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February 21, 2020

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Scan to all Persons on PUC E-Service List per Certificate of Service*

Patricia Van Gerpen, Executive Director
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
Pierre, South Dakota

Re: File 6184-004. • *In re Docket EL19-027, Crowned Ridge Wind II, LLC
Codington, Grant & Deuel Counties*

Dear Director Van Gerpen:

Included with this letter please find a certificate of service, along with Intervenors' proposed Exhibit I-8, entitled "Participation Agreement," a document having some predicate in the hearing record and more recently produced by Attorney Miles Schumacher. I would ask this exhibit be made a part of the record, without objection by Applicant.

Thank you.

Very truly yours,
ARVID J. SWANSON P.C.



A.J. Swanson

c: All persons listed in the current Service List,
as reflected in the Certificate of Service
submitted herewith, including counsel for
Applicant:

Miles Schumacher, Esq. (via Email Only)
LYNN JACKSON SHULTZ & LEBRUN, PC
mschumacher@lynnjackson.com

Garry Ehlebracht, *et al.*



**THIS INSTRUMENT DRAFTED BY AND
AFTER RECORDING RETURN TO**

Orin Shakerdge, Esq.
NextEra Energy Resources, LLC
700 Universe Blvd.
Juno Beach, FL 33408
(561) 694-4678

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT ("Agreement") is dated this 23 day of July, 2019 ("Effective Date") by and between Brian Schlotterbeck and Becky Schlotterbeck, husband and wife, with an address of P.O. Box 1908, Watertown, SD 57201 ("Owner") and Crowned Ridge Wind II, LLC, a Delaware limited liability company ("Operator"), with an address of 700 Universe Blvd., Attn: Land Services Administration, Juno Beach, FL 33408, and its successors in interests. Owner and Operator are sometimes collectively referred to hereinafter as the "Parties".

RECITALS

A. Owner is the owner of a certain tract of real property located in Deuel County, South Dakota and more particularly described on **Exhibit A** attached hereto and made a part hereof ("**Property**").

B. Operator is the holder of certain easements and other related rights covering real property located adjacent to and/or in the vicinity of the Property because it is developing a wind energy conversion system including wind turbines, collection lines, roads, and an electric substation in Codington, Deuel and Grant Counties, South Dakota (collectively "**Wind Farm**").

C. Operator desires to have certain landowners participate in the benefit of the Wind Farm and Owner agrees to grant and convey to Operator an option to acquire an easement for wind non-obstruction and an easement for effects on the Property attributable to the Wind Farm.

For good and valuable consideration set forth herein, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Option.** Owner grants to Operator an exclusive option ("**Option**") to acquire the easements in accordance with the following terms and conditions.

(a) The term of the Option shall be for three (3) years, commencing on the Effective Date ("**Option Term**").

(b) On the Effective Date, Operator and its employees, agents and contractors shall have a right to enter upon the Property and the right of ingress and egress over and across the Property for the purposes of surveying the Property.

(c) Operator may exercise the Option by giving written notice to Owner ("**Option Notice**") at any time during the Option Term. Operator shall specify in the Option Notice the date on which the Easements (as defined in Section 2 below) will become effective ("**Commencement Date**").

(d) If Operator fails to exercise the Option within the Option Term, the Option and the rights of Operator as provided herein shall automatically terminate.

2. **Easements.** On the Commencement Date, Owner grants Operator an exclusive easement for the right and privilege to use, maintain and capture the free and unobstructed flow of wind currents over and across the Property as described in **Exhibit A**. Owner shall not engage in any activity on the Property that might interfere with wind speed or wind direction over the Property; cause a decrease in the output or efficiency of any wind turbine or accuracy of any meteorological equipment; or otherwise interfere with Operator's operation of the Wind Farm or exercise of any rights granted in this Agreement. Owner grants to Operator an easement for sounds, visual, light, flicker, shadow, vibration, wake, electromagnetic, electrical and radio frequency interference, and any other effects (collectively "**effects**") on the Property caused or alleged to be caused by the Wind Farm. The easements described in this paragraph shall collectively be referred to as "**Easements**".

3. **Term.** The term of the Agreement ("**Term**") shall commence on the Commencement Date and end fifty (50) years after the Commencement Date, subject to the rights of termination as provided in this Agreement. Operator, at its option, shall have the right to terminate this Agreement at any time during the Term of the Agreement. Termination shall be effective thirty (30) days after written notice of such termination to Owner.

