

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

IN THE MATTER OF THE APPLICATION)	STAFF’S RESPONSE TO AMBER
BY CROWNED RIDGE WIND II, LLC FOR)	CHRISTENSON’S MOTION TO
A PERMIT OF A WIND ENERGY)	REQUIRE A SOUND STUDY OF
FACILITY IN DEUEL, GRANT AND)	CROWNED RIDGE WIND, LLC,
CODINGTON COUNTIES)	FALL 2022
)	
)	EL19-003

Staff of the South Dakota Public Utilities Commission (Commission) hereby files this Response to Amber Christenson’s Motion to Require a Sound Study of Crowned Ridge Wind, LLC, Fall 2022.

BACKGROUND

On January 30, 2019, Crowned Ridge Wind Farm (Crowned Ridge) filed with the Commission an application for a permit to construct a wind energy facility in Deuel, Grant and Codington counties. On July 26, 2019, the Commission issued a Final Decision and Order Granting Permit to Construct Facility; Notice of Entry with Permit Conditions (“Permit”). Ms. Christenson, along with intervenor Mr. Allen Robish appealed the Commission’s decision in this matter up to the South Dakota Supreme Court and on August 3, 2022, the Supreme Court issued a decision affirming the Commission’s Order.

On December 13, 2019, Crowned Ridge filed a Request for a Limited and Temporary Waiver of Permit Condition 2. Specifically, Crowned Ridge requested that the Commission provide a temporary waiver of Crowned Ridge’s commitment to use low noise trailing edges (LNTE) on the turbine blades for the Project. Commission Staff (Staff) and Intervenors Mogen, Christenson, Robish, and Patrick and Melissa Lynch provided responses to this Request. On January 9, 2020, the Commission issued an Order Approving Temporary Waiver (“Waiver

Order”) with conditions. One condition required Crowned Ridge to conduct a post-construction sound compliance test in accordance with Permit Condition 26 during the temporary waiver period and again after LNTEs are installed on all turbines. On February 13, 2020, Crowned Ridge filed a Proposed Protocol for Doing Post-Construction Compliance Sound Monitoring. On February 19, 2020, Ms. Christenson responded to the Proposed Protocol. On February 19, 2020, the Commission issued an Order Approving Post-Construction Noise Compliance Test Protocol. Crowned Ridge conducted Post-Construction Noise Compliance testing at six, Commission approved, locations between March 4, 2020, and March 18, 2020. On April 17, 2020, Crowned Ridge filed with the Commission, preliminary results of the sound measurement test and on May 15, 2020, filed the final Evaluation Report. This evaluation was conducted before LNTEs were installed on all of the turbines and Crowned Ridge’s final evaluation report concluded the noise levels were in compliance with the levels required by the Permit. On May 28, 2020, Staff filed a Letter and a Crowned Ridge Wind Sound Testing Data Review and Assessment. Staff’s expert, Hessler Associates, Inc., conducted an independent review of Crowned Ridge’s data and conclusions and concurred the project complied with the Permit Conditions. Ms. Christenson’s property was location ID 6 and sound was measured at the property line. The evaluation specifically found the sound level at this location to be approximately 34 dBA to 35 dBA. Crowned Ridge completed installation of LNTEs and on July 9, 2020, the Commission issued an Order Affirming Plan to End Curtailment.

On September 21, 2020, Crowned Ridge Filed a 2020 Sound Level Measurement Program Protocol, dated September 16, 2020, for Commission approval. On October 2, 2020, the Commission issued an Order Approving Sound Level Measurement Program Protocol. Crowned Ridge conducted a second Post-Construction Noise Compliance Testing at six, Commission approved, locations between October 20, 2020, and November 10, 2020.

