

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

<b>IN THE MATTER OF THE APPLICATION</b>	)	<b>Staff's Response to Motion to Deny</b>
<b>BY CROWNED RIDGE WIND II, LLC FOR</b>	)	<b>and Dismiss</b>
<b>A PERMIT OF A WIND ENERGY</b>	)	
<b>FACILITY IN DEUEL, GRANT AND</b>	)	<b>EL19-003</b>
<b>CODINGTON COUNTIES</b>	)	
	)	

COMES NOW, Staff of the South Dakota Public Utilities Commission (Commission) and hereby files this Response to Motion to Deny and Dismiss. Staff generally agrees with the legal standards regarding a motion to dismiss as set forth in the Motion. Staff will address each alleged failure individually.

**1. Estimated cost of construction**

Section 5.0 of the Application states the estimated cost of the facility. Staff used this information to calculate the filing fee for this docket. Because Staff only relies on this information to calculate a filing fee, it is not material to the Application.

**2. Local Review Committee**

Wind siting applications do not require a local review committee. SDCL 49-41B-6 provides for the establishment of a local review committee for energy conversion facilities and AC/DC conversion facilities. A wind energy facility is not considered an energy conversion facility for the purpose of SDCL Chapter 49-41B. In 2005, the Legislature removed “wind energy facility” from the definition of “energy conversion facility” in SDCL 49-41B-2.<sup>1</sup> Therefore, for any wind energy facility that files after July 1, 2005, no local review committee is required.<sup>2</sup>

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<sup>1</sup> See SL 2005, ch 250, § 2.

<sup>2</sup> Staff notes that as of July 1, 2019, this will also apply to solar energy facilities. For interested persons, audio of committee discussions regarding this change during the 2019 session provide discussions of applicability of local review committees and other requirements to wind and solar facilities.

**3. Disclosure of facility structures and disclosure of interconnection facilities  
(paragraphs 4 and 5 of Intervenor’s brief)**

The distance between turbines can be ascertained from the layout figures provided with the Application. While Staff typically requests and receives the GIS shapefiles from applicants, Staff has never felt additional information would be helpful or relevant. In recent dockets, all applications have included a turbine layout, which provides more useful information than just providing distances.

Regarding ARSD [20:10:22:33.02](#)(11), (12), and (13), those subsections refer to *interconnection facilities*, which were separately permitted.<sup>3</sup> An interconnection facility is the project components from the collector substation to the point of interconnection. Crowned Ridge has already received a permit for the transmission line from the collector substation to the Big Stone South Substation.<sup>4</sup> Therefore, this information is not needed in this application. Further, the definition of wind energy facility in [SDCL 49-41B-2\(13\)](#) clearly identifies power collection systems and interconnection systems as two separate project components. Therefore, the interconnection facility identified in the rules is not referring to the power collection system that was submitted as part of the wind farm Application.

**4. Setback distances (paragraph 6 of Intervenor’s brief)**

Staff interprets the requirement to provide setback distances to be satisfied if the application contains information on the minimum county setbacks. This information is provided in section 13.1.2 of the Application. Additional information can be found in the sound study, which includes the distance from each receptor to the nearest turbine.<sup>5</sup>

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<sup>3</sup> See dockets EL17-050 and EL18-019

<sup>4</sup> See docket EL17-050

<sup>5</sup> See updated Appendices A through D for Appendix H, filed February 27, 2019.

**5. Ownership (paragraph 7 of Intervenors' brief)**

ARSD 20:10:22:07 provides that the application shall contain a complete description of the current and proposed rights of ownership of the proposed facility and the name of the project manager. Staff has always interpreted this rule to refer to the development entity that owns the Project and those persons or entities with ownership interest in the development entity. Because Applicant is the appropriate party to respond to the Boulevard Associates, LLC issue, Staff will not opine as to the relevancy of that entity at this time other than to note that unless Boulevard Associates, LLC has some ownership interest in the development entity, it is not relevant to the Application.

**6. Impacts on landmarks of natural significance (paragraph 8 of Intervenors' brief)**

Identification of landmarks of natural significance is done through environmental and site characteristic studies conducted by the Applicant. Staff considers a landmark of natural significance to be a location that received a formal designation as such from a federal, state, or local government (e.g. a national park or a state park). This information was provided in Figure 13 of the Application. At this time, Staff is not aware of designated landmarks of natural significance within the project area that warrant an impact analysis beyond those identified in Figure 13 of the Application.

**7. Applicant's plans to coordinate with the local and state office of disaster services (paragraph 8 of Intervenors' brief)**

The Applicant identified it will coordinate with local emergency responders in sections 18.3.3 and 22.2 of the Application. Should additional information be provided into evidence that identifies additional coordination or a formal coordination plan is needed, Staff believes that this

can be properly accomplished through a permit condition should the Commission issue a permit.

#### **8. Mammal Inventories (paragraph 9 of Intervenors' brief)**

Effects related to fauna are discussed in section 11.3 of the Application and associated Application Appendixes. Wildlife studies are done by wind developers for specific species of concern or species that are known to be potentially impacted by a wind farm. Studies that wind developers end up conducting are based on wildlife agency (South Dakota Game, Fish & Parks and U. S. Fish & Wildlife Service) recommendations. Appendix B of the Application provides the agency coordination that Crowned Ridge completed during early stages of project development. The appropriate studies/surveys to conduct for Crowned Ridge, and the study/survey methodologies, were discussed during coordination with the wildlife agencies. Staff found that no wildlife agency recommended a mammal survey similar to the one contemplated in the Intervenors' Brief be completed for this project. Since the wildlife agencies are the experts in their fields and a mammal survey as contemplated in Intervenor's Brief was not requested or recommended, at this time it is Staff's opinion that one is not needed to understand the potential impacts to the local fauna. Should the intervenors present expert testimony and evidence on the need for a mammal inventory to properly assess project impacts, Staff will address this in rebuttal testimony or at the evidentiary hearing. Finally, Staff notes that a mammal survey specific to foxes, beavers, and burrowing animals was not recommended by the wildlife agencies for other wind projects in the same ecoregion.

#### **9. Easements (paragraph 9 of Intervenors' brief)**

In their brief, Intervenors argue that the Application is lacking because it does not include "material representations regarding the terms and conditions of private landowner turbine

easements or leases and related landowner construction easements or leases.”<sup>6</sup> Staff obtained a copy of an easement through discovery, which any party to the proceeding may do. The rules do not specifically require that the easement be provided in support of an application. Staff does agree that it is relevant and useful information, however, there is not a basis to require the easement contracts to be filed with every application.

### CONCLUSION

For the reasons stated above, Staff believes the Application was consistent with all recent wind siting applications and was filed generally in the form and content required by SDCL Chapter 49-41B and ARSD 20:10:22. Therefore, Staff recommends that the Commission deny the Motion to Deny and Dismiss.

Dated this 30th day of April 2019.

  
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<sup>6</sup> Intervenors’ Brief, P. 9.