

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

<b>IN THE MATTER OF THE</b>	)	
<b>APPLICATION OF CROWNED</b>	)	
<b>RIDGE WIND, LLC FOR A</b>	)	<b>RESPONSE TO INTERVENORS</b>
<b>PERMIT OF A WIND ENERGY</b>	)	<b>MOTION TO DENY AND DISMISS</b>
<b>FACILITY IN GRANT</b>	)	
<b>AND CODINGTON COUNTIES</b>	)	

**EL-19-003**

**RESPONSE OF  
CROWNED RIDGE WIND, LLC**

**I. Introduction**

1. On January 30, 2019, Crowned Ridge Wind, LLC (“CRW”) filed an application requesting a facility permit for the construction of a 300 megawatt wind energy facility to be located in Grant and Codington counties (“Application”). On March 20, 2019, a public input hearing was held in Waverly, South Dakota. On April 5, 2019, the Commission issued a procedural order setting forth the deadlines for testimony, discovery, and an evidentiary hearing.<sup>1</sup>

2. On April 25, 2019, the Intervenors filed a motion to deny and dismiss the Application (“Motion”).<sup>2</sup> The Motion asserts that the Application should be denied and dismissed, because the Application did not include certain required information. Contrary to these assertions, and as explained in detail below, CRW’s Application includes all required information. Accordingly, the Motion should be denied.

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<sup>1</sup> *In The Matter Of The Application Of Crowned Ridge Wind, LLC For A Permit Of A Wind Energy Facility In Grant And Codington Counties*, Order Granting Party Status; Order Establishing Procedural Schedule, Docket No. 19-003 (April 5, 2019) (“Order Granting Party Status; Order Establishing Procedural Schedule”). The Commission granted party status to Melissa Lynch, Patrick Lynch, Amber Christenson, Allen Robish, and Kristi Morgan (collectively “Intervenors”).

<sup>2</sup> The Motion was accompanied by the Affidavit of Patrick Lynch, which attached a Memorandum of Leases and Easements. The Affidavit merely repeats the assertions in the Motion, and, therefore, this Response does not separately address the Affidavit, but, rather, the addresses the assertions of the Affidavit and Motion together.

## **II. The Motion is without merit and should be denied**

3. As shown below, CRW's Application is generally in the form and includes the content required by the applicable Commission rules. Therefore, there is no basis to deny and dismiss the CRW Application pursuant to SDCL 49-41B-13 (2).

### **A. The Application includes all required information**

#### *The Application includes the estimated construction cost*

4. Commission Rule ARDS 20:10:22:09 and SDCL 49-41B-11 (12) require that an application describe the estimated construction cost of the proposed facility. On page 17 of its Application, CRW provides the following description:

The Project has an estimated capital cost of approximately \$400 million. Estimated costs include construction costs and wind turbine pricing estimates for the proposed 130 GE 2.3 MW turbine layout. Cost estimate also includes lease acquisition, permitting, engineering, procurement, and construction of turbines, access roads, the underground electrical collector system, the Project's collection substation, interconnection facilities, O&M facility, supervisory control and data acquisition (SCADA) system, meteorological towers, and project financing. Fluctuations in capital costs could be as much as 20% percent for the Project, dependent on final micrositing and MISO interconnection costs.

Neither the Commission's rules nor applicable statutes expressly specify the contents to be included in a description of the estimated construction costs. CRW, therefore, appropriately set forth a description of how it estimated its construction costs.<sup>3</sup> Further, CRW's description is similar to the descriptions of estimated construction costs included in recent wind applications

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<sup>3</sup> The Motion at page 4 cites to the definition of "Construction" in SDCL 49-41B-2. The definition of construction in Chapter 49-41B defines those activities that constitute the start of construction, and, therefore, is not a definition intended to prescribe what costs should be included in the description of the estimated cost of construction. Hence, the citation to SDCL 49-41B-2 is not instructive on how to describe the estimated cost of construction.

approved by the Commission.<sup>4</sup> Accordingly, the Motion is incorrect that the Application did not include a description of the estimated construction costs.

*There is no requirement to form a local review committee*

5. Intervenors claim that “[n]o local review committee was formed contrary to the law.”<sup>5</sup> This assertion is wrong. SDCL 49-41B-6 requires that a local review committee be designated “for a permit for the construction of an energy conversion facility or AC/DC conversion facility.” CRW does not fall within the statutory definition of an energy conversion facility or an AC/DC conversion facility.

