

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

**IN THE MATTER OF THE
APPLICATION BY DAKOTA RANGE
I, LLC AND DAKOTA RANGE II, LLC
FOR A PERMIT OF A WIND ENERGY
FACILITY IN GRANT COUNTY AND
CODINGTON COUNTY, SOUTH
DAKOTA, FOR THE DAKOTA RANGE
WIND PROJECT**

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**DAKOTA RANGE I, LLC AND
DAKOTA RANGE II, LLC'S
PROPOSED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER**

EL18-003

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EL18-003

APPEARANCES

Commissioners Kristie Fiegen, Gary Hanson, and Chris Nelson.

Mollie Smith and Lisa Agrimonti, Fredrikson & Byron, P.A., 200 South Sixth Street, Minneapolis, Minnesota 55402, appeared on behalf of the Applicants, Dakota Range I, LLC and Dakota Range II, LLC (together "Dakota Range" or "Applicant").

Kristen Edwards and Amanda Reiss, 500 E. Capitol Ave., Pierre, South Dakota 57501, appeared on behalf of the South Dakota Public Utilities Commission Staff ("Staff").

Kristi Mogen appeared on behalf of herself.

Teresa Kaaz appeared on behalf of herself.

PROCEDURAL HISTORY

On January 24, 2018, Dakota Range filed an Application for an Energy Facility Permit for an up to 302.4 megawatt ("MW") wind energy facility to be located in Grant County and Codington County, South Dakota, known as the Dakota Range Wind Project ("Project") with the South Dakota Public Utilities Commission ("Commission").¹ Also on January 24, 2018, Dakota Range filed the pre-filed direct testimony of Mark Mauersberger/Brenna Gunderson, Robert O'Neal, and David Phillips/Ryan Henning.

On January 25, 2018, the Commission electronically transmitted notice of the filing and the intervention deadline of March 26, 2018, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv.

On January 31, 2018, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status.

¹ See Ex. A1 (Application).

On January 31, 2018, Dakota Range filed a certificate of service confirming it had sent copies of the Application and Dakota Range's direct testimony to the Codington County Auditor and Grant County Auditor.

On February 15, 2018, the Commission issued an Order assessing Dakota Range a filing fee in an amount not to exceed \$390,000, with a minimum filing fee of \$8,000. In the same Order, the Commission further voted unanimously to authorize the executive director to enter into necessary consulting contracts.

On February 22, 2018, Dakota Range filed a Proof of Mailing to affected landowners demonstrating compliance with the requirements of South Dakota Codified Law 49-41B-5.2.

On March 22, 2018, an Affidavit of Publication was filed confirming that the Notice of Public Hearing was published in the *Watertown Public Opinion* on February 21, 2018 and March 14, 2018.

On March 22, 2018, an Affidavit of Publication was filed confirming that the Notice of Public Hearing was published in the *South Shore Gazette* on March 1, 2018 and March 15, 2018.

On March 22, 2018, an Affidavit of Publication was filed confirming that the Notice of Public Hearing was published in the *Grant County Review* on February 21, 2018 and March 14, 2018.

On March 21, 2018, a public input hearing was held as scheduled and the Commission received applications for party status from 16 individuals.

On March 28, 2018, Staff submitted a Motion for Adoption of Procedural Schedule.

On March 30, 2018, Dakota Range filed a Response to Applications for Party Status and Staff's Motion for Adoption of Procedural Schedule.

On April 6, 2018, the Commission issued an Order Granting Party Status and Establishing Procedural Schedule. The Commission granted party status to: Teresa Kaaz; Daniel D. Seurer; Vincent Meyer; Diane Redlin; Jared Krakow; Kevin Krakow; Matt Whitney; Timothy J. Lindgren; Linda M. Lindgren; Christian Reimche; Derek Nelson; Paul Nelson; Kelly Owen; Kristi Mogen; Wade Bauer; and Patricia Meyer.

On April 6, 2018, Dakota Range filed the pre-filed testimony of Dr. Mark Roberts and Michael MaRous.

On May 4, 2018, Staff filed the pre-filed testimony of Paige Olson, Tom Kirschenmann, David Hessler, David Lawrence, and Jon Thurber. Intervenor Kristi Mogen filed the pre-filed testimony of Kristi Mogen and Intervenor Teresa Kaaz filed the pre-filed testimony of Teresa Kaaz.

On May 2, May 4, May 7, and May 10, 2018, respectively, Dan Seurer, Christian Reimche, Paul Nelson, and Derek Nelson requested withdrawal of party status.

On May 15, 2018, the Commission issued an Order Granting Withdrawal of Party Status to those individuals who requested withdrawal.

On May 15, 2018, the Commission issued an Order for and Notice of Evidentiary Hearing.

On May 15, 2018, Dakota Range filed a Motion to Exclude Portions of Testimony and/or Exhibits of Intervenors Teresa Kaaz and Kristi Mogen and Request Regarding Hearing Participation. On May 16, 2018, Staff filed a Response to Dakota Range's Motion and a Motion for Judicial Notice.

On May 21, 2018, Dakota Range filed the pre-filed rebuttal testimony of Mark Mauersberger, Brenna Gunderson, David Phillips, Robert O'Neal, Daniel Pardo, Dr. Mark Roberts, Michael MaRous, Alice Moyer, and Wade Falk.

On May 24, 2018, the Commission issued an Order Granting Motion to Exclude Portions of Exhibits.

On June 8, 2018, Staff filed the pre-filed Surrebuttal testimony of David Lawrence.

On June 7, 2018, Dakota Range filed its exhibits for hearing. On June 8, 2018, Dakota Range filed its witness and exhibit lists and exhibits for hearing. Staff also filed its witness and exhibit lists and exhibits for hearing on June 8, 2018. Intervenor Kristi Mogen also filed her witness and exhibit lists and exhibits for hearing on June 8, 2018. Intervenor Teresa Kaaz also filed her witness and exhibit lists on June 8, 2018.

On June 11, 2018, Staff filed a Motion to Compel Discovery, which was granted on June 12, 2018, and Dakota Range filed a copy of the requested wind energy lease and easement agreement confidentially with the Commission on the same date (Exhibit A19).

