

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION BY) Intervener, Kristi Mogen
CROWNED RIDGE WIND, LLC FOR A) Complaint
PERMIT OF A WIND ENERGY FACILITY IN) DOCKET EL-19-003
GRANT AND CODINGTON COUNTIES)

Complaint, by Kristi Mogen, CRW did not construct 79 turbines with LNTE BLADES as presented during the Permitting Process. CRW is in Violation of Condition No. 2 and may be in violation of No. 26 the ORDER Granting Permit to Construct Facility (ORDER) and is in violation of SDCL 49-41B-4 “Any Facility, with respect to a permit required, shall thereafter be constructed, operated, and maintained in conformity with such permit including any terms, conditions, or modifications contained therein.”

On July 26, 2019 the South Dakota Public Utilities Commission (Commission) filed the Final Decision and Order Granting Permit to Construct Facility (ORDER) including Procedural History, Findings of Fact, including No.5 “...The Project is situated within an approximately 53, 186-acre Project Area and will include the following: (i) up to 130 GE 2.3 MW wind turbine generators; ...” and 45 Conditions, including Condition No.2 “**Applicant shall construct, operate, and maintain the Project in a manner consistent** with (1) descriptions in the Application, (2) Application supplements and corrections, (3) commitments made by Applicant in response to data requests, (4) the Final Decision and Order Granting Permit to Construct Facility, and attached Permit Conditions, (5) all applicable industry standards, (6) all applicable permits issued by a federal, state, or local agency with jurisdiction over the Project, and (7) evidence presented by Applicant at the evidentiary hearing.”

On August 12, 2019, CRW filed Notice for Start of Construction Letter with the PUC. The Letter stated “Crowned Ridge Wind, LLC (CRW) plans to commence construction ... located in Grant and Codington County, South Dakota no earlier than **August 29, 2019.**”

On December 13, 2019, in an untimely filing, Crowned Ridge Wind, LLC (CRW) filed a Request for a Limited and Temporary Waiver (Waiver Request) pertaining to Condition No.2 of the ORDER, issued July 26, 2019.

The Waiver Request included two technical sound modeling tables and two affidavits as well as a letter and the Request for a Limited and Temporary Waiver to Condition No.2.

Paragraph two CRW offers Appendix H of the Application, "CRW modeled sound assuming the installation of LNTE attachments" In Appendix H CRW did not use the word "attachment."

Appendix H filed on January 30, 2019 and updated several times with the same language, "Turbine Specifications: GE Wind turbine specifications from the manufacturer were supplied to EAPC by Crowned Ridge Wind, LLC. Wind turbine specifications included in the model were the power curves, **blade types** (standard and low noise), hub heights and operational rotational speed of the rotor. For all turbines, **Low Noise Trailing Edge (LNTE) blades** were used to reduce the sound pressure levels in order to achieve compliance with county regulations by increasing the flexibility in turbine locations to meet setback requirements."

In paragraph two CRW also offers Staff Data Request 3-11, CRW confirmed that it would use LNTE **blades**. In Staff Data Request 3-11 CRW does not mention or offer correction "attachments"

"3-11) Referring to page 1 of Appendix H attached to the original application, please confirm that Crowned Ridge will use **Low Noise Trailing Edge Blades** as was modeled. Response: Confirmed. Respondent: Tyler Wilhelm, Project Manager"

Not once, did CRW mention "LNTE attachments" not in the Application, application supplements and corrections, data requests, and/or evidence presented by CRW at the evidentiary hearing.

CRW denied the Commission, Intervenors, and the Public the right to investigate and question the impacts including but not limited to safety of LNTE attachments being used in the Facility.

In the Affidavit of Joshua Tran, paragraph three "CRW has stopped installing LNTE on more wind turbines due to weather conditions in the project area." Paragraph four "the optimum weather conditions to install LNTE attachment..."

Even though the construction timeline was discussed, many times, during the evidentiary hearing, CRW representatives, NextEra Energy Resources (NEER)

employees, assured the Commission, Staff, Intervenors and the Public, that CRW could meet the December Commercial Operations Date (COD).

Testimony on June 11, 2019 by **Sam Massey**, director of renewable development for NextEra Energy Resources (NEER) “And, you know, we looked at this project and balanced it with the other projects in our portfolio for 2019 commercial operation. **And the company is fully aligned on dedicating the resources necessary to get Crowned Ridge done in time for our scheduled December 31, 2019 commercial operation date”**

CRW knew and agreed to Condition No. 2 and Condition No. 26, Exhibit A61 Joint Stipulation of Agreed to Conditions between Crowned Ridge and PUC Staff filed on June 11, 2019 at the evidentiary hearing.

