

Attachment A

RECOMMENDED PERMIT CONDITIONS

1. The Applicant will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency or any other governmental unit for construction and operation activity prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by the Applicant shall be sent to the Commission.
2. The Applicant shall construct, operate, and maintain the Project in a manner consistent with (1) descriptions in the Application, (2) Application supplements, (3) responses to any data requests, (4) the Terms and Conditions of the Permit to Construct Facilities, (5) any applicable industry standards, and (6) any permits issued by a Federal, State, or Local agency.
3. Applicant agrees that the Commission's complaint process as set forth in ARSD 20:10:01 shall be available to landowners and other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit.
4. The Applicant shall provide each landowner on whose property the Project is to be constructed with the following information:
 - a) A copy of the Commission Order Granting Permit to Construct Facilities;
 - b) Detailed safety information describing:
 - 1) Reasonable safety precautions for existing activities on or near the Project,
 - 2) Known activities or uses that are presently prohibited near the Project, and
 - 3) Other known potential dangers or limitations near the Project;
 - c) Construction/maintenance damage compensation plans and procedures;
 - d) The Commission's address, website and phone number;
 - e) Contact person for Applicant, including name, e-mail address, and phone number.
5. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors, and agents of Applicant involved in this Project be made aware of the terms and conditions of this Permit.
6. Except as otherwise provided in the conditions of this Stipulation, Applicant shall comply with all mitigation measures set forth in the Application, Applicant responses to Staff data requests, and the Environmental Assessment. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.

7. Applicant shall comply with and implement any Commitments set forth in the United States Fish and Wildlife Service (“USFWS”) Final Environmental Assessment (“Environmental Assessment”).
8. Applicant will negotiate road use agreements with Clark County, and all affected townships, if required. Applicant will follow the terms of all road use agreements. Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being windblown, and the removal of any soils or mud deposits by construction equipment when necessary.
9. Applicant shall comply with the following conditions regarding road protection:
 - a) Applicant shall acquire all necessary permits authorizing the crossing of federal, state, county, and township roads.
 - b) Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
 - c) Applicant shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public.
 - d) After construction, Applicant shall repair and restore deteriorated roads resulting from construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads, such that the roads are returned to their preconstruction condition.
 - e) Privately owned areas used as temporary roads during construction will be restored to their preconstruction condition to the extent practicable, except as otherwise requested or agreed to by the landowner.
 - f) Should applicant need to widen any existing roadways during construction of the Project, the Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
 - g) Should the Environmental Assessment identify any mitigation measures to be implemented by Applicant during road construction activities, Applicant shall implement said measures as required.
 - h) Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways.
 - i) Before commencing construction, the Applicant shall furnish an indemnity bond in the amount of \$1,000,000 to comply with the requirements of SDCL 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the transmission facilities. The bond shall remain in effect until released by the

Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicant shall give notice of the existence and amount of this bond to all counties, townships and other governmental entities whose property is crossed by the transmission facilities.

10. Applicant will provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
11. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the Project area that Applicant becomes aware of and that was not previously reported to the Commission.
12. The Applicant agrees to avoid direct impacts to cultural resources that are unevaluated, eligible for or listed in the National Register of Historic Places (NRHP). When NRHP unevaluated, eligible or listed site cannot be avoided, Applicant shall notify the State Historic Preservation Office (SHPO) and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
13. The Applicant agrees to develop an unanticipated discovery plan for cultural resources and follow South Dakota Codified Laws 34-27-25, 34-27-26 and 34-27-28 for the discovery of human remains.
14. The Applicant shall file the final cultural resources report with the Commission prior to construction. If any potential adverse impacts are found in the final cultural resources report, the Applicant shall file with the Commission a report describing the SHPO-approved planned measures to ameliorate those impacts.
15. Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) to the Commission when Applicant has a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP will be completed before submittal of an application for a National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.
16. Applicant will repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical. In order to facilitate compliance with this Condition, the Applicant shall:
 - a) Strip topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing, in all areas disturbed by the Project; however, with respect to access roads, Applicant may remove less than the actual depth of topsoil to ensure roads remain low-profile and contours align with the surrounding area;
 - b) Store topsoil separate from subsoil in order to prevent mixing of the soil types;

