STATE OF SOUTH DAKOTA	IN CIRCUIT COURT
COUNTY OF DEUEL	THIRD JUDICIAL CIRCUIT

GARRY EHLEBRACHT, STEVEN GREBER, MARY GREBER, RICHARD RALL, AMY RALL, AND LARETTA KRANZ Appellants, vs. SOUTH DAKOTA PUBLIC UTILITIES COMMISSION AND CROWNED RIDGE WIND II, LLC. Appellees	Case No. 19CIV20-000021 **APPELLEE COMMISSION STAFF'S RESPONSE BRIEF TO APPELLANTS EHLEBRACT, GREBER, GREBER, RALL, RALL AND KRANZ**

INTRODUCTION

Staff of the South Dakota Public Utilities Commission (Staff) submits this brief in response to the opening brief submitted by Appellants Garry Ehlebract, Steven Greber, Mary Greber, Richard Rall, Amy Rall, and Laretta Kranz (together, Appellants). Appellants have appealed the South Dakota Public Utilities Commission's (Commission or PUC) issuance of a permit to construct a wind energy facility for the Crowned Ridge Wind II Wind Farm. Appellants have not specified the relief they are seeking from the Court.

For the purposes of this brief, all citations to the administrative record will be referenced as AR.

JURISDICTIONAL STATEMENT

Appellants appealed to this Court from the Commission's Final Decision and Order Granting Permit to Construct Facility; Permit Conditions; Notice of Entry in Docket EL19-027, issued April

6, 2020. This appeal is taken pursuant to SDCL 1-26-30 and 1-26-30.2. The Circuit Court has jurisdiction over this case pursuant to SDCL 1-26-30.2 and 1-26-30.4. Deuel County is an appropriate venue for this action pursuant to SDCL 1-26-31.1. Appellants filed their Notice of Appeal in Circuit Court on April 29, 2020.

STATEMENT OF THE CASE AND FACTS

On July 9, 2019, Crowned Ridge Wind II, LLC (Crowned Ridge or CRW), a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC filed with the Commission an application for a permit for an up to 301 megawatt (MW) wind energy facility (Project) in Grant, Deuel, and Codington counties, South Dakota. The Project will consist of up to 132 wind turbine generators. (AR 14230-14258, Final Decision and Order Granting Permit to Construct Facility, Permit Conditions, Notice of Entry (Permit)).

South Dakota law requires wind energy facilities with a nameplate capacity of 100 MWs or more obtain a permit from the Commission prior to construction. (See SDCL 49-41B-2(7), (12) and SDCL 49-41B-4). Pursuant to SDCL 49-41B-17, Staff is a party to the proceeding. SDCL 49-41B-17 permits certain individuals and entities to participate as parties in the proceeding. When the parties to the proceeding are unable to reach a full settlement between all parties, the Commission treats the matter as a contested case proceeding pursuant to SDCL Chapter 1-26 and holds an evidentiary hearing. (See SDCL 49-41B-17.2).

With its Application filed on July 9, 2019, Crowned Ridge submitted written testimony of five witnesses. (AR 1-1118). On July 11, 2019, the Commission issued public notice of the application

and the public input meeting and established an intervention deadline of September 9, 2019. (AR 1122-1123). The Commission held the public input meeting on Monday, August 26, 2019 in Watertown, South Dakota. (AR 1274-1477). The Commission received applications for party status from nine individuals prior to the intervention deadline and the Commission granted party status to each of the nine individuals, including Appellants. (AR 1124-1126, 1193-1194, 1197-1214, and 1478). The Commission established a procedural schedule on September 20, 2019. (AR 3227-3228).

On August 6, 2019, Crowned Ridge filed a request to redact pages 3-6 of the application for party status filed on August 6, 2019 on behalf of Garry Ehlebracht Steven Greber, Mary Greber, Richard Rall, Amy Rall, and Laretta Kranz. (AR 1215-1219). On September 9, 2019, Crowned Ridge filed a revised request for confidential treatment of Section 11.10 of an easement as found in the August 6, 2019, Application for Party Status. (AR 1925-1933). The Commission held a hearing on this matter on September 17, 2019 and denied Crowned Ridge's request for confidential treatment of Section 11.10 of the easement. (AR 1972-2006 and 3224-3226).

