

IN THE SUPREME COURT  
OF THE STATE OF SOUTH DAKOTA

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TIMOTHY LINDGREN AND LINDA LINDGREN,

*Plaintiffs and Appellants,*

v.

#29229

CODINGTON COUNTY, CODINGTON COUNTY  
BOARD OF ADJUSTMENT, CROWNED RIDGE, LLC,  
CROWNED RIDGE II, LLC, BOULEVARD  
ASSOCIATES, LLC, AND SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION,

*Defendants and Appellees.*

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Appeal from the Circuit Court, Third Judicial Circuit  
Codington County, South Dakota  
The Honorable Carmen Means

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**APPELLEE SOUTH DAKOTA PUBLIC UTILITIES COMMISSION BRIEF**

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Notice of Appeal was filed on January 10, 2020

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IN THE SUPREME COURT  
STATE OF SOUTH DAKOTA

No. 29229

TIMOTHY LINDGREN AND LINDA LINDGREN V. CODINGTON COUNTY, ET  
AL.

**PRELIMINARY STATEMENT**

Throughout this brief, Appellants Timothy and Linda Lindgren are referred to collectively as “the Lindgrens.” Appellants’ brief shall be cited as “AB”, followed by the appropriate page number. Appellee, the South Dakota Public Utilities Commission, shall be referred to as the “Commission.” The Appellees, Codington County and Codington County Board of Adjustment shall be referred to collectively as “Codington County” or the “County.” Appellees, Crowned Ridge Wind, LLC, Crowned Ridge Wind II, LLC, and Boulevard Associates, LLC shall be referred to collectively as “Crowned Ridge.” Citations to the Settled Record shall be denoted by the letters “SR” followed by the appropriate page number. Citations to the Circuit Court’s Hearing Transcript shall be denoted by the letters “HT” followed by the appropriate page number.

**JURISDICTIONAL STATEMENT**

This Court has jurisdiction in this case pursuant to SDCL 15-26A-3.

## STATEMENT OF ISSUES AND AUTHORITIES

### **I. WHETHER DISMISSAL WAS PROPER UNDER SDCL 15-6-12(B)(1), BECAUSE THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION.**

The Circuit Court ruled that it lacked jurisdiction to consider the Lindgrens' Complaint.

SDCL 49-41B-17

ARSD 20:10:22:40

*Dan Nelson Automotive, Inc. v. Viken*, 2005 S.D. 109, 706 N.W.2d 175

*Lippold v. Meade County Board of Commissioners*, 2018 S.D. 7, 906 N.W.2d 917

### **II. WHETHER DISMISSAL WAS PROPER UNDER SDCL 15-6-12(B)(5), BECAUSE THE COMPLAINT FAILED TO STATE A CLAIM ON WHICH RELIEF COULD BE GRANTED.**

The Circuit Court ruled that it lacked jurisdiction to consider the declaratory judgment action and that the Complaint failed to state a claim on which relief could be granted.

*First National Bank in Sioux Falls v. Drier*, 1998 S.D. 1, 574 N.W.2d 597

*Muscarello v. Ogle County Board of Commissioners*, 610 F.3d 416 (7<sup>th</sup> Cir. 2010)

### **III. WHETHER THE TRIAL COURT ERRED IN GRANTING DEFENDANT PUBLIC UTILITIES COMMISSION'S MOTION FOR COSTS, BASED ON SDCL 21-24-11.**

The Circuit Court granted the Commission's request for costs and assessed the costs to be \$0.00.

SDCL 21-24-11

## STATEMENT OF THE CASE

The Lindgrens filed a Complaint for Declaratory Judgment and Other Relief in circuit court in Codington County (*Lindgren v. Codington County et. al*, 14CIV19000303) on September 29, 2019. SR 1. The Commission filed a Motion to Dismiss and Motion for Award of Costs pursuant to SDCL 21-24-11, on September 24, 2019. SR 59. The Commission's Motion to Dismiss asserted that the court lacked jurisdiction because the administrative process and its subsequent appeal had not been exhausted, and the Lindgrens failed to state a claim upon which relief could be granted. SR 72. On September 30, 2019, Codington County filed Defendants Codington County and Codington County Board of Adjustment's Motion to Dismiss (SR 81), and Crowned Ridge filed a Motion to Dismiss on October 3, 2019. SR 130. All three motions to dismiss were based on SDCL 15-6-12(b)(1) and (5). On November 8, 2019, the Lindgrens filed a Reply Brief to Defendants' Separate Motions to Dismiss Complaint, under Rule 12(b). SR 188. The arguments on the parties' Motions to Dismiss were heard by Circuit Court Judge Carmen Means, on December 9, 2019.