- c) Remove all excess soils generated during the excavation of the WTG foundations from the site, unless the landowner requests, and/or agrees, otherwise; and
 - d) When revegetating non-cultivated grasslands, the Applicant shall use a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, and agreed upon by the landowner in writing.
17. Applicant shall work closely with landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds.
 18. Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between Applicant and landowner or Applicant and appropriate federal, state, and/or local government agency. All excess construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
 19. In order to mitigate interference with agricultural operations during and after construction, Applicant shall locate all structures, to the extent feasible and prudent, to minimize adverse impacts and interferences with agricultural operations, shelterbelts and other land uses or activities. Applicant shall take appropriate precautions to protect livestock and crops during construction. Applicant shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed with the landowner or designee. Applicant shall be responsible for the repair of private roads damaged when moving equipment or when obtaining access to the right-of-way.
 20. Applicant shall bury the underground collector system at a minimum depth of four feet, or deeper if necessary, in order to ensure the current land use is not impacted.
 21. Applicant shall repair or replace all property removed or damaged during all phases of construction, including but not limited to, all fences, gates and utility, water supply, irrigation or drainage systems. Applicant shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair, replacement and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicant and affected landowners where such agreements exist.
 22. Applicant shall, in the manner described in its written agreement with a landowner, indemnify and hold the landowner harmless for loss, damage, claim or actions resulting from Applicant's use of the easement, including any damage resulting from any release, except to the extent such loss, damage claim or action results from the negligence or willful misconduct of the landowner or his employees, agents, contractors, invitees or other representatives.
 23. Applicant may make turbine adjustments of 325 feet or less from the turbine locations identified in the Application without prior Commission approval, so long as said turbine shifts comply with county and state setback requirements, specified noise and shadow flicker requirements, avoid cultural resource and sensitive species habitat, and avoid wetland impacts to the extent practicable. Prior to implementing the turbine adjustment, Applicant will file in the docket an affidavit demonstrating compliance with the limitations

set forth above. Any turbine adjustment that does not comply with the aforesaid limitations would be considered a “material change,” and the Applicant shall file a request for approval of the “material change” prior to making the adjustment pursuant to the following approval process:

- Applicant would file with the Commission and serve on the official Service List a request for approval of the adjustment that includes:
 - An affidavit describing the proposed turbine adjustment, the reason for the adjustment, the reason the adjustment does not comply with one or more turbine flexibility limitations set forth above, and information regarding compliance with all other applicable requirements; and
 - A map showing both the approved location and the proposed adjustment (in different colors);
 - Once received, the information would be reviewed by Commission Staff, and Commission Staff would have 10 calendar days within which to request further Commission review.
 - If no further review is requested, then Applicant may proceed with the adjustment.
 - If further review is requested, the Commission would then issue a decision regarding Applicant’s request at its next available regularly scheduled Commission meeting after the request for further review is made by Commission Staff.
24. Applicant may adjust access roads, the collector system, and temporary facilities, so long as they are located on leased land, cultural resources are avoided, sensitive species habitat is avoided, wetland impacts are avoided to the extent practicable, and all other applicable regulations and requirements are met.
25. With respect to the transmission line, Applicant may adjust structures so long as they remain within the 150-foot-wide right-of-way identified in the Application, impacts to cultural resources and sensitive habitat are avoided, and wetland impacts are avoided to the extent practicable. Any adjustments that fall outside of the 150-foot-wide right-of-way identified in the Application, or do not meet the above-stated limitations, are considered a “material change.” If a “material change” is proposed, Applicant shall follow the same process for review of the proposed “material change” as is outlined in paragraph 23.
26. The terms and conditions of the Permit shall be made a uniform condition of construction, subject only to an affirmative written request for an exemption addressed to the Commission. A request for an exemption shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis, which evaluation shall be completed within 60 days unless exigent circumstances require action sooner.
27. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project. This mitigation requirement shall not apply to any dwellings or other structures built after completion of the Project.

