

1 THE PUBLIC UTILITIES COMMISSION
2 OF THE STATE OF SOUTH DAKOTA

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4 IN THE MATTER OF THE APPLICATION EL19-027
5 BY CROWNED RIDGE WIND II, LLC
6 FOR A PERMIT OF A WIND ENERGY
FACILITY IN DEUEL, GRANT, AND
CODINGTON COUNTIES ORIGINAL

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8 Transcript of Teleconferenced Proceedings
9 March 17, 2020
9:30 a.m.

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

13 COMMISSION STAFF
Karen Cremer
14 Adam de Hueck
Greg Rislov
15 Jon Thurber
Darren Kearney
16 Eric Paulson
Kaitlyn Baucom

17 A P P E A R A N C E S

18 Miles Schumacher and Brian Murphy,
19 appearing on behalf of Crowned Ridge Wind II;
20 Amber Christenson,
appearing pro se;
21 Kristi Mogen,
22 appearing pro se;
23 Kristen Edwards and Amanda Reiss,
appearing on behalf of Staff.

24 Reported By Cheri McComsey Wittler, RPR, CRR
25 Precision Reporting, 213 S. Main, Onida, South Dakota

1 The following transcript of teleconferenced
2 proceedings was held in the above-entitled matter at the
3 South Dakota State Capitol Building, 500 East Capitol
4 Avenue, Pierre, South Dakota, on the 17th day of
5 March, 2020, commencing at 9:30 a.m.

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1 CHAIRMAN HANSON: EL19-027. And I need to know
2 from Commissioners or parties if anyone needs to take a
3 break at this point.

4 COMMISSIONER FIEGEN: I'm good.

5 MR. SCHUMACHER: That would be welcomed,
6 Chairman Hanson. A two-minute break would be very nice.

7 CHAIRMAN HANSON: Well, if we have a break,
8 people will need to call and (Inaudible) probably. So
9 we're going to give it -- I show 11:07. So we will take
10 it to 11:20. And I'll try to start this again at 11:20.

11 So if you will place your phones on mute and
12 remember not to have chats around open mics., place
13 yourselves on mute, and we'll start again at 11:20.

14 (A short recess is taken.)

15 CHAIRMAN HANSON: I will call the meeting of the
16 South Dakota Public Utilities Commission for March 17,
17 2020, back to order. And the first item on the agenda is
18 to make certain that I can be heard and that
19 Commissioners are on the line.

20 Commissioner Fiegen, are you on the line?

21 COMMISSIONER FIEGEN: Commissioner Fiegen's
22 present. Thank you.

23 CHAIRMAN HANSON: Commissioner Nelson, are you
24 on the line?

25 COMMISSIONER NELSON: I'm here, and you're

1 sounding good.

2 CHAIRMAN HANSON: Great. I'll check with
3 Crowned Ridge.

4 MR. SCHUMACHER: Miles Schumacher is here. Yes.
5 Thank you, Commissioners.

6 CHAIRMAN HANSON: Are you aware of any of your
7 parties that you need to have on the line that are not on
8 the line? Are you good to go?

9 MR. SCHUMACHER: I'll let Brian speak for the
10 rest of the group with him. Are you there?

11 MR. MURPHY: I'm here. Chairman Hanson, we have
12 everybody on the phone that we need.

13 CHAIRMAN HANSON: Thank you, Mr. Murphy.

14 And, Staff, who will be representing Staff on
15 this? Are you on the line?

16 MS. REISS: This is Amanda. I am on the line.
17 And I believe we have Ms. Morey and Mr. Hessler and
18 Mr. Kearney on as well.

19 CHAIRMAN HANSON: All right. And,
20 Ms. Christenson, Ms. Mogen, Mr. Robish, whoever is
21 representing your group, the Intervenors, are you on the
22 line?

23 MS. CHRISTENSON: This is Amber Christenson.
24 Allen Robish is not available today.

25 CHAIRMAN HANSON: Okay. Thank you.

1 And, Ms. Christenson, will you be the one
2 representing the Intervenor?

3 MS. CHRISTENSON: We aren't represented as a
4 group in this docket, but I do believe I'm the only
5 Intervenor speaking.

6 CHAIRMAN HANSON: Thank you. Ms. Mogen, is that
7 correct?

8 MS. MOGEN: Yes. Amber will be speaking for me.

9 CHAIRMAN HANSON: Thank you.

10 So in Docket EL19-027, a reminder that this is
11 being transcribed so identify yourself before speaking.
12 Cheri Wittler is transcribing the discussion so, please,
13 if you plan to read something, pace yourself slow enough
14 so people can follow through and type it.

15 In the Matter of the Application by Crowned
16 Ridge Wind II, LLC for a Permit of a Wind Energy Facility
17 in Deuel, Grant, and Codington Counties, the question
18 before the Commission is shall the Commission grant,
19 deny, or grant with conditions a permit for the
20 construction of a wind energy facility to Crowned Ridge
21 Wind II, LLC pursuant to SDCL 49-41B-25? Or how shall
22 the Commission proceed?

23 We will go through this discussion today giving
24 five minutes to each one of the parties, and then Crowned
25 Ridge will have three minutes for a rebuttal.

1 We'll begin with Crowned Ridge. Then we'll go
2 to Staff and then to the Intervenors. Excuse me. I
3 misspoke. We will go to Crowned Ridge first and then
4 Intervenors.

5 Mr. Swanson sent a letter indicating that he
6 would not be here. I will ask at this time, Mr. Swanson,
7 have you joined us?

8 So after the Intervenors, then we'll go to
9 Staff. Then we'll go back to Crowned Ridge for their
10 three minutes.

11 So we'll begin now with Crowned Ridge for your
12 presentation.

13 MR. SCHUMACHER: Thank you, Chairman Hanson.
14 Miles Schumacher for Crowned Ridge Wind II. The weight
15 of the record in this proceeding shows that the Applicant
16 has met its burden of proof.

17 On the first element of 49-41B-22, the project
18 will comply with all applicable laws and rules, including
19 the county setbacks required in Deuel, Grant, and
20 Codington Counties.

21 Contrary to Intervenors' claim, the record in
22 this proceeding shows the project complies with both
23 Grant County ordinances. Intervenors themselves
24 submitted as Exhibit AC-19 Crowned Ridge's Sound and
25 Shadow Flicker Study that shows the project is in

1 compliance with the older Grant County ordinance.

2 (Inaudible) sound studies that show it will
3 comply with the new ordinance, and these studies show
4 compliance using cumulative impacts not to exceed 45 dBA
5 for nonparticipants, while the old ordinance that
6 intervenors point to had a threshold for all receptors of
7 50 dBA.

8 Therefore, the only potential cumulative
9 impacts that may have not been studied are on accessory
10 structures such as barns where accumulative impact
11 studies are not required by any state or county
12 regulation.

13 By showing that we will meet both ordinances,
14 the Applicant has met its burden of proof that it will
15 comply with all applicable laws and rules.

16 The evidence also shows the project will not
17 pose a threat of serious injury to the environment, nor
18 to the social and economic condition of inhabitants,
19 which is demonstrated by the Applicant being granted
20 conditional use permits by the counties.

21 In addition, there is substantial evidence that
22 the project will not pose a threat of serious injury to
23 the environment or cultural resources by way of studies,
24 surveys, and consultations with agencies and tribes.

25 Further, the Applicant has committed to equip

1 the project with an FAA approved ADLS for the life of the
2 project. In this regard, on March 12, 2020, the
3 Applicant filed with the FAA its application for approval
4 of the ADLS.

5 In addition, Staff filed with its Brief an
6 Amended Condition 29, which addresses postconstruction
7 avian and bat mortality monitoring, which Applicants
8 support and request that the Commission adopt.

9 Turning to economic impacts, the project will
10 produce benefits to the community, including the payment
11 of property taxes, lease payments, temporary jobs for
12 250 construction workers, and up to 7 to 12 permanent
13 workers stationed in South Dakota.

14 As Applicant noted in its Brief in Footnote 14,
15 there was one easement option that needed to be executed
16 to maintain turbine location No. 85. That easement
17 option has now been renewed and executed.

18 The record also shows the project will not
19 substantially impair the health, safety, or welfare of
20 the inhabitants. Applicant has appropriately minimized
21 shadow flicker to 30 hours annually and the sound level
22 to no more than 45 dBA at any nonparticipant's residence
23 and no more than 50 dBA at any participant's residence.

24 Further, consistent with witness Hessler's
25 testimony, Applicant agreed to use four alternative

1 turbine sites as a way to further reduce (Inaudible)
2 sound.

3 Applicant presented a Ph.D. and medical doctor,
4 both with many years of relevant experience that
5 testified that the project will not substantially impair
6 the health or welfare of the inhabitants. There is no
7 evidence to the contrary.

8 Without any expert testimony in support,
9 Intervenors argue that the Commission should limit
10 nonparticipant sound to 40 dBA and shadow flicker to
11 15 hours annually and 15 minutes per day.

12 Similarly, the Ehlebracht Intervenors filed a
13 legal brief replete with baseless legal notions on common
14 law, trespass, and governmental takings and
15 inappropriately cited testimony of witnesses in other
16 dockets never proffered for cross-examination in this
17 proceeding, and cited and quoted the Stanton NARUC paper
18 that was objected to and not allowed to be part of the
19 record here.

20 Accordingly, the positions of Intervenors are
21 not supported by substantial evidence and have no legal
22 basis and should not be relied upon in making a decision
23 in this proceeding.

24 Applicant has presented substantial credible
25 evidence showing the project will not substantially

1 impair the health, safety, or welfare of the inhabitants.
2 Applicant has also shown that it will meet or exceed
3 required setbacks established for safety and implement
4 safety practices during construction, operation, and
5 maintenance (Inaudible) the operation of the project
6 24 hours a day seven days a week. Thus, the evidence
7 also shows that the project will not substantially impair
8 safety.

9 The record also demonstrates that the proposed
10 project will (Inaudible) --

11 CHAIRMAN HANSON: Slow up just a smidgen there,
12 please.

13 MR. SCHUMACHER: Yes. Thank you.

14 The record also demonstrates that the proposed
15 project will not unduly interfere with the orderly
16 development of the region, which is supported by the
17 granting of conditional use permits for the project by
18 the counties.

