Deuel counties.
16. Whether the PUC abused its discretion and acted arbitrarily and capriciously by granting applicants a permit without considering proof of the cumulative effects of multiple wind energy systems in the affected counties and how the other wind energy systems in the area impact applicants noise emissions.
17. Whether the PUC abused its discretion and acted arbitrarily and capriciously and in violation of Intervenor's due process rights when it gave consideration to applicant witness Sappington's adaptation of Kim Wells' testimony in spite of the fact that no evidence was presented regarding Sappington's correspondence with Wells regarding Wells' testimony.
18. Whether the PUC violated Intervenor's due process rights when it relied on hearsay testimony to support its Final Order and Decision Granting Permit to Construct Facility.
19. Whether the PUC committed reversible error when it permitted an expert to testify outside of the expert's field of expertise.
20. Whether the PUC acted arbitrarily and capriciously when it approved the permit without cultural and historical impact studies encompassing the area of the project consisting of approximately 15,500 acres.
21. Whether the PUC acted arbitrarily and capriciously and in violation of Intervenor's due

process rights when it approved applicants permit without applicant meeting its burden of proof regarding the health and welfare of the inhabitants of the project area.

22. Whether the PUC violated Intervenor's due process rights and acted arbitrarily and capriciously by considering false and misleading evidence and testimony in entering its Final Order and Decision Granting Permit to Construct Facility.
23. Whether the PUC acted arbitrarily and capriciously when it granted applicants permit in violation of grassland guidelines knowing that approximately 19 of the planned 130 turbines will be positioned in native prairie, in spite of the fact that a continued recommendation for wind development is to avoid untilled native prairie habitat.
24. Whether the PUC acted arbitrarily and capriciously when it granted applicants permit without applicant providing a map showing rural water transportation facilities or a forecast of the impact on transportation facilities.
25. Whether the PUC acted arbitrarily and capriciously when it granted applicants permit without applicant providing environmental studies on mammals as required by SDCL 49-41B-11(11).
26. Whether the PUC acted arbitrarily and capriciously in violation of Intervenor's due process rights in granting applicants permit in spite of applicant's failure to provide reliable technical evidence (specifically related to Haley's disclaimer as to the reliability of the opinions expressed).
27. Whether the PUC violated Intervenor's due process rights by approving an application that ignored and violated Codington County Ordinance 68 related to measuring noise levels at nonparticipating landowner's property lines.
28. Whether the PUC violated Intervenor's due process rights by approving applicant's permit in spite of its knowing violation of Codington County Ordinance 68, a direct violation of SDCL 49-41B-22(1).
29. Whether the PUC acted arbitrarily and capriciously by granting applicants permit without requiring a preconstruction sound study be completed by applicant. Applicant failed to provide a complete analysis of the compatibility and effects of the proposed facility with/on present land use, rural residences, farmsteads, family farms, ranches and noise sensitive land uses, of the surrounding area, with special attention paid to the effects of rural life.
30. Whether the PUC violated Intervenor's of their due process rights by depriving them of the evidence and facts necessary to analyze and contest the application.
31. Whether the PUC abused its discretion, violated constitutional and statutory provisions,

and acted arbitrarily and capriciously when it granted Applicant's permit to construct the Crowned Ridge Wind Project in spite of Applicant's clear violations of South Dakota Administrative Rules governing wind energy facilities in the following particulars:

- a. Applicant submitted inaccurate maps into evidence and the PUC relied on them to make their decision.
- b. As of the date of the final hearing addressing the application, Applicant had not secured a "no hazard determination" from the FAA.
- c. Applicant failed to provide a letter of positive determination from the DOE all in violation of ARSD 20:10:22:33:02(6).
- d. Applicant failed to complete environmental studies.
- e. Applicant failed to meet the requirements to forecast the impact on cultural resources of historic, religious, archaeological, scenic natural or other cultural significance.
- f. Applicant failed to disclose the distance between wind turbines in the proposed project.
- g. Applicant did not provide conductor configuration, size, length of span between structures, number of circuits per pole or tower, even after being informed of missing information on April 25, 2019.
- h. Applicant has not provided the distance between access points conductor configuration and size and number.
- i. Applicant did not provide set back distances from offsite buildings, right of way of public roads, and property lines. ARSD 20:10:22:33:02(4).
- j. Applicant failed to provide an analysis of landmarks and the effects to them.
- k. Applicant failed to provide a map that included transportation facilities.
- l. Applicant failed to identify and analyze the effects and impacts of the construction, operation and maintenance of the proposed facility on rural water lines, a transportation facility.
- m. Applicant did not provide overhead photographs of the proposed wind energy site.
- n. Applicant has not provided a written summary for the geotechnical features of the

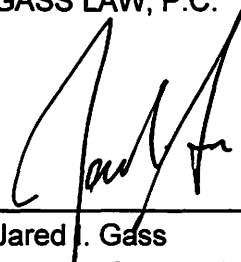
proposed wind energy project, and a description and the location of economic deposits.

- o. Applicant did not provide a completed stormwater pollution prevention plan (SWPPP) and has not provided planned measures to ameliorate negative total aquatic biological impacts as a result of the construction and operation of the proposed facility.**
- p. Applicant has not completed the wildlife conservation study that is required to provide planned measures to ameliorate negative biological impacts as a result of the construction and operation of the proposed facility.**
- q. Applicant failed to include on the list of permits, the need for DENR air permit and the list has not been updated.**
- r. Applicant has not shown proposed facility will comply with all air quality standards.**
- s. Applicant has failed to meet the requirement to provide a source of portable water supply for process water specifications of the aquifer to be used for the project.**
- t. Applicant did not state when a permit application will be/has been filed with US Army Corp of Engineer.**
- u. Applicant did not state when the permit application will be/has been filed with South Dakota Aeronautics Commission.**
- v. Applicant did not state when the permit application will be/has been filed with South Dakota Department of Transportation.**
- w. Applicant did not state when the permit application will be/has been filed with the South Dakota State Historical Society.**
- x. Applicant failed to include on the list of permits the need for railroad utility crossing permits and the list has not been updated.**
- y. Applicant does not state when the permit application will be/has been filed with Western Area Power Administration.**
- z. Application failed to provide the construction costs of the proposed wind energy facility.**

Appellants reserve the right to amend the Issues on Appeal as additional review of the record and briefing ensues.

Dated this 29 day of August, 2019.

GASS LAW, P.C.

A handwritten signature in black ink, appearing to read "Jared J. Gass", is written over a horizontal line.

Jared J. Gass
Attorney for Appellants
P.O. Box 486
Brookings, SD 57006
605.692.4277
jared@gasslaw.com