SDCL 49-41B-2 defines these facilities as follows:

‘AC/DC conversion facility,’ an asynchronous AC to DC to AC tie that is directly connected to a transmission facility or a facility that connects an AC transmission facility with a DC transmission facility or vice versa;

and

‘Energy conversion facility,’ any new facility, or facility expansion, designed for or capable of generation of one hundred megawatts or more of electricity, **but does not include any wind energy facilities.** (Emphasis added).

With respect to the AC/DC conversion facility, CRW is not proposing to construct and operate an asynchronous AC to DC to AC tie nor a DC transmission facility, and, therefore, that definition is not applicable. Further, the definition of an energy conversion facility expressly excludes wind energy facilities. Therefore, the CRW wind facility is neither an AC/DC conversion facility nor an energy conversion facility as defined by SDCL 49-41B-2, and, thus,

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<sup>4</sup> Crocker Wind’s Application at 18, Docket No. EL17-055 (“Crocker Wind Application”); Prevailing Wind’s Application at 7-1, Docket No. EL18-026 (“Prevailing Wind Application”); and Dakota Range I and II’s Application at 8-1, Docket No. EL18-003 (“Dakota Range I and II Wind Application”). The citation to these applications is to provide comparative information for purposes of this Response. Whether or not the Commission issues a facility permit to CRW will be based on the record in this proceeding.

<sup>5</sup> Motion at 5.

there is no statutory requirement for the Commission to designate a local review committee under SDCL 49-41B-6.

6. Notwithstanding that there is no statutory requirement for the formation of a local review committee for a wind facility, Commission Rule ARDS 20:10:22:36 is referenced as applying to a facility in Commission Rule ARDS 20:10:22:05. Commission Rule ARDS 20:10:22:36 requires the applicant provide “. . . any addition information necessary for a local review committee to assess the affected area’s effects of the proposed facility pursuant to 49-41B-7.” Arguably, as no local review committee is required to be formed under SDCL 49-41B-6, there is no additional information required by Commission Rule ARDS 20:10:22:36. However, consistent with past practice and out of abundance of caution to ensure its Application was complete, CRW complied with Commission Rule ARDS 20:10:22:36 through the submittal of its Application, maps, and appendices, all of which provide information that local review committees could use to assess the proposed CRW wind facility. In addition, at pages 117-119 of the Application and in Appendix B, CRW provides information related to its interaction with and progress on obtaining approvals from federal, state, and local agencies. CRW’s submittal of information to address Commission Rule ARDS 20:10:22:36 is similar to information provided in recent wind applications that have been approved by the Commission.<sup>6</sup> Therefore, even though there is no statutory requirement to form a local review committee, CRW complied with Commission Rule ARDS 20:10:22:36. Accordingly, the Motion is incorrect that: (1) a local review committee must be formed, and (2) CRW did not comply with Commission Rule ARDS 20:10:22:36.

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<sup>6</sup> Crocker Wind Application at 135-142; Prevailing Wind Application at 27-1 to 27-8; Dakota Range I and I Wind Application at 28-1 to 28-7.

***The Application includes the distance between wind turbines***

7. The distance between wind turbines is shown on Appendix A, Figure 03, which was filed as an attachment to the Application. Appendix A, Figure 03 includes an overall project map showing the distance between the turbines, and, additionally, includes 17 sub-maps of the project that provide a more detailed understanding of the distance between turbines, including helpful reference points such as streets, highways, rivers, and the project boundary. Further, the Application at page 76 states:

The turbines shall be spaced no closer than three (3) rotor diameters (RD) (measurement of blades tip to tip) within a straight line. If required during final micro siting of the turbines to account for topographic conditions, up to ten (10) percent of the towers may be sited closer than the above spacing but the permittees shall minimize the need to site the turbines closer.

Similar information on the distance between turbines was provided in recent applications approved by the Commission.<sup>7</sup> Therefore, the Motion's assertion that the Application does not include the distance between turbines is incorrect.<sup>8</sup>

***The Application includes meteorological tower ("MET") tower information***

8. Page 22 of the Application indicates that the one permanent MET tower will be approximately 275 feet (83 meters) in height. On pages 22, 30, and 31, the Application explains that the base of the MET tower will be one-square foot, with four one square-foot anchor points for a total of a permanent impact of .0001 acre. The Motion incorrectly asserts that the MET tower information must also include information required in subsection 11 of Commission Rule

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<sup>7</sup> *Id.* at Figure 2a; *Id.* at Appendix a, figure 2; *Id.* at 10-3 and Appendix A, figure 11.