On September 20, 2019, Crowned Ridge filed Supplemental Testimonies and Exhibits. (AR 2007-3223). On October 21, 2019, Crowned Ridge Filed Corrected Direct Testimony of witness Sarah Sappington. (AR 3233-3254). On December 9, 2019, Staff filed Pre-filed Direct Testimony of five witnesses. (AR 3356-4250). On December 12, 2019, Amy Rall, Laretta Kranz, Garry Ehlebract and Steven Greber each filed Pre-filed Direct Testimony in the form of Affidavits. (AR 4251-4264). On January 8, 2020, Crowned Ridge filed Rebuttal Testimonies of seven witnesses

with corrections filed on January 22, 2020, and January 24, 2020. (AR 4267-4338). On January 23, 2020, Staff filed Pre-filed Supplemental Testimony of David Lawrence. (AR 7054-7079).

The Commission held an evidentiary hearing on February 4, 5, and 6, 2020, in Pierre, South Dakota. (AR 8844-13781). Crowned Ridge, Staff and Appellants participated in the evidentiary hearing, presenting testimony and cross-examining witnesses. (AR 8844-13781). Appellants presented witness testimony. The Hearing Examiner presided over the hearing and each of the Commissioners was present for the entirety of the hearing.

On March 2, 2020, the Parties filed Post-Hearing Briefs. (AR 13878-13919 (Crowned Ridge), 13934-13969 (Mogen, Robish, Christenson), 13920-13933 (Staff), 13977-13981 (Appellants)). On March 17, 2020, the Commission met to consider whether to issue a facility permit for the Project. (AR 13984-14079). At the meeting, the Commission voted unanimously to issue a permit for the Project, subject to 49 conditions. (AR 13994-14079).

On April 6, 2020, the Commission issued the Permit. (AR 14230-14258). The Permit includes conditions establishing maximum permissible sound levels and maximum levels of shadow flicker at residences in the vicinity of the Project. (AR 14246-14258). Specifically, Permit Condition 26 limits sound levels emitted from the Project to 45 dBA for non-participating residence and 50 dBA for participating residences, as measured within 25 feet of a residence, with an allowance for a landowner to waive the condition. (AR 14251). Permit Condition 35 restricts Shadow Flicker at residences to 30 hours per year, with an allowance for an owner to waive the condition. (AR 14255).

GENERAL LEGAL STNDARD APPLICABLE TO REVIEW OF A COMMISSION DECISION

A court's review of a final decision of an administrative agency is governed by SDCL 1-26-36:

> The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:
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> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in light of the entire evidence in the record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion
>
> A court shall enter its own findings of fact and conclusions of law or may affirm the findings and conclusions entered by the agency as part of its judgment.

The Commission's "findings of fact are reviewed under the clearly erroneous standard .. . . A reviewing court must consider the evidence in its totality and set the [PUC's] findings aside if the court is definitely and firmly convinced a mistake has been made." *In re Otter Tail Power Co. ex rel. Big Stone II*, 2008 S.D. 5, ¶ 26, 744 N.W.2d 594, 602 (citing *Sopko v. C & R Transfer Co., Inc.*, 1998 SD 8, ¶ 7, 575 N.W.2d 225, 228-29). The Court is to give great weight to findings and inferences of an agency on factual questions. *Id.* "Factual findings can be overturned only if we find them to be 'clearly erroneous' after considering all the evidence. *Permann v. South Dakota Dept. of Labor*, 411 N.W.2d 113, 117 (S.D. 1987). Unless we are left with a definite and firm conviction a mistake has been made, the findings must stand. The question is not whether there is

substantial evidence contrary to the findings, but whether there is substantial evidence to support them." *Abild v. Gateway 2000, Inc*., 1996 S.D. 50, ¶ 6, 547 N.W.2d 556, 558. On factual issues, courts "give great weight to the findings and inferences made by the agency on factual questions." *Woodcock v. City of Lake Preston*, 2005 S.D. 95, ¶ 8, 704 N.W.2d 32, 34. The requirement in SDCL 1-26-36(5) that the Court is to look at the whole record, does not, however, allow the Court to substitute its judgment for the Commission's judgment as to the weight of evidence on questions of fact. *City of Brookings v. Department of Environmental Protection*, 274 N.W.2d 887, 890 (S.D. 1979).

