BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

IN THE MATTER OF THE REQUEST FOR A DECLARATORY RULING REGARDING CROWNED RIDGE ENERGY STORAGE I, LLC	* * * * * * *	**STAFF'S COMMENTS REGARDING PETITION FOR DECLARATORY RULING** **EL25-027**

The Commission Staff, by and through its attorney of record, hereby files these Comments Regarding Petition for Declaratory ruling in the above-captioned siting proceeding.

I. Preliminary Statement.

For purposes of these comments, the South Dakota Public Utilities Commission shall be referred to as the "Commission"; Commission Staff is referred to as "Staff"; Crowned Ridge Energy Storage I, LLC (CRES); NextEra Energy Resources, LLC (NEER); Crowned Ridge Wind, LLC (CRW).

II. Background and Facts.

On August 1, 2025, the Commission received a Petition from Crowned Ridge Energy Storage I, LLC (CRES) requesting the Commission issue 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. CRES plans to construct a 120-megawatt energy storage facility in Codington County, South Dakota with an anticipated commercial operations date of December 2027. CRES specifies the facility will store energy generated by CRW and other energy from the grid and inject that stored energy into the Big Stone Substation via a Generation Interconnection Agreement (GIA) with MISO.

On August 7, 2025, the Commission electronically transmitted notice of the filing to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. No Petitions to Intervene or comments were filed.

Specifically, the Petitioner seeks a declaratory ruling that the Commission does not have jurisdiction over the construction and operation of CRES.

III. Jurisdictional Statement and Authority.

The Commission has jurisdiction to issue declaratory rulings pursuant to SDCL 1-26-14 and SDCL 1-26-15 and ARSD 20:10:01:34 and 20:10:01:35. The Commission has jurisdiction over energy conversion facilities and wind energy facilities pursuant to SDCL Chapter 49-41B. Under SDCL Chapter 49-41B, an energy conversion facility must obtain a permit from the PUC prior to beginning construction.[1] In a petition for a declaratory ruling, the Commission is to make a decision "based on "any state of facts described by a petition" including "an assumed state of facts.""[2]

IV. Statement of the Issues.

The principal issues to be decided in this matter are:

1. Whether CRES is a new wind energy facility, or a facility expansion of an existing wind energy facility, pursuant to SDCL 49-41B-2(16).
2. Whether CRES is an Energy Conversion Facility pursuant to SDCL 49-41B-2(6).

[1] SDCL 49-41B-4.

[2] *In re Petition for Declaratory Ruling re SDCL 62-1-1(6)*, 2016 SD 21, ¶ 10, 877 NW2d 340, quoting *Power Authority of State of New York v. New York State Department of Environmental Conservation*, 58 N.Y.2d 427, 461 N.Y.S.2d 769, 448 N.E.2d 436, 438–39 (1983).

V. Argument and Analysis.

1. CRES does not appear to be a new wind energy facility, nor an expansion of the Crowned Ridge Wind facility.

Based on the information provided in the Petition, it appears CRES is a separate and distinct facility from Crowned Ridge Wind and is not a part of the Crowned Ridge wind energy system. CRES would only be considered a wind energy facility if the facility met the elements set in the plain language of the statute. SDCL 49-41B-2(16) clearly defines "wind energy facility" as "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." (emphasis added). Based on the facts asserted in the Petition, it does not appear CRES falls within this definition.

The Petition shows no indication that CRES will have any towers or wind turbine generators within its design. Therefore, CRES cannot be considered a wind energy facility, unless it is a commonly managed integrated system with another facility determined to be a wind energy facility. Petitioner asserts "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] The Petition further indicates CRES will not be operated by personnel at the Crowned Ridge site and will instead be operated by NEER's Renewable Operations Control Center in Florida.[4] Based on the assertion alone, CRES and CRW do not appear to be commonly

[3] Petition, page 4.
[4] Petition, page 3.

managed, but Staff would note CRES asserts it is a indirect wholly-owned subsidiary of NEER[5] and it is commonly known to this Commission that CRW is also a wholly-owned, indirect subsidiary of NEER[6]. While having a common parent company does not establish common management in itself, it could be indicative of some common management between the facilities. In this case, there are not facts within the Petition that clearly show CRES and CRW are commonly managed facilities.