<sup>8</sup> Motion at 5.

ARDS 20:10:22:33:02.<sup>9</sup> The plain language of that rule relates to towers and poles used to interconnect the wind facility. A MET tower is used to hold anemometers,<sup>10</sup> which measure wind speed; a MET tower does not interconnect the wind facility with the transmission grid. Accordingly, the Motion's factual premise is flawed, and, therefore, its citation to Commission Rule ARDS 20:10:22:33:02 (11) is incorrect and without merit.

***The Application is not seeking the approval of interconnection facilities, and, therefore, was not required to include information on interconnection facilities***

9. For context and for informational purposes, CRW's Application at pages 1 and 22 explains that the interconnection facilities associated with CRW were approved in Docket No. EL17-050. CRW is not seeking approval of interconnection facilities in Docket No. EL19-003. Therefore, Intervenors incorrectly claim that CRW failed to disclose the information required in Commission Rule ARDS 20:10:22:33:02 subpart 11 and 12 related to interconnection facilities, because no interconnection facilities are before the Commission in Docket No. EL19-003. The Motion further confuses underground collector lines with interconnection facilities. Underground collector lines connect the wind turbines to the CRW collector substation,<sup>11</sup> while interconnection facilities connect the wind facility's collector substation, via a transmission line, to the transmission grid at Big Stone South Substation (Docket No. EL17-050). Accordingly, Intervenors claim that CRW failed to provide information required in Commission Rule ARDS 20:10:22:33:02 subpart 11 and 12 is wrong.<sup>12</sup>

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<sup>9</sup> *Id.*

<sup>10</sup> Application at 22.

<sup>11</sup> *Id.* at 1.

<sup>12</sup> Motion at 5-6.

***The Application includes the required setback information***

10. Intervenors incorrectly claim CRW did not include setback distances of the wind turbines from off-site buildings, rights-of-way of public roads, and property lines.<sup>13</sup> First, table 13.1.2 at pages 75-76 provides detailed setback requirements for buildings (including any off-site building), property lines, and right-of-ways of public roads. Second, the CRW sound and shadow flicker studies also include the setbacks required to be in compliance with the Grant and Codington Counties sound and shadow flicker requirements for buildings and property lines.<sup>14</sup> The information provided by CRW is also similar to that provided in recent wind applications approved by the Commission.<sup>15</sup> Therefore, Intervenors incorrectly assert that CRW did not provide certain setback information.

***The Application provides a complete description of current and proposed rights of ownership of the proposed facility***

11. The Application indicates that the owner of the proposed project is CRW, a wholly-owned indirect subsidiary of NextEra Energy Resources, LLC (“NEER”). This is a complete and accurate description. This information is also similar to that included in recent wind applications approved by the Commission.<sup>16</sup>

12. Intervenors claim that CRW should have mentioned Boulevard Associates, LLC (“Boulevard Associates”) as an owner, because of a 2015 Memorandum of Leases and

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<sup>13</sup> *Id.* at 5.

<sup>14</sup> Appendices H and I of the Application.

<sup>15</sup> Crocker Wind Application at 46-47; Prevailing Wind Application at 9-3 to 9-4; Dakota Range I and II Wind Application at 10-3.

<sup>16</sup> *Id.* at 2; *Id.* at 5-1; *Id.* at 6-1.

Easements (Memorandum”) executed by Boulevard Associates.<sup>17</sup> This is incorrect. Boulevard Associates is wholly-owned indirect subsidiary of NEER that enters into easements during the pre-development of a project. Boulevard Associates has no ownership interest in the proposed wind facility. All easements entered into by Boulevard Associates that are needed to support the construction and operation of the proposed wind facility will be assigned to CRW when and if the Commission issues a facility permit for the proposed CRW wind facility. Accordingly, the Motion incorrectly asserts that CRW did not provide complete information on the owner of the proposed wind facility.

***The Application includes a forecast of the impact on landmarks of natural significance***

13. The Application at pages 105-108 explains that record searches of historical databases were conducted. The Application on these pages also identifies the results of those searches, including identifying historical bridges, churches, structures, cemeteries, and Native American landmarks. Thereafter, the Application at pages 108-110 sets forth the impacts and mitigation (i.e., forecast) of the proposed wind facility on these landmarks. This information is similar to that submitted in other wind applications approved by the Commission.<sup>18</sup> Accordingly, Intervenors incorrectly assert that the Application did not include the impact on landmarks of natural significance.<sup>19</sup>

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<sup>17</sup> Motion at 6-8.