After hearing arguments, the circuit court made a ruling on December 9, 2019. SR 400. In its oral ruling, the court stated that it found that the Defendants' motions should be granted under SDCL 15-6-12(b)(1) and (5). SR 400. On December 20, 2019, the circuit court issued its Order Granting Defendants' Motion to Dismiss and Granting the Commission's Motion for Costs. SR 339-341. Notice of Entry of Order was served on the Lindgrens on December 26, 2019. SR 344. Appellants' Notice of Appeal was filed on January 10, 2020. SR 365.



## STATEMENT OF THE FACTS

The Commission does not dispute the Lindgrens' claim that they own and occupy the Lindgren Farm located in Section 2 of Waverly Township, Codington, County, South Dakota. AB 6. Beyond this fact, many of the other facts as set forth in Appellants' brief were not adjudicated by the circuit court and are subject to dispute by the Commission. AB 6-17. However, regardless of those disputed facts, the Commission submits to this Court that only the following facts are relevant and necessary for the purposes of this appeal with respect to the Commission.<sup>1</sup>

Pursuant to SDCL 49-41B-4, anyone wanting to build a wind generation facility (wind farm), greater than one hundred megawatts, must first obtain a facility permit from the Commission. This permit issued by the Commission is separate and distinct from any permit that may be required by local authorities.

On January 30, 2019, Crowned Ridge filed with the Commission an application, pursuant to SDCL Chapter 49-41B, for a permit to construct a wind energy conversion facility to be located in the counties of Grant and Codington in South Dakota. The application was duly filed and docketed by the Commission as Docket No. EL19-003, *In the Matter of the Application by Crowned Ridge Wind, LLC for a Permit of a Wind Energy Facility in Grant and Codington Counties.*

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<sup>1</sup> Because the facts differ as to each Appellee, the Commission limits its discussion to those facts relevant to the Commission's Motion to Dismiss and does not include a background of any local permitting processes.

Pursuant to administrative rule ARSD 20:10:22:40, any interested person in a wind energy facility permit process before the Commission has sixty days from the date the wind farm application is filed to intervene in the permit proceeding. The intervention deadline in this Crowned Ridge docket was April 1, 2019. As the Lindgrens admit to this Court, they failed to file any motion to intervene within this timeframe. AB at 10.

On June 6, 2019 and June 11-12, 2019, a full and complete Evidentiary Hearing was held regarding Crowned Ridge's requested permit, pursuant to SDCL 1-26-18. SR 135. The Lindgrens did not petition for intervention until after the conclusion of the Evidentiary Hearing. SR 225. Based on the Lindgrens' untimely motion to intervene, on June 26, 2019, the Commission issued an order denying the Lindgrens' petition for intervention, finding the late intervention would unduly prejudice the rights of the other parties to the proceeding and/or be detrimental to the public interest. App. 7. Again, the Lindgrens failed to appeal from the Commission's order which denied their intervention. SR 228. Similar to the county zoning matter, the Lindgrens failed to attempt to appeal this administrative finding, though they certainly could have exercised that right. Therefore, the Lindgrens are not a party to the Crowned Ridge Wind Farm permitting docket before the Commission and cannot now appeal any aspect of the Commission's administrative decision to a South Dakota Circuit Court or now with this Court.

After considering all testimony and evidence regarding this Crowned Ridge wind farm docket, the Commission ultimately determined that, with certain permit conditions, the project did not pose a significant health risk to the inhabitants of the project area, and permit was issued on July 26, 2019. An appeal of this permit by intervenors, other than

the Lindgrens, all of whom were properly recognized as non-participating landowners, is now pending in Codington County Circuit Court (14CIV19000290, *In the Matter of the Application by Crowned Ridge Wind, LLC for a Permit of a Wind Energy Facility in Grant and Codington Counties*). SR 393, HT 9:3-4.

Following the above Commission action, on September 29, 2019, the Commission was served with the Lindgrens' Complaint for Declaratory Judgment and Other Relief. SR 1. In their brief supporting their Complaint, the Lindgrens assert that the relief they are now seeking is a general declaratory judgment and what appears to be injunctive relief. AB 17. This is in contrast to the Lindgrens' Brief in Opposition to Defendants' Separate Motions to Dismiss Complaint filed with the court below, in which the Lindgrens specifically state that no injunctive relief is being sought against the Commission. SR 282.

