

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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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'  
OBJECTION TO LATE FILED  
EVIDENCE AND MOTION TO  
STRIKE

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1. Intervenors object to Applicant's late-filed effort to submit evidence and testimony by way of Applicant's July 8<sup>th</sup> 2019 letter with attachment to Commission Staff Counsel, and Intervenors move that the Commission strike this letter and its contents from the record, and that the Commission and its Staff decline to consider Applicant's late-filed evidence and testimony in the above entitled proceedings.
2. Applicant attempts by its letter to the Commission dated July 8<sup>th</sup> 2019 regarding Agency Correspondence filed by U S Fish and Wildlife as an opportunity to add to Applicant's record in this proceeding. Applicant uses agency correspondences filed by US Fish and Wildlife on July 2<sup>nd</sup> 2019 as an opportunity to argue for its pending Application by presenting statements and arguments that are hearsay and include out-of

-court facts, opinions and conclusions. These arguments and statements by Applicant are provided by Applicant's so-called expert, Kimberly Wells, who as an Applicant witness failed to appear at the hearing in chief in this proceeding. The effort of Applicant is an unmitigated effort to violate the scheduling Order and established procedure of this Commission; and is an unmitigated effort to deny Intervenors due process of the law. The party submitting and signing the letter on behalf of the Applicant did not show up at the hearing, but yet now finds the time to "educate" the Commission and its Staff in response to a letter the Commission received from U S Fish and Wildlife reflecting grave concerns with the appropriateness of the pending Application.

3. Intervenors object to Applicants attempt to enter evidence and argument into the record after the evidentiary hearing has closed. The letter should not be considered by the Commission. The July 8<sup>th</sup> letter of Applicant violates the scheduling order as well as the instructions of the Commission concerning procedures to be followed for the pending Application.
4. The July 8<sup>th</sup> letter in question goes on at some length to argue that NextEra, NOT the Applicant, maintains "good environmental practices." It is clearly recorded in the record of this proceeding that this so-called holding company or company holding a substantial ownership in the Applicant will not stand behind the proposed project. When asked during the evidentiary hearing whether NextEra, would guarantee the performance of the proposed project NextEra absolutely and unconditionally refused. The words, representations and braggadocio of NextEra should not be accepted or considered credible.

5. Intervenors further object to Applicant's allegations in the July 8<sup>th</sup> letter regarding how Applicant will be in compliance with any Fish and Wildlife policies and recommendations in the proposed project. There is no project. Applicant in the record in this proceeding (which record is and has been closed) failed to indicate where it will place turbines in the proposed project on wetland easement lands. And Applicant has failed to indicate where it will "move" existing turbine locations in the proposed project. To suggest in this belated letter that Applicant will comply with USFW easement policies is false. Applicant has not presented that in the record. Applicant has not identified on which properties Applicant will place turbines, including properties encumbered with wetland easements. It is impossible to even consider Applicant's arguments found in the letter under these circumstances. Applicant is creating smoke where there is no substance behind the smoke. The letter is an illegal and unacceptable method of presenting in support of an Application. Applicant in the letter suggests it has avoided all parcels with grassland or combination wetland/grassland USFWS easements on them. This is a further attempt by Applicant to state what it did not show in Exhibit A55 in the record. This is an attempt by Applicant to introduce hearsay and out-of-court testimony after the case is closed.
6. The July 8<sup>th</sup> letter of Applicant is a late attempt to help its argument in favor of the pending Application. This act violates the rules of hearsay, violates due process of the law, violates the scheduling order and procedure of the Commission and violates any

principle of fair play which must always be at the forefront of a procedure considering  
an application for a public permit.

Dated this 8 day of July, 2019

/s/ David L Ganje *DL Ganje*

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