

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

<p>AMBER CHRISTENSON, LINDA LINDGREN, and TIMOTHY LINDGREN,</p> <p>Complainants,</p> <p>v.</p> <p>CROWNED RIDGE WIND, LLC</p> <p>Respondents.</p>	<p>Docket No. CE22-001</p> <p>REPLY</p>
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Respondent, Crowned Ridge Wind, LLC, (“Crowned Ridge”), by and through its attorneys of record, and pursuant to SDCL § 1-26-19(1) and SDCL § 19-19-701, respectfully files this reply to Complainant Christenson’s October 1, 2023 response (“Response”) to Crowned Ridge’s Motion in Limine (“Motion”).

I. Introduction

1. On September 18, 2023, Crowned Ridge filed a Motion that demonstrated Christenson’s pre-filed testimony and exhibits contravene a cardinal rule of evidence prohibiting a lay witness from testifying on scientific or technical subjects or subjects requiring another type of specialized knowledge. Therefore, as shown in the Motion, much of Ms. Christenson’s pre-filed testimony and exhibits should be excluded from being entered into evidence.

II. Reply

2. Christenson's Response is void of any legal basis supporting her opposition to the Motion. The failure to provide precedent, case law, or a legal basis is a waiver of any opposition. *Cf State of Kansas ex rel. Adams v. Adams*, 455 N.W.2d 227, 229 (S.D. 1990) ("Gale's failure to provide case law or statutes for her asserted error waives the issue"). Therefore, on its face, Christenson's Response is a nullity with respect to the Motion, which requires that the Motion be granted.
3. In addition to failing to lay a legal foundation against the Motion, Christenson's Response also incorrectly asserts that she has the right to submit additional testimony and exhibits and present additional witnesses at the evidentiary hearing. The Commission's April 19, 2023 procedural order ("Order") clearly set forth the schedule for the filing of pre-filed testimony, exhibits, and conducting discovery. In contradiction to the Order, Christenson claims because the procedural schedule allowed for discovery to be responded to after the submission of her rebuttal testimony, she has a right to submit additional testimony. There is no such right provided for in the procedural schedule, and there is no demonstration in the Response that would constitute the requisite showing of need to justify the submission of additional and exhibits.
4. That said, discovery received after pre-filed testimony is filed can be used for purposes of cross-examination, not additional testimony. In the instant case, Christenson submitted a fifth and sixth set of discovery to Crowned Ridge on August 30 and 31, 2023, respectfully, which required Crowned Ridge to

respond on September 19 and 20, 2023, respectively. Indeed, Christenson's data requests themselves acknowledge the 20-day timeframe for responses, but in her Response somehow claims because her Rebuttal testimony was due September 7, 2023, she is allowed to supplement that testimony based on when responses were submitted. Christenson's assertion is incorrect and inconsistent with the Order. Therefore, other than a properly proffered cross-examination exhibit, Christenson has no right to introduce additional testimony and exhibits prior to or at the evidentiary hearing.

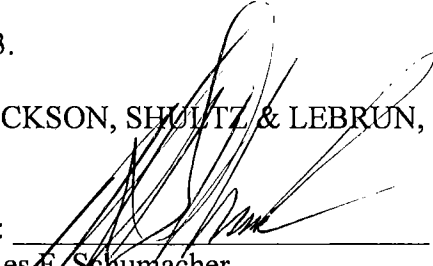
5. Further, the Commission ordered that "pre-filed testimony shall be filed for any witness in order to appear at the evidentiary hearing". Therefore, Christenson's claim that she can present witnesses at the hearing that have not submitted pre-filed testimony is incorrect. The only witnesses who submitted pre-filed testimony, and, therefore, can appear at the evidentiary hearing, are Mr. Martinsen, Mr. Lampeter, and Ms. Christenson, with the understanding that Ms. Christenson can only appear as a lay witness as demonstrated in the Motion.

III. Conclusion

6. For the forgoing reasons, Crowned Ridge reiterates its request that the Commission grant its Motion in Limine.

Dated this 4th day of October, 2023.

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