At the conclusion of the motions hearing, the circuit court granted each of the Appellees' motions to dismiss, as well as the Commission's request for costs pursuant to SDCL 21-24-11. SR 400. After some consideration, the Commission decided not to request any costs, and on February 26, 2020, the trial court issued an Order assessing costs to the Commission of \$0.00. App. 5.

### **STANDARD OF REVIEW**

This Court reviews a circuit court's order for dismissal "for lack of subject matter jurisdiction under the de novo standard of review." *Bingham Farms Trust v. City of Belle Fourche*, 2019 S.D. 50, ¶ 11, 932 N.W.2d 916, 919 (quoting *Upell v. Dewey Cty.*

*Comm'n*, 2016 S.D. 42 ¶ 9, 880 N.W.2d 69, 72). A lack of subject matter jurisdiction means the court lacks the authority to hear and determine the case. *Id.* at FN 2.

A circuit court's determination of a motion to dismiss for failure to state a claim upon which relief can be granted is reviewed do novo, as it turns on a question of law. *Rhines v. South Dakota Dept. of Corrections*, 2019 S.D. 59, ¶ 11, 935 N.W.2d 541, 544 (Citing, *Sisney v. Best Inc.*, 2008 S.D. 70, ¶¶ 6-8, 754 N.W.2d 804, 807-09).

## ARGUMENTS

### **I. Dismissal was proper under SDCL 15-6-12(b)(1) because the trial court lacked subject matter jurisdiction.**

The Commission is charged by the South Dakota Legislature with permitting authority for wind energy facilities designed for or capable of generating one hundred megawatts or more of electricity. SDCL 49-41B-2(13). This permitting authority is separate from and independent of any permits or regulations of a local government entity.

The exclusive statutory authority to challenge the Commission's issuance of a wind facility permit is to appeal the Commission's permitting decision under SDCL 49-41B-30 and SDCL Chapter 1-26. In fact, such an appeal is now pending at this time in Circuit Court in Codington County, docketed as 14CIV19000290, *In the Matter of the Application by Crowned Ridge Wind, LLC for a Permit of a Wind Energy Facility in Grant and Codington Counties*. Unfortunately, the Lindgrens, again because of their own inaction, are not a party to this appeal. Because the remedy by appeal was available,

an action for declaratory judgment is not an appropriate remedy in this case. See, *Dan Nelson Automotive, Inc. v. Viken*, 2005 S.D. 109, FN 9, 706 N.W.2d 175.

A review of the Lindgrens' Complaint will reveal that, in reality, the Complaint is not a request for declaratory relief, but a poorly disguised attempt by the Appellants to circumvent the administrative appeal process. This they cannot do because they were not a proper party to the Crowned Ridge docket before the Commission. The Lindgrens failed to timely intervene in the Commission's permitting process, as set forth in SDCL 49-41B-30 and SDCL Chapter 1-26. In their brief to this Court, the Lindgrens could have sought intervention, pursuant to SDCL 49-41B-17 but chose not to do so until after the Evidentiary Hearing had concluded. AB at 10. Additionally, the Lindgrens did not appeal the denial of their intervention in the Crowned Ridge Docket to a state circuit court. The Lindgrens appear in their brief to this Court to justify their failures by claiming that they were unable to exercise their right to intervene in the wind farm permitting docket due to a contract they voluntarily entered into with Crowned Ridge. The Commission would note that, the Lindgrens cite no authority to support this claim that a contract supersedes SDCL 49-41B-17 or authority to support the concept that a voluntary contract changes their legal position with respect to those, such as the Commission, who are not a party to that contract. If such a theory was recognized by the Court, it would undermine the finality of all permits issued by the Commission or any other administrative agency.

In South Dakota, our Legislature created specific ways for aggrieved parties to participate in the permitting process and to appeal from an order in that process if they

disagree with the administrative agency's decision. In the case of a wind facility permit issued by the Commission, interested individuals may provide comments at the mandated public input meeting (see SDCL 49-41B-16), and comments may also be filed at any time by those who have not intervened in the proceeding. (ARSD 20:10:01:15.06).<sup>2</sup> The Lindgrens took advantage of both of those public input options. A review of the record will reveal that the Lindgrens spoke at the public input meeting in this case and filed comments in the Commission docket. See, SR 310. The Legislature also provided a formal participation process by allowing interested persons to intervene within sixty days of the filing of the wind farm application. SDCL 49-41B-17 and ARSD 20:10:22:40. If any party successfully intervenes, then a contested case process is followed pursuant to SDCL 1-26. In this docket an administrative record of nearly 30,000 pages was amassed. HT 8:14.