It was known, only to CRW, that the low noise trailing edge (LNTE) attachments would need to be installed. It was also only known by CRW the manner in which the LNTE attachments would need to be installed.

In the Application, Application supplements and corrections, data requests, and evidence presented by CRW at the evidentiary hearing, CRW presented information using the National Climatic Data Center, has collected weather data for 10 years, and is familiar with South Dakota weather as CRW has other wind turbine facilities in South Dakota.

According to weather.gov the last day above 50 degrees in the Facility area and thus the last day LNTE attachments could have been installed was October 26, 2019.

It was only known by CRW that Condition No.2 could never have been achieved by the COD as the LNTE attachments could not be installed below certain temperatures.

CRW did not construct the Turbines with LNTE Blades as presented in the application, application supplements, and corrections, data requests and evidence presented by CRW at the evidentiary hearing. **CRW representatives, NEER employees, OMITTED and/or MISREPRESENTED key information, denying the Commission and the Intervenors the right to make careful and critical examination of the CRW use of LNTE “attachments”**. **The Commission, Intervenors and Public rely on the information presented from CRW and its representatives NEER employees, to be true and correct. CRW knew during the whole permitting process that “LNTE attachments” would need to be affixed and the manner in which the LNTE “attachments” would need to be installed. CRW representatives, NEER employees, knew the start of construction timeline**

would be 30 days after the ORDER, CRW knew construction would be taking place during fall and winter weather conditions. CRW agreed to the proposed conditions (in which Condition No. 2 and 26 remained the same). CRW representatives, NEER employees, repeatedly stated CRW could meet the COD. And still, CRW constructed 79 turbines without LNTE blades as described during the permitting process and in violation of State Codified Law, Rules and Conditions. CRW constructed these 79 turbines, knowing that it would be more difficult and dangerous to install the LNTE attachments after the blades were off the ground and attached to a 295-foot tower.

Who is responsible to conduct an onsite review that CRW constructed the Facility in a manner consistent with the 45 conditions in the ORDER? What else has CRW done that does not comply with the ORDER?

The Commission should not go down this slippery slope; the Commission should deny CRW Waiver Request and the Commission should take the fox out of the hen house and Initiate an Onsite Compliance Investigation by a Third Party (approved by the Intervenors) and in Accordance with SDCL 49-41B-33 Revocation of the ORDER filed July 26, 2019.

On December 16, 2019 Intervenors, without staff and **with** careers not related to wind energy, families, volunteer activities, and Christmas Holiday plans filed Notice of Insufficient Notice and Request to postpone until the next regularly scheduled Commission meeting in January 2020.

On December 17, 2019, CRW filed an Opposition to Intervenors Request to Postpone due to Insufficient Notice (Opposition).

In the CRW Opposition, paragraph 3, CRW reveals, “if it does not proceed to commercial operation on or before December 31, 2019, it will be subject to a \$75,000 a day penalty”

The steep penalty might explain why CRW would omit key information during the permitting process or agreed to conditions that CRW could never accomplish by the commercial operations date of December 31, 2019.

In the CRW Opposition, paragraph 3 CRW tries to make the Intervenors the bad guys, “Intervenors request to postpone should not be granted, as it could jeopardize CRW’s ability to achieve commercial operations, which would have a real and material financial impact on CRW”

We are at this point because; CRW built 79 turbines without **LNTE Blades**, as CRW stated in Appendix H and Staff Data Request 3-11. CRW built the Facility

in a manner that does not comply with the conditions CRW jointly agreed to with PUC Staff.

In the CRW Opposition, CRW addresses the Commissions imposed sound thresholds set forth in Condition No.26 of the ORDER. CRW further states in paragraph 4. **“In the event Commission Grants Intervenor request ... CRW commits not to operate the 6 wind turbines** that need to be curtailed to ensure compliance with the Commission imposed noise thresholds.”

In the CRW Opposition, CRW should have stated, CRW will only operate the 8 turbines, numbered 20, 22, 24, 25, 31, 36, and 53 with LNTE attachments that comply with the requirements of Condition No.2 of the ORDER, and SDCL 49-41B-4.

How is it that CRW, has missed the fact that CRW must comply with all the State Codified Laws, Rules and Conditions of all permits from all agencies?

CRW built 79 turbines, a substantial amount without “LNTE blades,” The Commission is a regulatory agency and should not allow the “do it and ask for forgiveness later” approach to a Facility that covers over 53,000 acres and impacts over 200 homes. The Intervenor and the public have the right to expect the Commission hold CRW accountable, to construct the Facility in a manner consistent with all the Conditions of the Order and laws of the State. The Commission should deny the Waiver Request and Sanction CRW.

On December 18, 2019, PUC Staff filed analysis of CRW request for Waiver. This analysis notes information received in emails that was not provided to the Intervenor.