On June 12, 13, and 14, 2018, Dakota Range filed exhibits A18 – A27.

On June 14, 2018, Staff filed Exhibit S7.

The evidentiary hearing was held before the Commission on June 12, 13, and 14, 2018 in Pierre, South Dakota. Only Intervenors Teresa Kaaz and Kristi Mogen participated in the evidentiary hearing (together, "Intervenors").

Having considered the evidence of record, applicable law, and the briefs and arguments of the parties, the Commission makes the following Findings of Fact, Conclusions of Law, and Order:

FINDINGS OF FACT

I. PROCEDURAL FINDINGS.

1. The Procedural History set forth above is hereby incorporated by reference in its entirety in these Procedural Findings. The procedural findings set forth in the Procedural History

are a substantially complete and accurate description of the material documents filed in this docket and the proceedings conducted and decisions rendered by the Commission in this matter.

II. PARTIES.

2. Dakota Range I, LLC and Dakota Range II, LLC are wholly owned indirect subsidiaries of Apex Clean Energy Holdings, LLC (“Apex”).² Dakota Range I, LLC and Dakota Range II, LLC will jointly own, manage, and operate the Project.³

3. Apex is an independent renewable energy company based in Charlottesville, Virginia. Apex has one of the nation’s largest, most diversified portfolios of renewable energy resources, capable of producing more than 14,000 MW of clean electricity. Apex has brought 2,200 MW online since 2012, and operating assets under management are nearly 1 gigawatts (“GW”) as of the first quarter of 2018.⁴

4. Kristi Mogen owns property approximately 9 miles from the Project area.⁵

5. Teresa Kaaz is a landowner within the Project area.

6. Staff fully participated as a party in this matter, in accordance with SDCL 49-41B-17(1).

III. PROJECT DESCRIPTION.

7. The proposed Project is an up to 302.4 MW wind energy conversion facility located in Grant and Codington counties, South Dakota. The proposed Project includes up to 72 wind turbine generators, access roads to turbines and associated facilities, underground 34.5-kilovolt (“kV”) electrical collector lines connecting the turbines to the collection substation, underground fiber-optic cable for turbine communications co-located with the collector lines, a 34.5-kV to 345-kV collection substation, up to five permanent meteorological (“MET”) towers, and an operations and maintenance (“O&M”) facility. The Project would interconnect to the high-voltage transmission grid via the Big Stone South to Ellendale 345-kV transmission line, which crosses the Project site.⁶

8. A new 345-kV interconnection switching station connecting to the Big Stone South to Ellendale line will be constructed, owned, and operated by Otter Tail Power Company and Montana Dakota Utilities. Dakota Range would construct and own a 345-kV interconnection facility connecting the Project collection substation to the interconnection switching station. Because the interconnection facility is less than 2,640-feet long, does not cross any public highways, and does not require the use of eminent domain, it falls outside the Commission’s jurisdiction and has been permitted locally.⁷

² Ex. A1 at 6-1 (Application).

³ Ex. A1 at 6-1 (Application).

⁴ Ex. A1 at 1-1 – 1-2 (Application).

⁵ Ex. A10 at 7 (Mauersberger).

⁶ Ex. A1 at 1-1, 9-1 – 9-2 (Application).

⁷ Ex. A1 at 1-1 (Application).

9. The Project is located on approximately 44,500 acres of privately owned land in Grant County and Codington County, South Dakota (“Project Area”).⁸

10. The current estimated capital cost of the Project is approximately \$380 million based on indicative construction and wind turbine pricing cost estimates for the proposed Vestas V136-4.2 MW turbine layout. This estimate includes lease acquisition, permitting, engineering, procurement, and construction of turbines, access roads, underground electrical collector system, Project collection substation, interconnection facilities, O&M facility, supervisory control and data acquisition (“SCADA”) system, and MET towers; and project financing.⁹

11. The proposed turbine that would be utilized for the Project is the Vestas V136-4.2 MW turbine at an 82-meter hub height and 136-meter rotor diameter (“RD”).¹⁰

12. All turbines will be constructed within the Project Area consistent with the configuration presented in the Updated Layout Map (Exhibit A25), and subject to all commitments, conditions, and requirements of this Order.¹¹

13. Apex currently owns Dakota Range and is overseeing development of the Project. Northern States Power Company, d/b/a/ Xcel Energy (“Xcel Energy”) has entered into a Purchase and Sale Agreement (“PSA”) with Apex to acquire Dakota Range, which owns the Project. The PSA will be finalized after the completion of certain development milestones, including acquisition of an Energy Facility Permit from the Commission for the Project. Xcel Energy is a utility company operating in South Dakota, Minnesota, North Dakota, Colorado, Michigan, New Mexico, Texas, and Wisconsin.¹²

14. Dakota Range presented evidence of consumer demand and need for the Project.¹³ The Project would install up to 302.4 MW of wind generating capacity in South Dakota that would contribute to satisfying utilities’, commercial and industrial customers’, and consumers’ demands for renewable energy, and meet utility renewable requirements or individual sustainability goals.¹⁴ Though Xcel Energy will own Dakota Range (the Project entities), and therefore the electricity produced, the specific electrons generated by the Project would be utilized as needed on the Midcontinent Independent System Operator, Inc. (“MISO”) regional grid and cannot be tracked to their exact delivery location or final use. The electricity generated by the Project would help MISO operators meet electricity demand in both the immediate and surrounding MISO control area. This Project would also provide zero-emission cost electricity to the grid, as well as firm price stability due to the availability of a renewable resource that would replace the need for ongoing fuel costs.¹⁵

⁸ Ex. A1 at 1-1 (Application).

⁹ Ex. A1 at 8-1 (Application).

¹⁰ Ex. A1 at 9-3 (Application).

¹¹ See Ex. A25 (Updated Wind Turbine Map).

¹² Ex. A1 at 7-1 (Application).

¹³ See Ex. A1 at § 7.2 (Application).

¹⁴ Ex. A1 at 7-3 (Application).

¹⁵ Ex. A1 at 7-1 (Application).

