

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF SOUTH DAKOTA

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In The Matter of the Request for a Declaratory Ruling Regarding Crowned Ridge Energy Storage I, LLC	EL25-_____  Petition for Declaratory Ruling
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Petitioner Crowned Ridge Energy Storage I, LLC (CRES) hereby requests the Public Utilities Commission of the State of South Dakota (“Commission”) for a declaratory ruling that the Commission does not have the statutory authority to require a facility permit for the construction and operation of an energy storage facility.

An indirect wholly-owned subsidiary of NextEra Energy Resources, LLC (“NEER”), Crowned Ridge Energy Storage I, LLC (“CRES” or “Petitioner”), plans to construct and operate an energy storage facility in Codington Couty, South Dakota. The projected commercial operations date of CRES is December 2027. At some time in the future, CRES will require financing which will also require a showing that CRES has obtained all required permits. Therefore, Petitioner seeks a declaratory ruling that the Commission does not have jurisdiction over the construction and operation of CRES so there is no ambiguity with respect to whether CRES should have obtained a facility permit from the Commission prior to the construction and operation of CRES.

In support of its Petition, CRES submits the following information required by ARSD

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**1. State statutes or Commission rule or order in question.**

The following statutes are in question:

- A. SDCL §49-41B-2(6): Definition of “Energy conversion facility” which is “any new facility, or facility expansion, designed for or capable of generation of one hundred megawatts or more of electricity, but does not include any wind or solar energy facilities that are designed for or capable of generating one hundred megawatts or more of electricity. This term includes a hybrid facility capable of injecting one hundred megawatts or more of electricity into the transmission or distribution system.”
- B. SDCL §49-41B-2(16): Definition of “Wind energy facility” which is “a new facility, or facility expansion, consisting of a commonly managed integrated system of towers, wind turbine generators with blades, power collection systems, and electric interconnection systems, that converts wind movement into electricity and that is designed for or capable of generation of one hundred megawatts or more of electricity.”

**2. Facts and circumstances which give rise to the issue to be answered by the Commission.**

CRES intends to construct a 120-megawatt energy storage facility and sell the output to Norther States Power Company (“NSP”). CRES will store energy generated by Crowned Ridge Wind, LLC (“CRW”) and non-CRW energy from the grid. CRES will inject the stored energy into the Big Stone Substation. CRES will neither generate energy nor convert wind or solar or any other resource into energy. Instead, CRES will store energy that has already been converted from a resource into energy, and, later, inject the stored energy into the grid. To inject energy

into the grid, CRES will execute a generation interconnection agreement (“GIA”) with MISO to inject energy through surplus interconnection capacity at the Big Stone Substation. The CRES GIA will be separate from the GIA executed by CRW. MISO completed its initial studies of CRES in earlier in 2025 with no showing of an adverse impact. GIA execution is projected for the third or fourth quarter of 2025 with the expectation that no system upgrades will be needed for CRW to inject energy into the Big Stone Substation.

CRES will connect the battery facility to the grid at the CRW collector substation through an approximate 1,355-foot 34.5 kilovolt collector line. CRES will not share collector lines or the collector line system with CRW. CRES’ storage of energy is separate from all of the facility components CRW uses to convert wind into energy. CRES will use the same gen-tie to inject energy into Big Stone Substation and will do so whether that storage energy comes from the CRW wind facility or the grid. The CRW collector substation will be expanded to accommodate two 2,500-ampere breakers for the connection of CRES. CRES will be operated by NEER’s Renewable Operations Control Center located in Florida. CRES will not be operated by personnel at the CRW site.

To achieve the December 2027 in-service date, CRES needs to start construction no later than the Spring of 2026.<sup>1</sup> Construction activities and practices are outlined in Exhibit 1. Exhibit 1 also sets forth measures that CRES will implement to mitigate sound from the facility. Even with the lack of jurisdiction of the Commission over CRES, CRES commits to work with CRW to ensure CRW does not exceed any Commission condition, including conditions related to sound, due to the operation of CRES.

