

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION) EL08-031
BY BUFFALO RIDGE II LLC, A SUBSIDIARY)
OF IBERDROLA RENEWABLES, INC. FOR AN)
ENERGY CONVERSION FACILITY PERMIT)
FOR THE CONSTRUCTION OF THE BUFFALO) **MOTION FOR ENTRY OF**
RIDGE II WIND FARM AND ASSOCIATED) **PROTECTIVE ORDER**
COLLECTION SUBSTATION AND ELECTRIC)
INTERCONNECTION SYSTEM.)

COMES NOW Buffalo Ridge II LLC, who moves the Commission for an Order adopting the attached draft protective order or a version of it for use by the parties during the discovery phase of the docket proceeding.

Should there be discovery disputes of a confidentiality nature during the pendency of the pre-hearing discovery and testimony filing stages, it will be difficult to get them resolved in time to keep the schedule. Therefore, the Applicant offers this draft for the Commission's consideration and possible Order in order to keep the matter on schedule.

Respectfully submitted this 16th day of January, 2009.

MAY, ADAM, GERDES & THOMPSON LLP

BY: 

BRETT KOENECKE

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RIDGE II WIND FARM AND ASSOCIATED)
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INTERCONNECTION SYSTEM.)

ORDERED, that Applicant, Intervenor parties and Commission Staff (Parties) shall treat Confidential Information provided to them or any of them by any other Party to the case through discovery, or filed in this case, as confidential information subject to the Commission’s rules regarding confidential information and to the following additional protective provisions of this Protective Order.

1. Documents to be filed or provided to a Party pursuant to this Order for which the filing or providing Party seeks confidential treatment shall be stamped or sealed as “Confidential” (Confidential Information) in accordance with the Commission rules regarding the marking and filing of confidential information.

2. All marked Confidential Information filed by a Party or provided or disclosed by any Party to any other Party through discovery, including depositions, shall be treated as confidential information by the receiving Party pursuant to ARSD 20:10:01:39 through 20:10:01:44 and SDCL 15-6-26(c), except that access to and use of such information by the receiving Party for purposes of preparation for the proceedings in this matter and use in the proceedings shall be permitted subject to the provisions of this Protective Order.

3. Any Party, and their attorney, receiving Confidential Information from any another Party, or from the Commission in the case of filed documents, is responsible to the Commission and to the providing Party (i) for limiting disclosure only to such third party experts, employees, attorneys and other persons acting on the Party’s behalf who have a bona fide need to review such information for purposes of preparing for the proceedings in this case (“Authorized Recipients”) and (ii) for the use, return and destruction of the disclosed information as provided by this Protective Order. The receiving Party shall limit its Authorized Recipients to the minimum number of persons necessary to analyze the information and prepare for and present its evidence in this proceeding. Before a Party discloses Confidential Information received by it to its Authorized Recipient, the Party shall assure itself that the Authorized Recipient to whom the Confidential Information is to be disclosed has read and understands this Protective Order, has agreed to abide by its terms, understands that unauthorized disclosure or use of the Confidential Information is prohibited and has signed a Non-Disclosure Agreement in

the form attached hereto as Exhibit A.

4. The Parties, their attorneys and Authorized Recipients and their other employees, agents, consultants and representatives shall be subject to a standard of good faith in their election to designate information as confidential and their disclosure, receipt, custody and use of the Confidential Information. The producing Party (i) will only seek confidential treatment for information having bona fide trade secret or proprietary value, containing sensitive personal identification information or required to be maintained as confidential by state or federal law or regulation or by contract, (ii) will make reasonable efforts to narrow the scope of information designated as confidential and (iii) upon request of the receiving Party, will confer in good faith to narrow the scope of information designated as confidential to the minimum redaction that will not compromise the confidentiality or propriety value of the information for which confidential treatment is justified.