19 In summary, Applicant has met its burden of
20 proof and, thus, respectfully requests that the
21 Commission grant it an energy facility permit.

22 Thank you.

23 CHAIRMAN HANSON: Thank you. And we will now
24 turn -- I'll ask one more time if Mr. Swanson is on the
25 line.

1 I don't believe anyone has joined us.

2 So we will turn to Intervenors. And I believe,
3 Ms. Christenson, as I understand, you're carrying the
4 load here today.

5 MS. CHRISTENSON: Thank you. Amber Christenson.

6 It is not -- excuse me. It is not for the
7 Intervenors to establish the Applicant does not meet
8 requirements for the permit. The burden of proof rests
9 solely on the Applicant.

10 You as Commissioners are here to protect
11 South Dakota by ensuring the proposed project will comply
12 with all laws and rules. First and foremost, also you
13 must ensure this project will not pose a threat of
14 serious injury to the environment, nor will this project
15 impair the health, safety, or welfare of the inhabitants.
16 This Applicant has not met its burden in all three of the
17 aforementioned instances.

18 There is no reliable sound study for the
19 Commission to review. As referenced in my posthearing
20 brief and the incorporated Findings of Fact and
21 Conclusions of Law, the sound studies presented by the
22 Applicant do not provide all necessary criteria for
23 review. Accuracy is required by South Dakota rules. The
24 Applicant just admitted during Mr. Schumacher's speech
25 that their sound study is not complete.

1 The cement batch plant poses serious concerns
2 for public health and safety and air quality. The
3 Applicant is required by state law to provide evidence
4 the project will comply with air quality standards and
5 regulations. Yet they submitted no proof.

6 The safety of the public will be jeopardized by
7 the placement of the proposed batch plant. During the
8 recent construction of Highway 212 when this site was
9 used as a batch plant Highway 212 was closed to through
10 traffic. This highway is a major route for interstate
11 traffic, and this project is scheduled to be built during
12 peak tourism season.

13 Despite the plain language of SDCL 49-41B-25.2,
14 the Applicant has not even applied for FAA approval for
15 ADLS lighting. The Applicant has also testified to the
16 Commission that the project is not funded. The
17 abandonment of a half-built project could seriously
18 impact the welfare of the residents.

19 The Applicant testified there was no profit and
20 loss statement or balance sheet for the past three years.
21 Yet there was a check issued by Crowned Ridge II to
22 Grant County for their Application fee. And truth and
23 accuracy is required by South Dakota rules.

24 The Applicant has not proven that it and its
25 subcontractors are insured. The welfare of the

1 inhabitants shall be protected.

2 The Applicant has not provided an estimate of
3 expected efficiency of the proposed project. The
4 Applicant has not provided evidence that the project will
5 comply with the standards and regulation of disposal of
6 solid waste. The Applicant has no viable waste plan.
7 The Applicant did not prove waste was not toxic.

8 The Applicant did not provide a description of
9 the existing environment at the time of the submission of
10 the Application. No preconstruction sound study, no air
11 quality study, no infrasound or low frequency noise
12 studies.

13 Typically property is the largest asset of any
14 family. Staff Witness Lawrence submitted two properties
15 who reported losses. One in this very project before the
16 project is even permitted or built, and it is a
17 substantial loss.

18 In my posthearing Brief, Findings and
19 Conclusions, I suggested some conditions if the
20 Commission had found the Applicant's burden had been met.

21 Staff Witness Hessler during the evidentiary
22 hearing agreed that the Applicant should be able to meet
23 a noise limit on this project for nonparticipants of
24 40 dBA. A 40 dBA nonparticipant noise limit will reduce
25 annoyance and complaints. I quote, "Sleep deprivation

1 leads to adverse health effects. No question." That is
2 a quote directly from the Applicant's own witness.

3 No shadow flicker for nonparticipants. At the
4 very least this Commission should provide the four
5 nonparticipating properties that are going to receive
6 flicker protection by ordering zero flicker for their
7 respective properties. A small amount of turbines moved
8 a few feet or an alternate used would fix the issue for
9 the people who came here for intervention and
10 protection.

11 Construction noise restriction from 7:00 p.m. to
12 7:00 a.m. Unreasonable? No. Making the project more
13 palatable to the residents? Yes.

14 A 1,500-foot setback from any public roadway to
15 protect all travelers. I assume the reason is safety.
16 Commissioner Fiegen addressed the interstate. Our local
17 residents should be afforded the same concern for our
18 state, county, and township roads.

19 In summary, Commission, Applicants have not
20 simply been unpersuasive. Rather, Applicants have
21 completely failed to meet their burden under state law.
22 Having failed to meet their burden on nearly all, if not
23 all, key areas related to this failed Application, it
24 appears this Commission has no other alternative but in
25 the best interest of South Dakota to deny the Applicant's

1 deficient Application.

2 Thank you.

3 CHAIRMAN HANSON: Thank you very much,
4 Ms. Christenson.

5 I'll turn to Staff at this time. And we have
6 Darren Kearney, Jon Thurber, Eric Paulson, Kristen
7 Edwards, and Amanda Reiss.

8 MS. REISS: Thank you. This is Amanda Reiss for
9 Staff.

10 Staff filed its Brief with the recommendation
11 that Crowned Ridge Wind II has met its burden of proof
12 and that the Commission should grant the permit so long
13 as the certain conditions Staff proposed are attached to
14 the permit. Those conditions include all of the
15 conditions outlined in Staff's Exhibit S7.

16 We do have two slight changes to that proposal.
17 And these were both mentioned in Staff's Brief, but I
18 would like to highlight them for the Commission today.
19 The first change is that Staff recommends that
20 Condition 29 be revised.

21 The original proposal would have required two
22 years of postconstruction mortality monitoring. Staff
23 proposes that that be revised to require one year of
24 postconstruction mortality monitoring to assess
25 predictions of wildlife fatality risks at Crowned Ridge

1 Wind II. This is consistent with the voluntary U.S. Fish
2 & Wildlife Service Land-Based Wind Energy Guidelines.

3 Xcel Energy has agreed that the funds set aside
4 for the second year of postconstruction mortality
5 monitoring would be reallocated to fund a three-year
6 raptor study at Crowned Ridge Wind I and Crowned Ridge
7 Wind II. Staff came to this revision in the condition
8 based on guidance from South Dakota Game, Fish & Parks,
9 and their further rationale is explained in Staff's Brief
10 as well as the February 27, 2020, letter that's marked as
11 Attachment A.

12 The second change to Staff Exhibit 7 is
13 mentioned in our Brief as well, and Staff recommends that
14 an additional condition be added -- this condition stems
15 from discussions with Staff witness Morey at the
16 evidentiary hearing regarding whether GF&P had authority
17 to require Crowned Ridge Wind II to access the facility.

18 Despite the voluntary agreement from the
19 Applicant, it was determined that GF&P does not have the
20 authority to require access. Based on this analysis,
21 Staff proposed and the Applicant agreed to a new
22 condition. That condition is outlined in the Brief, but
23 it essentially says Applicant shall allow Crowned Ridge
24 Wind access to the project area to conduct a pre and
25 postconstruction survey to evaluate the potential effect

1 on the Crowned Ridge Wind II project on the local prairie
2 grouse population.

3 I would also mention today that Staff has been
4 in communication with the Applicant regarding concerns
5 due to the proximity of the batch plant to a daycare
6 facility. While the daycare facility did not express
7 concerns to Staff with the batch plant, the Applicant
8 has, nevertheless, agreed to look at other options.

9 Intervenors Goodwin Group, as they identified
10 themselves in the Brief, argued that granting a permit
11 allowing any amount of noise or shadow flicker to cross
12 onto the property of nonparticipants is interfering with
13 their personal property rights. Staff is unconvinced by
14 this argument.

15 For clarification, the PUC has limited
16 jurisdiction. The PUC does not grant or alter property
17 rights as they exist before a permit is considered or
18 issued. Instead the PUC reviews Permit Applications to
19 determine whether the Application meets the standard in
20 state law, specifically whether the facility will comply
21 with applicable laws and rules ensuring that the facility
22 will not pose a threat of serious injury to the
23 environment or social or economic condition of the
24 inhabitants, that the facility will not substantially
25 impair the health, safety, or welfare of the inhabitants,

1 and that the facility will not unduly interfere with the
2 orderly development of the region.

3 As Goodwin Group mentioned in its Brief, the
4 PUC's role is not to ensure that a project will in no way
5 impact the community, but instead to ensure the project
6 will produce minimal adverse effects. The evidence on
7 the record shows no indication that imposing the noise
8 and shadow flicker limits recommended by Staff would
9 impair the health, safety, or welfare of the inhabitants
10 of the project area, nor would it cause more than minimal
11 effects to the Goodwin Group or other inhabitants of the
12 project area.

13 The Goodwin Group's argument appears to rest on
14 an idea that any amount of noise or light or blocking of
15 light that crosses property lines should be considered a
16 de facto easement. But this argument fails to provide
17 any real support that a court has ever recognized this
18 concept. Instead, courts have generally recognized that
19 some interference is permissible, such as a road, a
20 railroad, or airport, so long as interference does not
21 render the property completely unusable.

22 Accepting Goodwin Group's argument would
23 effectively prohibit the permit and construction of any
24 energy project, an unreasonable result.

25 In the absence of any guidance from the Court

1 supporting Goodwin Group's argument, granting a permit
2 with the proposed conditions ensures that the project
3 will not pose serious injury to the environment, will not
4 substantially impair the health, safety, or welfare of
5 the inhabitants, and will not unduly interfere with the
6 orderly development of the region.

7 Staff is available for any questions from the
8 Commission and has nothing further at this time. Thank
9 you.

10 CHAIRMAN HANSON: Thank you very much,
11 Ms. Reiss. And, Crowned Ridge, you have three minutes
12 for rebuttal.

13 MR. SCHUMACHER: Thank you, Chairman Hanson.
14 Miles Schumacher. I'll be very brief.

15 First, we stand by the sound studies that were
16 submitted on the record and believe they demonstrate we
17 have met our burden. With regard to the batch plant
18 (Inaudible) indicated we have agreed with Staff to --

19 CHAIRMAN HANSON: You cut out at the beginning
20 of that sentence. Try 'er again.

21 MR. SCHUMACHER: I will. Thank you.

22 With regard to the batch plant, we have agreed
23 with Staff that we will look at and find an alternative
24 location for that and would confirm that our
25 conversations with the neighboring landowner indicate

1 they have no objection.

