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' POST-HEARING BRIEF

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## STATEMENT OF THE CASE AND INTRODUCTION

1. On January 30, 2019, the South Dakota Public Utilities Commission (Commission) received an Application for a Facility Permit for a wind energy facility (Application) from Crowned Ridge Wind, LLC (Crowned Ridge or Applicant) to construct a wind energy conversion facility to be located in Grant County and Codington County, South Dakota (Project or proposed project). The Project would be situated on approximately 53,186-acres in the townships of Waverly, Rauville, Leola, Germantown, Troy, Stockholm, Twin Brooks, and Mazeppa, South Dakota. The total installed capacity of the Project is claimed not exceed 300 megawatts (MW) of nameplate capacity. The proposed Project includes up to 130 wind turbine generators, access roads to turbines and associated facilities, underground 34.5-kilovolt (kV) electrical collector lines, underground fiber optic cable, a 34.5-kV to 345-kV collection substation, one permanent meteorological tower, and an operations and maintenance facility. On

January 31, 2019, the Commission electronically transmitted notice of the filing and the intervention deadline of April 1, 2019, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv. On February 6, 2019, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status. On February 22, 2019, the Commission issued an Order Assessing Filing Fee; Order Authorizing Executive Director to Enter into a Consulting Contracts; Order Granting Party Status. On March 20, 2019, a public input hearing was held as scheduled. On March 21, 2019, the Commission issued an Order Granting Party Status. On March 25, 2019, Patrick Lynch filed an Application for Party Status. On March 26, 2019, Commission staff filed a Motion for Procedural Schedule. On March 27, 2019, Crowned Ridge filed its Responses to the Motion for Procedural Schedule. On March 28, 2019, lntervenors filed a Response to Crowned Ridge's Response to the Motion for Procedural Schedule. On April 5, 2019, the Commission issued an Order Granting Party Status; Order Establishing Procedural Schedule. On April 25, 2019, lntervenors filed a Motion to Deny and Dismiss. On April 30, 2019, the Commission issued an Order For and Notice of Motion Hearing on Less Than 10 Days' Notice. On April 30, 2019, Commission staff and Crowned Ridge each filed a Response to Motion to Deny and Dismiss. On May 6, 2019, lntervenors filed a Reply Brief in Support of Motion to Deny and Dismiss. On May 10, 2019, the Commission issued an Order Denying Motion to Deny and Dismiss; Order to Amend Application. On May 10, 2019, the Commission also issued an Order for and Notice of Evidentiary Hearing. On May 17, 2019, Intervenors filed a Second Motion to Deny and Dismiss. On May 23, 2019, Commission staff filed a Request for Exception to Procedural Schedule and Crowned Ridge filed its Response to lntervenors Second Motion to Deny and Dismiss and, as a part of its response, Crowned Ridge requested a Motion to Strike. On May 28, 2019, Intervenors

filed a Reply Brief and Motion to Take Judicial Notice. On June 12, 2019, the Commission issued an Order Granting Request for Exception to Procedural Schedule; Order Denying Motion to Take Judicial Notice; Order Denying Motion to Strike. The Commission has not ruled on the Second Motion to Deny and Dismiss. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49- 41 B, and ARSD Chapter 20: 10:22. The evidentiary hearing was held, beginning on June 11, 2019, and ending on June 12, 2019, with one Staff witness heard prior to the scheduled evidentiary hearing. At the conclusion of the evidentiary hearing, a briefing schedule and decision date was set by the Commission. Intervenors, through undersigned counsel, submit this Post-Hearing Brief. Applicant is seeking a permit from the Commission to build a wind farm in Grant and Codington Counties South Dakota. As the permit applicant, Applicant shoulders the burden of proof to establish its proposed project satisfies the provisions of SDCL 49-41B-22. Intervenors do not have the burden of proof to show the proposed project does not satisfy SDCL 49-41B-22. If there remains a question as to whether the proposed project complies with SDCL 49-4 lB-22, the permit application must be denied. As shown below, Applicant has not satisfied its burden. Therefore, Intervenors respectfully request the Commission deny Applicant's permit Application. Citations to facts contained in the record are included in this Post-Hearing Brief and in the Intervenors' Proposed Findings of Fact and Conclusions of Law which are incorporated into this Brief.

## ARGUMENT

2. The Legislature intended for an extensive and complete review of a wind farm permit application by the Commission. The legislature would not have done so if it did not expect its statutory requirements to be a high bar. In this proceeding, as of the conclusion of the

evidentiary hearing, the Application is still, at best, materially incomplete. It is also accurate to say the Application at completion of the evidentiary hearing is unavailable as an understandable proposed project. See for example the findings set forth in Intervenors' Proposed Findings of Fact and Conclusions of Law on the issue of due process.

3. Intervenors' Proposed Findings of Fact and Conclusions of Law are filed with this Brief as Exhibit A and are incorporated into this Post-Hearing Brief by reference. The insufficiency of Applicant's evidence and facts, the unaddressed relevant legal issues in this proceeding, as well as the failure of the Applicant to satisfy legal requirements following applicable siting law and rules under the mandate of SDCL 49-41B-22(1) are presented in detail as findings and conclusions in Exhibit A.

4. Applicant's statutory burden of proof under SDCL 49-41B-22 has not been met in this proceeding. Additionally, ARSD 20:10:01:15.01 is one of the Commission's Rules of Practice, and it also applies to this matter. The rule requires: In any contested case proceeding, the complainant, counterclaimant, applicant, or petitioner has the burden of going forward with presentation of evidence unless otherwise ordered by the commission. The complainant, counterclaimant, applicant, or petitioner has the burden of proof as to factual allegations which form the basis of the complaint, counterclaim, application, or petition. ARSD 20:10:01:15.01 Applicant's evidence supporting its regulatory compliance obligations are matters within the possession of the Applicant. The burden to produce evidence is on the Applicant. Davis v. State, 2011 S.D. 51, 804 N.W.2d 618, 628 (S.D. 2011); Eite v. Rapid City Area School Dist. 51-4, 739 N.W.2d 264 (S.D. 2007); Meacham v. Knolls Atomic Power Lab., 554 U.S. 84 (2008);

Dubner v City and County of San Francisco, 266 F3d 959, 965 (9th Cir 2001) This burden remains upon Applicant regarding all wind energy siting statutes and concerning all wind energy siting rules throughout every stage of the proceeding. Gordon v. St. Mary's Healthcare Ctr., 617 N.W.2d 151 The facts and issues regarding the denial of due process of the law raised by Intervenors also reflect Applicant's failure to meet its statutory and administrative burden of proof in this proceeding. Wind farm siting laws and the related administrative rules have disturbed Applicant's efforts to obtain a permit. The proposed Application, at the completion of the evidentiary hearing, does not meet Applicant's burden of proof under which this Commission might have approved a permit -- even with proposed conditions. In this matter the Applicant and Staff submitted proposed permit conditions. As the record reflects, Intervenors were not invited to, and did not participate in, the writing or negotiation surrounding the creation of the proposed conditions. Under these circumstances the Intervenors do not accept the terms of the proposed conditions. Applicant must prove to the Commission compliance with all the elements of South Dakota's siting statutes and each of the applicable siting rules by a greater convincing force of the evidence. Applicant's burden of proof is that the "proposed facility will comply with all applicable laws and rules." That's not a maybe. That's not a might. The Applicant is not allowed to get kind of close to complying with applicable laws and rules. An applicant must comply with all applicable laws and rules. Applicant has not done this.

5. In this proceeding are the Applicant's requested 45 db(A) and 50 db(A) sound levels for the proposed project standards which the Commission should approve? No. Are Applicant's requested 45 db(A) and 50 db(A) sound levels supported by the testimony and writings of Staff witness Hessler and supported by the testimony and writings of Applicant's *principle* health witness Ollson? No. Applicant must prove to the Commission compliance with all the elements

of South Dakota's siting statutes and each of the applicable siting rules by a greater convincing force of the evidence. Applicant has failed to meet that burden on the issue of health and welfare. SDCL 49-41B-22(3) Staff witness Hessler wrote in a 2011 professional article that 40 db(A) is recommended. Staff witness Hessler testified in a prior 2018 South Dakota PUC hearing that 40 db(A) should be the design goal. Staff Witness Hessler advised the Minnesota Public Service Commission in a 2011 report that any new project should maintain a mean sound level of 40 db(A) or less. Staff witness Hessler advised the Wisconsin Public Service Commission in a 2012 report that a 39.5 db(A) or less should be used for all non-participating residences. Staff witness Hessler testified in the current proceeding that for many years he recommended as the ideal performance level of 40 db(A). Staff witness Hessler testified also in the present preceding that he recommended 40 db(A) as an ideal design goal. Staff witness Hessler acknowledged as his professional opinion that a 40 db(A) for every non participant was recommended. Staff witness Hessler reported in his pre-filed testimony in this proceeding that anytime sound levels are higher than about 40 db(A) he anticipates complaints with the number of complaints and the severity of complaints increasing exponentially as sound levels approach 50 db(A). Staff witness Hessler told the Commission that 40 db(A) sound level maximums would be better for the public than 42 db(A). Staff witness Hessler testified that 40 db(A) would be acceptable to the welfare of the public as a permit condition. Staff witness Hessler testified in this proceeding that he agreed with a professional article found at Exhibit I – 8 reporting that the level of 40 db(A) is a design goal intended to protect the public. Staff witness Hessler also agreed with a 2017 professional article at Exhibit I-4 indicating that wind turbine farms designed to a level of 40 db(A) or lower for non-participating receptors have an acceptable community response. Staff witness Hessler acknowledged that a report he gave to the

Wisconsin Public Service Commission recommended a 40 db(A) level for non-participating residences. Applicant's principle health Witness Christopher Ollson agreed that a 2011 World Health Organization noise guideline of 40 db(A) is a health-based limit value. Applicant witness Ollson acknowledged he wrote in a 2014 professional article recommending that preference should be given to sound emissions of approximately 40 db(A) for non-participating receptors and that this level was the same as the World Health Organization night noise guideline. Applicant's witness Ollson wrote in a 2014 presentation that noise from wind turbines can be annoying to some and associated with sleep disturbance especially when found at levels greater than 40 db(A). Applicant's witness Ollson wrote in a 2014 presentation that preference should be given to sound emissions of 40 db(A) or less for non-participating individuals. Ollson further testified that the limit of 40 db(A) or less for non-participating was the same guideline as the World Health Organization guideline. Applicant's witness Ollson admitted that he had previously testified in a 2014 Canadian wind farm proceeding that 40 db(A) was reasonable and sufficient to protect against human effects. Ollson also testified he had recommended in a prior application proceeding that best practices include a preference for sound emissions of 40 db(A) or less for non-participating receptors. In his testimony in this proceeding Applicant witness Ollson acknowledged that he expressed a preference to be given to sound dimensions of 40 db(A) or less for non-participating receptors in a 2014 professional article he had written. When asked in this proceeding, Ollson stated that he had not changed any of his writings or his opinion on the opinion recommending sound emissions of 40 db(A) or less. Intervenor's Proposed Findings of Fact and Conclusions of Law cite to and provide reference to the record on the above statements for each of the two witnesses. The preceding is substantial evidence, by Applicant and Staff witnesses, against approving Applicant's requested sound level standards in this

proceeding. Considering this evidence, Applicant has not presented its case for sound standards with a greater convincing force of the evidence. The Commission cannot and should not approve the Applicant's requested sound standards for the proposed project.

6. When one considers the essential information needed to obtain permit approval under wind energy siting law, one appreciates the law's purpose in requiring that an applicant place before all interested parties a competent and full disclosure as well as a public explanation of how the proposed project complies with applicable siting law and rules and how the project would affect the health, safety and welfare of inhabitants. Applicant has not met its burden of proof under the administrative rules and under wind energy siting statutes. By way of illustration, Applicant states that it may agree to move 7 turbines because of the opinion of Staff witness Hessler who recommended to the Commission that 16 turbine locations *should be moved.* Staff witness Hessler testified, "The 16 units that I believe are unduly and unnecessarily affecting non-participating residences are circled in black. . ." (citation for the record and quotations in this Post-Hearing Brief are found in Intervenors' Proposed Findings of Fact and Conclusions of law) The recommendation Staff witness Hessler expressed to the Commission regarding the welfare of inhabitants is not reflected in the proposed minimal acts of Applicant. Applicant suggested it may move seven of the recommended 16 turbines. "Q. You're not going to move 16 of them? A. We have agreed to moving seven turbine locations. Q. You haven't agreed to move 16? A. That's correct. We agreed to move 7." Applicant's position is far from a commitment to do what is recommended. And further, Applicant does not represent to the Commission that the 7 turbine sites which it may move are to be withdrawn sites or are to be terminated as project turbine location sites. Applicant will still maintain those 7 sites as a 'back

up.' None of this 'moving of 7 turbines' complies with the Staff witness' recommendations. Applicant is not taking adequate action to protect the health, safety and welfare of project inhabitants. The Applicant's several witnesses in this proceeding do not show any dispute or criticism regarding the recommendations of Mr. Hessler that 16 turbines should be relocated. Applicant's proposed action does not adequately protect non-participators. This effort to sway to the Commission is too little. Applicant is over-careful regarding its own interests at the expense of the project community, the inhabitants and non-participators. A proposed move of a minimal number of the turbine relocations contrary to the recommendation by Staff witness Hessler does not meet Applicant's burden of proof regarding the health and welfare of the inhabitants pursuant to SDCL 49-41B-22(3).

7. The materially incomplete Application is shown by the lack of a full avian use survey report. Applicant's purported avian study for the proposed project is found at Appendix E of the Application. The study ended in November of 2017. See page 58 of Appendix E. The avian use survey report fails to include a significant portion of the proposed project. The northeast area of the proposed project was not included in the report. This unsurveyed project area consists of 15,500 acres of land and 25 proposed turbine sites or alternate turbine sites. Applicant's avian survey map, Exhibit A1-E p2, reveals the failure to survey this large northeastern area of the project. The map included with the survey is Applicant's document filed in support of its assertion that Applicant completed a survey of the proposed project area. The northeastern area of the project was acquired by the Applicant at the end of November 2017 but well over one year before the Applicant formally filed the pending Application. Application Exhibit A1 p 88 "Cattle Ridge Wind Farm, LLC was acquired by the CRW on November 22, 2017 for inclusion

with the Project." Applicant did not do an avian use survey report on the northeast area of the proposed project. The fact that the Application contains no avian use study of the completed project area is confirmed by Applicant witness Sappington's testimony. "Mr. Ganje Q. I would refer you to Exhibit A1-E..." "Mr. Ganje Q. So then no avian study report was done for that portion of the project, was it? Sarah Sappington A. No Avian Use Survey." The dashed lines on A1-E show the limits of the survey area. "Q. I would ask you please to refer to A1-B page 80. And is the -- referring now to page 80 of the exhibit, please. Is page 80 the colored area, the area of interest that was studied by your company?" Sarah Sappington "A. This was studied as of July 2017. Q. Yes. And does that study area include the northeastern portion of the proposed project that I referred to you in a previous question and showed you on a previous map? A. Are you referring to that northeast portion? Q. That is correct. A. No. This map does not have it." The purple area shown on A1-B does not include the northeast area of the proposed project. And, Figure 1 of the "study area" on page 2 of the Avian Use Survey Report is clear evidence the Application is materially incomplete. See Appendix E to the Application. Applicant cannot be granted a permit by the Commission.

8. In this proceeding the problem of denial of the Intervenors' due process rights is set forth with citations in the findings and conclusions found at Exhibit A to this Brief. The lack of due process issue is stark. The issue warrants a review in this Brief. The right to be informed of, to access, to know and to challenge an Application is not available to Intervenors where material information has not been timely placed on the record - even at the end of the final evidentiary hearing. Applicant has not implemented a fair and adequate procedure under which Intervenors could understand the facts necessary for the Commission to reach a decision. Applicant has not

followed a fair and adequate procedure necessary for the Commission to reach a decision on the impacts of the proposed project. Since the day of filing the Application, Interveners have been deprived of adequate information from which to understand, research and challenge the Application under its ever-evolving and materially-changed proposed project. Up to the last day of the hearing substantial and material proposed project changes were submitted to the Commission. Adequate notice and due process of law do not permit an applicant in such a complicated public siting process to change *material facts and technical representations* on the final day and at the final hour of the submission of evidence. Further, the Application is still incomplete in multiple, material respects, and should be denied by the Commission.

9. Instances of denial of due process.

9a.) At the close of the evidentiary hearing, Applicant filed two documents Exhibits: A67 and A68, as so-called updated shadow flicker tables. The shadow flicker tables list 70 nonparticipating and 61 participating receptors, which are homes, with 4 participants listed as pending. The table is missing 56 of 59 of nonparticipators receptors in Stockholm and Waverly. Exhibit A1 page 75 And at this late date Intervenors still do not know the participators. Applicant fails to provide information on who is participating, who is not, and the effects on these receptors. Of the 131 receptors listed on the table, more than half are non-participators and this table does not include the 56 non-participating receptors in the two towns inside the proposed project. This brings the total of the non-participators inside the project boundary at 129 vs 61 participating. In the last 2 days of the evidentiary hearing Applicant submitted exhibits A57, A67 and A68. The exhibits are presented as updated sound and flicker modeling for the proposed project. Except for modeling four receptors in Waverly and one in or near Stockholm,

Applicant failed to consider, model or include receptors and residences in the towns of Stockholm and Waverly. While the proposed project offers setbacks away from the towns of Waverly and Stockholm, setbacks do not address the issue of the effects of sound and flicker on the residences of Waverly and Stockholm. The Applicant's modeling buffer zone, as well as the proposed project site, includes the towns of Waverly and Stockholm, but Applicant did not consider, model or include all the receptors and residences in the two towns. The large number of town residences within the proposed project is identified in the Application. See Application page 75 Applicant did not do complete sound and flicker modeling for Waverly and Stockholm. Applicant's evidence is void of material and necessary information concerning the consequences of sound and flicker on the residents of Stockholm and Waverly. The lack of relevant and material evidence makes it impossible for Intervenors to evaluate a complete Application which covers 53,186 acres of South Dakota.

9b.) Applicant's astonishing last-minute presentation of Application evidence included **Exhibit A55 –Proposed Turbine Drops and Moves**. This exhibit was presented to the Intervenors and the Commission on the first day of the evidentiary hearing June 11th, 2019. Revealing *for the first time* in a 6 month application process several proposed turbine drops and several proposed turbine moves. This last-minute disclosure did not provide adequate and timely notice to Intervenors on a substantive and material aspect of the Application. Applicant's Exhibit A55 represents that turbines will be 'dropped' from the project. However the testimony of Applicant witness Wilhelm at the evidentiary hearing contradicts this proposition. Mr. Wilhelm testified during the evidentiary hearing that, 1. The turbines will not be dropped but will actually be reserved for possible later use, and that, 2. The relocation of the turbines that Applicant offered to move is not to be disclosed. Applicant provided no coordinates for the turbines to be

relocated. Further, the so-called dropped turbines proposed do not address witness Hessler's recommended 16 turbine relocations. The representations of Applicant regarding the so-called dropped turbines, and Applicant's suggested turbines to be moved, found in Exhibit A55 are *misleading at best*. Turbines identified as CRII – 127 and CRII - 129 are included among the so-called dropped turbines. These turbines are not turbines sites for the proposed project. These turbines sites are part of a different wind farm project altogether. And, three turbine sites to be 'moved' (CR II Alt 3, CRII 126, CRII 133) are not a part of the proposed project. The three turbines are a part of a different wind farm project altogether. Further, and just as material, Applicant's proposal found in Exhibit A55 *does not move* ten of the turbines sites recommended to the Commission by Staff witness Mr. Hessler for relocation. See Exhibit S1a Applicant provides no designated placement sites for the 'moves' it suggests it would make. The map produced by Applicant at A55 and the accompanying proposal is an attempt by Applicant to offer something of no relevant value to the legitimacy of the proposed Application in exchange for approval of the proposed project by the Commission, the Intervenors and the affected property owners. Applicant's proposal should be labeled a dance of dissemblance. The lack of relevant and material information makes it impossible for Intervenors to timely evaluate a completed Application which covers 53,186 acres of South Dakota.

9c.) Although it is a requirement of the permit process, the Applicant did not timely file documents needed to evaluate the Application and its impacts to the environment and citizens. Applicant represented from and after January 2019 that no turbines would be placed on grasslands or wetlands. Application page 79 Applicant's representation is not true. On June 4, 2019 Intervenors learned through data request responses in Exhibit A45-3 the matter of missing USFWS easements. An Applicant may only place turbines on the upland portion of a federal

wetlands easement parcel. The maps submitted by Applicant do not adequately reflect the location of wind turbines on parcels designated as federal wetlands parcels. In this proceeding a reasonable person cannot determine the location of turbines proposed to be located in the 7 wetland parcels. The lack of relevant and material information makes it impossible for Intervenors to evaluate a completed Application for a proposed project that covers 53,186 acres of South Dakota, without all the required information timely provided.

9d.) Applicant misled the parties concerning a claimed, completed Avian Study. The Applicant provided an incomplete Avian Study in which 15,500 acres were not included, although the written Application represents that all such matters are good to go. And Applicant did not provide biological studies and information concerning native grasslands and mammals. The lack of relevant and material information makes it impossible for Intervenors to evaluate a completed Application for a proposed project that covers 53,186 acres of South Dakota, without all the required information timely provided.

9e.) Intervenors' Second Motion to Deny provides an illustration of the Applicant's failure to timely disclose and failure to provide proper notice, adequate information and failure to provide Intervenors due process. In paragraph 14 of the Patrick Lynch affidavit in support of the motion, Applicant's misrepresentation to the record, to the Commission and to Intervenors is recited. Patrick Lynch Affidavit filed 5/17/2019 The Lynch Affidavit reveals Applicant's failure to disclose a material fact. Until Applicant was obliged to respond to the Second Motion, Applicant withheld the fact that it did not have legal access to 25 proposed turbine locations. In its motion response Applicant did not deny Applicant's lack of an easement, even though Applicant had represented in its filings from January 2019 until the Second Motion was filed (the end of May 2019) that it had legal access to the 25 proposed turbines. The false representation

was made for 4 months of the 6 month application process allowed by law. Applicant knew the easement did not exist. And in response to the Second Motion Applicant further admitted there were six expired land agreements; while in a separate disclosure in June 2019 Applicant admitted that there were seven material land agreements necessary for the project. Without knowledge of the location of turbines, the location of easements and collection lines it is and was impossible for Intervenors to understand, research and timely challenge a completed Application.

10. Intervenors incorporate by reference into this Brief: Intervenors' filed Brief in support of their First Motion to Deny and Dismiss, Intervenors' filed Reply Brief in support of their First Motion to Deny and Dismiss, Intervenors' filed Brief in support of their Second Motion to Deny and Dismiss, and Intervenors' filed Reply Brief in support of their Second Motion to Deny and Dismiss. Intervenors also incorporate by reference into this Brief Intervenors' hearing Brief on Intervenors' Motion to Strike testimony of witness Haley.

CONCLUSION

11. The Application does not meet the criteria required by South Dakota Codified Laws. The construction of the project does not meet the requirements of South Dakota Codified Law 49-41B. Applicant has not demonstrated that the proposed facility will comply with all applicable laws and rules. Applicant has not demonstrated that the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area. Applicant has not demonstrated that the facility will not substantially impair the health, safety or welfare of the inhabitants.

12. Even if reviewed in the best light (which is not the legal standard for assuring a party due process of the law, and does not comply with Applicant's required burden of proof) the pending Application is murky, muddled, incomplete and with material information unknown. The Commission and the Intervenors should not have this many unanswered questions, and the Applicant unfulfilled legal obligations, all at this stage of the proceeding. Because there are so many and because of the significance of the unanswered questions as well as an incomplete Application, the Commission should deny the permit application. Further, based upon the arguments described in this Post-Hearing Brief and based upon the findings and law described in Intervenors' Proposed Findings of Fact and Conclusions of Law the Application should be denied. In addition, the application process in this proceeding has denied and infringed upon Intervenors' due process rights including their opportunity to be heard at a meaningful time and in a meaningful manner. Mathews v. Eldridge, 424 U.S. 319, 333 (1976). The Applicant has failed to meet its burden of proof under SDCL 49-41B-22 and ARSD 20:10:01:15.01. The Application should be denied.

Dated this 1st day of July, 2019

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