

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

IN THE MATTER OF THE COMPLAINT)	
FILED BY AMBER CHRISTENSON, LINDA)	STAFF’S JOINDER OF MOTION
LINDGREN AND TIMOTHY LINDGREN)	TO DISMISS
AGAINST CROWNED RIDGE WIND LLC)	
REGARDING PROJECT SOUND LEVEL)	CE22-001
COMPLIANCE)	

Staff (Staff) of the South Dakota Public Utilities Commission (Commission) hereby files this Joinder of Motion to Dismiss filed by Crowned Ridge Wind, LLC (Respondent) on October 28, 2022.

The facts leading up to this Complaint docket are laid out in Respondent’s Motion, and Staff concurs with the facts as stated therein, including the representations made regarding opinions of Staff consultant David Hessler. In its Motion, Respondent requests the Commission Dismiss the Complaint for failure to state a claim upon which relief can be granted.

Staff agrees with Respondent’s legal authorities and joins in the Motion to Dismiss.

Simply put, even if all of the facts alleged in the Complaint are assumed to be true, the Complaint still fails to show that the Project is operating at a noise level exceeding the threshold allowed by the Permit. Rather, the Complaint merely speculates that had the three previous sound studies been conducted in a different manner, noncompliance may have been shown.

“While a complaint attacked by a Rule 12(b)[(5)] motion to dismiss does not need detailed factual allegations, a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions Factual allegations must be enough to raise a right to relief above the speculative level.” *Kaiser Trucking, Inc. v. Liberty Mutual Fire Insurance Company*, 2022 S.D. 64, ¶ 13, --- N.W.2d --- (quoting *Sisney v. Best Inc.*, 2008 S.D. 70, ¶ 7, 754

N.W.2d 804, 808). There are no factual allegations contained in the Complaint to establish that the Project is operating above the noise threshold and that these particular Complainants are harmed and entitled to relief. For that reason, Staff joins in the Motion to Dismiss.

Dated this 15th day of November 2022.

A handwritten signature in blue ink that reads "Kristen Edwards". The signature is written in a cursive style and is positioned above a horizontal line.

Kristen N. Edwards

Staff Attorney

South Dakota Public Utilities Commission

500 East Capitol Avenue

Pierre, SD 57501

Phone (605)773-3201

Kristen.edwards@state.sd.us