As described in the Petition, CRES and CRW do not appear to be an integrated system as the facilities do not appear to be linked in any significant manner. CRES and CRW will not share a common power collection system. This separation is made clear as Petitioner asserts "all Crowned Ridge Wind I Facility underground electrical collection cables and communication lines terminate at the [s]ubstation"[7] and "CRES will connect to the substation via a 34.5 kilovolt collection line and will not share collector lines or collector line system with CRW."[8]

It appears CRES's only actual physical connection to CRW are the facilities it will share, which include the same collector substation and same gen-tie line to inject power into the Big Stone Substation. [9] While sharing a collector substation and a point of interconnect could be indicative of common management or integration between facilities, it is certainly not a determining factor in itself. It is not unusual for more than one facility to utilize the same point of interconnect to the grid as another and in this case, the CRES GIA will be separate from the CRW GIA.[10]

[5] Petion, page 1.
[6] See SD PUC Docket EL19-003, Crowned Ridge Wind Farm's Application, page 1 (pdf page 10).
[7] CUP Application, page 5
[8] Petition, page 3.
[9] Petition, page 3.
[10] Petition, page 3.

Based on these factors, it does not appear CRES and CRW are a commonly managed integrated system. However, if there are facts not asserted with the Petition that show additional integration between CRES and CRW, or that the facilities are jointly operated under the control of NEER, as opposed to being managed separately as CRES and CRW, there could be a reasonable basis that CRES is an expansion of the Crowned Ridge Wind I wind energy facility.

2. CRES is potentially an energy conversion facility pursuant to SDCL 49-41B-2(6).

A. The Petition indicates CRES may generate electricity.

Petitioner asserts CRES is a 120-megawatt energy storage facility that does not generate energy, and therefore does not fall within the Commission's siting jurisdiction. In support of these assertions, CRES submitted its Conditional Use Permit Application (CUP Application), providing technical information about the operation and function of CRES. Based on the CUP Application, the main technical operations aspects of CRES appear to be the batteries and the Power Conversion System (PCS). The CUP Application describes the PCS as:

> [t]he PCS will be located in the BESS and consists of an inverter, protection equipment, direct current (DC) and alternating current (AC) circuit breakers, filter equipment, equipment terminals, and a connection cabling system. Electric energy is transferred from the existing power grid to the batteries during a battery charging cycle and from the batteries to the grid during a battery discharge cycle. **The PCS converts electric energy from AC to DC when energy is transferred from the grid to the battery and from DC to AC when energy is transferred from the battery to the grid. The energy conversion is enabled by a bidirectional inverter that connects the DC battery system to the AC electrical grid.** The PCS will also include a transformer that converts the AC side output of the inverter to medium AC voltage to increase the overall efficiency of the BESS and to protect the PCS in the event of system electrical faults. (emphasis added)[11]

[11] CUP Application Page 7 (pdf page 13 of 31).

The CUP Application goes on to provide a description of the batteries:

> [i]ndividual lithium-ion, or similar technology, battery cells form the core of the BESS. Battery cells are assembled either in series or parallel in sealed battery modules. CRES will install battery modules in self-supporting racks that are electrically connected either in series or parallel. Individual self-supporting racks are then connected in series or parallel to deliver the BESS power rating. CRES has not finalized the battery type for the Project and will select the battery type based on the technology available at the time of construction.[12]

Taking these descriptions alone and at face value, it does not appear CRES is generating electricity.

However, other portions of the CUP Application indicate that generation of electricity may occur within CRES. The CUP Application specifies "[t]he goal of decommissioning is to remove the installed **power generation equipment** and to return the site to a condition as close to preconstruction as feasible." (Emphasis added).[13] The CUP Application further explains that "[i]f an item cannot be removed at the **point of generation** for a period of time, such as lubricants, paints, and solvents, it would be kept in a locked utility structure with integral secondary containment that meets applicable requirements for hazardous waste storage until removal for proper disposal and recycling." (Emphasis added).[14] Further, the Petition indicates CRES will execute a **generation interconnection agreement** with MISO to inject energy into the grid. [15](emphasis added).

Relying on common industry knowledge to further explain Petitioner's reference to batteries adds context to the facts provided in the Petition. Functionally, batteries store chemical

[12] CUP Application page 4 (pdf page 12 of 31).
[13] CUP Application page 15, section 9.2. (pdf page 21 of 31).
[14] CUP Application page 15-16, Section 9.2 Hazardous materials (pdf page 21-22 of 31).
[15] Petition page 3

energy[16] (not electricity) that can then be used to generate electricity at a later point in time. In other words, batteries convert electric energy to chemical energy and then chemical energy back to electric energy. During the process of converting chemical energy to electric energy and injecting the electric energy to the bulk power system, one could determine that batteries are generating electricity. However, there is some industry distinction between a traditional generator and a battery in that a battery uses a secondary source of energy (electricity) to create the chemical energy needed to later generate electricity rather than using a primary source of energy (e.g. chemical energy from fossil fuel carbon bonds, kinetic energy from the wind, or radiant energy from the sun).

