



TORNOW LAW OFFICE, P.C.

Mailing Address:
P.O. Box 90748
Sioux Falls, SD 57109-0748



R. Shawn Tornow, Attorney at Law
Office Address: 4309 S. Louise Ave., Ste. 101
Sioux Falls, South Dakota 57106

Telephone: (605) 271-9006
Fax: (605) 271-9249
E-mail: rst.tlo@midconetwork.com

March 31, 2021

Patricia Van Gerpen, Executive Director
South Dakota Public Utilities Commission
500 East Capitol Ave.
Pierre, SD 57501-5070

via e-mail: pattyvangerpen@state.sd.us

**RE: Docket EL 19-003; Crowned Ridge Wind's Failed Mitigation Plan as proposed 3/18/21,
Response for Location No. 3; pending litigation: Welder v. Crowned Ridge Wind, LLC.**

Ms. Van Gerpen:

This office has very recently been retained to represent Mr. Robert J. Welder. As you may know, Mr. Welder owns 15-acres of property in rural South Shore – which the Commission likely knows and distantly references as “Location No. 3” as a non-participating taxpayer/property owner who – to his direct detriment and damage - is, as this office has been informed, unfortunately surrounded by approx. 12-13 wind turbines that have (individually, collectively or both) impermissibly been operated in violation of the Commission’s past permitting order (as I also understand, as related to the sound requirements set forth in this docket/file as the requirements of Condition No. 26) as related to Crowned Ridge Wind’s (hereinafter “CRW-I”) mandatory wind farm operating permit requirements. While I am relatively new to the permit requirements within this file, on Mr. Welder’s behalf, it very much appears that the offensive and intrusive violations that have been noted to the Commission (from the violator’s 2020 sound study results) have been significant and severe – especially as to Welder as he simply attempts to live each day at/on his adversely affected property.

In light of the foregoing concerns then, my office points out that within only 24-hours after CRW-I proposed to this Commission its “Motion for Approval of Mitigation Plan” (on Mar. 18, 2021, and to which Mr. Welder was not privy to nor informed about), a non-party herein (by and through an individual named Terence Pellman, Brandon, S.D., on behalf of a non-party named NextEra Energy Resources, Ex. 3) sought out (on Mar. 19, 2021) & contacted Mr. Welder in Codington Co. proposing a “Waiver” document. See, Exhibit(s) 1 - 4, as attached hereto and fully incorporated herein. As can be seen, the proposed (and incomplete) document in no way, shape or form reflects that Mr. Pellman was an authorized agent for CRW-I. Moreover, it’s important to also note that the proposal also failed to reflect that CRW-I was authorizing or accepting such document on March 19th - unless and until it was to be later “EXECUTED effective the day and year set forth [when signed] below.” See, Ex. 1, pg. 4, and also, Ex. 2, pg. 4, *both* showing the document as unsigned and undated.

Less than 48-hours later, on Sunday, March 21, 2021, when Mr. Welder had not been provided any oral or written communication that CRW Vice President, Anthony Pedroni (presumably in Juno Beach, Florida), had, in fact, executed & signed-off with an effective date of the proposed “Waiver” document, Mr. Welder retained this office and - through counsel - immediately communicated his

revocation, rescission and/or nullification of the (still) proposed “Waiver.” See, Ex. 4, and Ex. 2, pgs. 1-4. On behalf of Mr. Welder and in light of applicable South Dakota contract law, including, in part, as provided for under the law of consent to contracts (SDCL Ch. 53-3), or, contract law under the statute of frauds (SDCL Ch. 53-8), it appears that – in this case – consent was not effectively consummated by communication prior to March 21, 2021. While CRW-I may find it self-serving in the moment before this regulatory agency to attempt to posture that the March 21st unfinalized “Waiver” is somehow possibly valid – any such determination is clearly a legal determination for our South Dakota courts – as compared to the hollow assurances¹ provided by the offending/non-compliant permitted entity. As a result, Mr. Welder submits that – prior to undertaking litigation in this regard, if necessary – there was not, nor is there, a binding contract or agreement in place as related to his adversely affected/damaged home property (once again, as referenced herein as Location No. 3) and CRW-I. Without a valid agreement in place, CRW’s claimed mitigation plan for their (ongoing) violations herein cannot be deemed to be successfully completed. See/*cf.*, March 18th *Motion for Approval of Mitigation Plan* by CRW, at pgs. 5-6.