Following a contested case, the Legislature has provided a specific mechanism for review of the Commission's decision. This exclusive legal remedy is an appeal of the Commission's order to the circuit court pursuant to SDCL 49-41B-30. In this case, the Lindgrens failed to follow these statutory and regulatory procedures and therefore, the trial court lacked subject matter jurisdiction over their Complaint.

Subject matter jurisdiction is the power of a court to act such that without subject matter jurisdiction any resulting judgment or order is void. Subject matter jurisdiction is conferred solely by constitutional or statutory provisions. Furthermore, subject matter jurisdiction can neither be conferred on a court, nor denied to a court by the acts of the parties or the procedures they employ. The test for determining jurisdiction is

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<sup>2</sup> This rule was further clarified in 2019 with the enactment of SDCL 49-41B-19.1.

ordinarily the nature of the case, as made by the complaint, and the relief sought.

*Lippold v. Meade County Board of Commissioners*, 2018 S.D. 7, ¶ 17, 906 N.W.2d 917, 921-922 (internal citations omitted).

Contrary to the Lindgrens' assertions, subject matter jurisdiction does not exist simply by virtue of grandiose constitutional claims in a complaint. Further, while it is exceedingly difficult to determine from the face of the Complaint what relief the Lindgrens are seeking, especially with respect to the Commission. The relief that appears to be sought is the reversal of the permit due to alleged shadow flicker and other "effects" from the wind farm. This relief is identical to the relief sought in the pending appeal in Codington County with recognized intervenors. Therefore, any trial on the Lindgrens' Complaint in the case regarding the issues of noise, shadow flicker, and other effects would be a relitigation of the issues that were decided by the Commission in Docket EL19-003, and now on appeal. Clearly, the subject matter jurisdiction over those issues is solely with a state circuit court reviewing the administrative decision, and the trial court in this case properly concluded that it lacked subject matter jurisdiction.

**II. The Circuit Court's Dismissal was proper under SDCL 15-6-12(b)(5) because the Complaint failed to set forth a claim upon which relief could be granted.**

A review of the Lindgrens' brief to this Court reveals a lot of elaborate, flowery, constitutional phrases which attempt to give the appearance of a reasonable constitutional challenge, but when critically considered, the Lindgrens' Complaint is nothing more than palaver that does not set forth a claim upon which relief can be granted. The record

demonstrates that the Lindgrens are not truly requesting a declaratory ruling. What the Lindgrens seek through their Complaint is judicial review of an administrative action and, ultimately, injunctive relief.

To survive a motion to dismiss under Rule 12(b)(6) [SDCL 15-6-12(b)(5)], “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)). A motion to dismiss for failure to state a claim tests the legal sufficiency of the pleading, not the facts which support it. *Guthmiller v. Deloitte & Touche, LLP*, 2005 S.D. 77, ¶ 4, 699 N.W.2d 493, 496. For purposes of the pleading, the court must treat as true all facts properly pled in the complaint and resolve all doubts in favor of the pleader.” *Id.* However, a motion to dismiss “does not admit conclusions of the pleader either of fact or law.” *Nygaard v. Sioux Valley Hospitals & Health System*, 2007 S.D. 34, ¶ 9, 731 N.W.2d 184, 190. “Therefore, while the court must accept allegations of fact as true when considering a motion to dismiss, the court is free to ignore legal conclusions, unsupported conclusions, unwarranted inferences and sweeping legal conclusions cast in the form of factual allegations.” *Id.* This complaint should be dismissed because it fails to state any valid claim of relief. See, *Wojewski v. Rapid City Regional Hosp., Inc.*, 2007 S.D. 33, ¶ 11, 730 N.W.2d 626, 631.

