

**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**

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**Docket  
EL19-003**

Reply of Intervenors, Amber Christenson, Patrick Lynch, Melissa Lynch, Kristi Mogen,  
and Allen Robish, “Request for Extension of Condition 45” letter filed by Crowned Ridge Wind  
LLC on October 3rd, 2019.

On October 3rd, Crowned Ridge Wind LLC notified the PUC and all on the Service List, a  
Request for Extension for portions of Condition 45. For reasons outlined below, the Intervenors  
object to any changes to the Permit Conditions.

In the letter, Crowned Ridge Wind LLC (CRW) did not include Condition 45 in its entirety.  
Using only a portion of the Condition, taints the perception of the purpose and full meaning of  
the Condition and leaves unaddressed issues and creates a murkiness. Below is Condition 45 in  
its entirety.

Applicant will undertake a minimum of two years of independently conducted  
postconstruction grouse lek monitoring of known leks that are located less than 1 mile from a  
wind turbine. **Known leks are SDGFP confirmed lek locations and leks documented during any  
wildlife surveys conducted by Applicant for Project development. Applicant shall file with the  
Commission its proposed independent third-party’s credentials and survey methodology for**

**approval by the Commission 60 days prior to the commencement of Project operation.** The study shall be conducted on the ground. Applicant shall consult with SDGFP and USFWS on the proposed survey methodology for the post-construction lek monitoring. Results of the post-construction lek monitoring shall be reported to the SDGFP and USFWS after the first year of monitoring and a final report should be compiled and submitted to the SDGFP and USFWS at the end of the second year of monitoring. Within 90 days of the issuance of this Final Order, Applicant and Staff shall work together to develop a mitigation plan that will be incorporated into Applicant's Wildlife Conservation Strategy in case impacts to prairie grouse leks are found.

To clear up any murkiness, CRW is only asking for an extension for the development of the mitigation plan and not a waiver of Condition 45 requirement **"Applicant shall file with the Commission its proposed independent third-party's credentials and survey methodology for approval by the Commission 60 days prior to the commencement of Project operation."**

The intervenors strongly object to any waivers allowing the commencement of operation without all conditions of the permit being met by CRW. If the applicant wishes to extend their commencement of operation an additional 60 days, the Intervenors have no objection to their self-imposed extension of commencement of operation; the Intervenors DO object to any waiving of any portion of Condition 45 as it intended.

In addition to CRW's request for an extension of Condition 45, CRW is non-compliant with Condition 30 and so stated in the Wildlife Conservation Strategy filed almost a month after the Final Order setting Permit Conditions.

PUC Permit Condition 30 “Applicant shall file a **Bird and Bat Conservation Strategy (BBCS) prior to beginning construction of the Project**. The BBCS shall be implemented during construction and operation of the Project.” Leks would be included in the BBCS.

CRW stated in the Wildlife Conservation Strategy filed on August 22nd, 2019 6.2.2 Decision of Need for Other Bird and Bat Conservation Plans “Crowned Ridge does not anticipate the need for additional bird or bat conservation plans based on the data collected to date.” CRW obviously has no intention of filing a BBCS.

The Permit Conditions are based on the Findings of Fact (FOF) and Conclusions of Law (COL). There is no FOF or COL that allows changes to the conditions of the permit.

#### **Final Order Findings of Fact 64-68**

64. The Commission finds that the **Permit Conditions** attached hereto and incorporated herein by reference are supported by the record, are **reasonable and will help ensure that the Project will meet the standards established for approval of a construction permit for the Project set forth in SDCL 49-41 B-22**.

65. The Commission finds that the Project, if **constructed in accordance with the Permit Conditions** of this decision, will comply with all applicable laws and rules, including all requirements of SDCL Chapter 49-41 and ARSD Chapter 20:10:22.

66. The Commission finds that the Project, if **constructed in accordance with the Permit Conditions** of this decision, will not pose an unacceptable threat of serious injury to the

environment nor to the social and economic conditions of inhabitants or expected inhabitants in the siting area.

67. The Commission finds that the Project, if **constructed in accordance with the Permit Conditions** of this decision, will not substantially impair the health, safety or welfare of the inhabitants in the siting area.

68. The Commission finds that the Project, if **constructed in accordance with the Permit Conditions** of this decision, will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

#### **Final Order Conclusions of Law numbers 10 and 11**

10. When considered with **all Permit Conditions**, Applicant has demonstrated that the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area.

11. When considered with **all Permit Conditions**, Applicant has demonstrated that the facility will not substantially impair the health, safety or welfare of the inhabitants.

Also, attached exhibit A, correspondence with Ms. Edwards on October 6<sup>th</sup>, 2019, "... saying it should probably be filed with the court because the PUC loses jurisdiction over most permit decisions while an appeal is pending. Then it is a question for the court." Based on the guidance from the PUC, CRW should be treated equally as the intervenors with requests during the appeal, and should ne required to file this request with the courts.

In the Letter filed by CRW on October 3<sup>rd</sup>, 2019, CRW admitted "additional time is needed to develop the mitigation plan due to the lack of pre-construction lek reference data". Even though construction has begun, and disturbance of leks may have already occurred, CRW admits the application and the project was not ready for construction, which is one point, of many, of both the Intervenor's post hearing brief and appeal.

Avian studies would have quantified leks in and around the project area. In the intervenor post hearing brief page 10, number 7 "Mr. Ganje Q. So, then no avian study report was done for that portion of the project, was it? Sarah Sappington A. No Avian Use Survey."

CRW has now admitted it failed to provide information required in the application and now after being given a questionable pass on requirements of ARSD's ARSD 20:10:22:04 (5), ARSD 20:10:22:13, ARSD 20:10:22:16, and SDCL 49-41B22(1) (2) (3) and SDCL 49-41B-11 (11), CRW is asking for an extension over 2 months after the Conditions of the Permit have been issued.

CRW started construction knowing fully the requirements of the conditions. The Intervenor's oppose any change to the conditions of the Permit.