15. Dakota Range provided evidence to support the need for turbine and associated facility flexibility.¹⁶ With respect to turbine flexibility, Dakota Range and Staff agreed to the turbine flexibility and “material change” provisions set forth in Condition 22 attached hereto.¹⁷ With respect to the access roads, the collector system, O&M facility, Project substation, and temporary facilities, Dakota Range and Staff agreed to Condition 23, attached hereto.¹⁸

16. At the evidentiary hearing, Dakota Range requested that three proposed turbine shifts be approved as part of the Project configuration, with the proposed new locations identified as Turbines 34a, 60a, and 12a in Exhibit A15-3.¹⁹ Dakota Range provided evidence to demonstrate that the proposed turbine shifts comply with all applicable siting requirements.²⁰ With respect to the three proposed turbine shifts, Dakota Range and Staff agreed to Condition 39, attached hereto.

17. The record demonstrates that Dakota Range has made appropriate and reasonable plans for decommissioning.²¹

18. With respect to financial security for decommissioning, a form of security that provides assurance of available funds for decommissioning and also minimizes the cost to Xcel Energy, as a regulated utility, is preferable.²² Staff and Dakota Range have agreed to Conditions 37 and 38, attached hereto, which accounts for Xcel Energy’s anticipated purchase of Dakota Range, and the potential that another entity may own the Project.²³

19. The record demonstrates that Dakota Range has provided adequate information on potential cumulative impacts and that the Project will not have a significant impact.²⁴

IV. FACTORS FOR AN ENERGY FACILITY PERMIT.

20. Under the SDCL 49-41B-22, the Commission must find:

- (1) The proposed facility will comply with all applicable laws and rules;
- (2) The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area;

¹⁶ See Ex. A1 at 9-2 (Application); Ex. A15 at 3-4 (Gunderson).

¹⁷ Recommended Permit Condition 22; *see also* Evid. Hrg. Tr. at 299-300 (Thurber); Evid. Hrg. Tr. at 218, 226-227 (Gunderson).

¹⁸ Recommended Permit Condition 23; Evid. Hrg. Tr. at 299 (Thurber).

¹⁹ Evid. Hrg. Tr. at 214, 216-218 (Gunderson).

²⁰ *See* Evid. Hrg. Tr. at 401-402 (O’Neal); Ex. A15-3 (Constraints Map); Ex. A24; Ex. A25 (Updated Wind Turbine Map - Public) and Ex. A25-C (Updated Wind Turbine Map (CONFIDENTIAL)).

²¹ *See* Ex. A1 at Ch. 24.0 (Application); Ex. A4-2 (Decommissioning Cost Estimate Technical Memorandum).

²² *See* Evid. Hrg. Tr. at 318-319 (Thurber).

²³ *See* Recommended Permit Conditions 37 and 38; *see also* Ex. A21 (Proposed Decommissioning Conditions); Evid. Hrg. Tr. at 221 (Gunderson).

²⁴ *See, e.g.,* Ex. A1 at Ch. 11.0 (Application); Evid. Hrg. Tr. at 187 (Phillips).

(3) The facility will not substantially impair the health, safety or welfare of the inhabitants; and

(4) The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

21. In addition, SDCL 49-41B-25 provides that the Commission must make a finding that the construction of the facility meets all of the requirements of Chapter 49-41B.

22. There is sufficient evidence on the record for the Commission to assess the proposed Project using the criteria set forth above.

V. SATISFACTION OF REQUIREMENTS FOR ISSUANCE OF AN ENERGY FACILITY PERMIT.

A. The proposed facility will comply with all applicable laws and rules.

23. The evidence submitted by Dakota Range demonstrates that the Project will comply with applicable laws and rules.²⁵ Neither Staff nor Intervenors have asserted otherwise or submitted evidence to the contrary.

24. Construction of the Project meets all of the requirements of Chapter 49-41B.

B. The facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area.

1. Environment.

25. The evidence demonstrates that the Project does not pose a threat of serious injury to the environment in the Project Area and that Dakota Range has adopted reasonable avoidance and minimization measures, as well as commitments, to further limit potential environmental impacts.²⁶

26. Construction of the Project will not result in significant impacts on geological resources.²⁷ The risk of seismic activity in the vicinity of the Project Area is low according to data from the U.S. Geological Survey (“USGS”).²⁸

27. Dakota Range has demonstrated that it will minimize and/or avoid impacts to soil resources.²⁹ The majority of impacts will be temporary and related to construction activities.³⁰

²⁵ See, e.g., Ex. A1 at 9-2, 10-2, 13-6, Ch. 17.0 (Application).

²⁶ See, e.g., Ex. A1 at Ch. 11.0, 12.0, 13.0, 14.0, 18.0, 19.0 (Application).

²⁷ See Ex. A1 at § 12.1.2 (Application).

²⁸ Ex. A1 at 12-3 (Application).

²⁹ See Ex. A1 at § 12.2.2 (Application).

³⁰ See Ex. A1 at 12-10 (Application).

Permanent impacts associated with operation of the Project will be up to 65 acres, which is less than 0.2 percent of the Project Area.³¹ Dakota Range will implement various measures during construction and restoration to minimize impacts to the physical environment, including separating topsoil and subsoil, installing temporary erosion control devices, and decompacting soil after construction is complete.³²

28. The Project is not anticipated to have material impacts on existing air and water quality.³³

29. Dakota Range has demonstrated that it will minimize and/or avoid impacts to hydrology.³⁴ The record demonstrates that Dakota Range has minimized impacts to wetlands and water bodies.³⁵ The Project is not anticipated to have long-term impacts on groundwater resources.³⁶ Any potential impacts to floodplains would be temporary in nature, and existing contours and elevations would be restored upon completion of construction.³⁷ Project impacts on hydrologic resources are anticipated to be temporary and/or minor.³⁸ No turbines are located within wetlands, and the Project is anticipated to permanently impact only approximately 0.08 acres of wetlands.³⁹

30. Dakota Range has demonstrated that it will minimize and/or avoid impacts to vegetation.⁴⁰ Permanent impacts associated with operation of the Project would be up to 65 acres, which is less than 0.2 percent of the Project Area.⁴¹

31. The Project facilities have been sited to avoid native grasslands, to the extent practicable.⁴² In areas where impacts cannot be avoided, temporary impacts would be minimized through construction Best Management Practices (“BMPs”), such as re-vegetation and erosion control devices.⁴³

32. Dakota Range coordinated with South Dakota Game, Fish and Parks Department (“GFP”) to avoid and minimize impacts to grasslands. The Project will only impact approximately 9.8 acres of potentially untilled grasslands, which is less than 0.13 percent of the total grasslands in the Project Area.⁴⁴ Dakota Range will reseed potentially untilled grasslands temporarily impacted by the Project with native seed mixes following construction.⁴⁵ The Project is not likely to result in significant adverse effects to the species that rely on these

³¹ Ex. A1 at 3-1, 12-10; Table 11 -1 (Application).