2 With regard to the roads, we will file a traffic
3 control plan in accordance with the conditions under
4 Condition 8 of the proposed condition. Finally, as
5 indicated in my opening comments, we did file the ADLS
6 application with FAA on March 12, so that has been done.
7 We believe we've met our burden and that it would be
8 appropriate to grant the permit.

9 Thank you.

10 CHAIRMAN HANSON: Thank you. And we'll turn to
11 Commissioner questions at this time. I just have one --
12 well, I have several, but I think those will be fleshed
13 out as we go through the process. I do have one question
14 of Ms. Reiss to start off with, and that is in pertaining
15 to the -- the suggestions for the changes to Staff's
16 Exhibit 7. The second one that you discussed you start
17 out with stating, "The Applicant shall allow," and you
18 state, "Crowned Ridge Wind, LLC access to the project."

19 I'm curious why that does not read, "Applicant
20 shall allow Game, Fish & Parks access" or as opposed to
21 Crowned Ridge Wind access.

22 MS. REISS: Sure. Thank you for the question.
23 And I can provide a beginning answer, and, Darren
24 Kearney, if you have more to add, please jump in.

25 It is my understanding that Crowned Ridge Wind

1 will be conducting this study, and so the condition is
2 specific to allow them access. I believe Staff would be
3 open to amending that to include Game, Fish & Parks as
4 well as Game, Fish & Parks believes it is necessary.

5 CHAIRMAN HANSON: Thank you very much. It just
6 seems strange that Crowned Ridge Wind II, which I
7 recognize is a project in -- that they're two different
8 entities, but it's just saying that Crowned Ridge would
9 allow -- I would like to see them required to allow
10 Game, Fish & Parks as well so I'll just throw that out
11 there at this juncture.

12 Are there other questions by Commissioners?

13 COMMISSIONER FIEGEN: This is Commissioner
14 Fiegen, and I do have questions, but I don't know if
15 Commissioner Nelson wanted to go first or if I can just
16 ask a couple.

17 COMMISSIONER NELSON: Well, you can go. The
18 only question I had was for Mr. Swanson, and he's not
19 here. So go ahead.

20 COMMISSIONER FIEGEN: Thank you, Mr. Chairman
21 and Vice Chairman. There's just a couple of questions,
22 and Staff, first of all, answered my question on
23 Condition 29 so I appreciate that.

24 Another question I have -- actually this is for
25 Staff and Crowned Ridge II. On Condition 26C, that talks

1 about the sound study. But, if you remember, in
2 December I added something to the sound study so I want
3 to make sure this is a friendly amendment to the
4 condition, is that the public liaison officer will assist
5 contacting nonparticipating landowners for permission to
6 test noise levels on their properties.

7 I just wanted to get confirmation that the Staff
8 and Crowned Ridge would be okay with that.

9 MR. MURPHY: Commissioner Fiegen, this is
10 Brian Murphy for Crowned Ridge. Crowned Ridge is okay
11 with that add to that condition.

12 COMMISSIONER FIEGEN: Thank you.

13 MR. MURPHY: And that would be our
14 understanding.

15 COMMISSIONER FIEGEN: Thank you.

16 CHAIRMAN HANSON: Commissioner Fiegen.

17 MS. REISS: This is --

18 CHAIRMAN HANSON: Excuse me. Go ahead,
19 Ms. Reiss.

20 MS. REISS: This is Amanda. Did you need
21 further input, Commissioner Fiegen?

22 COMMISSIONER FIEGEN: Sure. I'm sure the
23 Staff's okay; correct?

24 MS. REISS: Yes.

25 COMMISSIONER FIEGEN: Okay. And the other

1 question I have for Staff is on Condition 34. And I had
2 questions right away and then I think you're clear enough
3 in Condition 34 and that is that the Air Detection Light
4 System is required before starting commercial operation.
5 Is that your understanding? Correct? That they cannot
6 start commercial operation until the detection system has
7 been put on?

8 MS. REISS: Thank you. This is Amanda Reiss for
9 Staff. And, Mr. Kearney, again, if you have additional
10 thoughts, please jump in. But, yes, that is Staff's
11 intent with this condition.

12 COMMISSIONER FIEGEN: Okay. Those were my only
13 questions. And I guess I only have one amendment then
14 for the conditions.

15 Thank you.

16 CHAIRMAN HANSON: Commissioner Nelson.

17 COMMISSIONER NELSON: I have no questions, but I
18 do have a motion whenever you're ready.

19 CHAIRMAN HANSON: I have a question. I believe
20 we have Game, Fish & Parks on the line; is that correct?

21 MS. MOREY: Yes. This is Hilary Morey with
22 Game, Fish & Parks.

23 CHAIRMAN HANSON: Hi, Hilary. Excuse me.
24 Ms. Morey.

25 There's a number of questions pertaining to air

1 quality, water quality, environmental quality, et cetera.
2 Does the Game, Fish & Parks -- I know you're not DENR.
3 Do you have any concerns over effects on wildlife with
4 this project as it's being proposed?

5 MS. MOREY: In relation to air quality and water
6 quality?

7 CHAIRMAN HANSON: In relationship to the effect
8 on animal life from -- obviously, if air quality -- air,
9 water, land is affected in some fashion, it's going to
10 affect wildlife. I'm just wondering if you're concerned
11 about those effects and their not -- well, let me
12 rephrase that.

13 Are you concerned with the effect of this
14 project and -- that it may adversely affect wildlife
15 because of its effect on air, water, environment in
16 general -- I know you're concerned with it, but is there
17 a change that needs to take place on the S7, the Staff's
18 Exhibit 7?

19 I know that you've negotiated a variety of
20 things, but I'm wondering whether or not there's anything
21 in addition that you see a need for a change.

22 MS. MOREY: I guess our -- excuse me. This is
23 Hilary Meyer. Or Hilary Morey of South Dakota Game, Fish
24 & Parks.

25 Our main concern -- and we've made this clear in

1 a number of meetings with the Applicant and in previous
2 dockets as well, but our main concern of wind energy
3 projects is impacts to grasslands and fragmentation of
4 grassland landscapes.

5 Our primary concern there would be grassland
6 nesting birds such as prairie grouse, chestnut-collared
7 longspurs. These species guild, these grassland nesting
8 birds, have been in decline over the last 20 years so
9 those are our main concerns there.

10 In regards to air quality and water quality,
11 that would be under the realm of South Dakota Department
12 of Environment and Natural Resources so I can't really
13 speak to that. That is not my expertise. But in terms
14 of effects on aquatic organisms, these wind energy
15 projects generally have minimal impacts to aquatic
16 resources, specifically when they site their turbines and
17 access roads outside of waters of the United States.

18 CHAIRMAN HANSON: Thank you very much,
19 Ms. Morey. Yes. We recognize that the DENR will have
20 the air, water quality, et cetera.

21 What I was concerned with is -- and you
22 explained it well -- effects on the air and water will,
23 of course, affect wildlife. So I was concerned from that
24 standpoint. But your answer is suffice for that
25 question.

1 Thank you very much.

2 I have a motion as well; however, I'll certainly
3 allow Commissioner Nelson to make his motion. And I
4 assume it has to do with Staff's Exhibit 7 and amendments
5 to that.

6 So Commissioner Nelson.

7 COMMISSIONER NELSON: Well, Commissioner Hanson,
8 I think we've done this often enough that you are exactly
9 right.

10 I will move in EL19-027 that the Commission
11 grant the permit for construction of a wind energy
12 facility to Crowned Ridge Wind II, LLC pursuant to
13 SDCL 49-41B-25 and attach the conditions as found in
14 Staff Exhibit S7.

15 If I might continue, I would move to amend my
16 motion with a series of what I am going to call Nelson
17 proposed amendments. These are in written form, and at
18 this point we're going to have to take just a little bit
19 of a pause for Joy Lashley to e-mail that out to
20 everybody involved here, put it on the website.

21 Commissioners, I am going to send it to you as
22 we speak, and I think we just need to be at ease until
23 everybody gets that before I proceed with describing
24 what's in those amendments.

25 Commissioner Hanson, are you still there?

1 CHAIRMAN HANSON: I am. And I'm assuming these
2 are, for the most part, the amendments that Karen sent
3 out as no doubt to each one of us -- we assume so -- as
4 suggestions of -- I don't see all of them that she
5 mentioned.

6 COMMISSIONER NELSON: Yeah. And as soon as
7 everybody's got it, I'll go through them one at a time
8 and kind of explain the origin of each one.

9 CHAIRMAN HANSON: Mr. Schumacher. Excuse me.
10 Well, let's see how many -- we have 22 persons on the
11 phone right now for this docket.

12 Is there anyone who has not received this
13 information?

14 MR. SCHUMACHER: Thank you, Chairman Hanson.
15 Miles Schumacher.

16 I have not received it. I have the docket up,
17 and I don't see it posted there yet. I can't speak for
18 Mr. Murphy as to whether or not he and the remaining
19 Crowned Ridge representatives have it yet.

20 CHAIRMAN HANSON: All right. Well, we'll give
21 it a few more minutes, and then we will start to go
22 through it. It's a number of --

23 COMMISSIONER NELSON: Yeah. I think it's
24 probably self-explanatory enough that I can do it -- and
25 just for the public's benefit, I e-mailed the document

1 just now to my two fellow Commissioners so they've got
2 it. Our Staff is in the process of e-mailing it to the
3 docket list and posting it on our website, but because
4 we're working remotely, that may not be happening as
5 smoothly as we hoped.

6 CHAIRMAN HANSON: We'll give it a few more
7 minutes here, and then we will start with it. I don't
8 think it's going to be difficult by any means to
9 understand. I think we've discussed a number of these
10 items at this juncture so we'll start here in just a
11 couple of minutes.