<sup>18</sup> Crocker Wind Application at 124-129; Prevailing Wind Application at 20-11 to 20-14; Dakota Range I and I Wind Application at 21-13 to 21-16.

<sup>19</sup> Motion at 8.

***The Application includes plans to coordinate with the local and state office of disaster services in the event of an accidental release of contaminants***

14. The Application at page 102 sets forth CRW's plans to coordinate with local emergency response personnel during the construction and operations of the proposed wind facility. As further explained in the Application, these plans include coordinating with agencies in the event of an accidental release of contaminants. For instance, the Application at pages 41-42, 45, 90, and 100 sets forth CRW's plans associated with the Storm Water Pollution Prevention Plan, including explaining CRW will have a spill prevention and response plan for contaminants. The Application at pages 24 and 100 also explains that CRW's Spill Prevention, Control, and Countermeasures Plan will ensure that the necessary resources are available to respond to a release of contaminants. Page 100 further indicates that:

Consistent with the Applicant's corporate environmental health and safety policy, the Applicant will also implement an Environmental Training and Monitoring Program that will communicate environmental concerns and appropriate work practices, including spill prevention, control, and countermeasure protocols to all field personnel.

The information on CRW's plans to coordinate with the local and state office of disaster services in the event of an accidental release of contaminants is similar to the information included in recently approved wind applications.<sup>20</sup> Therefore, Intervenors' assertion that the Application did not include plans to coordinate with disaster services in the event of an accidental release of contaminants is without merit.<sup>21</sup>

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<sup>20</sup> *Crocker Wind Application* at 131-132; 140; *Prevailing Wind Application* at 13-6 to 13-7; 20-7 to 20-8; *Dakota Range I and II Wind Application* at 3-3; 21-10.

<sup>21</sup> Motion at 8.

***The Application includes the impact on mammals***

15. The Motion claims that the Application is deficient because it does not include an inventory of mammals. An inventory of mammals is not required by applicable Commission rules or statutes. Instead, Commission Rule ARDS 20:10:22:15 requires a map of the planned water uses of wildlife that could be effected by the proposed wind facility. The Application includes that map as Figure 12. Furthermore, Commission Rule ARDS 20:10:22:13 requires environmental impacts to be assessed for animal communities. The Application at pages 53-69 and Appendices G and F identifies the animals and avian mammals (i.e., bats) in the vicinity of the proposed project and also assesses the impact of the construction and operation of the wind facility on these mammals. The Application includes information on mammals similar to the information included in other wind applicants recently approved by the Commission.<sup>22</sup> Therefore, Intervenors are incorrect that the Application does not address impacts to mammals.<sup>23</sup>

***The Application includes the impact on the terrestrial biotic environment***

16. The Application at pages 47-69 (and Appendices C, D, E, F, and G) identifies, analyzes the impact, and sets forth mitigation measures related to the terrestrial biotic environment.<sup>24</sup> This information is similar to that included in other wind applications approved

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<sup>22</sup> Crocker Wind Application at 74-78; Prevailing Wind Application at 13-7 to 13-22; Dakota Range I and II Wind Application at 14-6 to 14-13.

<sup>23</sup> Motion at 8.

<sup>24</sup> Application at 50-51 (Vegetation impacts and mitigation) 52 (Wetland and Waterbody impacts and mitigation); 66-69 (wildlife and avian impacts and mitigation).

by the Commission.<sup>25</sup> Therefore, Intervenors are wrong that the Application does not include information on the impact of the proposed wind facility on the terrestrial biotic environment.<sup>26</sup>

***The Application is not required to include the material terms and conditions of private landowner turbine easements and leases***

17. The Motion claims that SDCL 49-41B-22 (2) and (3), as well as Commission Rules ARDS 20:10:22:05, 13, 14, and 19 require that Application include material representations regarding the terms and conditions of private landowner turbine easements and leases and related easements and leases. Intervenors are incorrect. The plain language of the cited statutes and Commission rules does not require the submission or representation of the material terms of easements and leases.<sup>27</sup> The Motion also sets forth generalized concerns on the contents of CRW easements.<sup>28</sup> Generalized concerns and questions on the contents of the easements are, at best, a factual inquiry and not an issue of whether CRW's Application is generally in the form and includes content required by Commission rules. Accordingly, Intervenors' assertion that the Application was required to include material representations regarding the terms and conditions of easements and leases is without merit.