³² Ex. A1 at 9-8, 12-10 – 12-11, 14-3 (Application).

³³ Ex. A1 at 18-1, 19-1 (Application).

³⁴ See Ex. A1 at Ch. 13.0 (Application).

³⁵ Ex. A1 at §14.2.2 (Application).

³⁶ Ex. A1 at 13-2 (Application).

³⁷ Ex. A1 at 13-5 (Application).

³⁸ See, e.g., Ex. A1 at 13-4, 14-5, 14-6 (Application).

³⁹ Ex. A8 at 5 (Phillips).

⁴⁰ See Ex. A1 at § 14.1.2 (Application).

⁴¹ Ex. A1 at 3-1, § 14.1.2 (Application).

⁴² Ex. A1 at 14-3 (Application).

⁴³ Ex. A1 at 14-3 (Application).

⁴⁴ Ex. A8 at 7 (Phillips).

⁴⁵ Ex. A8 at 8 (Phillips).

grasslands or to the functionality of the grassland ecosystem in and near the Project.⁴⁶ The record also demonstrates that the Project will not have a significant adverse impact on habitat, and will not substantially increase habitat fragmentation in the area.⁴⁷

33. Dakota Range will reseed temporarily disturbed uncultivated areas with certified weed-free seed mixes to blend in with existing vegetation.⁴⁸

34. The record does not support a permit condition requiring Dakota Range to provide compensatory mitigation for potential impacts to grasslands.⁴⁹ No evidence was introduced to support such a permit condition. As Staff witness Mr. Kirschenmann testified, South Dakota does not have such a policy, and GFP has not endorsed any particular method for calculating such impacts.⁵⁰ The land at issue is private property where GFP does not have a property interest.⁵¹ The Project has avoided high quality grasslands and minimized impacts to lesser quality grasslands through Project design.⁵² Additionally, the Project minimized risk to prairie grouse species through implementation of lek setbacks and construction timing stipulations.⁵³ These measures, coupled with baseline studies of the wildlife community done in coordination with U.S. Fish and Wildlife Service (“USFWS”) and GFP, indicate that significant adverse impacts to the environment or to rare or protected species associated with grasslands are unlikely.⁵⁴

35. Dakota Range has conducted numerous wildlife studies and surveys for the Project to assess existing use, identify potential impacts, and incorporate appropriate avoidance and minimization measures.⁵⁵ Dakota Range consulted with the USFWS and GFP to seek input on wildlife resources potentially occurring within the Project Area and to seek guidance on the appropriate studies to evaluate risk and inform development of impact avoidance and minimization measures for the Project.⁵⁶ Dakota Range followed the processes outlined in the USFWS Land-Based Wind Energy Guidelines (“WEG”), Eagle Conservation Plan Guidance (“ECPG”), and the SD Siting Guidelines for developing, construction, and operation wind energy projects.⁵⁷ In addition, Dakota Range is preparing a Bird and Bat Conservation Strategy (“BBCS”) in accordance with the WEG, which includes strategies for mitigating risks to avian and bat species during construction and operation of the Project.⁵⁸

36. Construction of the Project may have impacts on wildlife species primarily as a result of habitat disturbance.⁵⁹ However, following construction, all areas of temporary

⁴⁶ Ex. A8 at 7 (Phillips).

⁴⁷ Ex. A8 at 9 (Phillips).

⁴⁸ Ex. A8 at 8 (Phillips); Ex. A1 at 3-3 (Application).

⁴⁹ See Ex. A8 at 7-8 (Phillips).

⁵⁰ Evid. Hrg. Tr. at 105 (Kirschenmann).

⁵¹ Evid. Hrg. Tr. at 106 (Kirschenmann).

⁵² Ex. A8 at 8 (Phillips).

⁵³ Ex. A8 at 8 (Phillips); Evid. Hrg. Tr. at 196-197 (Phillips).

⁵⁴ Ex. A8 at 8 (Phillips).

⁵⁵ See, e.g., Ex. A1 at § 14.3.1.4 (Application).

⁵⁶ Ex. A1 at 14-6 (Application).

⁵⁷ Ex. A1 at 14-6 (Application).

⁵⁸ Ex. A8 at 11 (Phillips); Ex. A1 at § 14.3.2.5 (Application).

⁵⁹ Ex. A1 at 14-12 – 14-13 (Application).

disturbance will be reclaimed with vegetation consistent with the surrounding vegetation types.⁶⁰ The Project was designed to avoid and minimize displacement of wildlife by minimizing the Project's footprint in undisturbed areas.⁶¹ Permanent wildlife habitat loss and functionality due to construction and operation of the Project would be minimal across the Project Area.⁶²

37. The record demonstrates that, while the Project may directly impact birds and bats, avian fatalities due to the Project are anticipated to be low and to not have significant population-level impacts.⁶³ The Project has been sited in an area and designed in a manner to avoid and minimize impacts to birds and bats.⁶⁴

38. Dakota Range conducted two years of pre-construction avian surveys.⁶⁵ Those surveys indicate that avian impacts from the Project are anticipated to be low.⁶⁶ Further, Dakota Range has committed to one year of post-construction avian mortality monitoring, with a second year of monitoring contingent on USFWS and GFP review of the first year results.⁶⁷