An agency's conclusions of law are reviewed de novo. *Big Stone II*, 2008 S.D. 5, ¶ 26, 744 N.W.2d at 602. "[Q]uestions of law, including statutory interpretation, are reviewed de novo." *Pesall v. Montana Dakota Util. Co., et al*., 2015 S.D. 81, ¶ 6, 871 N.W.2d 649. Mixed questions of law and fact may be reviewed under either standard, depending upon whether the agency's analysis is predominantly factual or legal. *In re Dorsey & Whitney Tr. Co. LLC*, 2001 S.D. 35, ¶ 5, 623 N.W.2d 468, 471 (noting that when reviewing mixed questions of law and fact, "courts apply the clearly erroneous standard if the 'analysis is essentially factual, and thus is better decided by the agency or lower court …,' and the de novo standard when the 'resolution requires consideration of underlying principles behind a rule of law.'").

ARGUMENT

Issue 1: The Commission is not required to promulgate rules defining "minimal adverse effects" and the Commission did not err in reviewing the CRW application on an ad hoc basis.

The Commission is a body of limited jurisdiction, holding only the authority conferred by the Legislature. An agency may only act, or promulgate rules, when a Legislative delegation includes "(1) a clearly expressed legislative will to delegate power, and (2) a sufficient guide or standard to guide the agency." *Boever v. S.D. Board of* Accountancy, 561 N.W.2d 309, 312 (S.D. 1997) (citing Application *No. 5189-3,* 467 N.W.2d at 913 (citing *First Nat'l Bank of Minneapolis,* 394 N.W.2d at 718; *In re Ackerson, Karlen & Schmitt,* 335 N.W.2d 342, 345 (S.D.1983)). State statute does not require the Commission to promulgate rules defining "minimal adverse effects" as contemplated by Appellants. SDCL 49-1-11 and SDCL 49-41B-35 do grant some rulemaking authority to the Commission, but these statutes use the term "may," conferring a permissive rulemaking authority. Additionally, these statutes contemplate the promulgation of rules regarding procedures and application requirements, there is no express reference to promulgation of rules defining terms within the chapter.

State statute lays out an elaborate scheme instructing the Commission to review permit applications on a case-by-case, or ad hoc basis via a contested case proceeding. (See SDCL 49-41B-11 through 49-41B-25, inclusive). Because these statutes do not include any requirement that the Commission must promulgate rules or, more specifically, addresses the promulgation of rules to establish a specific definition for "minimal adverse effects," the Commission did not commit error when it proceeded to review the CRW application on an ad hoc basis. The Commission followed procedure established in statute for reviewing permit application through a contested case proceeding.

Issue 2: The Commission's decision to process Crowned Ridge Wind's application for a wind energy facility on an ad hoc basis is not arbitrary and capricious nor an equal protection violation.

The Commission's decision did not result in a violation of equal protection. Appellants claim a violation because the Commission imposed different sound and shadow flicker conditions in CRW than was imposed in a previous matter, the Prevailing Wind Park (PWP) docket. Although the two permit applications mentioned by Appellants did result in slightly different conditions imposed on the applicant, the equal protection clause does not require identical results. The equal protection clause does not entirely prohibit a state action from having a different effect on residents. Instead, the equal protection clause protects against state laws, or the application of state laws, that are adversely applied against groups with no valid reason.

The Court has a long-established test to identify whether an equal protection violation has occurred:

> "[W]hen a statute has been called into question because of an alleged denial of equal protection of the laws," we employ our traditional two-part test. *Accounts Management,* 484 N.W.2d at 299–300. First, we determine whether the statute creates arbitrary classifications among citizens. *City of Aberdeen v. Meidinger,* 89 S.D. 412, 233 N.W.2d 331, 333 (1975). Second, if the classification does not involve a fundamental right or suspect group, we determine whether a rational relationship exists between a legitimate legislative purpose and the classifications created. *Accounts Management,* 484 N.W.2d at 300.

