

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

EL 19-003

IN THE MATTER OF THE
APPLICATION BY CROWN
RIDGE WIND, LLC FOR A
PERMIT OF A WIND ENERGY
FACILITY IN GRANT AND
CODINGTON COUNTIES

INTERVENORS' NOTICE OF
TRANSMITTAL

Please take notice that attached hereto are true and correct copies of correspondence related to a change in the Scheduling Order concerning witnesses in the above entitled proceedings.

Dated this 23 day of May, 2019

/s/ David L Ganje

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David Ganje

From: Hanson, Mikal <Mikal.Hanson@state.sd.us>
Sent: Wednesday, May 22, 2019 2:44 PM
To: David Ganje; Edwards, Kristen; Van Gerpen, Patty; Thurber, Jon; Kearney, Darren; Paulson, Eric
Cc: Amber Christenson
Subject: RE: EL19-003

Thank you for yours and your client's cooperation on this matter.

From: David Ganje <davidganje@ganjelaw.com>
Sent: Wednesday, May 22, 2019 3:11 PM
To: Edwards, Kristen <Kristen.Edwards@state.sd.us>; Hanson, Mikal <Mikal.Hanson@state.sd.us>; Van Gerpen, Patty <Patty.VanGerpen@state.sd.us>; Thurber, Jon <Jon.Thurber@state.sd.us>; Kearney, Darren <Darren.Kearney@state.sd.us>; Paulson, Eric <Eric.Paulson@state.sd.us>
Cc: Amber Christenson <coteaupreservation@gmail.com>
Subject: RE: [EXT] EL19-003

Ms. Edwards

I have received your response today regarding the Hessler testimony. I am disappointed in the message. I have discussed with the clients in two conversation the position of the PUC regarding the Hessler testimony on June 6th rather than at the scheduled hearing on the Application. If the PUC is not able to otherwise devise a procedure that would address the issues I raised in my email to you of today, then my clients the Intervenors will accede to the request I received only yesterday that the PUC Staff call Mr. Hessler by telephone as a witness after the hearing on June 6th 2019 if the Motion to Deny and Dismiss should not be granted.

Thanks

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From: Edwards, Kristen [mailto:Kristen.Edwards@state.sd.us]

Sent: Wednesday, May 22, 2019 11:28 AM

To: David Ganje <davidganje@ganjelaw.com>; Hanson, Mikal <Mikal.Hanson@state.sd.us>; Van Gerpen, Patty <Patty.VanGerpen@state.sd.us>; Thurber, Jon <Jon.Thurber@state.sd.us>; Kearney, Darren <Darren.Kearney@state.sd.us>; Paulson, Eric <Eric.Paulson@state.sd.us>

Cc: Amber Christenson <coteaupreservation@gmail.com>

Subject: RE: EL19-003

Understood. There is not another option for putting Mr. Hessler on the stand, so just be aware that given your objection it is unlikely that we will call him as a witness.

From: David Ganje <davidganje@ganjelaw.com>

Sent: Wednesday, May 22, 2019 12:20 PM

To: Hanson, Mikal <Mikal.Hanson@state.sd.us>; Edwards, Kristen <Kristen.Edwards@state.sd.us>; Van Gerpen, Patty <Patty.VanGerpen@state.sd.us>

Cc: Miles Schumacher <MSchumacher@lynnjackson.com>; Brian.J.Murphy@nee.com; Amber Christenson <coteaupreservation@gmail.com>

Subject: [EXT] EL19-003

I was only advised of the possibility of Mr. Hessler appearing for testimony one week earlier than the scheduled hearings and not during the already scheduled hearings for the first time yesterday May 21st in an afternoon phone conversation with Staff attorney Mr. Hanson. Mt. Hanson stated that if the pending Motion to Deny and Dismiss was not granted that the PUC would prefer to have Mr. Hessler testify on that same date by telephone because he was going to be out of the country. This is a problem. I was not previously advised nor were my clients advise of any such possible 'scheduling conflict'?