39. Dakota Range has demonstrated that it will minimize and/or avoid impacts to federally- and state-listed species.⁶⁸ Based on coordination with the USFWS and GFP, the only federally-listed species with the potential to occur in the Project Area are the northern long-eared bat, Dakota skipper, and Poweshiek skipperling.⁶⁹ Impacts on federally-listed species due to Project construction and operations are anticipated to be minimal due to the low likelihood or frequency of species' presence in the Project Area and implementation of appropriate species-specific conservation measures.⁷⁰ The only state-listed species documented to occur during site-specific studies completed for the Project was the peregrine falcon (state-endangered), and only one individual was observed, suggesting that use of the Project site by this species and associated risk of impact is very low.⁷¹

40. Overall, there is a low level of risk for potential bald eagle impacts at the site.⁷² Dakota Range conducted eagle nest surveys in April 2016 and April 2017. No eagle nests were identified within the Project Area, and the closest eagle nest is approximately 1.8 miles from the Project Area.⁷³ In addition, Dakota Range has agreed to a number of avian-related impact minimization and avoidance measures, including: conducting post-construction avian mortality monitoring for at least 1 year; and preparing a BBCS in accordance with the USFWS WEG that

⁶⁰ Ex. A1 at 14-13 (Application).

⁶¹ See Evid. Hrg. Tr. at 194 (Phillips).

⁶² Ex. A1 at 14-13 (Application).

⁶³ See Ex. A1 at 14-13 – 14-14 (Application).

⁶⁴ Ex. A8 at 10 (Phillips).

⁶⁵ See Ex. A1 at 2-1 – 2-2 (Application).

⁶⁶ Ex. A1 at 14-14 (Application); Ex. A8 at 10 (Phillips).

⁶⁷ Ex. A8 at 10 (Phillips).

⁶⁸ See Ex. A1 at § 14.3.2 (Application).

⁶⁹ Ex. A1 at 14-7, 14-13 (Application).

⁷⁰ See Ex. A1 at 14-7, 14-13 (Application); Ex. A8 at 10-11 (Phillips).

⁷¹ Ex. A1 at 14-13 (Application).

⁷² Ex. A7 at 15 (Phillips).

⁷³ Ex. A1 at 14-10 (Application); Ex. A7 at 15 (Phillips).

will be implemented to minimize impacts to avian and bat species during construction and operation of the Project.⁷⁴

41. Dakota Range has demonstrated that it will minimize and/or avoid impacts to aquatic ecosystems.⁷⁵ Dakota Range consulted with USFWS and GFP regarding the federally- and state-listed aquatic species with potential to occur in or near the Project, and both agencies agree that the species are not anticipated to be affected by the Project.⁷⁶

42. Dakota Range has demonstrated that it will minimize and/or avoid impacts to land use.⁷⁷ The Project will not displace existing residences or businesses.⁷⁸ In all areas proposed for ground disturbance, Dakota Range will coordinate with the landowners to minimize impacts to the extent practicable so as to maintain opportunities to continue current land uses.⁷⁹ Areas disturbed due to construction that would not host Project facilities would be re-vegetated with vegetation types matching the surrounding agricultural landscape.⁸⁰ Agricultural uses may continue within the Project Area during construction and operation.⁸¹

43. Dakota Range has demonstrated that it will minimize and/or avoid impacts to recreation.⁸² Only five turbines and associated infrastructure will be located on three of the Walk-In Area parcels.⁸³ To address concerns related to potential viewshed impacts at Punished Woman's Lake, Dakota Range voluntarily agreed to a turbine setback of two miles from the shoreline of Punished Woman's Lake.⁸⁴

44. Dakota Range has demonstrated that it will minimize and/or avoid impacts to conservation easements and publicly-managed lands.⁸⁵ Dakota Range coordinated with the USFWS to identify and avoid areas held as conservation easements by the USFWS within the Waubay National Wildlife Refuge Complex (i.e., grassland easements, wetland easements, and waterfowl production area easements).⁸⁶ The Project has been designed such that no Project facilities (e.g., turbines, collector lines, access roads) would be placed on these USFWS Wetland, Conservation, or Grassland Easements, and thus, no direct impacts to these easement areas would occur.⁸⁷ The Project will also avoid direct impacts to all Game Production Areas and Waterfowl Production Areas.⁸⁸

⁷⁴ See Ex. A7 at 16 (Phillips) and Ex. A8 at 10-11 (Phillips); Ex. A1 at § 14.3.2.5 (Application).

⁷⁵ See Ex. A1 at § 15.2 (Application); Ex. A7 at 13 (Phillips).

⁷⁶ See Ex. A1 at § 15.2 (Application); Ex. A7 at 13 (Phillips).

⁷⁷ See Ex. A1 at §§ 16.1.2, 16.2.2 (Application).

⁷⁸ Ex. A1 at 16-3 (Application).

⁷⁹ Ex. A7 at 7 (Phillips).

⁸⁰ Ex. A1 at 16-3 (Application); Ex. A7 at 14 (Phillips).

⁸¹ Ex. A1 at 16-3 (Application).

⁸² See, e.g., Ex. A1 at §§ 13.3.2, 16.2.2, 16.6.2 (Application).

⁸³ Ex. A7 at 7 (Phillips).

⁸⁴ Ex. A9 at 6 (Mauersberger); Ex. A1 at 10-3 (Application).

⁸⁵ See Ex. A1 at § 16.2.2 (Application).

⁸⁶ Ex. A8 at 6 (Phillips).

⁸⁷ Ex. A1 at 16-4 (Application).

⁸⁸ Ex. A1 at 16-4 (Application); Ex. A8 at 6 (Phillips).

