

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

AMBER CHRISTENSON, LINDA
LINDGREN, and TIMOTHY LINDGREN,

Complainants,

v.

CROWNED RIDGE WIND, LLC

Respondents.

Docket No. CE22-001

**REPLY TO COMPLAINANT'S
RESPONSE TO MOTION AND
BRIEF IN SUPPORT
OF MOTION TO DISMISS
FORMAL COMPLAINT**

Respondent, Crowned Ridge Wind, LLC, ("Crowned Ridge"), by and through their attorneys of record, respectfully submits a reply to the December 5, 2022 responses ("Responses") filed by Amber Christenson and Linda and Timothy Lindgren (collectively "Complainants") opposing Crowned Ridge's Motion to Dismiss. Complainants Responses are unavailing, and, therefore, Crowned Ridge's Motion to Dismiss should be granted.

Christenson Response

The Christenson Response reiterates certain speculative observations set forth in the Complaint related to the Crowned Ridge sound study. As explained in the Motion to Dismiss and Brief in Support two well-qualified experts¹ filed studies and reports finding Crowned Ridge in compliance with the Commission's sound thresholds. Nothing in the Complaint provides a factual or legal basis to dispute the findings of Epsilon and Hessler. Hence, as was the case with the Complaint, the Christenson Response contains mere speculation and conjecture, which is insufficient for the Complaint to survive Crowned Ridge's Motion to Dismiss. *Hernandez v. Avera*

¹ Epsilon Associates, Inc. ("Epsilon") and the Commission Staff's independent expert Hessler Associates, Inc. ("Hessler").

Queen of Peace Hospital, 2016 SD 68, ¶ 15; *Nygaard v. Sioux Valley Hasps. & Health Sys.*, 2007 S.D. 34, ¶ 9.

Further, Complainant Christenson incorrectly infers that the Commission's guidance that she consider filing a complaint to address her disagreements with the Crowned Ridge sound study was also tantamount to a ruling that Complainants are entitled to a hearing. The Commission did not make such a ruling. Furthermore, under Commission rules, Crowned Ridge has a right to file a motion to dismiss and the Commission has authority to dismiss the Complaint. *See* ARSD 20:10:01:11.01. Therefore, the Christenson Complaint should be dismissed.

Lindgren Response

The Lindgren Response asserts that Crowned Ridge filed for summary judgment rather than a motion to dismiss, because it attached sound study information. Lindgren Complainants are wrong. The Epsilon and Hessler sound studies attached to the Complaint are the same studies that were attached to the Motion to Dismiss, with the understanding that Complainants only attached selected passages, while the Motion to Dismiss attached the full sound studies and information so the Commission would have the complete document and context. Furthermore, and importantly, Crowned Ridge submits that the Commission without consideration or reference to the attachments to the Motion to Dismiss can rule that the Complaint should be dismissed. Indeed, contrary to Complainant Lindgren, Crowned Ridge's attachments to its Motion to Dismiss were not provided to convert the Motion to Dismiss to a motion for summary judgment. Instead, given the interest of the Commission and the Complainants to better understanding the sound studies, the attachments were provided for informational purposes only, and not to submit a motion for summary judgment. As explained in the Motion to Dismiss and Supporting Brief, a reading of

the Complaint alone demonstrates: (1) it is based solely on speculation and conjecture; (2) does not show any injury or harm; and (3) fails to support the requested relief compelling an additional sound study. Accordingly, a review of the Complaint itself requires it be dismissed.

Dated this 16th day of December, 2022.

LYNN, JACKSON, SHULTZ & LEBRUN, P.C.

By: 

Miles F. Schumacher
110 N. Minnesota Ave., Suite 400
Sioux Falls, SD 57104
605-332-5999
mschumacher@lynnjackson.com

and

Brian J. Murphy
Managing Attorney
NextEra Energy Resources, LLC
700 Universe Blvd..
Juno Beach FL 33408
561-694-3814
Brian.J.Murphy@nee.com
Admitted Pro Hac Vice

*Attorneys for Respondent Crowned Ridge
Wind, LLC*