BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION BY CROWNED RIDGE WIND, LLC FOR A PERMIT OF A WIND ENERGY FACILITY IN GRANT AND CODINGTON COUNTIES	* * * * * *	**PETITION FOR RECONSIDERATION EL19-003**

Ms. Patricia Van Gerpen
Executive Director
SD Public Utilities Commission
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COMES NOW Allen Robish, Intervenor, by and through his attorney, R. Shawn Tornow of Tornow Law Office, P.C., and Amber Christenson, Intervenor, in the above-captioned matter.

On January 30, 2019, the South Dakota Public Utilities Commission (Commission) received an application from Crowned Ridge Wind, LLC (Crowned Ridge or Applicant) for a permit to construct a wind energy conversion facility to be located in Grant County and Codington County, South Dakota (Project). On July 26, 2019, the Commission issued a Final Decision and Order Granting Permit to Construct Facility; Notice of Entry (Permit). On January 9, 2020, the Commission issued an Order Granting Temporary Waiver that approved Crowned Ridge to operate temporarily without low noise trailing edge (LNTE) blade attachments installed on all turbine blades subject to the curtailment of certain turbines and that Crowned Ridge conduct post-construction noise compliance testing in accordance with Condition 26 of the Permit. On January 15, 2021, Crowned Ridge filed its Sound Level Compliance Evaluation Report. On February 16, 2021, Commission staff (staff) filed a letter and technical report titled Crowned Ridge Wind Final Operational Sound Test Data Review and Assessment. On March 18, 2021, Crowned Ridge filed a Motion for Approval of Mitigation Plan in order to verify compliance with Condition 26 of the Permit. On April 9, 2021, the Commission issued an Order Approving Mitigation Plan. On July 29, 2021, Intervenor Christenson filed a Motion to Amend Mitigation Plan of the Sound Study Protocol of Crowned Ridge Wind, LLC Fall 2021 (Motion, or Motion to Amend Mitigation Plan). On August 3, 2021, Crowned Ridge filed its Answer to Intervenor Amber Christenson. Thereafter, on August 9, 2021, SD PUC Staff filed their Response, in letter format, to Intervenor Christenson's Motion.

On August 19, 2021, at its regularly scheduled meeting, the Commission considered Intervenor's July 29th Motion. After hearing and considering the arguments of the Parties received prior to or at the Commission meeting, the Commission, with Commissioner Hanson dissenting, by a 2-1 decision, voted to deny Intervenor's Motion. As part of the (majority) Commission's denial, it was indicated that at least some of the Commission members felt as if Intervenor's Motion to Amend Mitigation Plan of the Sound Study Protocol of Crowned Ridge Wind, LLC Fall 2021 was untimely filed, and that Intervenor Christenson failed to meet what SD PUC Staff indicated - in their letter dated August 9th - was a burden on her (as an Intervenor) to demonstrate a technical need for her request.

On August 26, 2021, the Commission prepared and filed its Order to deny the Motion by Intervenor Christenson, with the Commission's Order being explained by and through the following sentence: "In support of its denial, the Commission found that [Intervenor's] Motion was untimely filed, and that Ms. Christenson (as a layperson/Intervenor) failed to demonstrate a technical need for her request."[1]

By and through this Petition and/or Application for Reconsideration, Allen Robish and Amber Christenson hereby submit through this Petition for Reconsideration that Intervenor's Motion was *not* untimely filed – especially, but not limited to the fact that, since it is an undisputed material fact in this file matter that there was and is no prejudice to CRW to slightly adjust their required sound study protocol for Fall 2021 (i.e., months later from and after Intervenor's July 29th motion). In addition, Intervenors respectfully submit that the Commission erred insofar as basing its finding on the claim that the PUC's retained expert (Hessler) "said that their expert ... said that 'there is no technical reason' to include this [Intervenor Christenson's property]" in the study.

Contrary to the foregoing expressed rationale, however, Intervenors' respectfully submit and urge reconsideration herein insofar as a.) Intervenor Christenson did *not* submit her July 29th Motion in contravention of any claimed 30-day timing limitation provided for by and through ARSD 20:10:01:30.01. That is, unlike the present timely Petition, Intervenor Christenson instead filed her Motion to Amend Mitigation Plan. Rather than misinterpreting her Motion (in an effort to make it appear untimely under an arguably inapplicable administrative rule), Intervenors submit that, applicable Commission's rules, specifically, ARSD 20:10:01:01.02 [Use of Rules of Civil

[1] Intervenor Robish, through your undersigned, notes that such Order failed to be properly served on him since said Order was not served, as required, on Intervenor's counsel of record in and for EL 19-003. *See*, Notice of Appearance as filed and docketed with Commission on August 16, 2021 – prior to the motion hearing herein.