28. Applicant will provide Global Positioning System (GPS) coordinates of structure locations to affected landowners at any time during the life of the Project. Coordinates will be provided in writing to landowners within 30 days of a request.
29. The Project, exclusive of all unrelated background noise, shall not generate a long-term average sound pressure level (equivalent continuous sound level, Leq), as measured over a period of at least two weeks that includes all integer wind speeds from cut in to full power, of more than 45 dBA at any non-participating residence or more than 50 dBA at any participating residence. The Applicant shall, upon Commission formal request, conduct field surveys or provide post-construction monitoring data verifying compliance with specified noise level limits. If the long-term average level exceeds 45 dBA at any non-participating residence or 50 dBA at any participating residence, then the Project Owner shall take whatever steps are necessary to rectify the situation. Sound monitoring will not be repeated in a representative area during any five year period unless operational or maintenance changes result in a reasonable assumption of higher turbine sound levels.
30. Not less than 30 days prior to commencement of construction work in the field for each phase of the Project, Applicant will provide to Staff the following information:
 - a) the most current preconstruction design, layout and plans, including the specifications of the turbine model selected;
 - b) a sound level analysis showing compliance with the applicable sound level requirements;
 - c) a shadow flicker analysis showing the anticipated shadow flicker levels will not exceed Applicant's voluntary commitment of 30 hours per year at any residence; and
 - d) such additional Project preconstruction information as Staff requests.
31. Within 90 days of the Project's completion of each phase, Applicant shall submit a report to the Commission that provides the following information:
 - a) as-built location of structures and facilities, including drawings clearly showing compliance with setbacks required by state and local governments and voluntary commitments set forth in Table 8-1 of the Application;
 - b) the status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulting from Project construction activities; and
 - c) a summary of known landowner complaints and Applicant's plan for resolving those complaints.
32. The Applicant shall, upon Commission request, conduct field surveys verifying compliance with specified noise level limits.

33. Any voluntary noise, shadow flicker, and/or setback commitments made herein by Applicant are specific to this Project and not intended to set a precedent for future wind energy conversion facilities.
34. For purposes of this Project and the commitments herein, “residences,” “businesses,” and “off-site buildings owned and/or maintained by a government entity” shall include only those that are in existence and in use as of the date of the Commission’s order issuing a permit.
35. Applicant shall seek local input to properly and effectively coordinate an emergency response plan consistent with local resources and response abilities. Upon completion of construction, a Project operation emergency response plan shall be provided to Staff to make available to the general public in the manner they choose.
36. Prior to construction of each phase of the Project, Applicant will notify public safety agencies providing a schedule and location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public safety, the Sheriff of Clark County, and the Clark County Office of Emergency Management.
37. Applicant agrees to conduct two years of post-construction avian mortality monitoring for each phase of the Project, and to provide a copy of the report to the USFWS and South Dakota Game Fish & Parks.
38. If the Project is decommissioned, Applicant will follow the decommissioning plan laid out in Section 23.0 of the Application as supplemented by the answers to Staff’s Data Request 2-6. The Commission shall be notified prior to any decommissioning action.
39. At least thirty days prior to commencing operation of the Project, Applicant agrees to provide decommissioning financial security for the portion of the Project to be commissioned. Financial security will be provided as a letter of credit in the amount of fifty percent of the estimated decommissioning cost, based on an estimated per turbine decommissioning cost of \$100,000. Following year ten of operation, Applicant will submit an updated decommissioning plan and cost estimate, and the amount of decommissioning financial security may be reevaluated by the Commission. Financial security for decommissioning will be provided for each subsequent portion of the Project constructed pursuant to the terms set forth above.
40. All conditions apply to each phase of the Project. Phase means the portion of the Project that is constructed under a specific, individual construction schedule. For example, if 200 MWs are constructed under a construction schedule beginning in September of 2018, then that is phase I. If the remaining 200 MWs are constructed under a construction schedule beginning in May of 2019, then that is phase II.