12 MR. SCHUMACHER: Thank you, Chairman,
13 Miles Schumacher. I will verify (Inaudible).

14 CHAIRMAN HANSON: Okay. You cut out right after
15 the word "verify."

16 MR. SCHUMACHER: I have received it. Thank you.

17 CHAIRMAN HANSON: Thank you.

18 Have the other parties -- I assume Staff has
19 received it. Ms. Christenson, have you received it?

20 MS. CHRISTENSON: Yes. Thank you.

21 CHAIRMAN HANSON: Thank you.

22 Staff?

23 MS. REISS: Staff has received it.

24 CHAIRMAN HANSON: Thank you.

25 Commissioner Nelson, would you proceed then?

1 COMMISSIONER NELSON: Certainly. And I've just
2 been advised by Staff that it has been posted to the
3 website, but our website has to go through a replication
4 process before it actually appears out there. And now
5 I'm being told that it's there. So I think we're good to
6 go.

7 CHAIRMAN HANSON: Let's call the amendments to
8 Staff Exhibit S7 -- you may come up with another
9 amendment as we go through this process. Please proceed.

10 COMMISSIONER NELSON: Thank you.

11 So, to begin with, I believe that the Applicant
12 has met their burden under state law and are, therefore,
13 entitled to receive a permit, hence the motion. Staff
14 did a great job of putting together their Exhibit S7 as a
15 foundation for the conditions that need to be attached.

16 However, through discussions at the hearing and
17 since the hearing, there are several items that have
18 bubbled up that I think demand that S7 be amended and,
19 hence, my proposal.

20 And I'll just go through this, and if people
21 have questions, I'm certainly happy to answer that.

22 No. 1, inserting the word "itemized." That's
23 something we talked about during the hearing.

24 No. 2, providing just a little bit of additional
25 information that the landowners -- that they be given the

1 Order in addition to the Permit. I think that additional
2 information is good.

3 No. 3 is the change to paragraph 29 that Staff
4 has already talked about. I think I've taken that
5 language verbatim from what Staff presented. And,
6 Ms. Reiss, if I haven't, please let me know.

7 No. 4 deals with paragraph 34. And this is a
8 complete replacement for paragraph 34. But I think it
9 gets at the question that Commissioner Fiegen asked just
10 a little bit earlier in that I want to be very clear that
11 we are requiring the Applicant, first of all, to utilize
12 an ADLS. Secondly, that they be required to apply for
13 their permit from the FAA in enough time to receive that
14 permission by the commercial operation date, and then
15 that it, in fact, be operational by the commercial
16 operation date.

17 And so I've just expanded upon that requirement,
18 making sure that we all understand that we intend it to
19 be there by commercial operation date.

20 No. 5, I'm proposing to delete paragraph 40. As
21 we've looked at that paragraph, we think we already have
22 the authority to do what's outlined there, and there's
23 not any reason to spell that out a second time.

24 No. 6 is the whooping crane amendment language
25 that was talked about during the hearing and was agreed

1 to by Staff and by the Applicant. So I've included that.

2 Commissioner Hanson, you can give me a point for
3 actually including a whooping crane amendment maybe for
4 the first time?

5 No. 7, in looking through S7 I think there's
6 some grammatical things that maybe before the final order
7 is written can be cleaned up just a little bit. Nothing
8 subjective, but just some grammatical changes.

9 No. 8, the Intervenors, and I don't recall which
10 Intervenor, suggested that we require that the completion
11 of the LNTE blade attachments on Crowned Ridge Wind I
12 turbines be completed before commercial operation of
13 Crowned Ridge Wind II. I think that's a reasonable
14 requirement. In order for the sound modeling to be
15 accurate, that does need to happen. And so I've included
16 that as a requirement.

17 Now I'll say from a practical perspective, I
18 think it's a moot issue. I am very confident that the
19 LNTE blade attachments will be in place much prior to
20 Crowned Ridge Wind II being ready to go commercial, but
21 let's just put it in there and spell it out.

22 No. 9, this comes from Applicant witness
23 MaRous who indicated that the project owner would be
24 willing to cooperate with ag spray applicators to shut
25 down turbines as needed for effective and safe spray

1 application and operation. So we've just included that
2 in the conditions.

3 No. 10, and this is something -- a provision
4 that Staff spoke to already today. Again, Ms. Reiss, I
5 think I've got the language right here, but if it needs
6 to be changed in any way, you can let us know.

7 And then I'm going to add a No. 11 on here just
8 to keep this easy. Let's include Commissioner Fiegen's
9 paragraph 26C, a public liaison suggestion. Let's just
10 include it in here so we can look at all of this at the
11 same time.

12 With that, I'd be happy to answer any questions
13 about any of these individuals. And if any of my fellow
14 Commissioners want to pull any of these out and deal with
15 them separately as opposed to an omnibus group, I'm fine
16 with that too.

17 CHAIRMAN HANSON: Thank you. And I would like
18 to have Commissioner Fiegen's -- on its own, let her make
19 that motion and explain it.

20 There are a number of areas that I have concerns
21 with. And I will give you a point for adding the
22 whooping crane at the end. Obviously, I was going to if
23 you had not, but I appreciate your coming around to my
24 side of the world on supporting the birds.

25 Commissioner Fiegen, do you have -- I have some

1 comments on the motion, but I'm going to hand over the
2 mic. to you.

3 You have the floor, Commissioner Fiegen.

4 COMMISSIONER NELSON: And, Chairman Hanson, if I
5 could, I will just voluntarily pull back that 26C portion
6 of that and let Commissioner Fiegen handle that. Not a
7 problem.

8 CHAIRMAN HANSON: All right. Commissioner
9 Fiegen.

10 COMMISSIONER FIEGEN: I am still reviewing the
11 amendments so I will have comments in a little bit. And
12 it doesn't matter if my amendment's on there or not. I'm
13 okay either way.

14 CHAIRMAN HANSON: Yeah. I'd like to print a
15 paper copy of this so that I can -- so that I can work on
16 it. I'm going to -- I have to send this over to a
17 different computer, turn that computer on and then send
18 it to a -- my printer here. Three computers on my work
19 area and two iPads and two phones gets a little bit
20 challenging at a time like this.

21 So if we could take just maybe 10 minutes here
22 so that I can make a copy and anybody else who's in that
23 position can look this over. Thank you. I'm going to go
24 on mute here and take care of that.

25 (A short recess is taken.)

1 CHAIRMAN HANSON: Okay. As we discuss it -- I
2 know I said 10 minutes, but as we discuss it I think
3 people will be able to follow along.

4 Commissioner Fiegen, do you have any questions
5 or discussion on the motion?

6 COMMISSIONER FIEGEN: If my amendment wasn't put
7 on and Commissioner Nelson took it off, I do move to
8 amend the section of -- oh, all the sudden I can't find
9 it. The section on the public liaison officer, 26C, by
10 adding, "The public liaison officer will assist in
11 contacting nonparticipating landowners for permission to
12 test noise levels on their properties."

13 CHAIRMAN HANSON: Great. Okay. And I'm going
14 to accept that as a motion to amend.

15 And we've discussed it. But is there any
16 discussion on the motion?

17 COMMISSIONER FIEGEN: No. I think all of us
18 probably agree with that and the two parties -- or the
19 three parties I'm assuming all agree also.

20 And for the other conditions, while I looked
21 through all of them, I guess I -- actually there are -- I
22 think the -- 34 is probably written a little bit more
23 clearly. And I want to make sure that was the case so I
24 reread that. I wanted to make sure 40 could be deleted,
25 and I do believe Commissioner Nelson is proper on that.

1 And then I certainly appreciate the amendment on
2 the sprayers, the aircraft sprayers that spray for our
3 agricultural people, and I appreciate that amendment. So
4 thank you.

5 CHAIRMAN HANSON: Thank you. Any further
6 discussion on the motion? Looks like a friendly motion.

7 Hearing no further discussion on the motion to
8 amend, Commissioner Nelson.

9 COMMISSIONER NELSON: Aye.

10 CHAIRMAN HANSON: Commissioner Fiegen.

11 COMMISSIONER FIEGEN: Fiegen votes aye.

12 CHAIRMAN HANSON: Hanson votes aye. The motion
13 carries.

14 That brings us to further discussion, motions to
15 amend. I'm going to ask that on No. 10 of the list of
16 amendments that after the word on the first line,
17 "Applicants shall allow Game, Fish & Parks and Crowned
18 Ridge Wind," I'd like to see it very plain that GF&P has
19 access to the project area. That's all the discussion I
20 have on that.

21 Any further discussion on that motion to amend?

22 Hearing none on the motion to amend,
23 Commissioner Nelson.

24 COMMISSIONER NELSON: Aye.

25 CHAIRMAN HANSON: Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Fiegen votes aye.

2 CHAIRMAN HANSON: Motion carries.

3 Brings us back to further discussion on the main
4 motion. Commissioner Fiegen, Commissioner Nelson --
5 Commissioner Nelson, do you wish to amend your own motion
6 here or --

7 COMMISSIONER NELSON: Well, no, I don't, but I
8 think we're back to -- I don't think we're back to the
9 main motion because I don't think we voted on these
10 10 items yet. So I think we're on my motion to amend.

11 CHAIRMAN HANSON: Correct. You're correct.
12 We're back on the amended motion to amend.

13 Anything further, Commissioner Fiegen? I have a
14 few items if you --

15 COMMISSIONER FIEGEN: You know, I have went
16 through them, and this is Commissioner Fiegen again, and
17 I believe these are correct. Thank you.

18 And I also appreciate the new paragraph on the
19 LNTE blades. So I appreciate that too. Thank you.

20 CHAIRMAN HANSON: Yes. Absolutely.

21 I'm a little concerned with item No. 7. It says
22 minor grammatical changes. I'd like to phrase that a
23 little bit differently, but I don't want -- some of the
24 areas where I see that we need some changes -- you know,
25 I think once we get back to the main motion I'll have

1 some motions at that point so I won't -- I guess I won't
2 worry about that at this juncture.

3 I'm going to look at -- there were a couple of
4 things that I have concerns with. And, no, I do not have
5 concerns with the whooping crane.

6 COMMISSIONER FIEGEN: Mr. Chairman, I do have a
7 question for Commissioner Nelson on the paragraph 34.

8 CHAIRMAN HANSON: Please proceed.

9 COMMISSIONER FIEGEN: I see FSA in there. Is
10 that correct, or is that a state officer thinking about
11 FFA?

12 COMMISSIONER NELSON: Yeah. That's me thinking
13 about FFA, and that does need to be FAA. And let's just
14 consider that a friendly amendment. Thank you.

15 COMMISSIONER FIEGEN: Okay. Thank you.

16 CHAIRMAN HANSON: Would you point that out. I
17 was looking at -- oh, I see it. Twice it says FFA. I
18 assume that's under minor grammatical changes. Oh, it's
19 on there just once. Okay.

20 Too many papers to deal with.

21 Item 29, did you make a motion on -- there it
22 is. Replace paragraph 29.

23 I agree with that in its entirety, and I
24 understand that -- with one exception. And I understand
25 the negotiation that took place with -- between Staff,

1 GF&P, and the Applicant. I just have never been
2 comfortable with a one-year postconstruction -- one year
3 gives us such a short moment in time and the effects.

4 And so I would like to leave that as a two-year
5 and just leave everything else the same as it's presented
6 there. I think you did a real good job of putting that
7 together, and certainly Karen appreciates your work on
8 this.

9 Commissioner Nelson, I hope you don't have any
10 heartburn with that, but I will move that -- I move that
11 in paragraph 29 to supplant the word "one" in the first
12 line with the word "two" so that it reads, "Applicant
13 agrees to undertake a two-year independently conducted
14 postconstruction."

15 Discussion on that motion. I guess I've already
16 discussed it. I just feel it's too short of a window in
17 time to have a real decent study of any sort. I'd like
18 to see three to four years. But a one-year just causes
19 me real concern.

20 Any further discussion on that motion?

21 COMMISSIONER NELSON: Well, yeah. No hard
22 feelings, but I'm probably going to oppose it. You know,
23 and Staff and Game, Fish & Parks, you know, looked at
24 what they thought was needed. You know, one year is what
25 they came up with so I'm going to stick with that for

1 now.

2 CHAIRMAN HANSON: Yeah. I agree. I understand
3 that they went through that process. I think it was the
4 type of a deal where they felt they could -- well, they
5 definitely did through their discussion, that they traded
6 the two year to a one year in order to get the Applicant
7 also agrees to fund a federal grant match. And I think
8 we're in a position where we're able to accomplish both.
9 So that's why I went with that.

10 Thank you, though, for the comment.

11 Any further discussion on the motion to amend
12 the -- go ahead.

13 COMMISSIONER FIEGEN: Thank you, Mr. Chairman.
14 Commissioner Fiegen here.

15 It makes me a -- I appreciate what you're doing,
16 but I would like to ask Crowned Ridge because I know
17 there's negotiations and give and take on settlement.
18 And I appreciate that they were willing to do the
19 additional LEC study.

20 So I just want to talk to Crowned Ridge if
21 they'd be willing to do that. Because I know during
22 settlement discussions there's give and take. So if I
23 could ask the question to Crowned Ridge.

24 MR. MURPHY: Thank you, Chairman Hanson,
25 Commissioner Fiegen. I would like Kim Wells to provide

1 you some context and background of the discussions. And
2 I think that will help.

3 So, Kim, can you -- are you still on?

4 MS. WELLS: I am. Thank you for the
5 opportunity. I would just like to highlight that the
6 rationale for proposing the amendment to Condition 29 was
7 because Crowned Ridge, Xcel, and GF&P all agreed that
8 there was existing data in the scientific literature to
9 look at the effects of wind on bird and bat mortality.
10 So there is data to draw on.

11 We also agreed that there's a lot of
12 South Dakota data. We agreed that because there's
13 already two years being completed at Crowned Ridge I, we
14 didn't think that a second year at Crowned Ridge II
15 offered compellingly new or different information. And,
16 third, we in conjunction with Xcel and GF&P thought this
17 was a more useful study for the funds to meet a need that
18 GF&P articulated.

19 I'm sure Hilary would be able to articulate more
20 of how that fits into the State Wildlife Action Plan, but
21 in short those are the three reasons why we came to this
22 amendment to Condition 29.

23 Thank you.

24 CHAIRMAN HANSON: Commissioner Fiegen.

25 COMMISSIONER FIEGEN: Thank you, Mr. Chairman.

1 Commissioner Fiegen here. I'm going to actually --
2 although I agree a lot of times with Commissioner Hanson,
3 I'm going to oppose his amendment today because I believe
4 the settlement discussion, and we got to hear part of it
5 just now, relieves me of that concern.

6 So when I read this I also became very concerned
7 with the one year. And so I kept on going back to the
8 filing, and I became more comfortable after I read more
9 of the filing. So I'm going to oppose it but certainly
10 appreciate the amendment.

11 CHAIRMAN HANSON: Thank you.

12 Ms. Morey, just a short question. We don't need
13 to have other people testify for you, but I know that
14 there was a significant negotiation that took place, and
15 I know the position that you finally promised on.

16 However, you did originally ask for a two-year.
17 Do you feel there was good reason to ask for a two-year?

18 MS. MOREY: This is Hilary Morey with
19 South Dakota Game, Fish & Parks. So when I originally
20 prepared my testimony for this docket we asked for the
21 two years of postconstruction mortality monitoring. As
22 you mentioned, that two years gives you a little bit more
23 of a spacial time frame to look at the effects of wind
24 energy impacts because these projects do last for 20 to
25 30 years.

1 However, once we started working with Crowned
2 Ridge I on the grouse study, we started to come up with
3 some additional objectives that were of interest to us as
4 Game, Fish & Parks to look at specific species
5 interactions with wind energy projects.

6 So we felt that this was a good compromise
7 because we would still get one year of that
8 postconstruction monitoring and, as Ms. Wells mentioned,
9 we'll have the two years of postconstruction monitoring
10 of the adjoining Crowned Ridge I wind facility. So we're
11 really excited about this opportunity to conduct this
12 raptor study at both Crowned Ridge I and Crowned Ridge II
13 footprints.

14 This is some research that was done about
15 20 years ago in southeastern South Dakota so we would
16 essentially be able to repeat this research in a new
17 location and 20 years later to look at the impacts of
18 these facilities on our raptor populations in the state.

19 CHAIRMAN HANSON: Well, that's great news. And
20 that was a good compromise that you made from that
21 standpoint.

22 Would a two-year independently conducted
23 postconstruction avian, et cetera, et cetera -- would a
24 two-year give you a much better idea of -- would it give
25 you a better study?

1 MS. MOREY: This is Hilary Morey for Game, Fish
2 & Parks. The two studies are pretty different, I guess.
3 So the postconstruction mortality monitoring would only
4 monitor animals, bats and birds, that are killed by
5 operating turbines. Whereas this raptor project would
6 actually look for raptor use within the project area.

7 So I don't think that we can use the
8 postconstruction mortality monitoring necessarily to add
9 to the study. I'm not 100 percent sure. I would have to
10 speak with our project collaborators. But they're two --
11 excuse me.

12 CHAIRMAN HANSON: I think you're misinterpreting
13 my question. I'm not asking you to give up anything.
14 I'm asking simply if you -- if you got your cake and got
15 to eat it too, in other words, you were able to keep the
16 raptor study and everything that's been agreed to up to
17 this point, you simply would have two years instead of
18 one year, would that be of significant benefit?

19 MS. MOREY: This is Hilary Morey with
20 South Dakota Game, Fish & Parks.

21 Yes. I understand your question now. And we
22 would -- we would like to fund this avian predator study.
23 That's our number one priority. And I guess it's up to
24 the Applicant if they can fund both the study and a
25 second year of postconstruction mortality monitoring for

1 the project. But there would be utility in both of
2 those.

3 CHAIRMAN HANSON: Thank you. Appreciate your
4 answer.

5 It hurt a little bit when you said something
6 about avian mortality wasn't significant or something of
7 that nature. I forget what it was.

8 All right. Well, thank you for that.
9 Appreciate it.

10 We're back to the motion to amend. And I've
11 heard my colleagues and, nevertheless, I hope that you
12 both understand that the Applicant does have enough
13 dollars in their pocket to handle one more year of this
14 and it would be a much better study and hope that you'll
15 have seen the light.

16 So, on that, is there any further discussion?

17 If not, on the motion to amend, going from one
18 year to two year, Commissioner Nelson.

19 COMMISSIONER NELSON: With my sunglasses on, I'm
20 going to have to vote no.

21 CHAIRMAN HANSON: Commissioner Fiegen, did you
22 take your glasses off?

23 COMMISSIONER FIEGEN: Fiegen votes no.

24 CHAIRMAN HANSON: Well, Commissioner Hanson
25 votes aye. And the motion fails. Ouch.

1 Okay. Back to the discussion on has anyone -- I
2 still have one motion to amend, but I'd like to know if
3 anybody else has anything first. If not, I have a
4 question first, and then perhaps the motion.

5 On the main motion it shows No. 5, delete
6 paragraph 40. And I was in love with that paragraph
7 because I felt that it provides a hammer that the permit
8 is conditioned on the Applicant and any future owner,
9 that the permit can be revoked by the PUC. It makes it
10 very, very plain. And I want it very plain that the
11 project can be revoked by the PUC if conditions are not
12 met.

13 It seems like we have had some -- well, I know
14 we have had some discussions and concerns about semantics
15 and whether or not the PUC can revoke permits so I'll ask
16 the attorneys, is it very clear within this document --
17 if we do not have paragraph 40, is it very clear, and
18 where is it very clear, that the PUC can revoke the
19 permit if a condition is not met? So whomever --
20 whichever attorney can answer that question, I appreciate
21 it.

22 MS. CREMER: This is Karen Cremer. Are you
23 looking to Staff and Crowned Ridge, or are you looking to
24 Adam and I?

25 CHAIRMAN HANSON: Well, I'm looking to you and

1 Adam. Certainly you're the ones who will be making the
2 decision. But if Crowned Ridge were to attest to the
3 fact that, yes, here's another paragraph that absolutely
4 makes it conclusive that you can remove the permit, then,
5 of course, that would be on record and that would be
6 ironclad.

7 However, in the absence of that, yes,
8 Ms. Cremer, I'd love to hear from one of you on this.

9 MS. CREMER: Well, with that then, I'll let
10 Crowned Ridge go.

11 CHAIRMAN HANSON: Okay. Mr. Schumacher, is
12 there somewhere within this document that it is
13 absolutely clear that the permit can be revoked by the
14 PUC if a condition is not met by the Applicant or an
15 owner?

16 MR. SCHUMACHER: Yes. This is Miles Schumacher.
17 I don't see the specific language, unless it's read in
18 conjunction with the statute that was referenced in one
19 of our earlier dockets today.

20 MS. CREMER: And this is Karen Cremer.

21 CHAIRMAN HANSON: Thank you.

22 MS. CREMER: And, with that, I would say I would
23 agree with Miles. To me, the first two sentences are
24 already covered by statute. It even references the
25 statute. So that seems unnecessary to me to have those

1 first two sentences.

2 As to the last sentence, to me that's covered in
3 41.

4 I think where we're running into problems in
5 prior dockets, you know, that we heard earlier today is
6 it has to do with jurisdiction and who has jurisdiction
7 and not the fact that we can't revoke. Clearly we can.
8 It becomes a matter of when we could do that. And so
9 that would be my take on paragraph 40.

10 CHAIRMAN HANSON: Thank you.

11 With great trepidation, I will not make a motion
12 then to exclude that. I keep wrestling with it even
13 after I say that because I don't want to build things for
14 the present people that are involved. I don't want to
15 build things for other areas that may be changed
16 somewhere.

17 You know, if we don't specify it here and
18 something changes elsewhere, then we lose that
19 opportunity to make it very clear. And I don't like to
20 build things from the standpoint of the three
21 Commissioners who are here now because there will be
22 three different Commissioners many years from now. And
23 so I really, really struggle with deleting paragraph 40.

24 I'm going to ask my fellow Commissioners. It
25 may be redundant at this juncture, but I'm wrestling with

1 it so much that I'm going to ask you to support it in
2 deleting that portion in No. 5 where it states to delete
3 paragraph 40. I'd like to leave paragraph 40 in the
4 document.

5 And you can tell I'm not vacillating a lot, but
6 I'm falling back and forth on this. I just am too
7 uncomfortable with deleting it. So that's my motion.

8 Any discussion from my fellow Commissioners?

9 COMMISSIONER NELSON: Yeah. This is
10 Commissioner Nelson. I hear where you're coming from
11 but, you know, I've got my statute book open to
12 49-41B-33, and it's crystal clear to me that we have that
13 authority by statute. I don't think we gain anything by
14 putting it in the conditions. So I'm okay with it as it
15 is, taking that paragraph out.

16 CHAIRMAN HANSON: Thank you.

17 COMMISSIONER FIEGEN: Mr. Chairman.

18 CHAIRMAN HANSON: Commissioner Fiegen.

19 COMMISSIONER FIEGEN: Thank you.

20 I would like to ask Staff for their legal
21 opinion. Because I believe, like Commissioner Nelson,
22 we're okay. But are they concerned if that statute would
23 be deleted by the state legislature in upcoming years and
24 that's why we should have this? Because, otherwise, I
25 fall in line with Commissioner Nelson.

1 MS. REISS: Thank you. This is Amanda Reiss for
2 Staff. And I don't think that Staff has that concern
3 when we included that condition in our proposal. I
4 believe if I remember correctly, this condition stemmed
5 from some discussions with Intervenors, and Staff
6 attempted to craft a condition that would address some of
7 their potential concerns.

8 I think Staff agrees that the statute identified
9 does give the PUC authority to revoke a statute if
10 required. The one thing that this condition does address
11 that the statute does not is in regard to the individual
12 turbines. But if the Commission would like to remove
13 this condition, I believe we could potentially address
14 individual turbine concerns in a different manner, if
15 necessary.

16 COMMISSIONER FIEGEN: So, Commissioner Hanson,
17 if I could just have a couple minutes to look at
18 everything one more time, I'd appreciate that.

19 CHAIRMAN HANSON: Please go ahead.

20 COMMISSIONER FIEGEN: So other people can talk
21 if they want to. I just want a couple of minutes.

22 CHAIRMAN HANSON: Okay.

23 (Pause.)

24 COMMISSIONER FIEGEN: Mr. Chairman.

25 CHAIRMAN HANSON: Yes.

1 COMMISSIONER FIEGEN: This is a hard one because
2 I certainly appreciate how Staff talked about trying to
3 work with Intervenors. And that softens my heart, but I
4 still don't think we need this. But I appreciate Staff's
5 effort and Crowned Ridge for agreeing.

6 But my goal is to make this as clean as
7 possible, and I don't think 40 is needed. I've tried to
8 look at that in the last hour a couple times and I
9 believe it's unnecessary but I certainly appreciate the
10 effort of working with the Intervenors.

11 CHAIRMAN HANSON: Thank you. I will look for
12 any further discussion on the motion to amend by deleting
13 the deletion of paragraph 40.

14 Any further discussion on the motion to amend
15 the amendment -- proposed amendment?

16 Hearing none, all those in favor will -- well,
17 Commissioner Nelson.

18 COMMISSIONER NELSON: No.

19 CHAIRMAN HANSON: Commissioner Fiegen.

20 COMMISSIONER FIEGEN: Commissioner Fiegen votes
21 a very soft no.

22 CHAIRMAN HANSON: Commissioner Hanson votes a
23 very hard aye.

24 Motion fails. I hope that doesn't bite us in
25 the future.

1 We are back to the amended motion to amend. Any
2 further discussion on the amended motion to amend?

3 Hearing none --

4 COMMISSIONER FIEGEN: So I just have a question.
5 Are we to the main motion now?

6 CHAIRMAN HANSON: No. We are on the motion --

7 COMMISSIONER FIEGEN: Okay.

8 CHAIRMAN HANSON: -- of the S7 exhibit.

9 COMMISSIONER FIEGEN: Thank you.

10 CHAIRMAN HANSON: That has been amended.

11 COMMISSIONER FIEGEN: Thank you.

12 CHAIRMAN HANSON: Editorial comment. It hasn't
13 been amended enough, but it's been amended. We're back
14 to the motion to amend as amended. Any further
15 discussion?

16 Hearing none, Commissioner Nelson.

17 COMMISSIONER NELSON: Aye.

18 CHAIRMAN HANSON: Commissioner Fiegen.

19 COMMISSIONER FIEGEN: Fiegen votes aye.

20 CHAIRMAN HANSON: Hanson votes aye. Motion
21 carries.

22 We're now back to the main motion as amended.
23 Further discussion on that. Well, I'd turn to
24 Commissioner Fiegen. Do you have any motion --

25 COMMISSIONER FIEGEN: Thank you. Thank you,

1 Chairman Hanson. I do have discussion on the main motion
2 when you're ready.

3 CHAIRMAN HANSON: Okay. Do you have any motions
4 to amend at this point?

5 COMMISSIONER FIEGEN: No. No.

6 CHAIRMAN HANSON: Okay. I have one motion to
7 amend. I probably have more than one, but just to make
8 some verbiage clear -- but I have a subjective motion.

9 Throughout the document of S7 we refer to
10 Applicant shall, Applicant will, Applicant agrees,
11 et cetera, et cetera throughout the -- and I'm not about
12 to change all of those Applicants to Applicant or future
13 owner. However, I would like to add -- so that it
14 applies prospectively to all future owners, whomever they
15 may be, I'd like to add an additional paragraph that
16 states these permit conditions shall apply to any future
17 owner who takes possession pursuant to 49-41B-29.

18 And this is something as I was rereading this
19 last night in preparation for today's meeting rather than
20 e-mailing Adam or Karen at 2 o'clock in the morning I
21 decided I'd just write down something. I called Karen
22 this morning early and said that was my concern. What do
23 you think?

24 I had a different paragraph written up. She
25 suggested that this would -- and certainly as an attorney

1 she writes law much better than I. So this -- the
2 purpose of this is to make certain that any -- all future
3 owners are very clear, again -- I've been in contract
4 businesses for a very, very long time. I just like
5 things -- as you can tell from my other amendments,
6 motions to amend and concerns, that it would make it very
7 clear that this obligations of these conditions are on
8 the shoulders for all future owners of the property.

9 So the paragraphs states that, "These permit
10 conditions apply to any future owner who takes possession
11 pursuant to 49-41B-29." That's all the discussion I have
12 on that. I make it as a motion and the main motion as
13 amended.

14 Discussions, questions?

15 COMMISSIONER NELSON: Commissioner Nelson -- go
16 ahead, Commissioner Fiegen.

17 COMMISSIONER FIEGEN: No. I'm just -- all I
18 wanted to say is thank you, Commissioner Hanson, for
19 bringing that to our attention. I totally agree with you
20 on it, and I assumed it was already done so I appreciate
21 you bringing that to our attention.

22 Thank you.

23 COMMISSIONER NELSON: Yeah. So here's my
24 question. Yeah. I certainly agree it, but it looks to
25 me like 49-41B-29 states that we, the PUC, can't transfer

1 a permit to anyone unless they agree to abide by all of
2 the conditions. So how does this motion to amend add
3 anything beyond what the statute requires?

4 CHAIRMAN HANSON: I'll ask Ms. Cremer on that.
5 I did not have my Title 49 out right now so I can't check
6 that very easily.

7 I don't know that I needed to say pursuant to
8 that. I just look at it from the standpoint that the
9 conditions of the permit apply to all future owners. So
10 perhaps Karen has a better way to phrase it or an answer
11 to your question.

12 Ms. Cremer.

13 MS. CREMER: Thank you. This is Karen Cremer.
14 And, again, you know, we had a very quick discussion this
15 morning. And, again, I would just state that it is in
16 statute clearly, just kind of like the prior discussion
17 we had but you had asked for some language and so I
18 provided that to you.

19 Does that answer it?

20 CHAIRMAN HANSON: Commissioner Nelson, does that
21 answer your question?

22 COMMISSIONER NELSON: Well, yes. What I heard
23 is that this is no different than the discussion we just
24 had, that it's already covered in statute. So I
25 absolutely don't disagree with the intention. I just

1 don't think it's needed because it's already covered.

2 CHAIRMAN HANSON: And I don't know that it is
3 covered by the way that you explained or read that
4 statute. So it is something that I'm -- that I believe
5 needs to be a part of it if that cite needs to be removed
6 from it and just simply state these permit conditions
7 shall apply to any future -- or excuse me. These permit
8 conditions apply to any future owner who takes
9 possession --

10 Yeah. I think the cite is still appropriate
11 because it states if they take possession pursuant to
12 that, where we give them permission.

13 COMMISSIONER NELSON: Yeah. And I'm not arguing
14 that point. Let me just read the statute. It's short.
15 And then I'll shut up.

16 49-41B-29, "A permit may be transferred subject
17 to the approval of the Public Utilities Commission to a
18 person who agrees to comply with the terms, conditions,
19 and modifications contained therein. The Commission
20 shall adopt rules pursuant to the authority granted under
21 this chapter."

22 CHAIRMAN HANSON: Okay. Thank you for reading
23 that. It does appear that -- excuse me, Commissioner
24 Fiegen.

25 COMMISSIONER FIEGEN: No. Go ahead.

1 CHAIRMAN HANSON: I was just going to say that
2 it does sound that it's covered under present statute.
3 Thank you.

4 Commissioner Fiegen, did you have anything?

5 COMMISSIONER FIEGEN: No. Just for Staff of the
6 Public Utilities Commission, they have worked, of course,
7 with transfers and, you know, we get to see it at a
8 hearing but we don't always get to see the
9 behind-the-scenes issue.

10 Have the Staff ever had issues with a transfer
11 where the new owners objected to the permit conditions
12 and they thought our laws weren't stringent enough?

13 MS. REISS: Thank you. This is Amanda Reiss for
14 Staff. And I don't believe we've had any concerns or
15 come across any issues with that statute. Or with
16 transferring the conditions to a new owner.

17 COMMISSIONER FIEGEN: Okay. Thank you. I
18 appreciate the discussion we've had. And I know that if
19 a transfer comes up to us in a docket, we can make sure
20 that that happens.

21 Thank you.

22 CHAIRMAN HANSON: Yes. Thank you for that.
23 Appreciate the discussion and work from everyone,
24 especially when we're in compressed time frames as we
25 are.

1 I'm going to withdraw that Motion because it --
2 if we do our due diligence when someone transfers, then
3 it's taken care of.

4 Are there any further motions to amend the main
5 Motion that's amended?

6 I have a question of Staff on 8C on page 2. The
7 second line there refers to active construction period.
8 Again, I'm a stickler on semantics and contracts, and it
9 says, "Repaired through the active construction."
10 Shouldn't we state through -- any time that they're doing
11 construction on it, that they will do this?

12 I'm thinking of striking the word "active" and
13 through --

14 MS. REISS: Thank you.

15 CHAIRMAN HANSON: Excuse me. Go ahead. Sorry.

16 MS. REISS: Oh. Thank you. And I think, you
17 know, when Staff put together this condition I think we
18 tried to look to the future and what construction we were
19 looking to to protect the roads. And I think the
20 additive "active" really protects that time when there's
21 large machinery traveling across roads on a regular basis
22 multiple times a day.

23 I think if you -- if you do remove it, there may
24 be a question as to whether general maintenance is
25 included as construction. And then I think there's

1 concern as to whether those maintenance trucks have
2 caused a problem or whether it's just general wear and
3 tear.

4 I do think there are road use agreements with
5 local entities that can address that as well, but that's
6 just a little bit of a rationale and explanation, but
7 clearly this Commission is free to alter this condition
8 as you see fit.

9 CHAIRMAN HANSON: Okay. I appreciate that.

10 Perhaps you can help me with No. 15C. And for
11 those people who are wondering why the heck didn't I talk
12 to you prior to this, for those folks who aren't aware,
13 we're not allowed to chat, except in an open meeting like
14 this in regards to this.

15 So in 15C there's a suggestion that the word
16 "insure" at the beginning of the sentence -- so that it
17 would read "Insure all access soils generated." That
18 might seem a small change, but I'm concerned whether the
19 Motion on minor grammatical changes that we passed
20 includes that.

21 Would the -- well, would the fellow
22 Commissioners assume with me that that is -- should be
23 included, we don't need a Motion to amend, et cetera,
24 just that -- well, maybe we do.

25 COMMISSIONER NELSON: Chairman Hanson, this is

1 Commissioner Nelson. That was exactly the types of
2 things that I intended to cover with my phrase minor
3 grammatical changes.

4 CHAIRMAN HANSON: Right. And when I looked at
5 that certainly in item 2 when it states, "Applicants
6 shall construct" instead of "Applicant shall, one,"
7 you know, that sort of thing, yes. I don't know if
8 this falls under -- far enough down the list to be
9 minor. So that's why I asked whether we needed
10 (Inaudible) included.

11 COMMISSIONER FIEGEN: Chairman Hanson, if I
12 could just interject, this is Karen Cremer. If you go
13 back up to 15 where it says, "Applicant shall."

14 CHAIRMAN HANSON: Right.

15 MS. CREMER: The two words right before. So
16 it's "Applicant shall strip the topsoil. Applicant shall
17 store the topsoil. Applicant shall...all excess soils."
18 It doesn't say what they (Inaudible). And so I just put
19 a verb in there.

20 CHAIRMAN HANSON: Okay.

21 MS. CREMER: Yeah.

22 CHAIRMAN HANSON: Right. Yeah. I understood
23 that. It makes grammatical sense to do that. Your
24 adjective may be different from the next person's, but I
25 assume that you'll make sure that's changed and that

1 there won't be an argument from the Applicant.

2 We'll turn to page 5 then and look at 22 --
3 well, it's -- it's the third indentation with the dot.
4 It states, "Once received, Staff shall have 10 calendar
5 days."

6 Calendar days are a lot different than business
7 days. And if the request is made on a Friday and there's
8 a Monday holiday -- or for any other reason, that could
9 knock -- with two weekends in there, that would knock
10 that down to four working days with Staff. And with the
11 compressed times that we always have, that just did not
12 seem like a very long -- 10 days --

13 Even 10 business days don't seem like a long
14 enough time for me. So I'd like to change that to
15 business days instead of calendar days. So I make that
16 as a Motion to amend at this time.

17 And I've spoken to it, which I guess I shouldn't
18 do prior to making a Motion, but it seems to facilitate
19 the work we do a little bit easier if we do that.

20 So I have a motion to strike "calendar" and
21 supplant the word "business" with "calendar." And I've
22 spoken to it.

23 Any discussion on that Motion?

24 COMMISSIONER NELSON: This is Commissioner
25 Nelson. I don't have a problem with it. But if I could

1 just ask Staff if there was any reason for this being a
2 more accelerated time frame than 10 business days?

3 MS. REISS: Thank you, Commissioner Nelson.
4 This is Amanda Reiss for Staff. I think, if I remember
5 correctly, there was discussion in previous dockets about
6 needing to move forward expeditiously. So I believe we
7 included calendar days as opposed to business days.

8 Staff has no concern changing that at this
9 point. We have not, though, conferred with Crowned Ridge
10 Wind II regarding such a change at this point.

11 COMMISSIONER NELSON: Thank you.

12 CHAIRMAN HANSON: Further discussion on the
13 Motion?

14 Obviously, if it's business days and it's a
15 pressing deal, Staff has never been known to be dilatory
16 in any fashion so I don't believe that's going to hurt
17 the Applicant in any way if we make certain that future
18 Staff has an opportunity.

19 Further discussion on the Motion?

20 Hearing none, Commissioner Nelson.

21 COMMISSIONER NELSON: Aye.

22 CHAIRMAN HANSON: Commissioner Fiegen.

23 COMMISSIONER FIEGEN: Fiegen votes aye.

24 CHAIRMAN HANSON: Hanson votes aye. The Motion
25 carries.

1 Item No. 7 on the Motion to Amend -- the Amended
2 Motion to Amend stated the grammatical changes. And just
3 for the record, I'm going to point out what I consider
4 some of those. And I know that the Commission -- my
5 fellow Commissioners are thinking similarly.

6 On 26B, which is on page 6, about one, two,
7 three, four -- about six lines from the bottom the word
8 "wind" needs to be added before "turbines," and the word
9 "Commission" removed before the word "Staff."

10 And there's 15 times when the word "wind" should
11 be added on page 6 and 7 in front of the word "turbine."
12 And in some cases the word "Commission" should be
13 removed. So I would -- whomever is working through that
14 process make certain that the word "wind" is placed in
15 front of "turbine" so it says "wind turbine."

16 And then on page 8 I'm wondering whether some of
17 these are significant enough to change. And some
18 instances, like on page 8, it would be 33, the second
19 paragraph of 33, which is on -- at the top of the page.
20 It has the word "Applicant."

21 And, again, in 33A, the first line, it says,
22 "Applicant." And again it says, "Applicant" in B. And
23 the second line from the top of B it says, "turbine." It
24 should probably say, "project owner."

25 In every place where it says "Applicant" it

1 should probably say "project owner" instead of
2 "Applicant." I would consider those to be items that
3 would fall undermine or grammatical changes, but it's
4 really not a minor grammatical change. But unless my
5 fellow Commissioners disagree and think that we need to
6 have a Motion on those or they disagree with me.

7 In 33E, however, I think that it is material
8 where it states escrow -- "the escrow account
9 obligations," and it should state the "decommissioned
10 funding account." And it's not the escrow account at
11 this point. It's a decommissioning funding. I think we
12 know that, but just so there's no misunderstanding. That
13 needs to be done in E and F and H. And when it states
14 "agreement" it should state escrow agreement."

15 And in H(ii) and iii and item 4, Roman numeral
16 II, III, and IV, it should say "decommission funding
17 account" instead of "escrow" and "escrow account." And
18 the same in I and J where it refers to the account and at
19 the beginning of the sentence says, "account funds," it
20 should say "decommissioning."

21 And I know you're all excited with me going
22 through this like this, but there's a sentence at the end
23 of 35 that I have a question on. "If no waiver is
24 obtained, Applicant shall file a mitigation plan with the
25 Commission prior to construction and obtain Commission

1 approval of the mitigation plan."

2 Is that a part of S7?

3 Can someone from Staff -- I'm having trouble
4 getting through all of the different items I have on my
5 computer here to check that. That would be item 35.

6 I believe that -- I'm going to answer my own
7 question. I believe that it is the same grammatical
8 situation with item 37 needs to be changed on the word
9 "wind and "project owner," et cetera, and "wind turbine."

10 And in 41 -- I believe whoever is redoing it
11 will notice 41 where there's a number of changes that
12 need to take place, but I'll bring that to their
13 attention at this time. And then -- and that is all that
14 I have on it, much to the relief of my fellow
15 Commissioners.

16 Are there any other motions to be made at this
17 time?

18 Hearing none, we have a main motion as amended.
19 Hearing no further discussion on the main motion as
20 amended -- excuse me. Go ahead.

21 COMMISSIONER FIEGEN: So sometime I'd like to
22 make a statement on the main motion.

23 CHAIRMAN HANSON: Why don't we do that now. I
24 was thinking we'd do it afterwards but, yes, it makes all
25 the sense to do it now.

1 COMMISSIONER FIEGEN: So are you -- did you just
2 state that you were amending those -- the statements that
3 you just made, is that an amendment?

4 CHAIRMAN HANSON: No. That is to bring
5 attention to whomever is doing the grammatical changes,
6 that those are items to consider when they do their --
7 because it really needs to have clarification.

8 COMMISSIONER FIEGEN: Okay.

9 CHAIRMAN HANSON: There's ambiguity with them,
10 and whoever's doing it should recognize that.

11 COMMISSIONER FIEGEN: Right. Thank you.
12 Whenever you're ready, I'll be ready. Thanks.

13 CHAIRMAN HANSON: All right. Then I'll yield
14 the floor to Commissioner Fiegen for comment on the main
15 motion as amended. Unless you wish to go after someone
16 else.

17 COMMISSIONER FIEGEN: I'll go after you,
18 Mr. Chairman.

19 CHAIRMAN HANSON: All right. Well, Commissioner
20 Nelson, you made the main motion so I'll let you go.

21 COMMISSIONER NELSON: I don't have much else to
22 add. As I said when I made the Motion, I believe that
23 through the hearing and the evidence that has been
24 presented that the Applicant is entitled by law to this
25 permit.

1 I believe that the conditions that we have put
2 together are conditions necessary to protect the people
3 and the property in that area. And I fully understand
4 that there's a balance here, that not everyone in that
5 area is going to be happy with this.

6 Obviously, Mr. Swanson believes that there are
7 some property rights that have been taken away with this.
8 That's an argument that, you know, he can make to Circuit
9 Court, which is the appropriate place for that argument
10 to be made. And, you know, we'll see whether he is right
11 or not on that -- on the law.

12 But for the task that we have, that we have been
13 given by statute, I believe the company is entitled to
14 this permit and, hence, my Motion. Thank you.

15 CHAIRMAN HANSON: Thank you.

16 Throughout the process we have said a number of
17 the things that I'll probably touch on at this time.

18 Wind docketing are always troubling to me. I
19 shouldn't -- they didn't start out that way years ago, 17
20 years ago when we were first working on them. There's a
21 lot of issues that have been clarified since that time, a
22 lot of issues that we didn't even think about back then
23 or realize and concerns that have been brought up. And
24 they're challenging to me from the standpoint that I do
25 believe that properties are affected. Certainly I think

1 we all agree, and that's why there's laws that have been
2 passed.

3 Maybe it's the old legislator in me. When I was
4 in the legislature we had the freedom to make decisions
5 based upon how we felt from talking to lots of different
6 folks, and we're constrained as Commissioners from that
7 standpoint. We follow the law. If the law says this is
8 what we do after we've gone over the entire process, then
9 that's what we do.

10 And Staff brought out those five requirements
11 that we had -- and they are requirements. We certainly
12 must protect the citizens, but at the same time we have
13 to follow the law. And if the Applicant proves that they
14 fulfilled their requirements, then we're obliged to vote
15 in favor of the permit with the conditions.

16 And I think we've provided some excellent
17 conditions here. I would certainly like to have a couple
18 more on there. They're not heartbreaking by any means to
19 me. I won't regurgitate what they were but would very
20 much have liked to have seen that.

21 A couple of areas that I'm uncomfortable with in
22 dockets of this nature. One has to do with the
23 valuation. I think we heard some real good lay testimony
24 and exhibits on valuation, something that we had not
25 heard prior to this.

1 It does appear both from expert and lay
2 testimony that the valuation of properties -- the
3 property values are affected by the proximity to a wind
4 farm. It's a matter of -- well, I think it's supported
5 by the fact that there's -- there's no disagreement that
6 sound, light, flicker, aesthetics of a wind farm affect
7 value. Otherwise, there wouldn't be any need for those
8 issues to be part of it, to be used for determining
9 setbacks, for instance.

10 So, obviously, it's not a question of whether
11 wind farms affect a value; it's a question of how close
12 is too close? At what distance do they -- is there too
13 much flicker, is there too much sound, is there -- is the
14 aesthetics wrong? And I think that's supported by
15 evidence. It's supported by the facts of what has been
16 presented to us.

17 I think that -- well, I really struggle with the
18 whole thing because of that. And I think that
19 Mr. Swanson's letter touched on that in a fashion that I
20 guess I can consider to be very legitimate. I think his
21 letter was -- I did not dismiss his letter by any means.
22 I read it a couple times. I thought that it had some
23 very good points.

24 And when it spoke to very much the affect that
25 wind farms have on other properties, nonparticipants, and

1 he used the word "aggressively," that the wind farm was
2 aggressively designed. He said that it was intended to
3 hug the regulatory limits rather than limiting conflicts
4 with nonparticipants. And I think that was a profound
5 statement because certainly the wind farms do everything
6 they can to get the very last wind turbine up that's
7 going to the economic value to the wind farm.

8 And I recognize we do not legislate the
9 setbacks, that that's done by the counties and the
10 legislature. And so, you know, I would really encourage
11 the counties and the legislature -- especially the
12 counties that do not have a setback law and the
13 legislature in that respect. Even the legislature from
14 the standpoint of looking at this very seriously and the
15 counties to revisit the setback laws and the regulations
16 that they have overview.

17 And these are outside the Public Utilities
18 Commission's ability. And so I -- lawful ability. And
19 so I just wish to impress to the legislators that they
20 have the freedom to make the laws. We have the
21 responsibility to make certain that they're -- that we
22 abide by them. And I'm just very concerned with that,
23 concerned with -- I'd like to hear further information on
24 the no such thing as moon flicker.

25 You know, I just do not accept the yardstick

1 experiment that is sufficient to disprove the theory that
2 there's moon flicker. We didn't have evidence on that
3 that we can use to support any decision that we make.
4 However, I'd certainly like to hear more on that.

5 I'll end with that, but there's a lot of
6 concerns that I have that I just don't feel that when
7 we -- when we make these decisions we make them based
8 upon the strongest testimony that we have. And that's
9 proper. However, I think that the other parties, the
10 Intervenors, are outgunned in many respects. Certainly
11 they don't have millions of dollars to spend on these
12 things. And so I just feel like I'm not getting the
13 whole story when we make these decisions.

14 I'm going to obviously support the Motion
15 because I think that's the proper thing to do and that we
16 are in a position where we've done the very best that the
17 Public Utilities Commission can do.

18 I congratulate our Staff and certainly the
19 Applicants for the work that they've done. But I'd
20 really like to also say the Intervenors came with a lot
21 of ammunition, did an excellent job, and there are a
22 number -- this final decision has their footprints on it.
23 They have helped meld it and influence the conditions,
24 and so they shouldn't go away thinking that they were at
25 a loss because it wasn't killed.

1 The fact is, they helped make it a better piece,
2 and for that we appreciate the Applicant and the
3 Intervenors, the Staff for a tremendous amount of work
4 that the average folks just don't understand how many
5 thousands of pages and the amount of work that goes into
6 something of this nature.

7 So, with that, I'd say thank you to my fellow
8 Commissioners for all that you've done and gone through
9 with this process as well.

10 And, Commissioner Fiegen, the floor is yours.

11 COMMISSIONER FIEGEN: Thank you, Commissioner
12 Hanson.

13 Crowned Ridge II certainly has been a lengthy
14 process, and not only lengthy today but the permit
15 process is quite lengthy. And as a Public Utilities
16 Commissioner we always have to look at federal law and
17 state law and county laws and ordinances when we do a
18 permit.

19 And so as a Commissioner I have to look at the
20 record. And so I believe the Public Utilities Commission
21 Staff and the developer has developed a record to approve
22 the permit.

23 And we have to look at evidence and facts. And
24 I asked the experts several questions, for example, on
25 property rights and property valuations, and there was

1 nothing in the record that I have seen that would add
2 another condition. And that's what I continue to look
3 at, the record, the evidence, and the facts.

4 And the Public Utilities Commission Staff have
5 really done a good job in developing conditions. And as
6 we heard today, they worked with Intervenors. They
7 worked with other interested parties like GF&P, and they
8 also, of course, worked with the Applicant.

9 And I appreciate my fellow Commissioners even
10 bringing additional conditions. And some of those
11 conditions certainly weren't talked about at the
12 evidentiary hearing but they added them today and I
13 certainly appreciate that.

14 All parties have worked very hard, and I
15 appreciate working with every one of them. But I
16 certainly appreciate the Staff's additional negotiations
17 on working with the developers.

18 So thank you to my fellow Commissioners, and
19 I'll be supporting the Motion.

20 CHAIRMAN HANSON: Is there any further
21 discussion on the Motion -- the main motion as amended?

22 Hearing no further discussion on the main motion
23 as amended, Commissioner Nelson.

24 COMMISSIONER NELSON: Aye.

25 CHAIRMAN HANSON: Commissioner Fiegen.

1 COMMISSIONER FIEGEN: Commissioner Fiegen votes
2 aye.

3 CHAIRMAN HANSON: Hanson votes aye. The Motion
4 is carried.

5 Thank you all very much. And ordinarily I would
6 say have a safe trip home, but I think just about
7 everybody is.

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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 17th day of
11 March, 2020, and that the attached is a true and correct
12 transcription of the proceedings so taken.

13 Dated at Onida, South Dakota this 10th day of
14 April, 2020.

15

16

17

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

21

22

23

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