On December 18, 2020, in accordance with the Commission’s requirement to conduct a post-LNTE installation compliance test, Crowned Ridge filed a preliminary summary of results for the Crowned Ridge I sounds test (post-LNTE installation). On January 15, 2021, Crowned Ridge filed the final Sound Level Compliance Evaluation Report with results specifying that the measurement program shows that the sound pressure levels meet the sound level limits set forth in the Permit. Crowned Ridge’s evaluation concluded that the data showed the project was in compliance with the Permit’s sound limits. On February 16, 2021, Staff filed a Letter and a Crowned Ridge Wind Farm Final Operational Sound Test Data Review and Assessment. Staff’s expert, Hessler Associates Inc., conducted another independent review of the data and Crowned Ridge’s conclusions and concluded “that the project has been appropriately designed and is meeting, in good faith, the intent of the Permit noise limits.” Hessler Associates, Inc. did note there were instances at three of the six measurement locations where sound was measured in excess of the Permit requirements. Ms. Christenson’s property was Location ID 6 in this test and that location complied with the Permit requirements at all times during the study (i.e. Ms. Christenson’s residence was not one of the locations at which an isolated exceedance was observed). On March 2, 2021, Staff filed a Letter Regarding Sound Report Discussion and a Plot Illustrating the Variable Nature of Wind Turbine Sound Emissions at a Receptor. On March 3, 2021, Crowned Ridge filed Responses to Staff’s February 16, 2021, Letter. On March 8, 2021, Crowned Ridge filed a Letter Regarding Distances from the Study Locations to Amber Christenson’s address.

On March 18, 2021, Crowned Ridge filed a Motion for Approval of Mitigation plan and on March 23, 2021, filed a supplemental Letter regarding Motion for Approval of Mitigation Plan. The Mitigation Plan proposed Crowned Ridge obtain waivers of Condition 26 from affected landowners, utilizing winter icing operation mode (“WIOM”), and a commitment to

perform an additional sound test. On March 26, 2021, Ms. Christenson filed a response to Crowned Ridge's Motion to Approve Mitigation Plan and on March 29, 2021, Staff filed a Response to the proposed Mitigation Plan. On April 9, 2021, the Commission issued an Order Approving Mitigation Plan subject to certain conditions, one of which was to add the Lindgren residence to the Fall 2021 sound study.

On July 29, 2021, Ms. Christenson filed a Motion to Amend the Mitigation Plan to add her residence as a test location in the Fall 2021 sound study. Crowned Ridge and Staff filed responses to Ms. Christenson's Motion to Amend on August 3, 2021, and August 9, 2021, respectively. On August 26, 2021, the Commission issued an Order Denying Motion to Amend Sound Study Mitigation Plan. On August 30, 2021, Ms. Christenson and Mr. Robish filed a Petition for Reconsideration. On September 2, 2021, Crowned Ridge filed an Answer to the August 30, 2021, Petition for Reconsideration. On September 20, 2021, the Commission issued an Order Granting Petition for Reconsideration and Order Granting Motion to Amend Sound Study Mitigation Plan in Part on Reconsideration, that added Ms. Christenson's residence to the Fall 2021 sound study.

Crowned Ridge conducted a third round of sound testing at five, Commission approved, locations between November 2, 2021, and November 18, 2021. On January 19, 2022, Crowned Ridge Wind filed a Letter Regarding Sound Study along with a Sound Level Compliance Evaluation - LNTE 2021 Initial Findings. On February 14, 2022, Crowned Ridge filed a Letter Regarding Sound Study and a Sound Level Compliance Evaluation Report. The Report concluded the data showed the Project was in compliance with the Permit limits at all sites during testing. On April 11, 2022, Staff Filed a Letter Regarding November 2021 Sound Test along with a Data Review and Assessment by Hessler Associates, Inc. Staff's expert, Hessler

Associates, Inc., once again conducted an independent review of the data collected during the test and Crowned Ridge's conclusion and concurred with Crowned Ridge's conclusions. Ms. Christenson's property was included as test location ID 6. The data collected showed noise levels at Ms. Christenson's property to be below the 45 dBA Permit requirement, with Hessler Associates, Inc. observing that the project-only sound levels at this location ranged between 32 dBA and 42 dBA. On April 21, 22, and 27, Ms. Christenson and Mr. Robish individually issued data requests to Crowned Ridge and Staff and on June 14, 2022, Ms. Christenson issued a second set of data requests to Crowned Ridge. On June 27, 2022, Ms. Christenson filed a Letter Requesting to be Added to the Agenda. On August 10, 2022, Ms. Christenson filed a Motion to Require a Sound Study of Crowned Ridge Wind LLC, Fall 2022.

