

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

**IN THE MATTER OF THE)
APPLICATION OF CROWNED)
RIDGE WIND II, LLC FOR A)
PERMIT OF A WIND ENERGY)
FACILITY IN DEUEL, GRANT,)
AND CODINGTON COUNTIES)**

**RESPONSE TO INTERVENORS
MOTION AND AFFIDAVIT**

EL-19-027

**RESPONSE OF
CROWNED RIDGE WIND II, LLC**

Introduction

1. On November 18, 2019, Intervenor submitted a Notice of Filing of Affidavit of Steven Greber, and Motion for Examination or Admission upon Stipulation of Counsel (collectively referred to as "Motion"). Intervenor request that any cross-examination on the Affidavit of Mr. Greber be conducted prior to November 27, 2019, as Mr. Greber will not be available after that date for three to four months. Motion at 1. Intervenor request that any cross-examination be conducted by teleconference, because on November 17, 2019 Mr. Greber left for Florida. *Id.* In the alternative, Intervenor request that all counsel to the proceeding stipulate to waive cross-examination and agree to the submission of the Affidavit as evidence. *Id.*
2. Crowned Ridge Wind II, LLC ("CRW II") does not waive cross-examination of Mr. Greber and does not agree to the marking and submission of the Affidavit as evidence. Further, CRW II requests that the Commission deny Intervenor's Motion, including the request to make the Affidavit of Mr. Greber part of the record.

Argument

3. On September 20, 2019, the Commission established the procedural schedule in this proceeding, which set forth the dates for the filing of pre-filed testimony, discovery, rebuttal testimony, and the start of the evidentiary hearings. Under the established procedural schedule, Intervenor's testimony is due on December 9, 2019, and CRW II has until January 8, 2020 to submit rebuttal testimony. CRW II also has until January 14, 2020 to conduct discovery on Intervenor's testimony. Consistent with the procedural schedule, on October 1, 2019, the Commission also issued a Notice of Hearing announcing that the evidentiary hearings would be conducted on February 4-7, 2020. Intervenor's Motion, if granted, would substantially amend the established procedural schedule and effectively start the evidentiary hearings on or before November 27, 2019, which is less than 10 days away and over 2 months ahead of the scheduled evidentiary hearings.
4. Intervenor's Motion should be denied, because (1) Intervenor's request for an evidentiary hearing on or before November 27, 2019 is incompatible with Commission Rule ARSD 20:10:01:22.02 which requires that the Commission issue written notice at least 10 days prior to setting a date for a hearing; (2) Intervenor has not demonstrated that they cannot comply with the established procedural schedule; and (3) the granting of the Motion would be prejudicial to CRW II.
5. Commission Rule ARSD 20:10:01:22.02 requires that written notice be issued at least 10 days prior to setting a date for a hearing, unless the Commission determines there is good cause for a shorter notice period. Intervenor, however, fail to even acknowledge the requirements of Commission Rule ARSD 20:10:01:22.02 in their Motion. It is axiomatic

that the burden to demonstrate good cause for the Commission to waive Rule ARSD 20:10:01:22.02 is on the Intervenors. Given that the Intervenors did not address the good cause standard, they have failed to meet their burden to show good cause and the Motion should be denied as incompatible with the requirements of Commission Rule ARSD 20:10:01:22.02.

6. Further, even if the Commission, on its own initiative, were to consider whether there is good cause for waiving the 10 day notice requirement of Commission Rule ARSD 20:10:01:22.02, there is no good cause because Intervenors have failed to demonstrate they cannot comply with the established procedural schedule. At best, Intervenors have alleged that one witness is not available.¹ Intervenors, however, have failed to demonstrate why another witness, including Ms. Greber,² is not available to submit direct testimony on December 9, 2019, and have that testimony subject to discovery, rebuttal testimony, and cross-examination at the February evidentiary hearings. Therefore, the Motion should be denied, because Intervenors have failed to exhaust all reasonable means to comply with the established procedural schedule.
7. In addition, the granting of the Motion would be prejudicial to CRW II. CRW II has the burden of proof in the proceeding, and, as such, should have the ability to understand the totality of the testimony of the Intervenors and Staff prior to the submittal of CRW II's rebuttal testimony, the start of the evidentiary hearings, and the cross-examination of witnesses. Intervenors' Motion thwarts any ability for CRW II to understand the totality

¹ The Motion and Affidavit does not address when Mr. Greber knew he would not be available for the February hearings nor do they address the process undertaken to file the Motion and Affidavit in a timely manner.

² The Affidavit claims that Ms. Greber "usually returns to the Philippines" when her husband is working as Merchant Marine. The Affidavit, however, does not demonstrate that Ms. Greber or another witness is not available to address Intervenor's issues consistent with the Commission established procedural schedule.

of the testimony of the Intervenor prior to submission of its rebuttal testimony and the start of the evidentiary hearings and cross-examination. CRW II is further prejudiced by Intervenor's failure to identify Mr. Greber as a witness in response to a Staff Data Request,³ but, instead, Intervenor, at the last moment, identified Mr. Greber as a witness and requested that the witness be cross-examined in less than 10 days, and 2 months prior to CRW II putting on its direct case at the scheduled hearings. Also, on its face, Mr. Greber's Affidavit makes numerous broad and speculative assertions that CRW II should have an opportunity to conduct discovery prior to conducting cross-examination. The Motion, however, provides no schedule for discovery prior to the cross-examination of Mr. Greber in less than 10 days. Such a rush to start the evidentiary hearings is prejudicial to CRW II's ability to prepare its case and should be rejected. Therefore, Intervenor's Motion should be denied as prejudicial to CRW II.

Conclusion

8. For the reasons set forth herein, Intervenor's Motion should be denied and Mr. Greber's Affidavit should not be made part of the record.

November 16, 2019



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³ Intervenor did not identify Mr. Greber as a potential witness in response to Staff's Data Request 1-4 on October 21, 2019, and, subsequently, failed to supplement the response to Staff Data Request 1-4 to identify Mr. Greber as a witness.

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