In re Davis, 2004 SD 70, ¶ 5, 681 N.W.2d 452, 454 (citations and internal quotations omitted)

In this case, Appellants make no claim that non-participants in the CRW matter are a protected class under the Equal Protection Act, so the correct test to apply is whether a rational basis for

applying the law in such a manner that resulted in a different result. *Cheyenne River Sioux Tribe Tel. Auth. V. PUC*, 595 N.W. 2d 604, 612-614 (S.D. 1999).

Appellants' argument relies on the *Smith v. Canton School Dist. No. 41-1* decision which ruled that a decision is arbitrary and capricious if there is no standard, or if the decision-making body failed to apply or disregarded an established standard. *Canton*, 599 N.W.2d 637 (S.D. 1999). This decision is not instructive here. In *Canton*, the court had previously established specific factors for school board to consider in making boundary determinations. Those factors were not considered by the school board in *Canton*, and the Court ruled the decision arbitrary.

In this case, State statute specifically established a procedure and standard with specific factors for the Commission to consider when processing an application for a wind energy permit. SDCL 49-41B-11 through 49-41-25 establishes basic information to be included in the application; a filing fee for the Commission to offset the cost to investigate, review, process, and serve notice of the application; a procedure for the Commission to follow including notifying local governing bodies and scheduling and providing notice for a public input meeting; permitting interested entities to request to be parties to the case; establishing that a party to the proceeding is entitled to a contested case hearing pursuant to chapter 1-26; and a requirement that the Commission receive evidence from state and local agencies related to projected changes in environment, social, and economic conditions.

SDCL 49-41B-22 includes the specific factors the Commission must consider when reviewing an application and establishes the burden of proof that the Applicant must show by a preponderance of the evidence:

> (1) The proposed facility will comply with all applicable laws and rules;
>
> (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area. An applicant for an electric transmission line, a solar energy facility, or a wind energy facility that holds a conditional use permit from the applicable local units of government is determined not to threaten the social and economic condition of inhabitants or expected inhabitants in the siting area;
>
> (3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
>
> (4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government. An applicant for an electric transmission line, a solar energy facility, or a wind energy facility that holds a conditional use permit from the applicable local units of government is in compliance with this subdivision.

In reviewing CRW's Application for a Permit, the Commission did review each of these factors and made a fact-based determination that CRW did comply with each of these factors by a preponderance of the evidence presented at the evidentiary hearing. (AR 14230-14258). The Permit clearly identifies each of these factors and refers to the evidence the Commission relied on when making the fact-based determination that CRW met its burden of proof. (AR 14230-14258). Specifically, as indicated in Permit Conditions 46, 47 and 48, the Commission found CRW appropriately minimized sound and shadow flicker levels and that "[t]here is no record evidence that the Project will substantially impair human health or welfare." (AR 14241-14242). As noted in the Permit, the Commission relied on the sound modeling report and shadow flicker studies as well as the testimony of CRW witnesses Jay Haley and Daryl Hart and Staff witness David Hessler to come to these conclusions. (AR 14241-14242). Reviewing the findings of fact in the Permit

clearly shows the Commission followed the factors established in statute and, therefore, Appellants' claim the decision is arbitrary and capricious is not convincing.

While CRW and PWP may have resulted in slightly different sound and shadow flicker conditions imposed in the Permit, the Commission followed the well-established statutory procedure and applied the statutory standards, citing ample evidence to support the conditions imposed. As a result, the decision was not arbitrary and capricious, nor an equal protection violation. The Commission's fact-based decision should be given deference and upheld.