A circuit court’s determination of a motion to dismiss, for failure to state a claim upon which relief can be granted, is reviewed do novo, as it turns on questions of law. See, *Rhines v. South Dakota Dept. of Corrections*, 2019 S.D. 59, ¶ 11, 935 N.W.2d 541,



544 (Citing, *Sisney v. Best Inc.*, 2008 S.D. 70, ¶¶ 6-8, 754 N.W.2d 804, 807-09). As the Appellant, the Lindgrens bear the burden of persuading the Court that the lawsuit should not have been dismissed by the trial court. In its review, this Court is confined to reviewing the allegations specifically contained in the Lindgrens' Complaint. *Hernandez v. Avera Queen of Peace Hospital*, 2016 S.D. 68, ¶ 16, 886 N.W.2d 338, 345.

The Lindgrens make a broad conclusory statement in their brief, alleging that “when a state or county agency meddles with the historic land-rights and prerogatives of a Non-Participant, that landowner should be entitled to challenge that action under the general jurisdiction of the courts of this State.” AB at 27. However, the Lindgrens cite no legal authority to back up this legal claim or to articulate a remedy that could be had from such a challenge if one existed. Nothing contained within the Lindgrens' Complaint supports the assertions that the Commission meddled in the Lindgrens' land rights or that such property rights exists.

To the contrary, the process that the Legislature created by enacting the South Dakota Energy Facility Permit Act, was specifically intended to place restrictions on, not extend additional rights to, wind developers in order to “ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a facility may not be constructed or operated in this state without first obtaining a permit from the commission.” SDCL 49-41B-1.

The Complaint on its face is completely devoid of any factual allegations and fails to state a claim upon which relief can be granted as to the Commission. At best, the

Complaint is an unclear attempt at asserting an unconstitutional taking and an apparent request for injunctive relief to halt the construction of the wind facility. While lengthy, the Complaint clearly leaves any reader with healthy speculation as to what relief the Lindgrens are actually seeking.

In the Motion to Dismiss, the Commission assumed that the intent of the Complaint was to seek injunctive relief. However, Lindgrens, in their reply to the Motion to Dismiss, made it clear that such a remedy was not sought with respect to the Commission. SR 282. Thus, any reader of the Lindgrens' pleadings below is left to ask what it is the Lindgrens actually request of the Court.

Furthermore, the legal theory that the Lingrens attempt to advance has never been adopted by a court of competent jurisdiction. In a strikingly similar constitutional challenge, the plaintiff in *Muscarello v. Winnebago County Board (Muscarello II)* raised constitutional claims based upon alleged effects from a wind farm adjacent to her property, including claims regarding noise and shadow flicker. See, *Muscarello v. Winnebago County Bd.*, 702 F.3d 909 (7<sup>th</sup> Cir. 2012). Ms. Muscarello also brought similar claims against another county and numerous defendants in *Muscarello v. Ogle County Board of Commissioners*, 610 F.3d 416 (7<sup>th</sup> Cir. 2010).

While the Seventh Circuit Court of Appeals acknowledged in *Muscarello* that it had previously recognized that a property owner whose own property is affected by a zoning or land use regulation has a constitutionally protected property interest, *see, e.g., River Park, Inc. v. City of Highland Park*, 23 F.3d 164, 165-66 (7<sup>th</sup> Cir. 1994), that Court, in *Muscarello*, held that property owners do not have a property interest protected

by the Fourteenth Amendment when the zoning or land use law governs a neighbor's property, rather than their own property. *Muscarello v. Ogle County Board of Commissioners*, 610 F.3d at 423. The clear and notable distinction is whether the plaintiff is the owner of the property subject to the regulation.

In *Muscarello II*, the county amended its zoning laws to permit wind energy facilities as a special use, and the plaintiff challenged as a violation of his due process rights the county's grant of a special use permit to an adjacent property owner for the construction of wind turbines. *Id.* at 418. The Seventh Circuit affirmed the district court's dismissal of that claim, holding that the plaintiff “does not have a property interest in the lifting of zoning restrictions on another's property.” *Id.* at 423.

As in the *Muscarello* cases, the Lindgrens do not have a justiciable property interest arising under the Constitution when their neighbors', rather than their own, property is affected by land use regulation. Therefore, the Complaint was properly dismissed for failure to set forth a claim upon which relief could be granted, and the Circuit Court's Dismissal should be affirmed.