Perhaps more importantly though, and as also failed to be addressed by CRW’s proposed Mitigation Plan, is the fact that, as your undersigned generally understands from my client, CRW has entirely failed to comply with Condition No. 20 (CRW “shall repair or replace ALL property removed or damaged during all phases of construction...”). That is, Mr. Welder reports that there was actual and significant damage to his home’s *foundation* during construction – to the point that CRW sent one of its (contracted) engineers out to review and assess the damage in approximately October-November 2020; however, no report was apparently provided to Mr. Welder, nor was any of the necessary repair work undertaken either in 2020 or even at this late date - as of March 31st.

As a result of the foregoing, on behalf of Mr. Welder – who must look to live with the offensive, intrusive and overbearing wind turbines that surround his property – as part of his initial desire to seek out administrative remedies, it’s submitted herein that the S.D. PUC cannot find compliance here as urged by/through CRW’s motion for approval of (its failed) mitigation plan. On behalf of Mr. Welder and like-situated adversely affected properties in & around Location No. 3 – thank you.

Sincerely,

/s/ R. Shawn Tornow

R. Shawn Tornow, for
Tornow Law Office, P.C.

c: Robert (“Bob”) Welder, Client
Chairperson Chris Nelson, Pierre, SD (e-mail only, w/ Exhibits: chris.nelson@state.sd.us)
Kristie Fiegen, Pierre, SD (e-mail only, w/ Exhibits: kristie.fiegen@state.sd.us)
Gary Hanson, Pierre, SD (e-mail only, w/ Exhibits: gary.hanson@state.sd.us)
Miles Schumacher, Sioux Falls, SD (e-mail only, w/ Exhibits: mschumacher@lynnjackson.com)
and, e-mail copy only to: amanda.reiss@state.sd.us
kristen.edwards@state.sd.us; darren.kearney@state.sd.us karen.layher@grantcountysd.us
eric.paulson@state.sd.us; jon.thurber@state.sd.us cbrugman@codington.org
melissamarie1010@yahoo.com; patrick.lynch_m@hotmail.com tyler.wilhelm@nexteraenergy.com
silversagehomestead@gmail.com brian.j.murphy@nee.com
allen.robish@gmail.com; amber@uniformoutlet.net

¹ It is important to note that CRW appears to have admitted its lack of certainty to its legal position insofar as it actually sent two (2) versions of its post-revocation (March 23, 2021) letter to the Commission: with its first/initially-submitted letter merely stating that “[u]nder South Dakota law rescission (sp) of a contract is allowed only under statutorily specified circumstances, none of which *appear to be* applicable here.” [Emphasis added.] As can be seen, that legal or litigation-related phraseology was later edited and unreasonably modified as CRW further sought to posture its present position before this Commission.

WAIVER

THIS WAIVER AGREEMENT ("Agreement") is dated this _____ day of _____, 2021 ("Effective Date") by and between _____ ("Owner"), with an address of _____ ("Property") and Crowned Ridge Wind, LLC, a Delaware limited liability company ("Operator"), with an address of 700 Universe Blvd., Attn: Land Services Administration, Juno Beach, FL 33408, and its successors in interests. Owner and Operator are sometimes collectively referred to hereinafter as the "Parties".