4. **Authority.** Owner is the holder of fee simple title to all of the Property, and has the right, without the joinder of any other party, to enter into this Agreement and grant Operator the Easements. Owner agrees to warrant and defend its ownership of the Property and Operator's interest in this Agreement against any other party claiming to have any ownership interest in or other claim to the Property.

5. **Assignment.** This Agreement, and its rights and obligations, may be assigned by either party to its respective heirs, successors and assigns. The Easements shall run with the Property and shall be binding on Owner and Operator, together with their mortgagees, assignees, and respective successors and assigns, heirs, personal representatives, tenants or persons claiming through them.

6. **Reserved Uses.** Owner reserves the right to use the Property for all other purposes not granted to Operator under this Agreement, including ranching and agricultural uses, and all recreational uses, provided that no such other use interferes with the Easements.

7. **Release.** Owner hereby releases Operator from any and all claims for damages

arising from any injury or harm or conditions related to the Property, including but not limited to, any harm or loss due to nuisance, trespass, disturbance, effects, diminishment of the value of the Property, proximity of the Wind Farm to Owner's Property and/or residence, diminishment or interference with the ability to use or enjoy the Property, and any other injury or harm, of whatever kind or character, to persons or property, whether now known or unknown, or which may appear or develop in the future, caused or alleged to be caused by the Wind Farm or by Operator, its parent companies, affiliates, successors, assigns, whether claimed or not claimed, or which hereafter might be brought by Owner or any of their successors and assigns.

8. **Governing Law.** Operator shall comply with valid laws applicable to the Property and Owner shall not be liable in the event that Operator violates a law relating to the Easements on the Property. This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity. **Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the court of competent jurisdiction.**

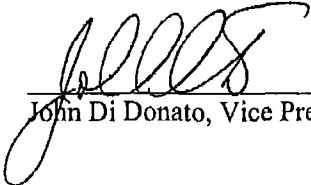
9. **Compensation.** Operator shall pay Owner the amounts set forth in a separate Compensation Agreement as the consideration for this Agreement. The Parties acknowledge and agree that the Compensation Agreement shall not be recorded with the County Recorder, and that by separating the Compensation Agreement from this Agreement prior to recording does not in any way affect the validity of this Agreement.

[Signatures on following pages]

EXECUTED effective the day and year set forth below.

Operator:

Crowned Ridge Wind II, LLC
a Delaware limited liability company

By: 
John Di Donato, Vice President

ACKNOWLEDGEMENT

STATE OF FLORIDA)
) ss:
COUNTY OF PALM BEACH)

On this 23 day of July, 2019, before me, the undersigned notary public, personally appeared John Di Donato, Vice President of Crowned Ridge Wind II, LLC, a Delaware limited liability company, personally known to me to be the person who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said limited liability company and that he was duly authorized so to do.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

(notary seal)


NOTARY PUBLIC, STATE OF FLORIDA

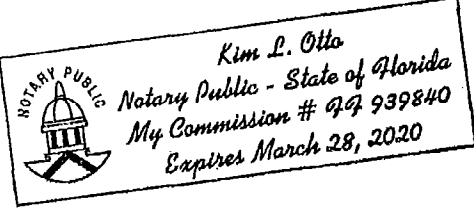


EXHIBIT A

Legal Description of Property

The South 396' of the North 1,696' of the West 460' of the Fractional Northwest Quarter (Frl.NW¼) of Section 6, Township 117 North, Range 50, West of the Fifth Principal Meridian, Deuel County, South Dakota.

BEFORE THE PUBLIC UTILITIES COMMISSION
STATE OF SOUTH DAKOTA

In the Matter of the Application by)
CROWNED RIDGE WIND II, LLC *for a*) Docket EL19-027
Permit of a Wind Energy Facility in)
Deuel, Grant and Codington Counties)

CERTIFICATE OF SERVICE

A true copy of proposed Intervenor’s Exhibit I-8, the same being entitled “Participation Agreement,” consisting of six pages, was transmitted (the date below) by undersigned, as counsel for said Intervenor to each of the following presently appearing on the Commission’s Service List in this matter:

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(605) 949-2648

Dated at Canton, South Dakota, this 21st day of February 2020.

Respectfully submitted,

A.J. Swanson
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/s/ A.J. Swanson

A.J. Swanson
State Bar of South Dakota # 1680

Attorney for,
GARRY EHLEBRACHT, STEVEN GREBER,
MARY GREBER, RICHARD RALL, AMY
RALL, and LARETTA KRANZ, *Intervenors*