

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

<b>IN THE MATTER OF THE</b>	)	
<b>APPLICATION OF CROWNED</b>	)	
<b>RIDGE WIND II, LLC FOR A</b>	)	<b>MOTION IN STRIKE</b>
<b>PERMIT OF A WIND ENERGY</b>	)	
<b>FACILITY IN DEUEL, GRANT,</b>	)	
<b>AND CODINGTON COUNTIES</b>	)	

**EL19-027**

**MOTION TO STRIKE  
CROWNED RIDGE WIND II, LLC**

1. Crowned Ridge Wind II, LLC (“CRW II”), by and through counsel, respectfully submits this Motion to Strike, and for the reasons set forth herein, hereby moves that the Commission issue an Order that:
  - a. Excludes the following testimony of Steven Greber: page 3 line 17, starting at “We” through line 26; and, also, page 4, line 6 through line 15 ending at “property rights”; and, further, page 4 line 25 through page 5 line 3. (*See Attachment 1*)
  - b. Excludes the following testimony of Amy Rall: page 2 line 20 starting at the second “and” through line 21. (*See Attachment 2*)
  - c. Excludes the following testimony of Garry Ehlebracht: page 3 line 16 starting at “I” through line 17 ending at “SDCL 11-2-14”); and, also, page 4 line 14 starting at “It” through line 18; and, further, page 4 line 20 starting at “This” through line 22 ending with “property”; and, lastly, page 4 line 24 starting with “Neither” through line 27.

## Argument

2. In contested cases, the Commission follows South Dakota Rules of Evidence in statute and used in the trial of civil cases by the circuit courts of South Dakota. *See* SDCL 1-26-19. The South Dakota Rules of Evidence, like the Federal Rules of Evidence, do not allow the admission of lay witness testimony on subjects that require specialized knowledge, such as the offering of legal opinions. SDCL 19-19-701(c) (lay witness testimony cannot be based on “specialized knowledge with the scope of § SCLC 19-19-702”); SCLC 19-19-702 (requires “knowledge, skill, experience, training, or education” to qualify as an expert); *Forster v. Gigli*, 550 Fed. Appx. 336 (7<sup>th</sup> Cir. 2014) (“Lay testimony offering legal opinions is improper.”) *United States v. El-Mezain*, 664 F.3 467, 511-512 (5<sup>th</sup> Cir. 2011) (under Federal Rules of Evidence 701 and 702, “[i]t is generally prohibited for a lay witness to interpret statutes and to give legal opinions.”).<sup>1</sup>
3. The above-identified testimony of lay witnesses Greber, Rall, and Ehkebracht constitute legal opinions, and, therefore, are inadmissible. In fact, in several instances, the lay witnesses concede the legal opinions were provided to them by their attorney, which also results in the testimony constituting inadmissible hearsay under SDLC 19-19-802. Given the identified testimony is inadmissible at the upcoming February evidentiary hearings in this proceeding, CRW II moves that the Commission enter an Order excluding the above-identified lay witness testimony prior to the start of the evidentiary hearings.

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<sup>1</sup> The Federal Rules of Evidence 701 and 702 are identical to South Dakota Rules of Evidence SDCL 19-19-701 and 19-19-702. It is appropriate for the Commission, as it would be for a South Dakota circuit court, to look to other court decisions in interpreting the South Dakota Rules of Evidence, when the other court is interpreting equivalent rules. *See Jacquot v. Rozum*, 2010 S.D. 84, ¶ 15, 790 N.W.2d 498, 503.

**Conclusion**

4. For the reasons set forth herein, the Commission should grant CRW II's Motion to Strike.

January 14, 2020

/s/ Miles Schumacher

Miles Schumacher  
Lynn, Jackson, Shultz & Lebrun, P.C.  
110 N. Minnesota Ave., Suite 400  
Sioux Falls, SD 57104

Brian J. Murphy  
Managing Attorney  
NextEra Energy Resources, LLC  
700 Universe Boulevard  
Juno Beach, Florida 33408  
[Brian.J.Murphy@nee.com](mailto:Brian.J.Murphy@nee.com)  
Office (561) 694-3814  
Admitted Pro Hac Vice

*Attorneys for Crowned Ridge Wind II, LLC*