Despite Petition's claim that CRES does not generate energy, based on the facts submitted in the Petition, as well as those facts inherent to the function of batteries, it appears that CRES may generate over 120 megawatts of electricity and may be an energy conversion facility under the statute.

B. Under the plain language of SDCL 49-41B-2(6) CRES appears to be an energy conversion facility, however there is potential ambiguity regarding the meaning of generation of electricity.

Petitioner asserts CRES is not an energy conversion facility because the facility will not generate energy and because energy storage facilities are not specifically listed in the statute. Petitioner asserts that reading energy storage facilities into SDCL 49-41B-2(6) would be an unlawful expansion of the plain language of the statute and that if the Legislature intended

[16] It is Staff's understanding that the batteries proposed by the Petitioner will store chemical energy. However, Staff notes batteries and electric storage resources may store other forms of energy such as thermal or kinetic energy.

energy storage facilities to be sited, they would have expressly included such language in the statute. Petitioner relies on the Court's decision in a previous case to support this argument, specifically that it was not permissible for the Commission to adopt a new definition of the term "location" within statute that had never previously existed.[17] However, this case further explained that the Commission did not apply the plain and ordinary definition of the term "location," which was based on location, but instead adopted a limited definition "location" based on the level of service being provided with no support from the plain text of the statute.[18] The Court also found it significant that the Court had previously adopted a geographically centered basis for the Act at issue in the case and that the Commission had also applied a geographically based definition in the past.[19] Staff does not disagree that this case established a standard that the plain meaning of the language of a statute must be applied. But Petitioner's application of this standard is only successful if energy storage facilities do not otherwise fall within the definition of "energy conversion facility" or "wind energy facility."

In determining whether CRES is within the PUC's siting jurisdiction, the Commission must consider whether the facility falls within the definition of an "energy conversion facility" based on the facts asserted in the Petition. In applying a statute, "[w]ords and phrases in a statute must be given their plain meaning and effect."[20] 49-41B-2(6) defines an energy conversion facility as "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

[17] *In re Petition of W. River Elec. Ass'n*, 2004 S.D. 11, ¶¶ 24-26.
[18] *Id.* at ¶ 22.
[19] *Id.* at ¶¶ 23-24.
[20] *Endres v. Endres*, 2022 SD 80, ¶ 43, 984 N.W.2d 139, 152 citing *Puetz Corp. v. S.D. Dep't of Revenue*, 2015 S.D. 82, ¶ 16, 871 N.W.2d 632, 637 (citing *State ex rel. Dep't of Transp. v. Clark*, 2011 S.D. 20, ¶ 5, 798 N.W. 2d 160, 164.)

facilities that are designed for or capable of generating one hundred megawatts or more of electricity." (emphasis added). In enacting this statute, the Legislature clearly chose to establish a definition based on the size and function of a facility, and not by creating a specific list of the types of facilities that fall within the statute. This language is indicative that the Legislature intended the statute to apply in a broad manner. Therefore, any facility which is capable of generation of one hundred megawatts or more of electricity, and is not specifically excluded, is considered an energy conversion facility under the plain language of the statute.

The statute does not specifically define the meaning of the term "generation of electricity," so we look to the plain, ordinary, and popular meaning[21] of the key terms in the statute, "generation" and "electricity." Merriam-Webster defines "electricity" as "a fundamental form of energy observable in positive and negative forms that occurs naturally (as in lightning) or is produced (as in a generator) and that is expressed in terms of the movement and interaction of electrons"; "electric current or power."[22] Merriam-Webster defines "generation" as "origination by a generating process: production."[23] Looking deeper into the language used in

[21] Matter of *Northwestern Public Serv. Co., 1997 SD 35* ¶ 14, 560 N.W.2d 925, 927 (citing *Whalen v. Whalen,* 490 N.W.2d 276, 280 (S.D.1992)).
[22] Located at: https://www.merriam-webster.com/dictionary/electricity. Accessed on September 15, 2025.

