

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

**AMBER CHRISTENSON, LINDA
LINDGREN & TIMOTHY LINDGREN**

v.

CROWNED RIDGE WIND, LLC

*
*
*
*
*
*

CE 22-001

***COMPLAINANT'S OPPOSITION
TO
MOTION TO DISMISS***

COMES NOW Linda Lindgren and Timothy Lindgren, as two of Complainants herein, by and through their counsel, R. Shawn Tornow, of Tornow Law Office, P.C., and hereby fully resist and oppose the pending Motion to Dismiss, as joined by PUC Staff, insofar as said Motion to Dismiss is both ill-fated and premature at this juncture following Complainants' Formal Complaint, as dated/filed September 16, 2022, as related to the Mitigation Plan of the (2021) failed Sound Study in and for South Dakota PUC Docket EL 19-003 as previously ordered by this Commission.

As part of its improper Motion to Dismiss, Crowned Wind Ridge, LLC, attempts to outline the applicable legal standard insofar as it cites to the provisions of ARSD § 20:10:01:11.01 which recognizes that motions to dismiss may be advanced before the Commission. However, the pending Motion to Dismiss completely fails to address the similarly governing provisions of ARSD § 20:10:01:01.02 that specifically provides that, "...[T]he rules of civil procedure as used in the circuit courts of this state shall apply." That is to say, as opposing counsel should be aware, if and when any such motion advanced under the long-established provisions of SDCL § 15-6-12(b)(5) and "matters outside the pleading (i.e., Complainants' September 2022 Complaint) are presented..." then "...the motion *shall* be treated as one for summary judgment and disposed of as provided in SDCL § 15-6-56, and all parties shall be given reasonable opportunity to present all materials made pertinent to such a motion by SDCL § 15-6-56."

In the instant case, opposing counsel has submitted with its motion to this Commission what was identified and filed as "Attachment A", "Attachment B", and "Attachment C", while Complainants can and will address at the appropriate time and in the appropriate venue Attachments A & B, Attachment C, as filed in support of the pending motion is, in fact, an improper and unsworn affidavit-like document¹ that necessarily amounts to information that is outside of Complainants' Formal Complaint to the extent

¹ With Attachment C being an undated and unsworn 19-page document offered as refutable rebuttal "comments" apparently seeking to critique Complainants Complaint purportedly prepared by/for CRW by Richard Lampeter.

that, pursuant to the controlling provisions of SDCL § 15-6-12(b)(5), such motion “*shall be treated as one for summary judgment*” and, as a result, must then comply with SDCL § 15-6-56, including the mandatory provisions of SDCL § 15-6-56(c)(1) – which, of course, was not and has not been done here.²

As to the merits of Complainants’ Formal Complaint, Complainants stand behind the underlying facts and prior errors in mandated testing that led to the need for such Complaint – as the Commission specifically asked to receive – when the underlying error(s), omission(s), oversight(s) and flawed testing protocols were discovered and previously outlined to this Commission.³ In light of the procedural error underpinning the proposed motion to dismiss herein, Complainants respectfully request that such motion be dismissed and that said matter be immediately advanced on the Commission’s docket calendar for a full and fair hearing on the merits in and for such matter. Finally, to any extent necessary, if the matter may otherwise proceed as part of any such motion, Complainants reserve the right to amend their Complaint.

Dated this 5th day of December 2022, at Sioux Falls, South Dakota.

/s/ R. Shawn Tornow

R. Shawn Tornow, *for*
Tornow Law Office, P.C.
3800 W. Technology Circle, Ste. 101
Sioux Falls, South Dakota 57106-4210
Telephone: (605) 271-9006
E-mail: rst.tlo@midconetwork.com
Attorney for Complainants,
Linda and Timothy Lindgren

² As counsel well knows, any such motion for summary judgment *must* include the statutorily mandated statement of undisputed material facts (i.e., required STUMF filing) which, of course, has not been done in the instant case. Moreover, any such factual assertions or claims by Richard Lampeter or others may only be advanced in the form of sworn testimony either by deposition testimony or by affidavit – thereby being subject to factual challenge either by cross-examination or by countering affidavit(s) as part of such summary judgment proceedings. Obviously, Attachment C as submitted/filed with the Commission was/is improper insofar as it was neither of the foregoing.

³ *See/cf.*, recent/previous PUC meeting in August 2022. That is, on Aug. 30, 2022, where Complainants’ articulated concerns and complaints were preliminarily addressed and, as a result of which, such a Formal Complaint was requested by Commission member(s) to be prepared, opened-up and considered in order to best allow the Commission to address the reasonable and fairly raised questions and issues outlined herein. In fact, Complainants find compelling Commission Chair Nelson’s comments toward the end of that meeting wherein he indicated to the effect that Complainants needed for formally file their complaint(s) in order to allow the Commission to hear and consider this matter as a Complaint-filing docket. That is, in talking about this matter to get “properly in front of [the Commission]”, the Complaint docket was, in fact, the proper method to handle the identified testing deficiencies and related Sound Study deficiency matters as suggested and advised by more than one of the Commission members. As a result, ultimately, following that meeting, Commission personnel assisted Complainants in pulling together the appropriate Complaint docket forms for the subsequent filing that is, in fact, the current Complaint.