RECITALS

A. Owner is the owner of the Property.

B. Operator is the holder of certain easements and other related rights covering real property located adjacent to and/or in the vicinity of the Property because it developed a wind energy conversion system including wind turbines, collection lines, roads, and an electric substation in Codington, Deuel and Grant Counties, South Dakota (collectively "Wind Farm").

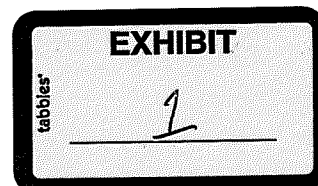
For good and valuable consideration set forth herein, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Waiver**. Owner grants Operator a waiver for exceedance of the sound thresholds set forth in Condition No. 26 in Attachment 1 (South Dakota Public Utilities Commission Final Order), which for Owner is sound over 45 dBA as measured within 25 feet.

2. **Release**. Owner hereby releases Operator from any and all claims for damages arising from the exceedance of the sound thresholds set forth in Condition No. 26 in Attachment 1, including but not limited to, any harm or loss due to nuisance, trespass, disturbance, effects, and any other injury or harm, to persons or property, whether now known or unknown, or which may appear or develop in the future.

3. **Authority**. Owner is the holder of fee simple title to all of the Property, and has the right, without the joinder of any other party, to enter into this Agreement and grant Operator the Easements. Owner agrees to warrant and defend its ownership of the Property and Operator's interest in this Agreement against any other party claiming to have any ownership interest in or other claim to the Property.

4. **Governing Law**. This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity. Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the court of competent jurisdiction.



5. **Compensation.** A one-time signing bonus of \$ _____ if Owner executes the Agreement on or before _____. The signing bonus shall be paid within sixty (60) days of the Effective Date of the Agreement.

Payment shall be distributed as follows:

100% _____

Signed and completed W-9 form required from each payee before payment is due from Operator.

[Signatures on following pages]

EXECUTED effective the day and year set forth below.

Owner:

EXECUTED effective the day and year set forth below.

Operator:

Crowned Ridge Wind, LLC,
a Delaware limited liability company

By: _____
Anthony Pedroni, Vice President

WAIVER

THIS WAIVER AGREEMENT ("Agreement") is dated this _____ day of _____, 2021 ("Effective Date") by and between Robert J Weider ("Owner"), with an address of _____ South Shore, SD 57263 ("Property") and Crowned Ridge Wind, LLC, a Delaware limited liability company ("Operator"), with an address of 700 Universe Blvd., Attn: Land Services Administration, Juno Beach, FL 33408, and its successors in interests. Owner and Operator are sometimes collectively referred to hereinafter as the "Parties".
ABSENT LEGAL REPRESENTATION AND WITH NO ACCEPTANCE RECEIVED: THIS PROPOSED REWAIVER IS IMMEDIATELY REVOKED, RESCINDED AND DEEMED NULL & VOID.

A/K/A:
Location #3
TLO, P.C.

A. Owner is the owner of the Property.

RJW 3-21-2021

B. Operator is the holder of certain easements and other related rights covering real property located adjacent to and/or in the vicinity of the Property because it developed a wind energy conversion system including wind turbines, collection lines, roads, and an electric substation in Codrington, Deuel and Grant Counties, South Dakota (collectively "Wind Farm").
NO ATTACHMENT 1 (ONE) DELINEATED AS PROPOSED AGREEMENT, RJW 3-21-2021

For good and valuable consideration set forth herein, the adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

1. **Waiver.** Owner grants Operator a waiver for exceedance of the sound thresholds set forth in Condition No. 26 in Attachment 1 (South Dakota Public Utilities Commission Final Order), which for Owner is sound over 45 dBA as measured within 25 feet.

RJW
3-21-2021

2. **Release.** Owner hereby releases Operator from any and all claims for damages arising from the exceedance of the sound thresholds set forth in Condition No. 26 in Attachment 1, including but not limited to, any harm or loss due to nuisance, trespass, disturbance, effects, and any other injury or harm, to persons or property, whether now known or unknown, or which may appear or develop in the future.