Procedure], should have more appropriately been applied to such a good faith motion – not to be misconstrued with a Petition/Application for a rehearing or reconsideration. *See/cf*, Rules of Civil Procedure at SDCL § 15-6-60(b) (1) and/or (6) ("On ***motion*** and upon such terms as are just, the [commission] may relieve a party … from a final judgment [or] order for the following reasons: 1.) mistake, inadvertence, surprise or excusable neglect; ….. 6.) Any other reason justifying relief… The *motion shall be made within a reasonable time*, and … *not more than one year after the … order* … was entered[.]). *See*, *Clarke v. Clarke*, 423 NW2d 818, 820-822 (S.D. 1988) ("…[M]otion was filed within five weeks after judgment, well within the one-year limitation of 15-6-60(b). The motion was also filed within a reasonable time. *Rogers*, *supra*, allowed a motion to vacate judgment when it was filed within 6-months of the original judgment. The *Rogers* court, while not expressly holding that 6-months was reasonable, implicitly recognized its reasonableness when it allowed the judgment to be vacated under 15-6-60(b)(1).") As such, in light of the information submitted herein, including *infra*, it was neither unreasonable nor improper for Intervenor Christenson to file her Motion only weeks later - in July - after the Commission's Order in late April & May 13, 2021.

As far as the reasons for relief within said Motion, Intervenor Robish and Christenson refer directly to said Motion at pages 1-4 to outline the reasoning therefor and also particularly note that - as one Commissioner alluded to on August 19th - the overall reasoning and rationale in support of such Motion by an adversely affected property owner in the area of failed testing to-date would meet the terms of being "just" and/or positively serve to listen to adversely affected laypersons in the area and assist in the requirement that such wind farms, in fact, be "good (or, better) neighbors" as part of such projects. On April 1, 2021, during the Commission meeting and to her surprise, Intervenor Christenson first learned from the PUC's expert, Mr. Hessler, and Crowned Ridge Wind's expert, Richard Lampeter, that the placement of sound-monitoring equipment near trees can distort and obstruct the accuracy of the recordings, and thus, the findings. Ms. Christenson also learned her property was the only property in the study to be studied at the property line, in the midst of trees, unlike the other five properties which were studied 25' from the respective home(s). In addition, Ms. Christenson also was astonished to learn, *after* the April 1st meeting and during the Commission's later meeting on May 13, 2021, that, according to Kearney on May 13th, that the goal of such sound studies is to determine the accuracy of the model submitted by project applicants in their application as part of evidentiary hearing testimony to/for the PUC to sound limits at the 25'-mark from homes. In addition, as first learned by Intervenors during the May 13th meeting, the sound expert hired by CRW-II, testified that turbines in CRW-I could possibly adversely affect sound study results to be referred to and/or relied on by landowners living near both projects and therefore - in order to meet the PUC required sound-level conditions - turbines would need to be shut down to determine actual background noise during the CRW-II testing period.

Finally, Intervenors herein briefly and respectfully state their clarification of the alternative error elucidated by the majority of the Commission on August 19th, insofar as it was claimed that the PUC's retained expert (Hessler) "...said that 'there is no technical reason' to include this [Intervenor Christenson's property]" in the study. Instead, to be clear, in Staff's letter (written by Darren Kearney as a PUC Utility Analyst), it was indicated that "Staff finds that there is no technical reason to include Ms. Christenson's residence in the [pending] Fall 2021 sound study." Later, (again, only through Darren Kearney) Staff indicated that they "discussed Ms. Christenson's Motion with Mr. [] Hessler" and "he *agreed* [with Staff] that there is no technical reason..." [Emphasis added.] Suffice it to say, that Mr. Hessler merely agreeing with Staff (that is, PUC Staff that hired/retained him otherwise) is not the same as an independent expert specifically making his or her own independent and unsolicited finding.[2] As a result, Intervenors respectfully request reconsideration of the timely and appropriate Motion previously advanced before the Commission and, upon such, reconsideration that said Motion be granted as both proper and in furtherance of positive community relations with adversely affected property owners and taxpayers – such as Intervenors.

Dated this 30th day of August, 2021.

/s/ R. Shawn Tornow

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[2] Intervenors submit that this is particularly true - and therefore ripe for reconsideration herein - insofar as Hessler Associates and Epsilon had otherwise - as related to the prior *failed* sound studies (as in, at least 3 of 6 failed/over-sound-limit study results) - "acknowledged the interference from vegetation in the shelter belt located on Ms. Christenson's property line." *See/cf.*, Intervenor Christenson's Motion at pgs. 1-4, for further outline/explanation of the otherwise obviously flawed testing results related thereto. To thereby, by motion, seek to have any such a pending plan (as in, a plan to be undertaken several months later, with absolutely no prejudice to any party) thereafter corrected upon "just terms" and/or based on Intervenor's outlined and explained reasons justifying relief appears to be and is most appropriate in this circumstance.