5. The Commission shall treat Confidential Information produced pursuant to this Order as confidential information subject to ARSD 20:10:01:39 through 20:10:01:44, provided that such confidential information is marked as confidential and, in the case of filed documents, filed in accordance with the Commission's filing rules for confidential information. The Commission shall conduct all hearings involving Confidential Information in camera with only Commission employees, the parties' attorneys and the Authorized Recipients present during the portion of the hearing in which such information is offered or discussed. Any person, other than a Commission employee or a Party, who desires to have access to Confidential Information shall comply with the procedures of ARSD 20:10:01:42 and 20:10:01:43.

6. Persons obtaining access to Confidential Information under this Order shall use the information only in the conduct or settlement of this proceeding and any judicial proceeding arising out of it, and shall not use such information for any purpose unrelated to the conduct of this proceeding, including business, governmental, commercial, political or public relations purposes. Persons obtaining access to Confidential Information under the terms of this Order may disclose, describe, or discuss the Confidential Information in any pleading filed in this proceeding, provided that such pleading is stamped confidential and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted.

7. Documents, including Confidential Information received by a Party through discovery, shall be subject to SDCL 15-6-5(g) and shall not be filed except in accordance with the exceptions set forth in that statute or an order of the Commission.

8. If a court or another administrative agency subpoenas or orders production of the Confidential Information, the Party or Authorized Recipient to whom the order or subpoena is directed shall promptly notify the providing Party of the pendency of such subpoena or order.

9. Nothing in this Order shall prevent or otherwise restrict counsel for a Party from rendering advice to their client regarding this proceeding and, in the course thereof, making professional analysis and use of the Confidential Information, provided, that in rendering such advice and otherwise communicating with such client, counsel shall not make disclosure of any confidential fact or assertion except to the Authorized Recipients except in accordance with the

procedures set forth in this Protective Order, the Commission's rules or a subsequent order of the Commission.

10. The Parties and their attorneys are responsible for employing reasonable measures to control, consistent with this order, duplication of, access to, and distribution of copies of the Confidential Information. Parties shall not duplicate any stamped Confidential Information except working copies and for filing at the Commission under seal.

11. This Order shall not be construed as a determination by the Commission or an agreement or concession by any Party that any document or data provided under the terms of this Order in fact contains Confidential Information entitled to protection. The Order is not intended to diminish any Party's right, through appropriate motion, to contest the entitlement of any particular document or data to confidential treatment or to request a more limited scope designation with respect to a document or data, such as redaction of only the particular information required by law, rule or contract to be kept confidential, sensitive personal identity information, competitively valuable material or other material properly entitled to confidential treatment.

12. This Order is not intended to prohibit any Party from (i) objecting to production, or to production only subject to special protective measures, of any material having particular sensitivity, such as material subject to homeland security or other federal or state statutes, rules or orders, (ii) objecting to production of documents on grounds of relevancy, materiality, admissibility, undue burdensomeness or other recognized grounds for objection to discovery, or (iii) objecting to the relevancy, materiality, or admissibility into evidence in this proceeding of any of the Confidential Information furnished or received pursuant to this Order.

13. Within two weeks after final resolution of this proceeding (which includes administrative or judicial review), Parties and their attorney(s) shall return all copies of Confidential Information and all analyses or other compilations which contain any of the Confidential Information in their possession to providing Parties or their attorneys, or destroy all such Confidential Information and certify, under penalty of perjury, that such destruction has occurred. In the case of analyses or compilations containing Confidential Information, all Confidential Information set forth in such document shall be redacted if the document is to be retained and a copy of the redacted version shall be served on the disclosing party(ies) at least ten (10) days before disclosure of the redacted version is made to anyone other than the Authorized Recipients.

14. The provisions of this Order shall not terminate at the conclusion of this proceeding.

Dated at Pierre, South Dakota, this ____ day of _____, 2009.

BY ORDER OF THE COMMISSION:

DUSTIN M. JOHNSON, CHAIRMAN

GARY HANSON, COMMISSIONER

STEVE KOLBECK, COMMISSIONER

CERTIFICATE OF SERVICE

I hereby certify that the above Motion for Entry of Protective Order was served upon all of the parties listed below on the 16th day of January, 2009, either electronically or by mailing a true and correct copy thereof to them by first class mail, postage prepaid, at their last known addresses.

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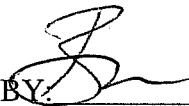
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