45. Dakota Range has demonstrated that it will minimize and/or avoid impacts to visual resources.⁸⁹ In accordance with Federal Aviation Administration (“FAA”) regulations, the turbine towers would be painted off-white to reduce potential glare and minimize visual impact.⁹⁰ No scenic resources with sensitive viewsheds are located within the Project Area or within viewing distance of the Project; therefore, no impacts to scenic resources would result from construction or operation of the Project.⁹¹

46. With respect to cultural and historical architectural resources, the State Historic Preservation Office (“SHPO”) made four recommendations.⁹² First, the SHPO recommended that an official record search be conducted for the Project. Dakota Range satisfied this recommendation when it conducted the Level I cultural resources records search in June 2017.⁹³ Second, SHPO recommended that a Level III Intensive Survey be completed for the Project Area. Dakota Range completed Level III intensive cultural resource surveys in December 2017 in areas of potential ground disturbance determined to have high probability of sensitive cultural resources.⁹⁴ The Level III survey results were provided to the SHPO, and the SHPO issued a letter stating that the Project would not encroach upon, damage or destroy any properties listed in the State or National Register of Historic Places (“NRHP”) or the environs of such property.⁹⁵ Third, SHPO recommended that Dakota Range analyze the visual effects to architectural resources located within one mile of the Project, which Dakota Range completed.⁹⁶ No historic architectural resources were identified within the proposed Project footprint or direct area of potential effects.⁹⁷ Within the visual area of potential effects, there are three structures recommended eligible for listing on the NRHP; however, the Project will have no adverse effect on the resources.⁹⁸ Fourth, SHPO recommended that Dakota Range contact the Tribal Historic Preservation Officers (“THPO”) in South Dakota. Dakota Range has engaged in ongoing voluntary coordination with the Sisseton-Wahpeton Oyate (“SWO”) to seek input on cultural resources in the Project Area, the Cultural Resources Monitoring and Management Plan (“CRMMP”), and proposed the cultural resource surveys for the Project.⁹⁹ Dakota Range completed tribal resource surveys with SWO in May 2018.¹⁰⁰ Staff witness Ms. Olson stated that SHPO’s recommendation that Dakota Range reach out to Native American tribes and consult on tribal resources has been satisfied.¹⁰¹

47. Dakota Range has demonstrated that it will minimize and/or avoid impacts to cultural resources.¹⁰² Dakota Range conducted multiple cultural resource surveys to identify

⁸⁹ See Ex. A1 at § 16.6.2 (Application).

⁹⁰ Ex. A1 at 16-13 (Application).

⁹¹ Ex. A1 at 16-14 (Application).

⁹² Ex. S3 at 3-4 (Olson).

⁹³ See Ex. A7 at 17 (Phillips); Ex. A1 at Appendix M (Application); *see also* Ex. S3 at 4 (Olson).

⁹⁴ See Ex. A7 at 17 (Phillips).

⁹⁵ Ex. A8-1 at 2 (SHPO Letter, dated February 14, 2018).

⁹⁶ See Ex. A7 at 18 (Phillips); *see also* Ex. S3 at 4 (Olson).

⁹⁷ Ex. A7 at 18 (Phillips).

⁹⁸ Ex. A7 at 18 (Phillips).

⁹⁹ Ex. A1 at 21-16 (Application); Ex. A7 at 5 (Phillips).

¹⁰⁰ Ex. A15 at 3 (Gunderson).

¹⁰¹ Evid. Hrg. Tr. at 293 (Olson); Ex. S3 at 4 (Olson).

¹⁰² See Ex. A1 at § 21.5.2 (Application); Ex. A7 at 19 (Phillips); Ex. A8 at 3-4 (Phillips).

cultural resources within the Project Area.¹⁰³ Dakota Range would avoid direct impacts to identified cultural resources as defined in the CRMMP and in coordination with the SWO.¹⁰⁴ Both SHPO and SWO have agreed that the measures outlined in the CRMMP are appropriate to avoid negatively impacting landmarks and cultural resources of historic, religious, archaeological, scenic, natural, or other cultural significance.¹⁰⁵ Further, Dakota Range's CRMMP provides a plan for unanticipated discovery of sensitive cultural resources, should any be unearthed during construction.¹⁰⁶

48. Staff and Dakota Range have agreed upon Conditions 11 through 13 regarding cultural resources, which are attached.

2. Social and Economic.

49. Apex acquired the Dakota Range Project from a small local developer, Wahpeton Wind, in March 2015.¹⁰⁷ The Project was acquired after initial site selection and a specific area was offered for sale; therefore, Apex was not involved in considering broader alternative locations.¹⁰⁸ The identification of the final Project site was primarily driven by: (1) the site's strong wind speeds; (2) direct access to transmission interconnection; (3) land use and environmental compatibility with wind development; (4) landowner support for wind energy development; and (5) the Project's ability to avoid or minimize potential adverse impacts to cultural resources, wetlands, grasslands, and wildlife species of concern.¹⁰⁹

50. Participating landowners Mr. Falk and Ms. Moyer testified regarding their support for the Project.¹¹⁰ The Project will provide an additional stable source of income for landowners.¹¹¹ Mr. Falk and Ms. Moyer also testified to their good working relationships with Dakota Range and their belief that Dakota Range has shown itself to be responsive and thoughtful.¹¹² Further, the Project uses a community compensation formula that does not limit compensation to only those landowner participants who host Project facilities.¹¹³

51. Dakota Range has demonstrated that construction and operation of the Project will result in substantial benefits to South Dakota and local economies.¹¹⁴ The Project will create temporary job opportunities during construction, and permanent operations and maintenance job opportunities.¹¹⁵ Additionally, local industrial businesses would also likely benefit from construction-related expenditures for the Project.¹¹⁶ The Project will make lease

¹⁰³ See Ex. A1 at § 21.5.1, Appendix M, Appendix N, Appendix O (Application); Ex. A7 at 17-18 (Phillips).

¹⁰⁴ See Ex. A1 at 3-2 (Application).

¹⁰⁵ See Ex. A1 at 21-16 (Application); Ex. A7 at 19 (Phillips).

¹⁰⁶ Ex. A8 at 3 (Phillips).

¹⁰⁷ Ex. A1 at 2-1 (Application).

¹⁰⁸ Ex. A1 at 10-1 (Application).

¹⁰⁹ Ex. A1 at 10-1 – 10-2 (Application).

¹¹⁰ See Ex. A11 (Moyer) and Ex. A12 (Falk); Evid. Hrg. Tr. at 138 – 158 (Falk) and 159 – 168 (Moyer).

¹¹¹ See Ex. A11 at 2 (Moyer); Ex. A12 at 2 (Falk).

¹¹² See Ex. A12 at 2 (Falk); Ex. A11 at 2 (Moyer); Evid. Hrg. Tr. at 140-141 (Falk).

¹¹³ Evid. Hrg. Tr. at 92-93, 97 (Mauersberger).

¹¹⁴ See Ex. A1 at § 21.1.2.1 (Application).