ANALYSIS

I. Ms. Christenson's Motion should be dismissed without hearing and with prejudice.

This docket commenced when Crowned Ridge filed an application requesting the Commission grant a permit to construct a wind energy facility. Ms. Christenson intervened in the proceeding as permitted by SDCL 49-41B-17 and, as contemplated by SDCL 49-41B- 17.2 and SDCL Chapter 1-26, the Commission held a contested case evidentiary hearing in this matter, allowing Ms. Christenson the opportunity to participate in the contested case hearing to which she was entitled under SDCL 49-41B-17.2. Following the contested case hearing, the Commission granted a permit to Crowned Ridge, which Ms. Christenson appealed to the circuit court and then to the Supreme Court. Both the circuit court and the Supreme Court issued rulings finding the Permit was granted in accordance with the law and affirmed the Commission acted

within its discretion in granting the Permit¹. The Supreme Court's ruling in this matter fully concluded the contested case proceeding before the Commission and Staff is not aware of any legal authority that requires Commission action on this Motion, nor response from Staff or Crowned Ridge.

Staff did not object to Ms. Christenson weighing in on post-Permit motions in the past, such as Crowned Ridge's Request for a Waiver of the LTNE Permit Condition and discussions regarding sound test protocol. Given the nature of Ms. Christenson's concerns in the contested case proceeding, Staff believed it would be beneficial and not unduly burdensome to attempt to incorporate Ms. Christenson's concerns into the development of sound test protocol and to include her property as a test site during the sound evaluations. However, at this point, Crowned Ridge has indicated an objection to Ms. Christenson's continued Motions and Staff agrees with Crowned Ridge's position in its August 15, 2022, Letter to the Commission. Furthermore, there is no requirement included in any of the Commission orders regarding sound compliance testing that requires the Commission to approve or take other action on Crowned Ridge's compliance test reports.

Beyond this, Ms. Christenson's Motion is deficient. Ms. Christenson cites no authority or legal basis to support her ability to make Motions at this point, nor to support her request that the Commission order an additional sound test. Beyond this, the Motion fails to specify what relief the additional sound test will provide for Ms. Christenson. Without authority or legal basis for Ms. Christenson to file a motion or make requests for additional sound studies, her motion should be dismissed without hearing and with prejudice.

¹ See 14CIV20-19-000290, 2022 S.D. 45(PUC Docket Supreme Court #29334

II. There is no sufficient reason to require Crowned Ridge to conduct an additional sound test.

Ms. Christenson requests this Commission require Crowned Ridge to perform an additional sound test in fall of 2022, or in the alternative, January, February, or March of 2023. In support of this request, Ms. Christenson claims the sound test performed in fall of 2021 failed to meet the project's Permit conditions, terms of Commission Orders, and the requirements of the Mitigation Plan. Ms. Christenson makes no mention of what she hopes another sound test will accomplish nor a request for mitigation or damages. Ms. Christenson's Motion also fails to provide a factual basis or specific reason for another sound test, making the Motion substantially deficient.

In accordance with the Waiver Order, Crowned Ridge conducted two post-construction sound compliance tests, one during the Temporary waiver period and a second after the LNTes were installed on all turbines. Crowned Ridge conducted a third sound compliance test as proposed in the Project's Mitigation Plan and in accordance with the Commission's Order Approving Mitigation Plan as modified by the Commission's Order Granting Petition for Reconsideration and Order Granting Motion to Amend Sound Study Mitigation Plan in Part on Reconsideration. All three of the sound compliance tests were conducted following a test protocol approved by the Commission. Each compliance test was performed by and reviewed by Epsilon (sound engineering expert retained by Crowned Ridge) and each test was independently reviewed by Hessler Associates, Inc. (sound engineering expert retained by staff). Each of the reviews showed compliance at Ms. Christenson's location, and none showed significantly different results that would support the necessity to conduct an additional sound test.

Staff's expert, Hessler Associates, Inc. concluded the results show Crowned Ridge to be in compliance with the sound requirements set forth in the Permit and does not find a need to perform additional sound testing. Ms. Christenson has not presented any evidence that shows a change in situation from the last three tests that warrants additional sound testing.

Without a showing of good cause to require additional sound testing, Staff is not convinced there would be any benefit to conducting an additional sound test at this point.

CONCLUSION

As noted supra, there is no basis for Ms. Christenson's Motion and the Motion should be dismissed without hearing and with prejudice. *In Arguendo*, should the Commission see fit to grant Ms. Christenson a hearing on this Motion, the Motion should be denied as Ms. Christenson failed to present any evidence of why another sound test should be completed.

Dated this 26th day of August 2022.



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