See also, The U.S. Energy Information Administration's EIA Glossary defines "electricity" as "a form of energy characterized by the presence and motion of elementary charged particles generated by friction, induction, or chemical change" and "electricity generation" as "the process of producing electric energy or the amount of electric energy produced by transforming other forms of energy, commonly expressed in kilowatt hours(kWh) or megawatt hours (MWh)." Located at: https://www.eia.gov/tools/glossary/index.php?id=E. Accessed on September 15, 2025.
[23] Located at: https://www.merriam-webster.com/dictionary/generation?src=search-dict-box. Accessed on September 15, 2025.

See also, FERC Glossary defines "generation" as "the act of producing electrical energy from other forms of energy (such as thermal, mechanical, chemical or nuclear); also, the amount of electric energy produced, usually expressed in kilowatt hours (KWh) or megawatt hours (MWh)." Located at: https://www.ferc.gov/industries-data/market-assessments/overview/glossary#G. Accessed on September 15, 2025.

this definition, one understanding does exist that production is "the action of making or manufacturing from components or raw materials."[24] Considering this, a reasonable mind could conclude that the Legislature intended generation to mean only the conversion of energy from a primary energy source, or "raw materials" to create electricity. Therefore, facilities that convert energy from a secondary energy sources, such as batteries may not be considered energy conversion facilities.

Ambiguity exists "when a statute "is capable of being understood by reasonably well-informed persons in either of two or more senses."[25] In this case, while there is a clear definition of the term "electricity," it is not necessarily unreasonable for the Petitioner to have a different, yet reasonable, understanding that the generation of electricity does not include CRES because the facility uses a secondary source of energy (electricity) as an input to its energy conversion process.

C. Resolving Ambiguity.

"When called upon to construe ambiguous statutes, courts may look to `the legislative history, title, and the total content of the legislation.'"[26] We "must also reflect upon the purpose

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See also, The U.S. Energy Information Administration's EIA Glossary defines "generation" as "the process of producing electric energy by transforming other forms of energy; also, the amount of electric energy produced, expressed in kilowatt hours." Located at: https://www.eia.gov/tools/glossary/index.php. Accessed on September 15, 2025.

[24] See Oxford Languages Located at: https://www.google.com/search?q=Production&rlz=1C1GCEA_enUS1136US1136&oq=production&gs_lcrp=EgZjaHJvbWUqEQgAEEUYOxhDGLEDGIAEGIoFMhEIABBFGDsYQxixAxiABBiKBTINCAEQABjwBRieBhjIBjIGCAIQRRhAMg0IAxAuGK8BGMcBGIAEMg0IBBAAGIMBGLEDGIAEMg0IBRAAGIMBGLEDGIAEMhIIBhAAGEMYgwEYsQMYgAQYigUyDwgHEAAYQxixAxiABBiKBdIBCTM1NjFqMGoxNagCCLACAfEF2Y1LnkfPtRrxBdmNS55Hz7Ua&sourceid=chrome&ie=UTF-8. Accessed on September 17, 2025.

[25] *Farm Bureau Life Ins. Co. v. Dolly,* 2018 S.D. 28 ¶ 9, 910 N.W.2d 196, 200 (citing Kling v Stern, 2007 S.D. 51, ¶ 6, 733 N.W.2d 615, 617) (quoting *Petition of Famous Brands,* 347 N.W.2d at 886).

[26] *Zoss v. Schaefers,* 1999 S.D. 105, ¶ 6, 598 N.W.2d 550, 552) (quoting *LaBore V. Muth*, 473 N.W.2d 845, 488 (S.D. 1991)).

of the enactment, the matter sought to be corrected and the goal to be attained."[27] Looking at Chapter 49-41B as a whole provides context to understand the Legislature's intent in using the phrase "generation of electricity."

The Legislative history supports an overarching concept that the Legislature intended SDCL 49-41B-2(6) to encompass a broad variety of facilities. This intent to a broad siting authority is supported with the Legislative Findings included in SDCL 49-41B-1 in which the Legislature affirmatively asserted the intent to encourage development, but also to protect the state's important resources and the interests of impacts of inhabitants. SDCL 49-41B-1 also states "[t]he Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled," and specified that energy development in the state "significantly affects the welfare of the population, the environmental quality, the location and growth of industry, and the used of the natural resources of the state." For these reasons, a permit from the PUC prior to construction is "necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state."[28]

Given that large batteries also have an impact on the bulk electric system and that utility scale batteries are taking root in the industry as a dispatchable, capacity resource, one could reasonably conclude that batteries are facilities that would be used to fulfill the energy requirements of South Dakotans. For large batteries that inject power to the transmission system, regional transmission organizations (RTOs) require those facilities to go through their generator