Furthermore, the Commission is not bound by past decisions. The Court has held that "administrative agencies are not bound by stare decisis as it applies to previous agency decisions." *Interstate Telephone Co-Op, Inc. v. Public Utilities Commission*, 518 N.W.2d 749, 753 (S.D. 1994) (citing *City of Alma v. United States,* 744 F.Supp. 1546, 1561 (S.D.Ga.1990) ("An agency is not forever bound by its prior determinations, as its view of what is in the public interest may change, even if the circumstances do not.")). Neither the PWP decision nor any other past Commission decision can establish binding precedent. Therefore, the outcome of the previous decision does not mandate a mirror outcome in this case.

Issue 3: The Commission did not err in not applying SDCL 43-13-2.

The Commission is a body of limited jurisdiction, holding only the authority conferred by the Legislature, so the Commission was correct in not applying SDCL 43-13-2. An agency is only permitted to promulgate rules when the Legislature specifically confers that authority via statute. *O'Toole v. Bd. Of Trust of SD Retirement,* 648 N.W.2d 342 (S.D. 2002). While the

Legislature has delegated the Commission with the authority to process and oversee permits for large wind energy facilities generating more than 99 MW, there is no statutory provision that instructs or even permits the Commission to adjudicate and interpret laws falling outside of the Commission's authority.

Similarly, the Commission is not a court of general jurisdiction and has no authority to assess property rights, nor waive any underlying law, ordinance or regulation that otherwise applies to the construction of wind turbines. *Northwestern Bell Tel. Co. v. Chicago & N.W. Transp.*, 245 N.W.2d 639, 641 (S.D. 1976). As such, a determination by the Commission that a request for a permit is in violation of SDCL 43-13-2 would be outside the Commission's jurisdiction.

Issue 4: The Commission's decision is not a taking of Appellants' private property interests nor a *per se* nuisance.

The Commission's order granting CRW a permit to construct a wind energy facility is not a taking or a *per se* nuisance as claimed. Appellants provide no legal authority for their contention, and such claim is not ripe. Moreover, Appellants have not submitted sufficient evidence for the court to determine a taking has occurred.

Appellants provide no legal authority that would support the allegation that granting the Permit resulted in a taking or a *per se* nuisance because it permits any amount of sound of shadow flicker on Appellants' property. *Kostel v. Schwartz* requires legal claims include authority, or the claim is waived. *Kostel*, 2008 S.D. 85, ¶ 34, 756 N.W.2d at 377. "The court is free to ignore legal

conclusions, unsupported conclusions, unwarranted inferences[,] and sweeping legal conclusions cast in the form of factual allegations." *Mordhorst v. Dakota Truck Underwriters*, 2016 S.D. 70, ¶ 8, 886 N.W.2d 322, 323.

These issues are not ripe for a taking or a *per se* nuisance claim. Each of these claims are entirely fact dependents. At this point the evidence presented to the Commission includes sound and shadow-flicker models. Appellants' attempt to argue a taking or *per se* nuisance case based on these models is premature. *Boever v South Dakota Board of Accountancy* instructs that the court should not waste resources on abstract, hypothetical or remote potential controversies. *Boever v. State of South Dakota Board of Accountancy*, 526 N.W.2d 747 (S.D. 1995). As presented to the Commission, the models present a conservative scenario of potential noise and shadow flicker possible at specific locations in the proposed project area. (AR 10303-10315). As testified, the models use numerous conservative inputs that show the maximum levels of shadow flicker and sound expected at receptors. (AR 10303-10315). However, at this point, the actual sound and shadow flicker levels that may be experienced by Appellants are merely conjecture or speculation at this point. Any nuisance or takings claim must present evidence of actual, not potential, impact. The court recognized this in *Lindgren v. Codington County*, and rejected similar arguments made regarding takings and nuisance claims. See *Lindgren*, 14CIV1-000303 (SD 3rd Cir. Dec. 20, 2019). Since Appellants have not, and cannot, make such a showing at this time, the claims are not ripe.