¹¹⁵ Ex. A1 at 21-3 (Application).

¹¹⁶ Ex. A1 at 21-3 (Application); Ex. A9 at 18 (Mauersberger).

payments to participating landowners and will provide long-term benefits to the state and local tax base.¹¹⁷

52. Dakota Range has demonstrated that the Project will not adversely impact property values.¹¹⁸ Mr. MaRous, a South Dakota State Certified General Appraiser and a certified Member Appraisal Institute appraiser with extensive experience evaluating the impact of wind turbines on property values, conducted a Market Analysis to analyze the potential impact of the Project on the value of the surrounding properties and found no credible data indicating property values will be adversely impacted due to proximity to the Project.¹¹⁹

53. Staff's witness, Mr. Lawrence, also a South Dakota State Certified General Appraiser and a certified Member Appraisal Institute appraiser conducted his own analysis of the sales of six Brookings County residential properties in proximity to wind turbines and testified that based on his research, "the evidence supports the presumption there have been no adverse effects on the selling price of rural residential properties in proximity to a wind tower, turbine or wind project."¹²⁰

54. There is no basis in the record to require a property value guarantee. There is no record evidence that property values will be adversely affected.¹²¹

55. The record demonstrates that the Project is not anticipated to adversely impact communications systems.¹²² If, after construction, Dakota Range receives information relative to communication systems interference potentially caused by operation of the wind turbines in areas where reception is presently good, Dakota Range has committed to resolve such problems on a case-by-case basis.¹²³

56. The record demonstrates that Dakota Range has avoided and/or minimized impacts to transportation.¹²⁴ Dakota Range will coordinate with applicable local road authorities to establish road use agreements, as needed, to minimize and mitigate Project impacts to haul roads.¹²⁵ For example, Dakota Range has entered into a road use agreement with Grant County.¹²⁶ The Project will utilize the One-Call program to locate underground infrastructure prior to construction.¹²⁷ In addition, once construction is completed, the Project will register its facilities with the One-Call program.¹²⁸

¹¹⁷ Ex. A9 at 19 (Mauersberger); Ex. A1 at 21-4 – 21-5 (Application).

¹¹⁸ See Ex. A1 at § 21.1.2.3 (Application); Ex. A13 at 5, 6 (MaRous); Ex. A13-1 at 3, 35 (Market Impact Analysis); Ex. A14 at 2, 11, 13 (MaRous); Evid. Hrg. Tr. at 171-172 (MaRous).

¹¹⁹ See Ex. A13 at 2, 6 (MaRous); Ex. A13-1 at 3, 35 (Market Impact Analysis); Evid. Hrg. Tr. at 169 (MaRous).

¹²⁰ Ex. S6 at 4 (Lawrence); see also Evid. Hrg. Tr. at 289-290 (Lawrence).

¹²¹ See Ex. A1 at § 21.1.2.3 (Application); Ex. A13 at 5, 6 (MaRous); Ex. A13-1 at 3, 35 (Market Impact Analysis); Ex. A14 at 2, 11, 13 (MaRous); Evid. Hrg. Tr. at 171-172 (MaRous) and 289-290 (Lawrence).

¹²² See Ex. A1 at § 16.5 (Application).

¹²³ Ex. A1 at 16-11 (Application).

¹²⁴ See Ex. A1 at § 21.4.2 (Application).

¹²⁵ Ex. A9 at 16 (Mauersberger); Ex. A1 at 21-12 (Application).

¹²⁶ Evid. Hrg. Tr. at 67-68 (Mauersberger).

¹²⁷ Ex. A1 at 25-2 (Application); Ex. A9 at 16 (Mauersberger).

¹²⁸ Ex. A1 at 25-2 (Application); Ex. A9 at 16 (Mauersberger).

C. The facility will not substantially impair the health, safety or welfare of the inhabitants.

57. The record demonstrates Dakota Range has minimized impacts from noise.¹²⁹ Staff and Dakota Range agreed to Condition 27, which is attached hereto.

58. Section 1211.04(13) of the Zoning Ordinance for Grant County imposes the following noise limit on wind energy facilities: Noise level shall not exceed 50 [A-weighted decibel (“dBA”)], average A-weighted Sound pressure including constructive interference effects at the perimeter of the principal and accessory structures of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.”¹³⁰

59. Section 5.22.03(12) of the Comprehensive Zoning Regulations for Codington County requires the following: “Noise level shall not exceed 50 dBA, average A-weighted Sound pressure including constructive interference effects at the property line of existing off-site residences, businesses, and buildings owned and/or maintained by a governmental entity.”¹³¹

60. Dakota Range conducted a Sound Level Modeling Report to measure the Project’s anticipated sound level in order to determine whether the Project will comply with the noise limits established by Grant and Codington counties.¹³² The projected one-hour sound levels from the Project are 45 dBA or less at all participating residences and 44 dBA or less at all non-participating residences.¹³³ Thus, the Project will comply with the Grant County and Codington County sound level requirements and the agreed-upon noise condition.¹³⁴

61. The record demonstrates that Dakota Range has minimized and/or avoided impacts from shadow flicker.¹³⁵ Dakota Range has committed to limit shadow flicker to 30 hours or less per year at any existing non-participating residence, business, or building owned and/or maintained by a governmental entity, unless otherwise agreed to by the landowner.¹³⁶

62. There is no record evidence that the proposed Project will have any impacts on human health.¹³⁷ Construction and placement of facilities meet or exceed industry standards established for protection of the health and welfare of residences and businesses in and around the Project.¹³⁸ Further, the South Dakota Department of Health provided Staff with a letter stating that the Department of Health has not taken a formal position on the issue of wind turbines and human health.¹³⁹ The South Dakota Department of Health referenced the Massachusetts Department of Public Health and Minnesota Department of Health studies and

¹²⁹ See Ex. A1 at § 16.3.2 (Application).

¹³⁰ See Ex. A5 at 4 (O’Neal).

¹³¹ See Ex. A5 at 5 (O’Neal).

¹³² See Ex. A5 at 5 (O’Neal); Ex. A1 at Appendix I (Application); see also Ex. A24 (Updated Wind Turbine Coordinates).