**III. Whether the trial court did not err in granting Defendant PUC's motion for costs, based on SDCL 21-24-11.**

This issue is moot, because the amount assessed by the trial court was \$0.00. Nonetheless, the trial court did not err in awarding costs pursuant to SDCL 21-24-11. The Lindgrens incorrectly alleged that the trial court was required to make a finding that the Complaint was frivolous or implemented for malicious purposes. The Lindgrens arrive at this conclusion by relying on the incorrect statute. While it is correct that no

findings were made to support costs awarded pursuant to SDCL 15-17-51, there would have been no reason to make such findings, as the award of costs was not requested or granted under that statute. Rather, the motion was made and granted pursuant to SDCL 21-24-11.

SDCL 21-24-11 provides, “[i]n any proceeding under this chapter the court may make such award of costs as may seem equitable and just.” Nothing in this statute requires a finding that the Complaint was frivolous. While grounds very likely existed to bring a motion for costs under SDCL 15-17-51, that is not the motion that was made or granted by the Circuit Court.

The trial court did not err in its Order with respect to costs pursuant to SDCL 21-24-11 and because no costs were actually assessed, this issue in the Lindgrens’ brief is moot.

### **CONCLUSION**

Based on the foregoing, the Commission respectfully requests the Court affirm the circuit court’s Order Granting Motion to Dismiss.

Dated this 3rd day of April 2020.

SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION

A handwritten signature in black ink, reading "Kristen N. Edwards", is written over a horizontal line.

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ASSOCIATES, LLC, AND SOUTH  
DAKOTA PUBLIC UTILITIES  
COMMISSION,

**CERTIFICATE OF COMPLIANCE**

*Defendants and Appellees.*

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Kristen N. Edwards, staff attorney for Appellee South Dakota Public Utilities Commission, hereby certifies that the foregoing brief meets the requirements for proportionally spaced typeface described in SDCL 15-26A-66(b) as follows:

- a. The typeface of the brief is in Times New Roman 12 point; and
- b. The brief contains 4,409 words, according to the word counting system in Microsoft Office 2010 for Windows used by the undersigned.



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COMMISSION,

**CERTIFICATE OF SERVICE**

*Defendants and Appellees.*

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The undersigned hereby certifies that true and correct copies of Appellee South Dakota Public Utility Commission's Brief in the above-referenced case were served upon the following persons by electronic mail at the addresses listed below:

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And the original and 2 copies were hand delivered to the South Dakota Supreme Court, 500 East Capitol Ave., Pierre, South Dakota 57501, as well as filing by electronic service in to the Clerk of the South Dakota Supreme Court at: [SCClerkBriefs@state.sd.us](mailto:SCClerkBriefs@state.sd.us) on the 3rd day of April 2020.



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**APPENDIX**

**To the Appellee’s Brief**

**Supreme Court #29229**

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Public Utilities Commission’s Order Denying Late-Filed  
Application for Party Status.....App. 7

STATE OF SOUTH DAKOTA     )  
  :SS  
COUNTY OF CODINGTON     )

IN CIRCUIT COURT  
  
THIRD JUDICIAL CIRCUIT

---

TIMOTHY LINDGREN and LINDA  
LINDGREN,

*Plaintiffs,*

vs.

CODINGTON COUNTY, *a political  
subdivision of the State of South Dakota,*  
CODINGTON COUNTY BOARD OF  
ADJUSTMENT, *an agency of Codington  
County, having issued a certain  
Conditional Use Permit, # CU018-007,*  
CROWNED RIDGE WIND, LLC,  
CROWNED RIDGE WIND II, LLC,  
BOULEVARD ASSOCIATES, LLC,  
*all other Persons having present or future  
interests in #CU018-007, and*  
SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION, *having issued a certain  
Facility Siting Permit, Docket EL19-003,  
and*  
*all other Persons having  
present or future interest in a certain  
Energy Facility Permit issued by the  
South Dakota Public Utilities Commission  
in  
Docket EL19-003,*

*Defendants.*

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Case No. 14CIV1-000303

ORDER GRANTING DEFENDANT'S  
MOTION TO DISMISS  
AND GRANTING MOTION FOR COSTS

Each Defendant having filed motions to dismiss the Plaintiffs' Complaint, to which Plaintiffs objected, with a hearing being held on December 9, 2019, before the Court, with A.J. Swanson (appearing on behalf of Timothy Lindgren and Linda Lindgren), Kristen N. Edwards and Amanda M. Reiss (appearing on behalf of South

Dakota Public Utilities Commission), Miles Schumacher (appearing on behalf of Crowned Ridge Wind, LLC; Crowned Ridge Wind II, LLC; and Boulevard Associates, LLC), and Jack Hieb (appearing on behalf of Codington County Commission and Codington County Board of Adjustment), participating.