[27] *State v. Davis,* 1999 S.D. 98 ¶ 7,598 N.W.2d 535, 537 (quoting *De Smet Ins. of South Dakota v. Gibson,* 1996 S.D. 102, ¶ 7, 552 N.W.2d 98, 100 (citations omitted)).
[28] SDCL 49-41B-1.

interconnection processes and obtain generator interconnection agreements. MISO indicates this by stating: "[a]n ESR [Electric Storage Resource] shall also be deemed a Generator based on and in contexts relevant to, its capability to inject Energy back into the Transmission System."[29] The need to go through the generator interconnection process is because batteries function similarly to traditional generators when discharging, and can affect reliability, voltage and thermal loading on the transmission system. As such, RTOs require generator interconnection studies for batteries to identify the impacts they may have on the power grid and any required mitigation measures. These RTO and interconnection considerations may have an impact on South Dakota's transmission systems and other resources in a significant manner, and Commission permitting and review of these factors is consistent with the overall purpose of the Commission's siting jurisdiction as described in Chapter 49-41B.

Additionally, CRES will be a large facility, similar in output and possible impacts to the area as energy conversion facilities the Commission has sited in the past. Batteries store not only energy, but also chemicals that could impact the local environment, and could pose unique fire risk or other impacts to the area. The size facility may also generate noise and possible unforeseen impacts to the health and welfare of the inhabitants in the area, in a similar manner to other energy conversion facilities sited by this Commission. Because the operation and impact from CRES aligns with the purpose of the chapter it is reasonable to conclude the Legislature intended for the statute to be applied in a broad manner.

D. The ambiguity in classifying battery storage facilities appears to exist in the regulatory sphere.

[29] MISO Knowledge Base. Electric Storage Resources: Getting Started. Located at: https://help.misoenergy.org/knowledgebase/article/KA-01336/en-us. Accessed on September 12, 2025.

Some jurisdictions, including North Dakota have asserted jurisdiction over energy storage facilities by specifically adding these storage facilities in statute rather than recognizing storage facilities as generation or conversion facilities under the existing statute.[30]

Significantly, at least one state, Rhode Island, has determined that batteries are an energy facility under that state's definition of a "Major energy facility."[31] The Rhode Island Energy Facility Siting Board concluded that batteries do fall under the definition of a "Major energy facility"[32] by finding:

> "[…] (a) electricity is the presence of current and voltage; (b) the Battery Storage Facility does not store electricity (i.e., "current and voltage"), but stores potential energy in the form of electrochemical energy; (c) when engaging in the function of discharging, the Battery Storage Facility creates current and voltage, resulting in the flow of electricity through the interconnection facilities that interconnect to the network transmission system, thus, generating electricity; and (d) the Battery Storage Facility will be designed and capable of operating at a capacity of over 200 megawatts."

Staff's understanding of the Rhode Island order is that the Siting Board focused on how batteries generate electricity when discharging, and the physics thereof, rather than how electric generators are traditionally defined in the industry. While batteries may not be considered an electric generator in a traditional convention (i.e. where a generating resource uses a primary source of energy such as coal, gas, or wind to produce electricity), they could be considered an electric generator if looked at how batteries function when discharging.

3. Conclusion.

[30] North Dakota Century Code 49-22-03(6)(c).
[31] State of Rhode Island Energy Facility Siting Board. SB-2024-01: Quonset Development Corporations Petition for Declaratory Ruling. Order Denying Petition for Declaratory Order. Located at: https://ripuc.ri.gov/sites/g/files/xkgbur841/files/2024-10/SB-2024-01 Final Order-167- 10-3-24.pdf.
[32] The relevant section of the definition of "Major energy facility" in Rhode Island law is "facilities for the generation of electricity designed or capable of operating at a gross capacity of forty (40) megawatts or more." R.I. Gen. Laws § 42-98-3(d).

Considering only the facts submitted with CRES's Petition, it appears that CRES is not a wind energy facility, but CRES may be subject to the Commission's jurisdiction as an energy conversion facility.

Based on the plain language of the definition of energy conversion facility and Staff's general understanding of battery storage, as well as information about battery storage available throughout the industry, there is a reasonable technical basis that CRES will generate more than one hundred megawatts of electricity under the plain language of the statute. However, Staff recognizes that there may be some ambiguity within the statute leading to an understanding that CRES functions as a secondary generation resource, which does not produce electricity from raw materials, and therefore, CRES would not fall within the Commission's siting jurisdiction.

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