¹³³ Ex. A6 at 7 (O’Neal).

¹³⁴ Evid. Hrg. Tr. at 238 (June 13, 2018) (O’Neal); Ex A5 at 7 (O’Neal).

¹³⁵ See Ex. A1 at § 16.4 (Application); Ex. A5 at 11 (O’Neal).

¹³⁶ Ex. A1 at 16-11 (Application).

¹³⁷ See, e.g., Ex. A2 at 13-14 (Roberts).

¹³⁸ See, e.g., Ex. A9 at 14-15 (Mauersberger); Ex. A1 at § 25.2 (Application).

¹³⁹ See Ex. S1 at 3 (Thurber).

noted that those studies generally conclude that there is insufficient evidence to establish significant risk to human health.¹⁴⁰ Dr. Roberts' analyzed and reviewed peer reviewed, published literature and did not identify any scientific works that provide objective support for claims that wind turbines cause adverse health effects.¹⁴¹ He concluded that there is no peer-reviewed, scientific data to support a claim that wind turbines are causing disease or specific health conditions.¹⁴²

63. The Project will utilize aviation warning lights compliant with the FAA requirements. The FAA determines lighting specifications and determines which turbines must be equipped with lights.¹⁴³ Dakota Range testified that it does not plan to utilize the Aircraft Detection Lighting System ("ADLS") because it is a newer technology and has not been proven as safe or reliable as the FAA-approved lighting system the Project plans to utilize.¹⁴⁴ No evidence contrary to Dakota Range's testimony was presented and Staff witness, Mr. Thurber, confirmed that Dakota Range's proposed lighting system meets applicable FAA regulations.¹⁴⁵

64. The record evidence does not support imposing a condition requiring the Project to use ADLS.

65. See Proposed Finding of Fact 65, which contains confidential information and has been filed confidentially in this docket.

D. The facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

66. The record demonstrates that the Project will not unduly interfere with the orderly development of the region, as demonstrated by Grant County's and Codington County's granting of conditional use permits for the Project.¹⁴⁶

67. Ms. Mogen and Ms. Kaaz proposed a two-mile setback from non-participating land.¹⁴⁷ Ms. Mogen and Ms. Kaaz did not present any evidence in support of the two-mile setback, and did not request a two-mile setback from the County during the County conditional use permitting process for the Project.¹⁴⁸ Nothing in the record supports a proposed two-mile setback from non-participants' land.

¹⁴⁰ See Ex. S1 at 3 (Thurber); Ex. A2 at 13-14 (Roberts).

¹⁴¹ Ex. A2 at 12 (Roberts).

¹⁴² Ex. A2 at 12 (Roberts); see also Ex. A2 at 13 (Roberts) ("Despite the attribution of various health events to wind turbines, there has not been a specific health condition documented in the peer-reviewed published literature to be recognized by the medical community or professional societies as a disease caused by exposure to sound levels and frequencies generated by the operation of wind turbines.").

¹⁴³ Ex. A1 at 9-4 (Application).

¹⁴⁴ Evid. Hrg. Tr. at 68-69 (Mauersberger).

¹⁴⁵ Evid. Hrg. Tr. at 309 (Thurber).

¹⁴⁶ See Ex. A1 at 17-1 (Application).

¹⁴⁷ See Evid. Hrg. Tr. at 331 (Mogen) and 356 (Kaaz).

¹⁴⁸ See Evid. Hrg. Tr. at 332-333 (Mogen) and 355 (Kaaz); see also Evid. Hrg. Tr. at 72-73 (Mauersberger).

68. Ms. Kaaz raised concerns regarding the proximity of the turbines to her land. However, the Project complies with all state and county setback requirements. Additionally, Dakota Range committed that it will use no more than three of the four turbine locations closest to Ms. Kaaz's property (Turbines 67, 68, 69 and A26).¹⁴⁹

CONCLUSIONS OF LAW

From the foregoing Findings of Fact and the record in this proceeding, the Commission now makes the following Conclusions of Law:

1. The Commission has jurisdiction to consider the Application under South Dakota Codified Law Chapter 49-41B.

2. The wind energy conversion facility proposed by Applicant is a wind energy facility as defined under South Dakota Codified Law 49-41B-2(13).

3. The Application submitted by Applicant meets the criteria required by South Dakota Codified Law 49-41B-25, and construction of the Project meets the requirements of South Dakota Codified Law 49-41B.

4. The Commission satisfied the hearing and notice requirement in South Dakota Codified Law Chapter 49-41B.

5. Applicant satisfied the applicable notice requirements in South Dakota Codified Law Chapter 49-41B.

6. Applicant has demonstrated that the proposed facility will comply with all applicable laws and rules.

7. Applicant has demonstrated that the facility will not pose a threat of serious injury to the environment nor to the social and economic condition of inhabitants or expected inhabitants in the siting area.

8. Applicant has demonstrated that the facility will not substantially impair the health, safety or welfare of the inhabitants.

9. Applicant has demonstrated that the facility will not unduly interfere with the orderly development of the region with due consideration having been given the views of governing bodies of affected local units of government.

10. All other applicable procedural requirements in South Dakota Codified Law Chapter 49-41B have been satisfied.

11. No party has provided evidence sufficient for the Commission to impose a property value guarantee.

¹⁴⁹ Evid. Hrg. Tr. at 220 (Gunderson).

12. No party has provided evidence sufficient for the Commission to impose mitigation for grassland impacts.

13. No party has provided evidence sufficient for the Commission to impose a 2-mile setback from non-participating landowners.

14. No party has provided evidence sufficient for the Commission to impose a condition regarding decommissioning above and beyond the condition agreed to by Staff and Dakota Range.

15. To the extent that any Finding of Fact set forth above is more appropriately a conclusion of law, that Finding of Fact is incorporated by reference as a Conclusion of Law.

ORDER

From the foregoing Findings of Fact and Conclusions of Law, it is therefore:

ORDERED, that an energy facility permit is issued to Dakota Range I, LLC and Dakota Range II, LLC for the Dakota Range Wind Project.

ORDERED, that Applicants shall comply with the attached Permit Conditions, which are hereby incorporated into and made a part of this Order.

Dated on _____