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<sup>25</sup> Crocker Wind Application at 67-92; Prevailing Wind Application at 13-1 to 13-22; Dakota Range I and II Wind Application at 14-1 to 14-15.

<sup>26</sup> Motion at 8-9.

<sup>27</sup> ARDS 20:10:22:05 (general provision on applicant contents); ARDS 20:10:22:13 (environmental information); 20:10:22:14 (effect on physical environment) and ARDS 20:10:22:19 (local land use controls) and SDCL 49-41B-22 (2) and (3) (the Applicant's burden of proof).

<sup>28</sup> Motion at 9-10.

**B. The continued processing of the Application does not result in the denial of due process**

18. Intervenors wrongly assert that the Application should be dismissed due to the denial of due process.<sup>29</sup> The Commission granted party status to the Intervenors and issued a procedural schedule that affords the Intervenors the opportunity to conduct discovery, proffer witnesses, and cross-examine the witnesses of the Applicant and Commission Staff at a 4 day evidentiary hearing.<sup>30</sup> The due process set forth in the Commission procedural schedule is in accord with the South Dakota Administrative Procedural Act, SDCL Ch. 1-26. Therefore, the Intervenors have no basis to claim that there is no due process of law.

19. Further, the cases cited in the Motion on due process are not on point nor are the cases informative. *In re Union Carbide Corp.* involved resolving whether a petition to intervene was timely, and, if so, whether the South Dakota State Conservation Commission provided sufficient notice and opportunity to the intervenor to participate at the hearing.<sup>31</sup> That is not the case here. The Commission granted all requests to intervene, and on April 5, 2019 the Commission set forth a procedural schedule with ample notice of deadlines for discovery, testimony, and the June 11-14 hearing dates. The Commission will also issue another order in the future providing notice of the date and location of the evidentiary hearing. Therefore, the Motion's citation to *In re Union Carbide Corp.* is not informative as to assertions raised in the Motion.

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<sup>29</sup> *Id.* at 10.

<sup>30</sup> Order Granting Party Status; Order Establishing Procedural Schedule.

<sup>31</sup> 308 N.W.2d 753 (S.D. 1981).

20. Similarly, *State v. Fifteen Impounded Cats* involved the impoundment of cats by a police officer under a municipality's general statutory authority to regulate domestic animals.<sup>32</sup> In that case, the due process question was whether the person who had her cats impounded had been provided adequate notice of two hearings.<sup>33</sup> The court ruled that since she never complained about notice and she attended the hearings, her due process claims were deemed waived.<sup>34</sup> The facts before the court in *State v. Fifteen Impounded Cats* are not similar to those asserted in the Motion, and the court's ruling that the due process claims were waived is not informative as to the assertions in the Motion.

21. In addition, the case of *Strain v. Rapid City Sch. Bd.* is not instructive.<sup>35</sup> That case involved the termination of a teacher's employment for improper sexual conduct with a student. The due process issue addressed by the court in that case involved whether the school board: (1) withheld exculpatory evidence; (2) was biased; (3) improperly admitted into evidence prior bad acts; and (4) should have issued findings of fact and conclusions of law. The court held the teacher's due process rights were not violated and affirmed the Board's termination of the teacher. This case is clearly not informative to the assertions set forth in the Motion. Indeed, the quote set forth the Motion from *Strain v. Rapid City Sch. Bd.* was made by the court in the context of whether the school board was biased. The Motion does not claim that the Commission is biased, and, therefore, the citation to *Strain v. Rapid City Sch. Bd.* is not instructive.

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<sup>32</sup> 785 N.W.2d 272, 279 (S.D. 2010).

<sup>33</sup> *Id.* at 282.

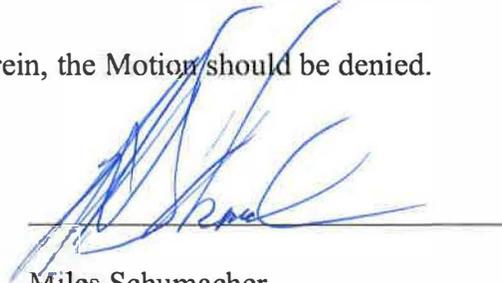
<sup>34</sup> *Id.* at 282-283.

<sup>35</sup> 447 N.W.2d 332 (S.D. 1989).

**III. Conclusion**

22. For the reasons set forth herein, the Motion should be denied.

Dated: April 30, 2019



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