Appellants' claim fails to assert how noise and shadow flicker emitted onto another's property meets the established test to show a taking has occurred. *Benson v. State* concisely explains the four theories available to show a taking:

> plaintiff must allege either 1) a *per se* regulatory physical taking under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S.Ct. 3164, 73 L.Ed.2d 868 (1982), "where government requires an owner to suffer a permanent physical invasion of her property"; 2) a *per se* total regulatory taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992), that deprives an owner of "*all* economically beneficial uses of the property"; 3) a regulatory taking under *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631 (1978), when a temporary or partial taking is alleged; or 4) a land-use exaction violating the standards as set forth in *Nollan v. California Coastal Comm'n.*, 483 U.S. 825, 107 S.Ct. 3141, 97 L.Ed.2d 677 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309, 129 L.Ed.2d 304 (1994). *Lingle*, 544 U.S. at 125 S.Ct. at 2081-82, 2086-87, 161 L.Ed.2d 876.
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> *Benson v. State* 710 N.W.2d 131, 149 (SD 2006).

The facts asserted by Appellants fail to show any physical invasion of property (theory 1), that Appellants have been deprived of "all economically beneficial uses of the property" (theory 2), or that the state has in any way restricted how Appellants may use their own property (theory 4). It is a settled standard that determining whether a taking has occurred under theory 3 is dependent on the circumstances of each case. *Penn Central Trans. Co v. New York* City, 438 U.S. 104, 125 (1978). "Not every destruction or injury to private property by governmental regulation will be a taking within the meaning of the Fifth Amendment." *Omnia Commercial Co. v. United States*, 261 U.S. 502, 508-510, 43 S.Ct. 437, 438, 67 L.Ed. 773 (1923). As discussed above, this case is simply not ripe, and the *Penn Central* test cannot be applied.

Even if *in arguendo*, a taking occurred, the Permit granted to CRW is not, as argued by Appellants, the "*sole instrument"* affording adverse use. (Ehlebracht Brief, at. 28). When reviewing a regulatory taking, the court must examine the character of the government action to determine whether that action is the cause-in-fact of the harm. *Benson v. State*, 710 N.W.2d 131, 153 (SD 2006) (citing *Ridge Line, Inc. v. U.S.*, 346 F.3d 1346, 1355 (Fed. Cir. 2003)). *Griggs v.*

County of Allegheny applied this test to determine the Civil Aeronautics Administration (CAA) could not be held responsible for a taking merely because the CAA established standards for airstrips and clearance for takeoff and landing strips, instead the entity selecting the site and securing the properties to construct the runway was responsible. *Griggs,* 369 U.S. 84 (1962). This rule was further recognized in *Harms v. City of Sibley* when the Iowa Supreme Court determined that the county was not responsible for a taking after property damage occurred following rezoning of an area from light industrial to heavy industrial, instead the industrial entity that chose to operate within that zone was the responsible party. *Harms,* 702 N.W.2d 91 (Iowa 2005).

Under the guidance from these cases, it is clear the Commission's grant of a permit is merely incidental, and not to cause-in-fact of any noise and shadow flicker emitted onto Appellants' property. State statute currently permits the construction of large wind energy systems (turbines) so long as turbines at least 75 feet in height are set back 1.1 times, or 500 feet from adjacent property lines. See SDCL 43-13-21 through 43-13-24, inclusive. Statute specifically prohibits the Commission from routing, designating, or mandating the location of wind energy facilities. (See SDCL 49-41B-36). The Project is also subject to regulation by the county where setback and noise and shadow flicker levels are regulated. (11650-11654).

While the Permit allows the construction of the CRW Project, the Commission is not constructing, owning, or operating the facility, nor did the Commission select the location of the Project. The Permit merely indicates the Project meets, by a preponderance of evidence, the factors established in SDCL 49-41B-22 and any effects caused by the Project are merely incidental and are not a taking by the state.

CONCLUSION

Staff respectfully requests the Court affirm the Commission's decision.

Dated this 24th day of September 2020.

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CERTIFICATE OF SERVICE

I, Amanda M. Reiss, attorney for the Defendant South Dakota Public Utilities Commission, hereby certify that on the 24th day of September 2020, I served through the Odyssey file and serve system a true and correct copy of the Appellee Commission Staff's Response to Appellants Ehlebracht, Greber, Greber, Rall, Rall and Kranz in the above-entitled matter upon the following:

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