RJW
3-21-2021

3. **Authority.** Owner is the holder of fee simple title to all of the Property, and has the right, without the joinder of any other party, to enter into this Agreement and grant Operator the Easements. Owner agrees to warrant and defend its ownership of the Property and Operator's interest in this Agreement against any other party claiming to have any ownership interest in or other claim to the Property.

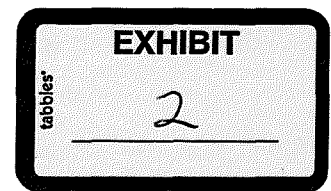
RJW
3-21-2021

4. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of South Dakota. The Parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If the Parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity. **Each party waives all right to trial by jury and specifically agrees that trial of suits or causes of action arising out of this Agreement shall be to the court of competent jurisdiction.**

(NO)
RJW
3-21-2021

5. **Compensation.** A one-time signing bonus of _____ if Owner executes the Agreement on or before March 19, 2021. The signing bonus shall be paid within sixty (60) days of the Effective Date of the Agreement.

RJW
3-21-2021



Payment shall be distributed as follows:

100% Robert J Welder

Signed and completed W-9 form required from each payee before payment is due from Operator.

RJW
3-21-2021

[Signatures on following pages]

ABSENT LEGAL REPRESENTATION and with
NO ACCEPTANCE RECEIVED: this PROPOSED
"WAIVER" IS IMMEDIATELY REVOKED,
RESCINDED and DEEMED NULL
and VOID.

RJW
3-21-2021

EXECUTED effective the day and year set forth below.

Owner: Robert J Welder

Date:

ABSENT LEGAL
REPRESENTATION
AND WITH NO
ACCEPTANCE RECEIVED:

RJW this PROPOSED
"WAIVER" IS
IMMEDIATELY REVOKED,
RESCINDED AND
DEEMED NULL & VOID
EFFECTIVE MARCH 19, 2021.

RJW 3-21-2021

* EXECUTED effective the day and year set forth below.

Operator:

Crowned Ridge Wind, LLC,
a Delaware limited liability company

* Unsigned AND Un-dated
as of 3/21/2021.
ILO, P.C.

By: _____
Anthony Pedroni, Vice President

Terence Pellman
Sr. Land Services Representative



NextEra Energy Resources, LLC
700 Universe Blvd.
Juno Beach, FL 33408

605.839.9071 office ←
Terence.Pellman@NEE.com

cell #

EXHIBIT

3

tabbles®

TLO P.C.

From: TLO P.C. <rst.tlo@midconetwork.com>
Sent: Sunday, March 21, 2021 10:56 PM
To: Terence.Pellman@nee.com
Subject: Message from "Tornow-Law-Office"- RE: Robert J. Welder, Codington Co., [REDACTED] South Shore, S.D. 57263; Sun., 3/21/2021 Immediately Important communication revoking-rescinding proposed Agreement
Attachments: 20210321231950033_RJ Welder returned-revoked-rescinded proposed Agrmt_3-21-21.pdf

WARNING: This e-mail message and any attachments are potentially privileged and confidential and, as such, the message and contents herein are confidentially protected from disclosure since the message and any and all attachments herewith are based on attorney work product and/or attorney-client privileged information. Therefore, you are hereby notified that any use, disclosure, copying or distribution of this e-mail msg. and/or attachments may be prohibited. If you may have received this e-mail in error, please immediately notify this office by returning it to the sender, contacting this office at 605-271-9006 and deleting all related information from your computer system. Thank you.