After hearing arguments of counsel, opposition by Plaintiffs, and having considered the written submissions of the parties, for reasons stated in the Court's oral decision and for good cause appearing, it is hereby

ORDERED, ADJUDGED, & DECREED, that Defendant South Dakota Public Utilities Commission's Motion to Dismiss is hereby GRANTED with prejudice. It is further

ORDERED, ADJUDGED, & DECREED, that Defendant South Dakota Public Utilities Commission's Motion for Award of Cost Pursuant to SDCL 21-24-11 is hereby GRANTED. It is further

ORDERED, ADJUDGED, & DECREED, that Defendants Crowned Ridge Wind, LLC, Crowned Ridge Wind II, LLC, and Boulevard Associates, LLC's Motion to Dismiss is hereby GRANTED with prejudice. It is further

ORDERED, ADJUDGED, & DECREED, that Defendants Codington County Commission and Codington County Board of Adjustment's Motion to Dismiss is hereby GRANTED with prejudice. It is further

ORDERED, ADJUDGED, & DECREED, that the above-entitled matter is hereby DISMISSED with PREJUDICE.

Attest:  
Zeller, Barbara  
Clerk/Deputy



BY THE COURT:

Signed: 12/20/2019 12:30:48 PM

*Carmen Means*

---

Honorable Carmen Means  
Circuit Court Judge

STATE OF SOUTH DAKOTA )  
 )  
 ) :ss  
 )  
COUNTY OF CODINGTON )

IN CIRCUIT COURT  
  
THIRD JUDICIAL CIRCUIT

TIMOTHY LINDGREN and LINDA  
LINDGREN,

*Plaintiffs,*

vs.

CODINGTON COUNTY, *a political*  
*subdivision of the State of South Dakota,*  
CODINGTON COUNTY BOARD OF  
ADJUSTMENT, *an agency of Codington*  
*County, having issued a certain*  
*Conditional Use Permit, # CU018-007,*  
CROWNED RIDGE WIND, LLC,  
CROWNED RIDGE WIND II, LLC,  
BOULEVARD ASSOCIATES, LLC,  
*all other Persons having present or future*  
*interests in #CU018-007, and*  
SOUTH DAKOTA PUBLIC UTILITIES  
COMMISSION, *having issued a certain*  
*Facility Siting Permit, Docket EL19-003,*  
*and*  
*all other Persons having*  
*present or future interest in a certain*  
*Energy Facility Permit issued by the*  
*South Dakota Public Utilities Commission*  
*in*  
*Docket EL19-003,*

*Defendants.*

Case No. 14CIV1-000303

ORDER ASSESSING COSTS OF \$0.00

Defendant South Dakota Public Utilities Commission having been granted costs pursuant to SDCL 21-24-11 and having requested in its February 25, 2020 filing that costs be assessed at \$0.00, it is hereby

ORDERED, that Plaintiff is assessed no costs.

Dated this \_\_\_\_\_ day of February 2020.

Signed: 2/26/2020 10:07:10 AM

*Carmen Means*

\_\_\_\_\_  
Honorable Carmen Means  
Circuit Court Judge

Attest:  
ATTEST:  
Zeller, Barbara  
Clerk/Deputy

By: \_\_\_\_\_,



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA**

<b>IN THE MATTER OF THE APPLICATION ) BY CROWNED RIDGE WIND, LLC FOR A ) PERMIT OF A WIND ENERGY FACILITY ) IN GRANT AND CODINGTON COUNTIES )</b>	<b>ORDER DENYING LATE-FILED ) APPLICATION FOR PARTY ) STATUS )  EL19-003</b>
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On January 30, 2019, the South Dakota Public Utilities Commission (Commission) received an Application for a Facility Permit for a wind energy facility (Application) from Crowned Ridge Wind, LLC (Crowned Ridge or Applicant) to construct a wind energy conversion facility to be located in Grant County and Codington County, South Dakota (Project). The Project would be situated on approximately 53,186-acres in the townships of Waverly, Rauville, Leola, Germantown, Troy, Stockholm, Twin Brooks, and Mazeppa, South Dakota. The total installed capacity of the Project would not exceed 300 megawatts (MW) of nameplate capacity. The proposed Project includes up to 130 wind turbine generators, access roads to turbines and associated facilities, underground 34.5-kilovolt (kV) electrical collector lines, underground fiber-optic cable, a 34.5-kV to 345-kV collection substation, one permanent meteorological tower, and an operations and maintenance facility. The Project will utilize the Crowned Ridge 34-mile 230-kV generation tie line and a new reactive power compensation substation to transmit the electricity from the Project's collector substation to the Project's point of interconnection located at the Big Stone South 230-kV Substation, which is owned by Otter Tail Power Company. Applicant has executed a power purchase agreement with Northern States Power Company (NSP) to sell NSP the full output of the Project. The Project is expected to be completed in 2020. Applicant estimates the total cost of the Project to be \$400 million.

