

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

**IN THE MATTER OF THE COMPLAINT)
FILED BY AMBER CHRISTENSON, LINDA)
LINDGREN AND TIMOTHY LINDGREN)
AGAINST CROWNED RIDGE WIND LLC)
REGARDING PROJECT SOUND LEVEL)
COMPLIANCE)**

**STAFF’S RESPONSE TO
OPPOSITION TO MOTION TO
DISMISS**

CE22-001

Staff (Staff) of the South Dakota Public Utilities Commission (Commission), having previously joined in the Motion to Dismiss filed by Crowned Ridge Wind LLC (Crowned Ridge), hereby files this Reply to Timothy and Linda Lindgren’s Opposition to Motion to Dismiss.

In their Opposition, the Lindgrens allege that the Motion to Dismiss is improper and should be treated as a motion for summary judgement because Crowned Ridge submitted attachments to the Motion to Dismiss, improperly addressing matters outside the pleading. Staff agrees with the Lindgrens’ interpretation of the law as it relates to presentation of facts outside the four corners of the Complaint.

The Court has held that when a party “moves to dismiss for failure to state a claim and matters outside the pleading are presented and not excluded by the court, the motion shall be treated as one for summary judgment...and all parties shall be given the reasonable opportunity to present all material made pertinent to [a summary judgment motion].” *Richards v. Lenz*, 539 SD 80, 83 (1995) (internal quotations omitted). In the *Lenz* case, the Court noted that the trial court’s decision clearly indicated that it had considered matters outside of the pleadings. *Id.*

As evidenced by the lack of attachments in Staff’s Joinder filing, Staff did not consider or reply upon Crowned Ridge’s attachments. The Motion to Dismiss can stand on its own without reliance on or consideration of the information in the attachments. Therefore, the most prudent

thing to do would be to exclude any attachments or information in the Motion to Dismiss and Attachments that presents matters outside the Complaint.

For these reasons, Staff believes it is appropriate to move forward with the Motion to Dismiss. However, should the Commission wish to consider information outside the Complaint, the matter should be deferred and treated as a motion for summary judgement, and a new procedural schedule established in order to allow all parties to respond as Lindgrens suggest.

Dated this 12th day of December 2022.



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