

THE LAW PRACTICE OF ARVID J. SWANSON, P.C.

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December 1, 2019

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Patricia Van Gerpen, Executive Director
SOUTH DAKOTA PUBLIC UTILITIES COMMISSION
Pierre, South Dakota

Re: File 6184-004. • *In re Docket EL19-027, Crowned Ridge Wind II, LLC
Codington, Grant & Deuel Counties*

Dear Director Van Gerpen:

This letter is an inquiry into ARSD 20:10:01:22.01, regarding the taking and use of discovery. I would be most appreciative if Staff counsel would address this inquiry; I represent several intervenors, namely, Garry Ehlebracht, *et al.*

In civil proceedings, written discovery may be initiated as to a particular party, but all parties to the proceeding are served. Although the cited rule says discovery before this Commission is to be conducted in the same manner, it strikes me that this is simply not so.

The docket contains a certificate of service for “Applicant’s First Set of Data Requests to Intervenors,” dated October 21, 2019. Although Applicant’s counsel claims to have served me that date, I did not receive either the “Certificate of Service” or the “first set” purportedly sent to me that same date. What I did receive was an email from Mr. Schumacher, stating – “AJ – Just a note to let you know your earlier response meets our data request – we just wanted to serve all intervenors the same with the request. Miles”.

I puzzled over this email the time, but finding no such data request, and always wanting to be fair and generous to opposing counsel, I thought perhaps Mr. Schumacher had gotten the cart ahead of the horse – that his email was sent in advance of his “first set.” Having other cases and things to do, I then forgot about the matter – until very recently. I again confirm, however, I’ve received no such “first set” data request. By review of the docket, I can see that other intervenors (not represented by me) responded to Crowned Ridge Wind II’s “first set.”

I can also determine – according to the filed Certificates of Service appearing on the docket – that Applicant *is also* responding to data requests of Staff – having done so on November 15, 2019, and again on November 26, 2019. But, *none* of these responses (according to the certificates) have been served on me, as counsel for intervenors (Garry Ehlebracht, et al.) or on those intervenors who are appearing *pro se*.

I am now advised that Staff’s First Data Request to Applicant (also not served on me at the time of initiation) involved more than 40 questions, and includes matters of direct concern or interest to my clients, as intervenors. As said, Applicant’s responses, likewise, were not served on me.

That Applicant and Staff can engage in some side bar exchange *with each other* – concerning my clients’ interests and without notice to intervenors or counsel - seems a procedure more fitting for a Star

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Chamber. Please assure me that the respective discovery requests – and responses – will be promptly served on *all* parties, and that Applicant will be directed by Staff to do likewise, which would seem to be the entire point of seeking “party status.”

If Staff is not able – or is unwilling - to do so as requested, I would then further request the concern expressed be placed on the Commission’s agenda for further resolution. Thank you.

Very truly yours,
ARVID J. SWANSON P.C.



A.J. Swanson

c: All persons listed in the current Service List,
as reflected in the Certificate of Service
submitted herewith, including counsel for
Applicant:

Miles Schumacher, Esq. (via Email Only)
LYNN JACKSON SHULTZ & LEBRUN, PC
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Garry Ehlebracht, *et al.*