BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE APPLICATION BY CROWNED RIDGE WIND II, LLC FOR A PERMIT OF A WIND ENERGY FACILITY IN GRANT, CODINGTON AND DEUEL COUNTIES	)))))	**Docket EL19-027** **Intervenors Amber Christenson, Allen Robish, and Kristi Mogen** **Post Hearing Brief**

COMES NOW Intervenors, Christenson, Robish and Mogen, and jointly submit their Post-Hearing Brief, including Intervenors' incorporated Findings of Facts and Conclusions of Law, and respectfully request that the Commission deny the pending permit for construction of a Wind Energy Facility for Crowned Ridge Wind II, LLC in Deuel, Grant and Codington counties.

STATEMENT OF THE CASE AND INTRODUCTION

On July 9, 2019, the South Dakota Public Utilities Commission (Commission) received an Application for a Facility Permit (Application) from Crowned Ridge Wind II, LLC (Crowned Ridge or Applicant), a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC. Crowned Ridge proposes to construct a wind energy conversion facility to be located in Deuel, Grant, and Codington Counties, South Dakota (Project). The Project would be situated within approximately 60,996 acres in the townships of Waverly, Kranzburg North, Kranzburg South, Troy, Rome, Goodwin, and Havana, South Dakota (Project Area). The total installed capacity of the Project would not exceed 301 megawatts (MW) of nameplate capacity. The proposed Project includes up to 132 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 230-kV collection substation, two permanent meteorological towers, and an operations and maintenance facility. The Project will utilize the Crowned Ridge Wind 11 5-mile 230-kV generation tie line and the Crowned Ridge Wind II collector substation to transmit the generation to the dead-end transmission structure adjacent to the Crowned Ridge Wind, LLC project's collector substation and conjoined to the Big Stone South 230-kV Substation, which is owned by Otter Tail Power Company. Applicant has executed a purchase and sale agreement with Northern States Power Company (NSP) to sell NSP the Project and the Facility Permits once constructed. The Project is expected to be completed in 2020. Applicant estimates the total cost of the Project to be $425 million.

On July 11, 2019, the Commission electronically transmitted notice of the filing and the intervention deadline of September 9, 2019, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv. On July 11, 2019, the Commission issued a Notice of Application: Order for and Notice of Public Input Meeting: Notice of Opportunity to Apply for Party Status. On July 31, 2019, the Commission issued an Order Assessing Filing Fee; Order Authorizing Executive Director to Enter into Consulting Contracts; Order Granting Party Status (Amber Christenson, Kristi Mogen, Allen Robish). On August 26, 2019, the Commission issued an Order Granting Party Status (Garry Ehlebracht, Steven Greber, Mary Greber, Richard Rall, Amy Rall, and Laretta Kranz). On August 26, 2019, a public input meeting was held as scheduled. On September 20, 2019, the Commission issued an Order Granting Motion Establishing Procedural Schedule and an Order Denying Request for Confidentiality. On October 1, 2019, the Commission issued an Order for and Notice of Evidentiary Hearing. On December 2, 2019, the Commission issued an Order Granting Motion to Appear Telephonically. On January 14, 2020, Applicant filed a Motion to Strike. On January 15, 2020, lntervenors filed a

Reply to Motion to Strike Testimonial Excerpts. On January 22, 2020, the Commission issued an Order for and Notice of Motion Hearing. On January 31, 2020, Commission staff filed its Partial Joinder of Motion to Strike. On February 14, 2020, the Commission issued an Order Granting, in part, Motion to Strike

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 15-6 and 49-41B and ARSD Chapters 20:10:01 and 20:10:22. The Commission may rely upon any or all of these or other laws of this state in making its determination.

The evidentiary hearing was held as scheduled, beginning on February 4, 2020, and ending on February 6, 2020. At the conclusion of the evidentiary hearing, a briefing schedule and decision date was set by the Commission. As such, Intervenors submit this Post-Hearing Brief and, as lay persons, also seek to hereby incorporate all facts and legal references as proposed findings of facts and conclusions of law, by and on their behalf.

Applicant is seeking a permit from the Commission to build a wind farm in Deuel, Grant and Codington County 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:

1) The proposed facility will comply with all applicable laws and rules;
2) 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. An applicant for an electric transmission line, a solar energy facility, or a wind energy facility that holds a conditional use permit from the applicable local units of government is determined not to threaten the social and economic condition of inhabitants or expected inhabitants in the siting area;
3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and
4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government. An applicant for an electric transmission line, a solar energy facility, or a wind energy facility that holds a conditional use permit from the applicable local units of government is in compliance with this subdivision.

Failure to meet the burdens imposed by 49-41B-22 requires a denial.

ARGUMENT

Pursuant to the evidence received at hearing, Crowned Ridge Wind II, LLC (CRWII) has failed to meet its burden. SDCL 49-41B-22 (1). In part, Applicant has completely failed to prove that the Project will comply with the version of the Grant County ordinance that was in effect at the time the CUP was jointly granted to Crowned Ridge Wind I, LLC (CRWI) and Crowned Ridge Wind II, LLC, since such ordinance governs the Conditional Use Permit (CUP). CRWII submitted to the docket Exhibit A19-3, Grant County Ordinance 2016-01C adopted December 28, 2018, effective date of January 28, 2019. The submission was a working copy which shows the changes being proposed to the ordinance after the CUP was issued on December 17, 2018, to CRWII. Intervenor Amber Christenson supplied Exhibit AC-18 which was admitted into the record. Exhibit AC-18 is the Grant County Ordinance, which governs the joint Grant County CUP of CRWI/CRWII.

Christenson questioning Wilhelm regarding the Grant County CUP:

"Q. The date of the approval for the Grant County Conditional Use Permit was December 17, 2018. Do you agree with that date?
A. Yes, I do.

Q. Okay. Now if you would refer to the Applicant Exhibit 19-3, page 1, in the lower left-hand corner…
Q. It's just the county ordinance for Grant County that you submitted…
Q. … In the lower left-hand corner of page 1 of that document would you please read to the Commission the date the Grant County ordinance was adopted.
A. It shows December 28, 2018.
Q. Okay. Thank you. December 28, 2018. That would be 11 days after you received your Conditional Use Permit; correct?
A. That would be correct, that it was officially adopted after we received our permit approval, …
Q. …Now please read to the Commission the date of the – the effective date of the ordinance. …
A. January 28, 2019.