On January 31, 2019, the Commission electronically transmitted notice of the filing and the intervention deadline of April 1, 2019, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv. On February 6, 2019, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status. On February 22, 2019, the Commission issued an Order Assessing Filing Fee; Order Authorizing Executive Director to Enter into a Consulting Contracts; Order Granting Party Status. On March 20, 2019, a public input hearing was held as scheduled. On March 21, 2019, the Commission issued an Order Granting Party Status. On March 25, 2019, Patrick Lynch filed an Application for Party Status. On March 26, 2019, Commission staff filed a Motion for Procedural Schedule. On March 27, 2019, Crowned Ridge filed its Responses to the Motion for Procedural Schedule. On March 28, 2019, Intervenor filed a Response to Crowned Ridge's Response to the Motion for Procedural Schedule. On April 5, 2019, the Commission issued an Order Granting Party Status; Order Establishing Procedural Schedule. On April 25, 2019, Intervenor filed a Motion to Deny and Dismiss. On April 30, 2019, the Commission issued an Order for and Notice of Motion Hearing on Less Than 10 Days' Notice. On April 30, 2019, Commission staff and Crowned Ridge each filed a Response to Motion to Deny and Dismiss. On May 6, 2019, Intervenor filed a Reply Brief in Support of Motion to Deny and Dismiss. On May 10, 2019, the Commission issued an Order Denying Motion to Deny and Dismiss; Order to Amend Application. On May 10, 2019, the Commission also issued an Order for and Notice of Evidentiary Hearing. On May 17, 2019, Intervenor filed a Second Motion to Deny and Dismiss. On May 23, 2019, Commission staff filed a Request for Exception to Procedural Schedule and Crowned Ridge filed its Response to Intervenor's Second Motion to Deny and Dismiss and, as a part of its response, Crowned Ridge requested a Motion to Strike. On May 28, 2019, Intervenor filed a Reply Brief and Motion to Take Judicial Notice.

The evidentiary hearing was held as scheduled, beginning on June 11, 2019, and concluding on June 12, 2019. On June 12, 2019, the Commission issued an Order Granting Request for Exception to Procedural Schedule; Order Denying Motion to Take Judicial Notice; Order Denying Motion to Strike.

On June 13, 2019, the Commission received an Application for Party Status from Timothy and Linda Lindgren. On June 18, 2019, the Commission issued an Order Setting Post-Hearing Briefing Schedule and Decision Date. On June 18, 2019, Commission staff filed its Response to Late Application for Party Status. On June 19, 2019, Intervenors filed an email regarding the Late Application for Party Status.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, and ARSD Chapters 20:10:01 and 20:10:22. The Commission may rely upon any or all of these or other laws of this state in making its determination.

At its regularly scheduled meeting on June 25, 2019, the Commission considered this matter. Crowned Ridge did not oppose the granting of the late-filed Application for Party Status provided the record was not opened to permit any new evidence.

ARSD 20:10:01:15:01.02 addresses late-filed interventions. The Commission has the discretion to grant or deny late-filed petitions to intervene. The Commission finds that the intervention would unduly prejudice the rights of other parties to the proceeding or be detrimental to the public interest. The Commission voted to deny the late-filed Application for Party Status. It is therefore

ORDERED, that the late-filed Application for Party Status is hereby denied.

Dated at Pierre, South Dakota, this 26<sup>th</sup> day of June 2019.

<p style="text-align: center;"><b>CERTIFICATE OF SERVICE</b></p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.</p> <p>By: <u>Karen E. Cremer</u></p> <p>Date: <u>06/26/19</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>
---

BY ORDER OF THE COMMISSION:

GARY HANSON, Chairman  
Dissenting

Chris Nelson  
CHRIS NELSON, Commissioner

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner