

# THE LAW PRACTICE OF ARVID J. SWANSON, P.C.

27452 482ND AVENUE  
CANTON, SOUTH DAKOTA 57013-5515

605-743-2070  
FAX 605-743-2073  
E-MAIL: AJ@AJSWANSON.COM

September 10, 2019

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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:

The eight-page application for party status, submitted on behalf of Garry Ehlebracht and several of his neighbors in the Goodwin area, was approved by the Commission on August 21, 2019.

As of August 27, we were able to note – rather unhappily – that the application appears on the Commission’s electronic docket, with *all* of the text on pages 2, 3, 4, 5 and 6 having been slavishly redacted (the sole exception being the footer description and page number) at your end, because counsel for Crowned Ridge Wind II, Mr. Schumacher, has made the claim the text on these pages are interwoven with “trade secrets” and “confidential information” that had been put forth in a proposed Wind Lease & Easement by an earlier rendition (Crowned Ridge Wind Center, LLC). Mr. Schumacher’s client claims to be the successor-in-interest.

Keep in mind that back in 2013, the proposed easement had been placed into the hands of Mrs. Kranz to consider. She considered it but never signed it.

As of today, counsel for Crowned Ridge has also modified his stance, having very recently narrowed the protection claim to the text of Section 11.10. This section – having reference to “glare” and “shadow flicker” – appears to be an obsolete item that this predecessor to the current Applicant had deployed, at least within the proposal handed to Ms. Kranz. With a variety of forms to compare, this language is never found again (by this writer) once the seed was sown that Shadow Flicker was a problem or Effect that could be fully dealt with by and through the State’s Zoning Power. Why is this old provision now deemed confidential? Does it appear in any Lease & Easement presently germane to this Application? And, given the “pull-the-plug” ending of this earlier rendition (Crowned Ridge Energy Center, LLC.), has Applicant established actual title and privilege claims to a never-executed document handed to Ms. Kranz?

In any event, as of this writing, the redacted version of the Ehlebracht application, as appearing in this docket, has been modified accordingly. Meanwhile, the intervention window has closed.

Several recent events may be noted also. On August 29, 2019, the case of *Lindgren, et al. vs. Codington County, et al.*, was commenced (14CIV19-000303) and service is underway. If any reader is not familiar with the case, please advise and I will do my best to email the 40-page (111-paragraph) pleading. I think it is likely to have some impact on this proceeding.

Then on August 31, this writer appears to have leaped into thin air, abandoning the tall, sturdy wooden double-faced stepladder (suddenly reporting for duty with three good and one “bad order” legs), and ending, rudely, on the ground with two broken wrists, a subdural hematoma, broken glasses, and whatnot. Typing is now an endurance sport.

I do not concede that Applicant’s proposed protective order is apt for the text of a wind easement, without regard to authorship or lineage of claims. The writings that do exist and are within the public domain (there are many versions) will be used in this proceeding – and within the pending Circuit Court case (Circuit Judge Carmen Means) – for purposes of establishing that much of what is being done to cram down wind farms onto an unsettled population, having fee title but not otherwise in privity with Applicant, is a property law conundrum: a servitude blessed by those having charge of governmental seals.

I do not presently know whether an appearance can or should be made on September 17, as called for in the Commission’s latest agenda. This writer is scheduled to meet with his orthopedic surgeon at that same hour. I only urge that caution be exercised, if ordering that land use documents – bearing on the issues both this case and in the *Lindgren* matter – are restricted-use and privileged.