> Q. Okay. So like a month and 10 or 11 days after you received your Conditional Use Permit. So at the time you received approval for your Conditional Use Permit for Crowned Ridge II the prior ordinance was in effect governing that Conditional Use Permit, not the version that's submitted in A19-3; correct?
> A. That would be correct." [Transcript 2/4/2020, page 47, line 14 page 49, line 3.]

Applicant witness Wilhelm goes on to describe the working copy of the Grant County ordinance that was submitted to the docket as Applicant's Exhibit A19-3:

> Applicant witness Wilhelm: …" what we provided is Exhibit A19-3 is the markup version of what the final ordinance came to be. And the providing of this was our means of showing what changed in the ordinance so people could track it, and we were a big part of that process and something that we're proud of. So it's just the redline or marked-up version…" [Transcript 2/4/2020, p53, line 21-p54, line 3] [Exhibit A19-3]

The governing ordinance of the Grant County CRWI/CRWII CUP in regard to Noise says in Section 1211.03, Item 13:

> 13. Noise. Noise level *shall not exceed 50 dBA,* [emphasis added] average A-weighted Sound pressure including constructive interference *at the perimeter of the principal and accessory structures* [emphasis added] of existing off site residences, businesses, and buildings owned and/or maintained by a governmental entity. [Exhibit AC-15, numbered page 15, Item 13] [Exhibit AC-18] [Exhibit A19-3, Item 14]

The governing ordinance for this Grant County CUP, *does not differentiate between participants and non-participants* in regard to Noise; each is provided a sound pressure limit of 50 dBA at the *perimeter of the principle and accessory structures*. (see above) The version of the ordinance, which governs the Applicant's CUP does not allow for waivers.

Applicant failed to provide sound and flicker studies that included all impacted receptors and homes. According to the Letter of Assurance provided in Applicant's Exhibit A1-K , Appendix K—County Conditional Use Permits, the Grant County Letter of Assurance to Crowned Ridge LLC, Item 3, Subset b, Obligation to Meet Requirements:

> "Applicant agrees that the construction and operation of all WES towers will comply with noise and shadow flicker thresholds *exhibited in the application's noise and shadow flicker analysis*." [Exhibit A1-K]

In their application to Grant County for the joint CRWI/CRWII CUP, the Applicant provided a sound study that included accessory structures. [Exhibit AC-19] The sound study included 181 receptors.

Applicant witness Haley testified regarding the sound and flicker studies submitted to this docket and to each of the 3 counties for the CRWII permit hearings for CUPs (Codington and Grant Counties) and a Special Exception Permit (SEP) (Deuel County). Intervenor Ms. Christenson questioning Applicant witness Haley: "Q. In the Grant County Conditional Use Permit Letter of Assurance, which is Exhibit A1-K… Okay. It says on page 11, item 3 --…Oh, sorry. It's subset 3 -- or subset B. I'll just read it to you… "Applicant agrees that the construction and operation of all WES towers will comply with noise and shadow flicker thresholds exhibited in the Application's Noise and Shadow Flicker Analysis." In the studies presented in this docket there are four receptors listed for Grant County. In Exhibit AC-19, which is probably in your folder on the corner there. My late-filed exhibit. A. You said AC-19?...Q. That's the Grant County …sound and flicker report? A. Yep. Q. If you go to page 17 and the following four pages, so a total of five pages, you'll see those are all receptors for Grant County. And I counted 181 receptors in Grant County for that permit. A. Uh-huh. Yes. Q. And, like I say, the sound and flicker -- or the sound study submitted to this docket has four. A. Yes. Q. So how could you possibly be able to know if you're in compliance with the Conditional Use Permit if you're missing 179 receptors for study?...A. This is a report from 2018.Q. Yes. This is your Conditional Use Permit that you have to abide by showing -- showing how the sound profile travels out into the county. But there's no receptors in your PUC sound study showing that. A. This report is

from 2018, and the layout and the ordinance are completely different today than they were when this report was generated. Q. But the governing ordinance for that Conditional Use Permit and the Letter of Assurance that's been submitted to this docket say that you have to abide by these shadow and sound studies that you submitted to Grant County. You understand? A. I think I do." [Transcript 2/4/2020, page 236, lines 1-2, page 237, line 1 – page 238 line 6, line 17 – page 239, line 5], [Exhibits A1-K and AC-19]

Also included in Exhibit AC-19, Appendix J of the Application to Grant County for a Conditional Use Permit, are the Dakota Range turbines added to the sound profile of CRWI/CRWII. However, Dakota Range turbines have not been included in the sound study submitted to this docket, Docket EL19-027. The questions below were posed to Mr. Haley by Ms. Christenson on February 5th to correct his erroneous statement the prior day, when he *thought* Dakota Range turbines *were* included in the sound study of this PUC docket: Applicant attorney Mr. Murphy: "Q. Yesterday in response to questions you were asked whether Dakota Range turbines were included in your studies. Can you elaborate on correcting that statement? Replying, Applicant witness Haley: "A. Yes. The Dakota Range turbines are not included in the Crowned Ridge II study. I think when she said Dakota Range my brain heard Deuel Harvest. But, in fact, the Deuel Harvest turbines were included, not Dakota Range." [Transcript 2/5/2020, page 262, lines17-24]

So we say to the Commission, how can the Commission, Crowned Ridge Wind II, Staff, the Public, or the Intervenors know if this Application complies with SDCL 4941B-22 (1) 'all applicable laws and rules' if there is no study of all receptors, and not all possible influencing projects are submitted as part of a study? Of course, it is not possible. The Applicant has not met

its burden and the permit should be denied. SDCL 49-41B-22 (1) (2) (3) 4), ARSD 20:10:22:04 (5) ARSD 20:10:22:18 (1-L) (3)

The Grant County ordinance, which governs the CUP for this project, has no parameter in regard to flicker. The measure of 30 hours per year was not a part of the ordinance and as was testified at the evidentiary hearing by Applicant witness Wilhelm, the Applicant sought to impose the same limits as were part of Codington and Deuel counties. In his answer regarding the changes to the ordinance in Grant county, Applicant witness Wilhelm testified: "we were a big part of that process and something that we're proud of." [Transcript 2/5/2020, page 53, line 24-page 54, line 1] The fox was happy to guard the henhouse. However in absence of a flicker component to the Grant County Ordinance which governs the CUP, as in Prevailing Winds, the Commission may impose a Condition of 15 hours flicker limit. [Exhibit A19-3] [Exhibit AC-18]

In addition, SDCL 49-41B-13 states that an application may be denied, returned or amended at the discretion of the Public Utilities Commission for any deliberate misstatement of a material fact in the application or in accompanying statements or studies required of the applicant. The Commission also has the discretion to deny the permit for failure of CRWII to file an application generally in the form and content required by this chapter and the rules promulgated hereunder. ARSD 20:10:22:04 (5) requires "The truth and accuracy of the Application shall be verified by the applicant. Each application shall be considered to be a continuing application, and the applicant must *immediately* notify the commission of any changes of facts or applicable law materially affecting the application." CRWII failed to meet this requirement.

Crowned Ridge Wind II *did not immediately notify the Commission*, but waited over one full month, and submitted the information via Supplemental Testimony on September 20, 2019. [Exhibit A13] ARSD 20:10:22:04 (5). Applicant witness Hart, in response to Intervenor Data Request, Exhibit AC-9, "Q. You state that, "NSP exercised its downsize rights on August 16, 2019"; is that correct? A. That is correct." [Transcript 2/5/2020, page 121, lines 10-12]

The applicant shall provide an estimate of the expected efficiency of the proposed energy conversion process and discuss the assumptions on which the estimate is based. ARSD 20:10:22:32 The accuracy of the application was questioned by Chairman Hanson, directed to Applicant witness Wilhelm: CHAIRMAN HANSON: "On the last page, page 12 of your Direct Testimony, you state, "The wind facility will deliver enough energy to power more than 150,000 homes." Can you give us an idea of what the number of hours per year is produced --.... WITNESS: Megawatt hours on an annual basis? … I'll follow up with that and say I'm happy to supplement that information. I do not have that in front of me right now." [Transcript 2/5/2020, page 88, lines 7-22]

The affiliations of the Applicant are important for the State of South Dakota. Intervenors requested the affiliations of CRWII and NextEra. One company in particular, Blattner Energy, who has been working on a Crowned Ridge Wind II transmission line, and the sister project Crowned Ridge Wind I, was not included in the list and the Intervenors are concerned as to why [Exhibit AC-17]:

> Q. Exhibit AC-17, Applicant's response to Intervenors' question 10. We asked for a list of all affiliations, entities, associations, partnerships, agents, et cetera, that have been associated with the Applicant and NextEra since 2008 in South Dakota.
> My question here is I do not see Blattner Energy on the list of your associations. Would you tell me why they're not listed? Should they be?

A. I would say they should not be listed.
Q. Can you explain that to me since they're building the project for you? Ridge Wind II, LLC, which, you know, Blattner is the EPC contractor who constructs the projects. You know, they were very active on Crowned Ridge I.
But given the context of this question and the point of Crowned Ridge II, I would say Blattner not being included is correct.
Q. Who is constructing the Crowned Ridge II transmission line?
A. That would be Blattner Energy.
Q. So they should be included here then?...
Would you read the question for me, please, the data request.
A. "Provide a list of all the affiliations, entities, affiliated entities, corporations, associations doing business as limited liability company incorporation, partnership and agents that have been associated with the Applicant NextEra and Crowned Ridge Wind II since 2008 in South Dakota."
Q. Will your answer change concerning Blattner Energy now that you've read NextEra in the question?
A. Well, NextEra, I mean, when it's not the -- I mean, I don't want to get into the weeds here, but NextEra, NextEra Energy Resources, LLC? I mean, this is our parent company that's -- you know, I --
Crowned Ridge Wind II, LLC is an indirect subsidiary of NextEra Energy Resources, LLC. NextEra is spelled wrong. It's -- I mean, this isn't coming together here the way this question's asked.
MR. MURPHY: The objection here would be we had an objection in the data request. NextEra is not the Applicant. The Applicant is Crowned Ridge Wind II, LLC. And the reason the objection was there, it was over broad. NextEra Energy Resources is not the Applicant.
MS. CHRISTENSON: Thank you.
Q. My next question, is Crowned Ridge Wind II a subsidiary of NextEra Energy Resources?
A. Yes, it is. [Transcript 2/4/2020, page 66, line 15 continuing through page 70, line 18]

The truth and accuracy of information supplied to this docket by the Applicant was discussed during testimony with Applicant witness Mr. Hart on February 4th:

> The following question in that same Data Request [Exhibit AC-17], No. 6, Intervenors asked, "Please provide the annual balance sheet, annual profit and loss statement for the Applicant for the last three years."
> … Your answer, "Crowned Ridge Wind II does not have an annual balance sheet, annual profit and loss statement for the last three years and, therefore, there are no documents responsive to this request."
> ….
> Q. So your testimony would be there are no funds or business transactions for the company, Crowned Ridge Wind II, LLC?
> A. There are no funds assigned to Crowned Ridge Wind II, LLC.
> Q. Would you please turn to Exhibit AC-15 and find the fourth page, please.
> … Could you describe that document for the Commission, please.
> A. It looks like a check.
> Q. Can you tell me who issued that check?
> A. I seem to be corrected that there's a Crowned Ridge Wind II, LLC check.
> Q. So okay. Thank you. I guess that ends that. So that is a check issued by Crowned Ridge Wind II, LLC to Grant County on August 13 of 2018. That would be within the last three years; is that correct?
> A. Yes, ma'am.[Transcript 2/4/2020, page 116, line 11-page 117, line 19] [Ex AC-15].

Applicant, however, has not yet updated the Intervenors with the correct information as requested in the Data Request. Intervenors submit that, arguably, such failure/intentional inaction could/should serve as a disqualification to Applicant's permit request in this matter.

In addition, Intervenors note Applicant's additional failure as related to specifying the model of turbines and generators – since such has (apparently) not been determined. The Applicant has discussed nameplate, but not model. The Applicant leads the Commission to believe the turbines being used will possibly generate more than 2.1 or 2.3 megawatts at some point in time. Discussion with Applicant witness Thompson: "THOMPSON: Although these turbines *have the capability to be upgraded*, Crowned Ridge has ordered GE and GE will deliver turbines that are nameplated 2.3 megawatts and 2.1 megawatts." [Transcript 2/4/2020, page 172,

lines 9-12]. As such, once again, Intervenors submit that Applicant has failed to meet its burden here.

The Applicant admits it is not at this time capable of constructing a 301MW Project financially, or through Interconnection Agreements. SDCL 49-41B-22 (2)

Chairman Hanson discussed the financial viability of the project with Applicant witness Wilhelm: "CHAIRMAN HANSON: Does the financial viability of the project depend upon state subsidy? WITNESS: I would say that our ability to be able to procure the project up to the 300.6 megawatts is dependent upon some relief, I would say. You know, it gives us more certainty that we would be able to procure an additional 100 megawatts because of the uncertainty that comes with it from, you know, the network upgrade side of things. CHAIRMAN HANSON: Are you in the process of requesting a subsidy at the present time from the State? WITNESS: We are. We are beginning to prepare an application at this time, yes." [Transcript 2/4/2020, page 82, lines 2-14]

Intervenor Christenson spoke to Applicant witness Hart regarding funding of the project. Mr. Hart stated: "There are no funds assigned to Crowned Ridge Wind II, LLC." [Transcript 2/4/2020, page 117, lines 2-3]

The inhabitants of the area, and the state of South Dakota, could obviously be put at significant financial risk as Applicant witness Wilhelm testified that Northern States Power (NSP): "after the transfer of Crowned Ridge II to Northern States Power, Northern States Power may issue bonds or raise other financing which uses the project's assets as collateral." [Transcript 2/4/2020, page 65, lines 8-11.] Even as lay persons, Intervenors fully understand that such

tenuous language should highlight the troubling lack of certainty to the vaguely claimed viability of any such proposed project, especially at this key permit stage .

Intervenor Robish discussed problems with homeowners acquiring or keeping insurance with Applicant witness Marous: Q: "In your research have you found anyone having problem getting or keeping insurance in a wind project on their - like a residential house or -
A: I heard that for the first time a few months ago in Iowa as to an insurance broker." [Transcript 2/4/2020, page 149, lines 2-6]

Concern regarding Applicant's liability insurance, was also discussed by Mr. Robish with Staff witness Kearney. It is also extremely troubling to the Intervenors that the Applicant has not been vetted as to if they are self-insured, or insured at all. "Q. In your review of the Applicant's submissions and applications concerning this project, what did you find in regards to insurance coverage? A: Well, I would expect that NextEra or Crowned Ridge II has liability insurance. And once NSP purchases the project, they would also carry liability insurance. Q. Do they list that insurance with the PUC? A. We do not review that specific information. Q. Okay. I was just wondering if they were self-insured or if they had a carrier? A. That, I do not know. [Transcript 2/6/2020, page 613, line 25-page 614, line 15]. Intervenors are concerned with the Applicant carrying insurance, not only for the protection of the inhabitants should an accident or damage occur, but also in light of the Applicant's fiscal instability.

Property values were identified as affected by wind farm development in the area, including one home specifically which lost value because of a wind turbine sited near the home in the Crowned Ridge Wind II project area, the home is referenced as the 'Richter' property.

Applicant witness Marous and Staff witness Lawrence, who both testified on property values, confirmed to the Commission, the loss of a buyer and the substantial sum of $75,000 was directly attributed to the Project. Mr. Marous' Supplemental Testimony, [Exhibit A16, page 5, line 16]: "I confirmed with the broker that a buyer withdrew their offer with the reason of the proposed wind farm."

Staff witness Lawrence stated the same in his testimony on February 6th: "the buyer canceled the offer due to the proximity of the wind tower." [Transcript 2/5/2020, page 456, lines 20-22] [Exhibit S5, see CD-2] The property value loss due to the proposed siting of a turbine near this particular property, which was discussed as 'the Richter property' at the evidentiary hearing, was not incurred until *after* Codington County issued a CUP to joint CRWI/CRWII. The Board of Adjustment failed to protect the economic condition of inhabitants. The Commission has the opportunity here to protect the inhabitants from such harm as was imposed upon the Richters.

An Intervenor from another wind project in the area also had a $250,000 loss on the sale of property according to Mr. Lawrence's Supplemental Testimony, "in the final analysis, we lost roughly $250k on a 30 acre parcel." [Exhibit S6, page 17,DAL-Exhibit HB].

Mr. Lawrence's further testimony discusses a property that was a 'no sale'. A property that was listed, surrounded by turbines, and the homeowner was unable to sell the property. "There is one sale that I didn't mention in my Direct Testimony called JE-1 that was an expired sale. That was near Toronto.... And I actually went to the property and met with the owner on it…It was -- it's a very interesting property. Some of the wind turbines are within, from my estimate, 700 to -- 800 feet to 1,500 feet, surrounding the property. And, you know, I inspected the property. There was a newspaper article about this gentleman's property and his ability to --

he had a difficult time selling the property. It never sold." [Transcript 2/5/2020, page 465, line 8-page 466, line 4] [Exhibit S5]

Mr. Lawrence, in his Supplemental Testimony, says, "the CD2 transaction does show there *could* be situations where a rural residence could be negatively influenced by a wind tower, turbine or proposed wind project." [Exhibit S6, page 3, lines 4-6] And "It continues to be my opinion that even though the majority of market evidence supports the overall presumption that the selling prices of rural residences have not been influenced by the presence of a wind tower, turbine or project, *it does not rule out* the fact that there could be certain situations where there *could be potential negative influences to the selling price of rural residences* as evident by the analysis of CD2." [Exhibit S6, page 4, line22- page 23, line 4]

Mr. Lawrence's thoughts concerning a pool of possible buyers who will be removed from a seller's buyer pool. Applicant witness Marous testified in regard to Mr. Lawrence's market analysis: "But when it's all well and done, I think, you know, one of his conclusions is there's certain people that don't like turbines. I agree with him." [Transcript 2/4/2020, lines 8-10] Applicant witness Marous continued the same line of thinking when speaking with Chairman Hanson: "CHAIRMAN HANSON: Last question: Would you agree that there are some folks that just absolutely do not want to be living in a residence and are not willing to purchase a residence close to, again, proximately -- close is a relative term -- to a wind farm? MAROUS: I would agree." [Transcript 2/4/2020, page 163 line 24-page164 line 4]

Attorney Swanson discussed participation agreements, agreements forged with a non-participating owners who may not have enough land to host infrastructure, but are offered an agreement to become a participant in the project for some reason, with Applicant witness

Wilhelm: “MR.SWANSON: Q. Well, I think in 1-8 you indicate that – something about the need to mitigate impacts or identify impacts on nonparticipants. Is that a fair statement of what your testimony was? MR WILHELM: A. Yep.”[Transcript. 2/4/2020, page 34, lines 8-12]

It would seem the Applicant is aware of the possibility of property value loss near turbine sites by reading the January 19th, 2020 submission by the Applicant of the Participation Agreement offered in the project to a homeowner. At the bottom of the second page, continuing on page 3, Item 7. Release, the document reads: “Owner hereby releases Operator from any and all claims for damages rising from any injury or harm or conditions related to the Property, including but not limited to, any harm or loss due to nuisance, trespass, disturbance, effects *diminishment of the value of the Property* [Emphasis added], proximity of the Wind Farm to Owner's Property and/or residence, diminishment or interference with the ability to use or enjoy the Property, and any other injury or harm, of whatever kind or character, to persons or property, whether now known or unknown, or which may appear or develop in the future, caused or alleged to be caused by the Wind Farm or by Operator, its parent companies, affiliates, successors, assigns, whether claimed or not claimed, or which hereafter might be brought by Owner or any of their successors and assigns.”

The financial ‘hit’ a homeowner could take on their typically largest asset, should not be taken lightly by the Commission. The inhabitants must be protected. Loss of value in rural residential properties will continue to rise as more and more wind farms are built in this small area of northeastern South Dakota.

ARSD 20:10:22:31 is clear when it states: The applicant shall provide information concerning the generation, treatment, storage, transport, and disposal of solid or radioactive

waste generated by the proposed facility and evidence that all disposal of the waste will comply with the standards and regulars of any federal or state agency having jurisdiction.

Applicant witness Thompson was asked about blade disposal and also cement and rebar disposal by Ms. Christenson. The amount of blades at end of life of the project would total 10-12 million pounds. Mr. Thompson suggests the blades would be disposed of in a landfill. The fiberglass blades would be cut up on site, leaving fiberglass splinters in the area land and air and disposed of in a landfill. Mr. Thompson was hopeful a recycle process would be developed, but at this time no such recyclable process exists. [Transcript 2/4/2020, page 186, line 9-page 187, line 20]

It is important for the Commission to not plan on 'hope', especially considering the amount of turbines all being constructed in the concentrated area of northeastern South Dakota. Just as Chairman Hanson was concerned with forecasting and protection of the whooping crane, the Commission must also protect our precious environment. "And if we have a 25-year project here that may extend for I don't know how many years beyond as they find additional generating facilities that would compete in the energy industry, you know, you can't just plan for this minute, for this day when we're looking at something of this nature. We've got to look beyond. We've got to look beyond the three Commissioners here. We've got to look beyond this year or the past two years." [Chairman Hanson, Transcript 2/5/2020, page 403, line 18-page 404, line 1]

The toxicity of blades to humans or animals has not been determined. Mr. Thompson answering questions regarding toxicity of blades asked by Intervenor Christenson: "Q. Nothing toxic or carcinogenic? A. Based on the information that was provided to us from the GE manufacturer, I would say no. Q. And by that are you talking about the material safety data

sheets that would be provided? Is there anything -- A. I didn't go through it in its entirety" [Transcript 2/4/2020, page 178, lines 17-23]

The Applicant presented experts who are capable of conducting air quality studies, yet the applicant has completed no air quality study, nor has any plan to complete an air quality study of the project area. The Applicant has failed to meet its burden, yet again. ARSD 20:10:22:21

Applicant witness Lampeter was asked by Ms. Christenson:, "Q. According to your resume, you have experience in air quality modeling. Did Crowned Ridge Wind II ask you to perform any air quality study or model for this project? A. No." [Transcript 2/5/2020, page 314, lines 16-19]

Applicant witness Ollson: "my degree is in looking at environmental risk and health from stressors in the environments, everything from arsonic to particulate matter in the air…" [Transcript 2/5/2020, page 356, lines 10-12]

A cement batch plant is sited on a major highway, Highway 212, and directly adjacent to a non-participants home. The safety of the public with the amount of cement trucks entering and exiting during construction has not been considered, nor the safety of the non-participating family in regard to traffic and air quality. Staff witness Kearney commenting on the proximity of the batch plant next to the non-participating family's home: "we did not hear from that nonparticipating landowner as to concerns associated with the batch plant proposed as is in this project." [Transcript 2/6/2020, page 591, lines 7-9] The reason of not hearing from a non-participant, is not a reason for the Commission to not protect the public. The danger of increased

truck traffic on an already high traffic highway endangers the public. SDCL 49-41B-22 (2) (3) (4) ARSD 20:10:22:21

ARSD 20:10:22:18 (3) requires CRWII to conduct an analysis of the compatibility of the Project with special attention paid to the effects on rural life…"

Applicant witness Haley spoke of using the *most conservative* method to gauge shadow flicker by assuming a receptor is a 'greenhouse'. However, in gauging sound, the model does not use the most conservative approach. Christenson and Haley discuss: " Q.You (Haley) talked about the greenhouse sensor a little earlier being so much more conservative and that's why you use that? A. Yes. Q. Okay. Why do you not use the most conservative sensor for sound? A. What would that be? Q. I believe you said zero. A. Oh, you're talking about the ground attenuation factor? Q. Yes. A. Because if we used that factor, it would be so unrealistic as to basically make the wind farm not feasible, more than likely. Your turbine spacing would be so unrealistically far apart that it wouldn't be feasible to build the wind farm. [Transcript 2/5/2020, page 286, lines 19 – page 287, line 9]

A conservative approach, erring on the side of caution for rural inhabitants, should be the standard for permitting of any industrial wind facility. SDCL 49-41B-22 (3)

Rural residents are accustomed to the quiet of the surroundings, and to the darkness of the night sky. Both the quiet and the darkness are important parts of rural life, not only for the enjoyment of property, but also for the production of healthy livestock. Livestock, just like people, need rest and a respite from fear of predation. As we have already shown to the Commission in our brief, the Applicant did no studies in regard to livestock or wildlife noise or shadows.

To further protect the rural inhabitants, animal and human, we now call the attention to the Commission on the Applicant's lack of approval for an aircraft detection lighting system (ADLS). SDCL 49-41B-25.2 is not discretionary. 'For *any* wind energy facility that receives a permit under this chapter after July 1, 2019, the facility *shall be equipped* with an aircraft detection light system…'

Despite the plain language of SDCL 49-41B-25.2, the Applicant admits it has *not even applied* for FAA approval for ADLS lighting, and has no intention to apply until *after* the Commission would issue or deny a permit for CRWII project. Staff attorney Reiss to Applicant witness Wilhelm: "Q. Do you have a time line in mind as to when that application will be submitted to the FAA? A. Yes, I do. Right now we're targeting April of this year." [Transcript 2/4/2020, page 77, lines 2-5]

In a shocking exchange between Chairman Hanson and Applicant witness Wilhelm, Wilhelm admits the Applicant would challenge in circuit court, the authority of the Commission to enforce South Dakota law if this project were permitted and the Applicant could not meet the requirement of the law: "CHAIRMAN HANSON: Am I to infer from your statement on page 6 that I stated -- am I to infer that if the FAA were to state that you did not need the ADLS and yet the PUC said as a condition that you would have ADLS, would you contest that in Circuit Court? THE WITNESS: I would say yes." [Transcript 2/4/2020, page 86, lines 6-11]

The possibility of FAA denial is a very real and distinct possibility. "Through our consulting with Capital Air Space and through coordination with the FAA it has been expressed that there is potential radar saturation in this part of eastern South Dakota…" [Witness Wilhelm, Transcript 2/4/2020, page 75, lines 19-22]. Applicant witness Wilhelm answers Staff attorney Reiss when asked the meaning of radar saturation: "You know, through coordination with Capitol

Airspace it was expressed to us that when there is a certain number of proposed structures that have, you know, a tall height to them within certain proximities to certain radars, those radars have the potential risk for saturation." [Transcript 2/4/2020, page 76, lines 4-9].

The Commission is aware the Applicant does ***not*** have approval from the FAA for ADLS lighting and will not have such approval or denial until summer of 2020. "COMMISSIONER NELSON: So in relation to this project, Crowned Ridge II, understanding that you may not have permission from the FAA to implement this system until July or later…" [Testimony 2/4/2020, page 206, lines 6-9] Therefore, the Applicant may never be able to comply with SDCL 49-41B-25.2, 49-41B-22 (1) (2) (3) and the Commission must deny the permit. As a result, once again, Intervenors submit that Applicant has failed to meet its burden of proof in this respect.

Mr. Swanson, attorney for intervenors Ehlebracht and others, went on to discuss turbine density of the project with Staff witness Hessler: "… your direct testimony in S2. Page 3, line 10 where you say the project layout -- I'm trying to quote here. I believe this is a quote. "The project layout appears to have been aggressively devised." Could you explain that a bit further for me? A: Yes. I've seen a lot of wind turbine site plans, and this one struck me as being dense in the sense of they're trying to put a lot of turbines into the project area. Q: And it still remains that way as the plan now stands? A: Yes." [Transcript 2/5/2020, page 497, line 19-page 498, line 5].

The project *shall* be equipped with an aircraft detection light system. The Applicant has not met its burden. SDCL 49-41B-25.2

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 Project is still, at best, ambiguous. It is also accurate to say the Application on completion of the evidentiary hearing is not viable project. The Applicant admits it is not at this time capable of constructing a 301MW Project financially, or through Interconnection Agreements. SDCL49-41B-22 (2)

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, Docket EL 19-027, the Applicant and Staff submitted proposed permit conditions. As the record reflects, Staff and Applicant met privately, without all parties (namely, Intervenors) present at Condition negotiations. Staff Analyst Kearney discussing negotiations with the Applicant: A. "No. That's a good clarification. And once we get to the point where we want to -- once our testimony's been submitted and we've gotten through the discovery part of the proceeding is when we start verbally discussing conditions with the Applicant. And it's easier to facilitate those negotiations face to face and verbally rather than through formal e-mails." [Transcript 2/6/2020, page 598, lines 1-7]

Under the circumstances, Intervenors cannot and 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 met its burden.

In this proceeding are the Staff and Applicant's proposed 45 db(A) and 50 db(A) sound levels for the proposed project. Testimony of Staff witness Hessler supports 40 db(A) being an achievable design goal for the Project. Amber Christenson and Staff witness Hessler speaking about the use of low noise trailing edge (LNTE) blades and Enhanced Power Curve Operation

(EPCO) on CRWII turbines: “Q. So by adding those two things together, would it be possible for Crowned Ridge Wind II by using your suggestions to maybe get a little closer to the 40 dBA design goal? A. (Hessler) Well, actually they're not that far away from it…Because the modeling adds in a 2 dB uncertainty factor. And all that is is increasing the turbine level by 2. It's lifting all the levels by 2. And now the further commitment to use this EPCO optimization essentially in theory reduces all levels by 3 and a half dB. Now almost all of the nonparticipants, according to current modeling, are in the 40 to 43-is range. So by setting aside the safety factor in the modeling and by using this EPCO, in effect, the actual level should be around 40 or less for just about everybody.” [Transcript 2/5/2020, p510, line 10-page511, line 1].

Because experts believed it to be an achievable design goal, in Prevailing Winds project, the Commission so ordered a 40 db(A) limit at non-participating residences. Intervenors’ attorney Mr. Swanson:

> “In the Commission's Final Order in EL18-026,Prevailing Wind Park, at paragraph 65 we find, "The record demonstrates that 40 dBA at nonparticipating residences is an appropriate reasonable sound limit to protect the welfare of nonparticipants." And then at 67, paragraph 67 on that same final order, "The record demonstrates that a 30-hour-a-year limit is merely an industry standard," and the Commission went on to find that in that case it should be 15 hours for nonparticipants. And I have two general points I'd like to make about that. First, the PUC has made the noise finding in EL18-026 on the strength of an expert's opinion, Mr. Hessler. You've been delegated, the Commission, the authority to make a determination as to the substantial impairment of health, safety, or welfare of inhabitants. The legislature gave you no other apparent guidelines to follow.” [Transcript 24/2020, p24 line 22 – p25 line 14]

The importance of sleep cannot be overlooked by this Commission. To provide for the protection of the health of residents, a 40 dB(A) requirement should be imposed on the project. Applicant witness McCunney addressing sleep disturbance and health to Ms. Christenson: “CHRISTENSON: Q. So stress from annoyance, sleep deprivation could lead to a health effect?

I guess that would be my question. A. Well, certainly *sleep deprivation can lead to adverse health effects, no question*." [Transcript 2/5/2020, page 324, lines 13-17].

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).

The Applicant failed to prove the project will not substantially impair the health, safety or welfare of the inhabitants. SDCL 49-41B-22 (3) The Applicant did not provide a description of the existing environment at the time of the submission of the application. ARSD 20:10:22:13

No pre-construction sound study was submitted to the Commission to provide a description of the existing environment.

> Question directed to Applicant witness Haley: "Q. No preconstruction ambient noise study was conducted by you or anyone else that you're aware of?
> A. That's correct." [Transcript, 2/4/2020, page 229, lines 17-19]

> Question directed to Applicant witness Lampeter: "Q. Did Crowned Ridge Wind II ask you to perform a preconstruction sound modeling study?
> A. Yes. That study was conducted, and they requested it.
> Q. And that's the study that you were talking about that's not been published or submitted?
> A. That's correct." [Transcript, 2/5/2020, page 314, lines 2-8]

Although 4 experts appeared and gave testimony and evidence at the evidentiary hearing for CRWII, no infrasound or low frequency sound study was requested to be conducted, nor any study submitted to the Commission for review.

> Question directed to Applicant witness Haley: "Did Crowned Ridge Wind II approach you about assessing infrasound or low frequency noise for this project?
> A. No. They did not ask for a specific study on low frequency or infrasound noise." [Transcript, 2/4/2020, page 230, lines 7-11]

Question directed to Applicant witness Ollson: "Q. …Did Crowned Ridge Wind II retain your service for a study pertaining to infrasound or low frequency noise?...
A. it was an overview of the knowledge of the scientific literature … and why we would not be concerned." [Transcript, 2/5/2020, page 357, lines 7-21] Apparently, by Mr. Ollson's answer, a study was not produced, only an 'overview of the knowledge of literature' was done by this witness.

Question directed to Applicant witness Lampeter: "Q. Did Crowned Ridge Wind II ask you to perform any studies or modeling regarding low frequency noise or infrasound?
A. No." [Transcript, 2/5/2020, page 314, lines 12-15]

Question directed to Staff witness Hessler: "Q. Okay. Did Staff ask you to do any study in regard to infrasound and/or low frequency noise for this project?
A. They didn't ask me to do it, but I did talk about it in my Direct Testimony.
Q. Okay. Not an actual study, just --
A. Oh, no. No study." [Transcript, 2/5/2020, pate 511, lines 9-15]

No air quality study was requested or submitted to the Commission for review.

Question directed to Applicant witness Lampeter:" Q. According to your resume, you have experience in air quality modeling. Did Crowned Ridge Wind II ask you to perform any air quality study or model for this project?
A. No." [Transcript, 2/5/2020, page 314, lines 16-19]

No health expert was retained by the Commission to protect the public. Staff relied on a letter from the South Dakota Department of Health as their evidence of absence of health impairment by the project. Mr. Swanson and Mr. Kearney discuss Exhibit DK-3, a letter from the South Dakota Department of Health, in the following testimony: Mr. Swanson: "…your testimony discusses a response you received from South Dakota Department of Health. And I believe that relates to Exhibit DK-3 also. Am I correct? A. I believe so. Let me look at DK-3 real quick. A.Yep. That's correct. Q. All right. And I've noted here in my notes a quote as follows, and I trust this is accurate: "Agency" -- meaning South Dakota Department of Health -- "has not taken a formal position on wind turbines and human health." Is that a correct statement or a summary of DK-3 in part? A. Yes. That's correct. Q. All right. They haven't taken a formal

position, but to your knowledge, have they taken an informal position, if that's possible? A. The information that we have is what has been provided in this docket, and I'm not aware of an informal position -- Q. All right. A. -- taken by the Department of Health. Q. All right. Has the PUC itself, based on the response of the Department of Health, itself taken a position formally or informally about wind turbines and human health? A. Commission Staff relies on the experts in the health field to provide that position, and we would rely on this letter from the Department of Health. Q. But they haven't taken a position? [Transcript 2/6/2020, page 564, line 11-page 565, line 15] [Exhibit DK-3].

Mr. Swanson discussed the suggestion, in response to a data request by Staff, of a health professional to be contacted for information regarding the protection of the public regarding health: "Q. All right. In DK-2, which is part of your S1, you had made inquiry of my clients, the Intervenors from Goodwin, and in I-5 response -- this is at page 6 of 157, part of S1. Did you find that? A. Yep. Sorry. Yes. Q. All right. Our response had made reference to a Dr. W. Ben Johnson from Des Moines, Iowa, who is an electrophysiologist or a cardiologist. Did you make any effort to contact Dr. Johnson regarding possible medical testimony? A. We did not. We relied on the Department of Health. Q. That's the same Department of Health that said they didn't have a position or a formal position to take? A. Correct. Q. Did you discuss Dr. Ben Johnson's possible views with anyone at the Department of Health? A. No, we did not." [Transcript 2/6/2020, page 576, lines 1-17].

No study or proposed conditions concerning safety of travelers on the roadway were submitted to the Commission. This question was directed to Applicant witness Sappington "Q. Did your company conduct any studies concerning shadows on the roadway? No." [Transcript, 2/5/2020, page 385, lines 4-6] A question was directed to Staff witness Kearney by Intervenor

Robish regarding safe travel near turbines: “Q. Okay. Some of the turbines proposed will be sited 600 feet or less from a highway or roadway. Will there be a requirement for a placard or warning sign to be placed at such sites by that specific turbine to warn the public of a danger of ice throws? It's been done before. A. Yeah. And there's not a specific proposed permit condition in this one.” [Transcript, 2/6/2020, page 612, line 23-page 613, line 4].

Even though the Applicant hired qualified consultants for some studies, the Applicant did not perform, nor submit to the Commission an ice throw study for review. Question directed to Applicant witness Haley: “Okay. On line 15 you mentioned you've performed ice throw studies, and you said that in your opening statement. Did you perform any ice throw studies for this project? A. No, I did not. Q. Did Crowned Ridge Wind II ask you or anyone that you are aware of for any ice throw study to be done for this project? A. They did not ask me, and I do not know if they contacted anyone else.” [Transcript, 2/4/2020, page 229, line 21-page 230, line 5]

No study for domestic animals or wildlife for audible noise, air quality, shadow, low frequency noise or infrasound were requested or submitted to the Commission for review. ARSD 20:10:22:18 (1) (3) Question directed to Applicant witness Sappington: “Q. Did your company conduct any study concerning noise, audible and inaudible, including low frequency noise or infrasound on domestic animals? No.” [Transcript, 2/5/2020, page 385, lines 10-13] Question directed to Applicant witness Sappington: “Q. Did your company conduct any study concerning shadow effects on wildlife or domestic animals? No.” [Transcript, 2/5/2020, page 385, lines 7-9]

The density of not only this potential project, but also in combination with other permitted and existing projects, will affect the precious wildlife of South Dakota . Chairman Hanson and Staff witness Morey from the South Dakota Game, Fish and Parks discuss the egregious effects: “CHAIRMAN HANSON: Your answers talk about – on page 8 specifically,

your answer to question on page 12 state that "some species will not use grassland or wetland habitat within a certain distance of wind turbines." And on page 16 you speak of the cumulative impacts. There are a lot of wind towers in that area presently. A lot is a relative term, I suspect. But this one is going to have -- if it's approved, would have a *greater concentration of turbines*. With all of those turbines presently there and the potential for these, are you concerned about the cumulative impact, knowing that there's -- there is, in fact, according to your testimony, that some species will not use the grassland areas close to wind towers? THE WITNESS: *Yes. We are concerned with cumulative impacts.* There has been, as you mentioned, a lot of development in this area. And some of the research out of North and South Dakota, there's *seven out of nine breeding grassland bird species will avoid turbines* up to 300 meters, so about a quarter mile – not quite a quarter mile. About two-tenths of a mile." [Transcript 2/6/2020, page 546, line 8-page 547, line 4].

Applicant confidentially filed safety information with the Commission. Information of safety has not been conveyed to landowners. Ms. Christenson and Mr. Thompson discuss: "Q. Mr. Thompson, my first initial questions I don't need an exhibit. Safety manuals were filed confidentially in this docket. Could you tell me what the GE safety distance would be for being in the proximity of a turbine during normal operations? A. As referenced by the GE safety manual, this would be 1.1 times the tip height of the turbine." [Transcript 2/4/2020, page 173, line 20-page 174, line 1] Further discussion concerned abnormal operations, which Mr. Thompson explained would be the same safety setback requirement as normal operation.

Commissioner Nelson expounded on the question of the safety zone information being communicated to landowners in the project area. "If the safety zone means anything, it would seem that your company should communicate that with the landowners. But I'm understanding

that that has not happened; correct? THE WITNESS: I can't state definitely that it hasn't happened. I'm not aware of it." [Transcript 2/4/2020, page 204, line 17] SDCL 49-41B-22 (2) (3). The Applicant has failed to meet its burden. The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of the inhabitants or expected inhabitants of the area, nor impair the health, safety or welfare of the inhabitants.

CONCLUSION

Applicant's pending application is woefully deficient in meeting South Dakota's statutory criteria. As a result, the construction of the project cannot and does not meet the requirements of South Dakota Codified Law 49-41B-22. Applicant has failed to demonstrate that the proposed facility will comply with all applicable laws and rules. Moreover, Applicant has fallen well short in demonstrating that the facility will not pose a threat of serious injury to the environment nor to the social & economic condition of inhabitants or expected inhabitants in the siting area. Further, Applicant has also failed to prove and demonstrate that the facility will not substantially impair the health, safety or welfare of the inhabitants.

Applicant should therefore explore areas that are less densely populated, both as to humans and animals. Developers should be encouraged to develop in those areas. Our rural way of life, and our wildlife are precious, precious treasures that must be protected. Once the Coteau Prairie may be allowed to be scarred, it will obviously be scarred for life with unacceptable and unsightly relics of cement, rebar, fiberglass and other offensive refuse.

Consequently, Intervenors Christenson, Robish and Mogen strongly urge that the requested permit be denied. In the alternative, however, Intervenors submit that the following conditions must otherwise be required to govern any such proposed project:

- 40 dB(A) noise limit when averaged over a ten minute time period for non-participating residences;
- No shadow flicker shall be permitted on non-participating residents' homes; or, in the alternative, a 15 hour per year, 15 minute per day limit;
- 1500' setback from any public roadway to protect all travelers;
- Construction noise restriction to 40 dB(A) from 7 pm to 7 am.

For the reasons outlined herein, the proposed permit should be denied. Otherwise, at a minimum, requiring/imposing the above-listed (minimum level) conditions on the project will greatly minimize the risk(s) associated with/attributable to such project since – absent such necessary conditions – the project will substantially impair the health, safety, or welfare of inhabitants living in and around the project area. Moreover, Intervenors point out that there appears to be no evidence – none – in the record that suggests and persuasively demonstrates that the above-referenced important and necessary (minimum) conditions would or could somehow prevent such project from being built.

However, Intervenors make specific note that the project, as was presented and as testimony outlined at hearing, is ***not*** a financially viable project at this time. That is, Applicant has failed to present evidence that it can comply with all laws and rules, not only the county CUPs, but the Applicant has not even yet applied for the mandatory ADLS lighting, and therefore would necessarily legally challenge this body's authority if denied by the FAA. It is quite troubling to Intervenors – and, obviously, should be much more concerning to this regulatory body – to consider at this juncture as to whether that was/is the purpose for Applicant to have heretofore withheld the CRWII FAA ADLS application until after the permitting deadline? Intervenors submit that such action and/or obtrusive inactions by Applicant, as well as the other remaining

questions, are of such important significance that, if for no other reason, such should (also) serve as a basis for denial.

As noted here and as outlined at hearing, the Crowned Ridge Wind II project is not currently viable and, perhaps more importantly, if permitted will adversely impact and impair the life, health, safety and welfare of local inhabitants and, as such, the requested permit must be denied.

Dated this 2nd day of March, 2020.
Respectfully submitted by Intervenors:

Mr. Allen Robish
47278 161st St.
Strandburg, SD 57265
allen.robish@gmail.com
(605) 949-2648 – voice

Ms. Amber Christenson
16217 466th Ave.
Strandburg, SD 57265
amber@uniformoutlet.net
(605) 756-4119 - voice

Ms. Kristi Mogen
15160 471st Ave.
Twin Brook, SD 57269
silversagehomestead@gmail.com
(307) 359-2928 – voice