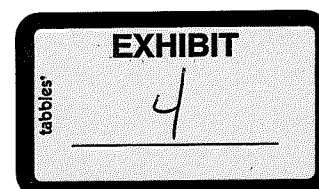
To: Land Services Administration: Terence Pellman, on behalf of NextEra Energy Resources, LLC, for Crowned Ridge Wind, LLC, 700 Universe Blvd., Juno Beach, FL

Please be advised that earlier today, Sunday, March 21, 2021, Robert J. Welder, who owns and resides at [REDACTED] in South Shore, South Dakota, 57263 (15-acres of property), has contacted and retained this office to represent him and his past and present property interests as related to the past and present wind farm related (i.e., PUC permit-ordered wind turbine limitation requirements and corresponding violations from and at several wind turbine locations nearby and relative to Mr. Welder's residence and property in Codington County).

Mr. Welder informed me earlier today that Mr. Pellman, apparently on behalf of NextEra for Crowned Ridge Wind, LLC, unilaterally contacted then sought to meet with this office's client - absent representation - on Friday, March 19, 2021, at approx. 2:00 pm with a proposed "waiver" agreement. As of this date, however, my client informs me that he has not been informed of nor provided any executed acceptance of any such proposed Agreement (by and through any pending signature/agreement by and through the proposed signatory: Anthony Pedroni, Vice President for Crowned Ridge Wind, LLC (a Delaware LLC). [In fact, this office has been informed that Mr. Pellman indicated late Friday afternoon that the proposed Agreement would next need to be sent to Florida (presumably Juno Beach) for approval and signing the following (i.e., upcoming) week.] As a result of the foregoing, my client has – as you can see from the attached (pdf doc) – hereby first returned/revoked and rescinded such proposed Agreement as attached and communicated herein. Consistent with his immediate revocation and rescission decision, Mr. Welder has asked me and my office to correspondingly relay his immediate revocation and rescission of such proposed Agreement, effective as of March 19, 2021. To that end: please be so advised that, in light of his immediate revocation and rescission of such a proposed agreement that he, of course, rejects any and all terms of such a proposed "waiver" agreement. Welder's immediately effective revocation and rescission of the proposed terms therein was and is especially necessary in light of the number of past and ongoing violations of what he understands to be all required conditions of the PUC-mandated wind farm terms and conditions related to and as has adversely affected and damaged and as continues to adversely affect and cause direct and/or indirect damage(s) to Mr. Welder's Codington County property in rural South Shore, S.D.

As I'm certain you and Crowned Ridge Wind understand, in light of Robert 'Bob' Welder's present legal representation and the corresponding communication thereof within this message, please be sure to direct any and all future communication as related to this or any other related matter to this office and not to Mr. Welder – this directive applies to any and all types of potential further communication, whether by phone, fax, text or any other electronic form(s) of communication. Thank you ~ please be advised that you may contact this office either at my office's mailing address (as indicated below) or by e-mail if your organization may prefer.

R. Shawn Tornow, for
Tornow Law Office, P.C.
Office location: 4309 S. Louise Ave., Suite 101
Mailing address: PO Box 90748
Sioux Falls, South Dakota 57109-0748
Office phone: 605-271-9006
Office fax: 605-271-9249



E-mail: rst.tlo@midconetwork.com

CONFIDENTIALITY STATEMENT & FORMAL NOTICE

This E-mail (including attachments) is covered by the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2521, is confidential and, as referenced above, may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, dissemination, distribution or copying of this communication is strictly prohibited. If you are the unintended recipient of this communication - please reply to the sender that you have erroneously received the message, then delete it.

Any files and documents attached to this E-mail that have been prepared by Tornow Law Office, P.C. should be considered to be legal documents. The contents hereof or attached documents have been prepared as drafts or final executable versions and should only be printed for further review or execution as instructed. Any alteration, modification, addition, deletion or other changes to these documents may result in changes to the legal effect of these documents and, as such, affect the rights and remedies of parties involved. Tornow Law Office, P.C. has no responsibility under any circumstances for any changes made to the attached files and documents that have not been reviewed and approved by Tornow Law Office, P.C.



R. SHAWN TORNOW

— ATTORNEY AT LAW

TORNOW LAW OFFICE, P.C.