The request to allow one witness to testify a week before each of the other witnesses is not reasonable or fair to my clients. My clients have due process rights and, thus, a right to a fair hearing of the evidence. Mr. Hessler should appear by phone or other means from where he might be located on the dates of the scheduled hearing. This should be taken into consideration by the Commission for purposes of the hearing, and the Commission could reschedule the hearing on the merits of the Application for later dates as there is enough time remaining on the subject Application deadline requirements of the law.

It is unreasonable to allow the examination of a witness one week before the evidentiary hearing, when the common mode of course is for all parties to gather together and have the hearing. Allowing one witness to testify and without the benefit of hearing other witness testimony is prejudicial to my clients. Applicant's witness on subjects relevant to Mr. Hessler's testimony in the normal course of proceedings would come before Mr. Hessler's testimony. This allows the Intervenor to understand the Applicant's relevant testimony, and then hear Mr. Hessler's relevant testimony after the Applicant's particular discussion of issues to be discussed by Mr. Hessler. To argue that - well it is all already testimony on paper as these parties have filed written testimony - is an inadequate justification for the prejudice this

would present. The live testimony of witnesses is the very purpose of the scheduled hearings. That live testimony may buttress, further explain, contradict or change points from any witnesses pre filed written testimony. Having Mr. Hessler testify a week before the hearing will deprive my clients of the opportunity to hear from Mr. Hessler's live testimony after the Applicant's first relevant witness[s]' testimony. The suggested early-testifying procedure will deprive Mr. Hessler of providing testimony discussing concerns or criticism of Applicant's witness's live testimony. This will deprive my clients of the right to examine Mr. Hessler about his testimony concerning Applicant's first witness's comments. It is not fair, and thus violates due process at the risk of losing Mr. Hessler's analysis of Applicant's first witness's live testimony, and deprives Intervenors of asking Hessler questions based upon Applicant's presentation which will come first in the normal order of a hearing.

Not only would my clients be prejudiced by losing the chance to hear from Mr. Hessler regarding his consideration of Applicant's live testimony which is provided first in the normal order of hearings, but Applicant would receive an unfair advantage by the opportunity to hear from a potentially critical witness, and my examination of Mr. Hessler, then during the course of several long days before the actual hearing, prepare responses and rebuttals and prepare its experts and other witnesses. Intervenors will have that opportunity. Once again, that is not fair process, and is in violation of due process of the law. U. S. Const. amend XIV; S.D. Const. Art. VI, §2. "(D)ue process is flexible, and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471.

Why can Mr. Hessler not appear and attend by phone or Skype? I understand that he may be in Europe at the time of the hearing, though it is not clear when you first learned about that problem. I have had the privilege on several occasions of teaching in Europe while at the same time practicing law in the United States. On those occasions I was able work abroad yet still communicate with my U.S clients and business—by phone, Skype and by computer, etc. There may be a minor inconvenience because of the time difference, but regarding important matters, I was always able to get things done. And for sure this case EL19-003 is an important matter. Arrangements could be made for Mr. Hessler to attend by phone and or appear by Skype during the existing scheduled hearing dates.

My clients requested a later date for the hearing when it was initially scheduled, but the request was denied. The PUC indicated previously that consistency among permit hearings is important and that last minute changes are frowned upon in light of due process concerns. It should be noted that, in this matter, my clients are at a disadvantage they are not a big corporation with lots of good lawyers working on the matter.

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BY CROWNED RIDGE WIND, LLC FOR A
PERMIT OF A WIND ENERGY FACILITY
IN GRANT AND CODINGTON COUNTIES

EL19-003

CERTIFICATE OF SERVICE

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I hereby certify that true and correct copies of the Notice of Transmittal with
attached correspondence was served electronically to the above named parties on
the 23 day of May, 2019.


/s/ David L. Ganje

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