The Staff analysis mainly addresses noise limits set forth in Condition No. 26 and was written without consultation with the Intervenor.

The Staff Report does not address the fact that CRW Waiver Request is during the **winter months, when the ground is bare and frozen and the attenuation or ground factor should be 0.**

In the CRW Waiver Request filed on December 13, 2019, Affidavit of Jay Haley’s **“I completed the sound model for the Project using the same assumptions used in the original studies”**

The original sound studies Exhibit A1-H, supplemented and updated many times with the same assumptions; “The analysis used the ISO 9613-2 “Attenuation of sound during propagation outdoors, Part 2” sound calculation model with “General” ground attenuation and an **attenuation factor of 0.5, which represents typical mixed vegetation (i.e., prairie grass, weeds, brush) and crop cover.**

Realistic sound pressure levels were calculated at 1.5 m AGL at the participating and non-participating existing occupied structures and occupied parcel boundaries (Codington County only). The term “realistic” in this case, means that some amount of ground attenuation is accounted for.”

It is very concerning several homes will be receiving just under the 45dba threshold, using an attenuation factor that does not correlate with the cold winter months, when noise travels farther and has no mixed vegetation, but instead bare frozen ground.

CRW has not demonstrated that all homes during the time, winter, of the CRW Waiver Request will meet Condition No. 2 and Condition No. 26 of the ORDER.

The Commission should not allow this sleight of hand trickery, and the Commission should Deny the CRW Waiver Request.

On December 20, 2019, the PUC granted the Intervenors Request to Postponing action, due to Insufficient Notice until December 30, 2019. Commissioner Nelson warned the Intervenors to “bring meaningful information.” Therefore, the Intervener, Kristi Mogen brings meaningful information with this and 5 more complaints.

Conclusion to CRW Waiver Request

CRW denied the Commission, Local Agencies, Intervenors, and the Public key information and the right to fully evaluate impacts, including but not limited to safety of the LNTE attachments.

CRW presented sound study tables, in the CRW Waiver Request using an attenuation factor that does not correlate with the winter season, the time in which CRW seeks the Waiver Request, therefore does has not proven CRW will be in compliance with Condition No.26.

CRW knowingly, willfully constructed 79 turbines without LNTE blades, in order to meet CRW, Power Purchase Agreement with steep penalties.

CRW is in violation of SDCL 49-41B-4 and the ORDER.

The Commission must tell CRW and all future PUC Permit Applicants that the Commission does not and will not play “hide the ball” games. The Commission who represents the Public of South Dakota, must show CRW that the Commission will not tolerate disregard to the laws, rules and conditions

governing the ORDER granting a Permit to construct, operate and maintain a Wind Turbine Facility in the State. The Commission should deny CRW Waiver Request, Sanction CRW and the Commission should Initiate an Onsite Compliance Investigation by a Third Party (approved by the Intervenors) and in Accordance with SDCL 49-41B-33 Revocation of the ORDER Granting the Permit filed July 26, 2019.

Kristi Mogen offers this additional conclusion to Complaints 1-6 filed on December 30, 2019.

In the December 13, 2019 CRW only addresses the 87 constructed turbines, and in the attached tables only show a Facility with 200 MW. What happened to the other 45 “deferred turbines and 100 MW?” When will CRW finally announce that the 45 turbines are not viable and will not be constructed as CRW presented in the Codington and Grant CUPs and the PUC Application? CRW is playing word games because “dropping” not “deferring”, one third of the Facility would mean this is an Entirely New Facility, and CRW would have to start over the permitting process. But then again, the following also make the CRW Facility an Entirely Different Facility than what CRW presented throughout the local agency and PUC permitting processes.

CRW built 79 turbines without LNTE Blades,

CRW changed the hub height on 4 turbines

CRW changed 2 turbine locations

CRW changed the size of 13 turbines in Codington County

CRW changed the size of 1 turbine in Grant County

CRW deferred/dropped 100 MW

CRW started Construction of the OM building before receiving PUC permit

CRW built an unknown amount of 2.7 MW turbines, according to photographic evidence

It is past time for the Commission to hold CRW accountable. If the Commission grants the CRW Waiver Request, the Commission will be setting a dangerous precedent, showing South Dakotans and out of State Corporations, it is okay to break the laws, rules, and conditions in South Dakota. **The Commission should label CRW/NextEra, “bad actor” for numerous violations of the ORDER and SDCL’s. The Commission should deny CRW Waiver Request, sanction CRW for violations and Initiate an Onsite Compliance Investigation by a Third Party**

**(approved by the Intervenors) and in Accordance with SDCL 49-41B-33
Revocation of the ORDER filed July 26, 2019.**