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](mailto:mschumacher@lynnjackson.com)

Garry Ehlebracht, *et al.*

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 correspondence to the Executive Director, dated September 10, 2019, submitted on behalf of Garry Ehlebracht, and others (“Intervenors”), has been transmitted (the date below) by undersigned, as counsel for said proposed Intervenors upon each of the following presently appearing on the Commission’s Service List in this matter:

Ms. Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[patty.vangerpen@state.sd.us](mailto:patty.vangerpen@state.sd.us)  
(605) 773-3201 - voice

Mr. Jon Thurber  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[jon.thurber@state.sd.us](mailto:jon.thurber@state.sd.us)  
(605) 773-3201 - voice

Ms. Kristen Edwards  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[Kristen.edwards@state.sd.us](mailto:Kristen.edwards@state.sd.us)  
(605) 773-3201 - voice

Mr. Eric Paulson  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[eric.paulson@state.sd.us](mailto:eric.paulson@state.sd.us)  
(605) 773-3201- voice

Ms. Amanda Reiss  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[amanda.reiss@state.sd.us](mailto:amanda.reiss@state.sd.us)  
(605) 773-3201 - voice

Mr. Miles Schumacher - Representing Crowned Ridge Wind II, LLC  
Lynn, Jackson, Shultz and Lebrun, PC  
101 N. Minnesota Ave., Ste. 400  
Sioux Falls, SD 57104  
[mschumacher@lynnjackson.com](mailto:mschumacher@lynnjackson.com)  
(605) 332-5999 - voice  
(605) 332-4249 - fax

Mr. Mikal Hanson  
Staff Attorney  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[mikal.hanson@state.sd.us](mailto:mikal.hanson@state.sd.us)  
605-773-3201

Mr. Tyler Wilhelm  
Project Manager  
Crowned Ridge Wind II, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
[Tyler.Wilhelm@nexteraenergy.com](mailto:Tyler.Wilhelm@nexteraenergy.com)  
(561) 694-3193 – voice

Mr. Darren Kearney  
Staff Analyst  
South Dakota Public Utilities Commission  
500 E. Capitol Ave.  
Pierre, SD 57501  
[darren.kearney@state.sd.us](mailto:darren.kearney@state.sd.us)  
(605) 773-3201 - voice

Mr. Brian J. Murphy  
Senior Attorney  
NextEra Energy Resources, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
[Brian.J.Murphy@nee.com](mailto:Brian.J.Murphy@nee.com)  
(561) 694-3814 – voice

Ms. Cindy Brugman  
Auditor  
Codington County  
14 First Ave. SE  
Watertown, SD 57201  
[cbrugman@codington.org](mailto:cbrugman@codington.org)  
(605) 882-6297 - voice

Ms. Karen Layher  
Auditor  
Grant County  
210 E. Fifth Ave.  
Milbank, SD 57252  
[Karen.Layher@state.sd.us](mailto:Karen.Layher@state.sd.us)  
(605) 432-6711 - voice

Ms. Kristi Mogen  
15160 471<sup>st</sup> Ave.  
Twin Brooks, SD 57269  
[silversagehomestead@gmail.com](mailto:silversagehomestead@gmail.com)  
(307) 359-2928

Ms. Amber Christenson  
16217 466<sup>th</sup> Ave.  
Strandburg, SD 57265  
[amber@uniformoutlet.net](mailto:amber@uniformoutlet.net)  
(605) 756-4119

Ms. Mary Korth  
Auditor  
Deuel County  
PO Box 616  
408 4th St. West  
Clear Lake, SD 57226  
[dcaudit1@itctel.com](mailto:dcaudit1@itctel.com)  
(605) 874-2312 - voice  
(605) 874-1306 - fax

Mr. Allen Robish  
47278 161<sup>st</sup> St.  
Strandburg, SD 57265  
[allen.robish@gmail.com](mailto:allen.robish@gmail.com)  
(605) 949-2648

Dated at Canton, South Dakota, this 10th day of September 2019.

Respectfully submitted,

A.J. Swanson  
ARVID J. SWANSON, P.C.  
27452 482<sup>nd</sup> Ave.  
Canton, SD 57013  
605-743-2070  
*E-mail:* [aj@ajswanson.com](mailto:aj@ajswanson.com)

/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*