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<sup>1</sup> These dates are different than those set forth in the CUP application due to more precise understanding of NPS’ timeframe and need for CRES.

In sum, CRES is a stand-alone facility, it is not operated by CRW, it is not part of the CRW collector system, interconnection system, nor any part of CRW's operation as a wind facility.

### **3. Applying the facts to the law demonstrates that the Commission does not have jurisdiction over CRES**

It is well settled that the Commission applies the same rules of statutory construction as a court. *See In the Matter of the Application of LTD Broadband LLC for the Designation as an Eligible Telecommunication Carrier for Purposes of Receiving Federal Universal Support*, Docket No. TC21-001, Order at Conclusions of Law ¶16 (Mar. 21, 2022), citing *Citibank, N.A. v. S.D. Dep't of Rev*, 2015 SD 67 at ¶12. "For both statutes and administrative rules, when the language of a rule is clear and unambiguous, the Commission's obligation is to enforce the clear language of the statute as written." *Id.*, citing *Hagmann ex rel. Est. of Hagemann v. NJS Eng'g, Inc.*, 2001 SD ¶102, *Citibank* at ¶12. The Supreme Court of South Dakota has elaborated that:

Words and phrases in a statute must be given their plain meaning and effect. When the language in a statute is clear, certain, and unambiguous, there is no reason for construction, and this Court's only function is to declare the meaning of the statute as clearly expressed.

*Endres v. Endres*, 2022 SD 80, ¶ 43, citing *Puetz Corp. v. S.D. Dep't of Revenue*, 2015 S.D. 82, ¶ 16, (quoting *State ex rel. Dep't of Transp. v. Clark*, 2011 S.D. 20, ¶ 5.)

It is undisputable that the terms energy storage or battery storage are absent from the Chapter 41B statute, including the definitions of "energy conversion facility" and "wind energy facility" set forth in SDCL §49-41B-2(6) and (16), respectively. Further, as the facts show, CRES falls outside these definitions as it does not generate energy or convert wind into energy. Also, CRES does not use facilities of CRW that are essentially to converting wind into energy, such as the wind turbines and the wind turbine collector line system. As explained, CRES stores

energy that has already been generated or converted by another facility. Thus, there are no facts that result in the application of Chapter 41B to CRES.

Consequently, applying the plain meaning of the words in SDCL §49-41B-2(6) and (16) to the facts of CRES requires that the Commission conclude that the legislature did not delegate to it the authority to require a facility permit for CRES. Indeed, if the South Dakota Legislature had intended the Commission have jurisdiction over CRES, it would have expressly provided for such authority. Thus, it would violate well-established rules of statutory construction for the Commission to read energy storage into Chapter 41B. *See In re Petition of W. River Elec. Ass'n* 2004 SD 11, ¶¶ 24-26. On this point, the Supreme Court affirmed Seventh Judicial Circuit Court's reversal of the Commission, concluding:

... even if the PUC has changed its view of public utility policy, it cannot read into a statute a new definition of 'location' that never previously existed. If the wording of SDCL 49-34A-42 is in need of revision to accommodate public policy changes in the utility industry, it is the responsibility of the Legislature, rather than the PUC, to change the statute.

Unlike South Dakota, the North Dakota Legislature has expressly provided the North Dakota Public Service Commission jurisdiction over energy storage facilities. *See*, N.D. Cent. Code, § 49-22-03 (5)(c) (electric energy conversion facility includes "utility-scale energy storage"). Hence, until such time that the South Dakota Legislature enacts a new law that expressly provides the Commission with jurisdiction over facilities such as CRES, no jurisdiction exists. Accordingly, the Commission should issue a ruling disclaiming jurisdiction over CRES.

**4. Petitioner's Exhibits are Incorporated by Reference.**

For informational purposes, Petitioner submits Exhibit 1, CRES's Conditional Use Permit Application.

**5. Declaratory ruling requested.**

Based on the foregoing, Petitioner respectfully requests that the Commission find it does not have jurisdiction over the construction and operation of CRES.

Dated this 1<sup>st</sup> day of August, 2025.

Respectfully submitted,

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