

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

**IN THE MATTER OF THE APPLICATION
OF DAKOTA RANGE III, LLC FOR A
PERMIT OF A WIND ENERGY FACILITY
AND A 345-KV TRANSMISSION LINE IN
GRANT AND ROBERTS COUNTIES**

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SETTLEMENT STIPULATION

EL18-046

It is hereby stipulated and agreed by and between the Applicant, Dakota Range III, LLC (Applicant or Dakota Range III), and Staff of the South Dakota Public Utilities Commission (Staff), (jointly the Parties), that the following Settlement Stipulation may be adopted by the South Dakota Public Utilities Commission (Commission) in the above-captioned matter.

In its support of its Application, the Applicant hereby offers this Stipulation, the Application filed on October 26, 2018, the supplements to the Application filed on December 11, 12 and 17, 2018, and all of the responses submitted by the Applicant to the Staff's Data Requests and attached hereto (Attachment 1). The Parties offer no answering testimony or exhibits, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions without any material condition or modification.

INTRODUCTION

Dakota Range III proposes to construct an approximately 8-mile 345-Kilovolt (kV) interconnection transmission line and an up to 151.2-megawatt (MW) wind energy conversion facility (Project). The Project will be in Grant and Roberts Counties, South Dakota, with the wind portion in an 18,717-acre area. The transmission line will run from the Project's substation located in section 13 of Blooming Valley Township, outside the public right of way along 455th Avenue, turning east on Farmington Township's 150th Street to the switchyard owned by Otter Tail Power Company, located in section 14 of Mazeppa Township. The Project is expected to be in service by December 31, 2020, with a total of up to 42 wind turbines and associated facilities. Dakota Range III estimates the total cost of the proposed Project to be approximately \$200 million.

PURPOSE

This stipulation has been prepared and executed by the Parties for the sole purpose of resolving Docket EL18-046. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of this Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.
2. This Stipulation includes all terms and conditions of the settlement and is submitted with the condition that, in the event the Commission imposes any material changes or conditions to this Stipulation which are unacceptable to either Party, this Stipulation may, at the option of either Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.
3. This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void, and privileged. This Stipulation is intended to relate only to the specific matter referred to herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein. No Party or a representative thereof shall directly or indirectly refer to this Stipulation as precedent in any other current or future proceeding before the Commission.
4. The Parties stipulate that all pre-filed testimony, exhibits, and responses to Staff data requests will be made a part of the record in this proceeding. The Parties understand that if this matter had not been settled, the Parties would have filed direct and rebuttal testimony.
5. The terms and conditions contained in this Stipulation shall inure to the benefit of and be binding upon the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, and assigns of the Parties. In addition, the terms and conditions of this Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors and retained professionals.
6. This Stipulation constitutes the entire agreement between the Parties and shall be deemed to supersede any other understanding or agreements, whether written, oral, expressed or implied, relating to the Application. This Stipulation may not be amended, modified, or supplemented, and waivers or consents to departures from the terms and conditions of this Stipulation may not be given without the written consent thereto executed by both Parties.
7. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.

8. This Stipulation may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
9. The Parties agree that subject to the four elements of proof under SDCL 49-41B-22, the Commission has the authority to grant, deny, or grant upon reasonable terms, conditions, or modifications Permits for the construction, operation, and maintenance of the Project. Each Party further agrees that Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to Permits to construct the Project as provided in SDCL 49-41B-24, subject to the following:

TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION

1. 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 of the Project prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by Applicant shall be sent to the Commission.
2. 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 Final Decision and Order Granting Permit to Construct Facilities, and Attached Permit Conditions, (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 Chapter 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. Participating landowners are free to use the complaint process free from retribution or consequence regardless of any private easement term to the contrary.
4. At least 14 days prior to commencement of construction, Applicant shall provide each participating and non-participating landowner in the Project Area with the following information:
 - a) A copy of the Final Decision and 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 (only to participating landowners);
 - 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 Permit Conditions, Applicant shall comply with all mitigation measures set forth in the Application and Applicant's responses to Commission staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
7. Applicant will negotiate road use agreements with Grant and Roberts Counties and all affected townships, if required. Applicant will follow the terms of all road use agreements. When using haul roads specified in applicable 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.
8. In accordance with applicable road use agreements or applicable law, 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) Within 180 days of completing construction and reclamation of the Project, Applicant shall submit documentation to the Commission identifying that the roads were repaired in accordance with this Condition 8 and to the satisfaction of affected townships and counties. If the townships or counties will not provide such documentation, then Applicant shall provide a report to the Commission on the outstanding road repair issues and how those issues will be resolved.
 - f) Privately owned areas used as temporary roads or crane paths during construction will be restored to their preconstruction condition, except as otherwise requested or agreed to by the landowner.
 - g) Should Applicant need to widen any existing roadways during construction of the Project, Applicant shall return the roadways back to original width after completion of the Project, unless agreed otherwise with the federal, state, county, or township entities, or the landowner.
 - h) Before commencing construction of the transmission facility, 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 facility. 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 the amount of this bond to all counties, townships, and other governmental entities whose property is crossed by the transmission facility.
9. Applicant shall 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.

10. 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.
11. 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 a NRHP unevaluated, eligible or listed resource cannot be avoided, Applicant shall notify the South Dakota 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.
12. Applicant agrees to develop an unanticipated discovery plan for cultural resources and follow SDCL 34-27-25, 34-27-26, and 34-27-28 for the discovery of human remains.
13. If any potential adverse impacts to NRHP unevaluated, listed, or eligible cultural resources are identified in the final cultural resources report, Applicant shall file with the Commission a report describing the SHPO-approved planned measures to ameliorate those impacts.
14. 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 to be engaged in ground disturbing activities will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.
15. Applicant shall repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration shall 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 Permit Condition, Applicant shall:
 - a) Strip topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing (e-mail is sufficient), 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 the contours align with the surrounding area;
- b) Store topsoil separate from subsoil in order to prevent mixing of the soil types;
 - c) All excess soils generated during the excavation of the turbine foundations shall remain on the same landowner's land, unless the landowner requests, and the landowner agrees, otherwise; and
 - d) When revegetating non-cultivated grasslands, Applicant shall use a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, unless otherwise agreed upon with the landowner in writing.
16. Applicant shall work closely with landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds.
17. 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 the appropriate federal, state, and/or local government agency. All excess (non-permanent) construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
18. 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 upon 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.
19. Applicant shall bury the underground collector system at a minimum depth of 3.5 feet, or deeper if necessary, to ensure the current land use is not impacted.
20. 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.

21. 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.
22. Applicant may make turbine adjustments of 250 feet or less from the turbine locations identified in the Application without prior Commission approval, so long as specified noise and shadow flicker thresholds are not exceeded, cultural resource impacts and documented habitats for listed species are avoided, and wetland impacts are avoided or are in compliance with applicable U.S. Army Corps of Engineers (USACE) regulations. 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 Applicant shall file a request for approval of the "material change" prior to making the adjustment pursuant to the following approval process:
 - Applicant will 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 will have 10 calendar days within which to request further Commission review.
 - If no further review is requested, Applicant may proceed with the adjustment.

- If further review is requested, the Commission will issue a decision regarding Applicant's request at its next available regularly scheduled Commission meeting, subject to notice requirements, after the request for further review is made by Commission staff.
23. Applicant may adjust access roads, the collector system, meteorological towers, the operations and maintenance facility, the Project substation, and temporary facilities, so long as they are located on land leased for the Project, cultural resources and documented habitats for listed species are avoided, and wetland impacts are avoided or are in compliance with applicable USACE regulations.
 24. 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. Any adjustments that fall outside of the 150-foot-wide right-of-way identified in the Application, or that 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 22.
 25. 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.
 26. 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.
 27. 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, defined by Commission staff, that includes all integer wind speeds from cut in to full power, of more than 45 dBA within 25 feet of any non-participating residence unless the owner of the residence has signed a waiver, or more than 50 dBA within 25 feet of any participating residence unless the owner of the residence has signed a waiver. Applicant shall, upon Commission formal request, conduct field surveys or provide post-construction monitoring data verifying compliance with specified noise level limits using applicable American National Standards Institute (ANSI)

methods. If the long-term average level exceeds 45 dBA at any non-participating residence or 50 dBA at any participating residence where the owner of the residence has not signed a waiver, then the Project Owner shall take whatever steps are necessary in accordance with prudent operating standards 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.

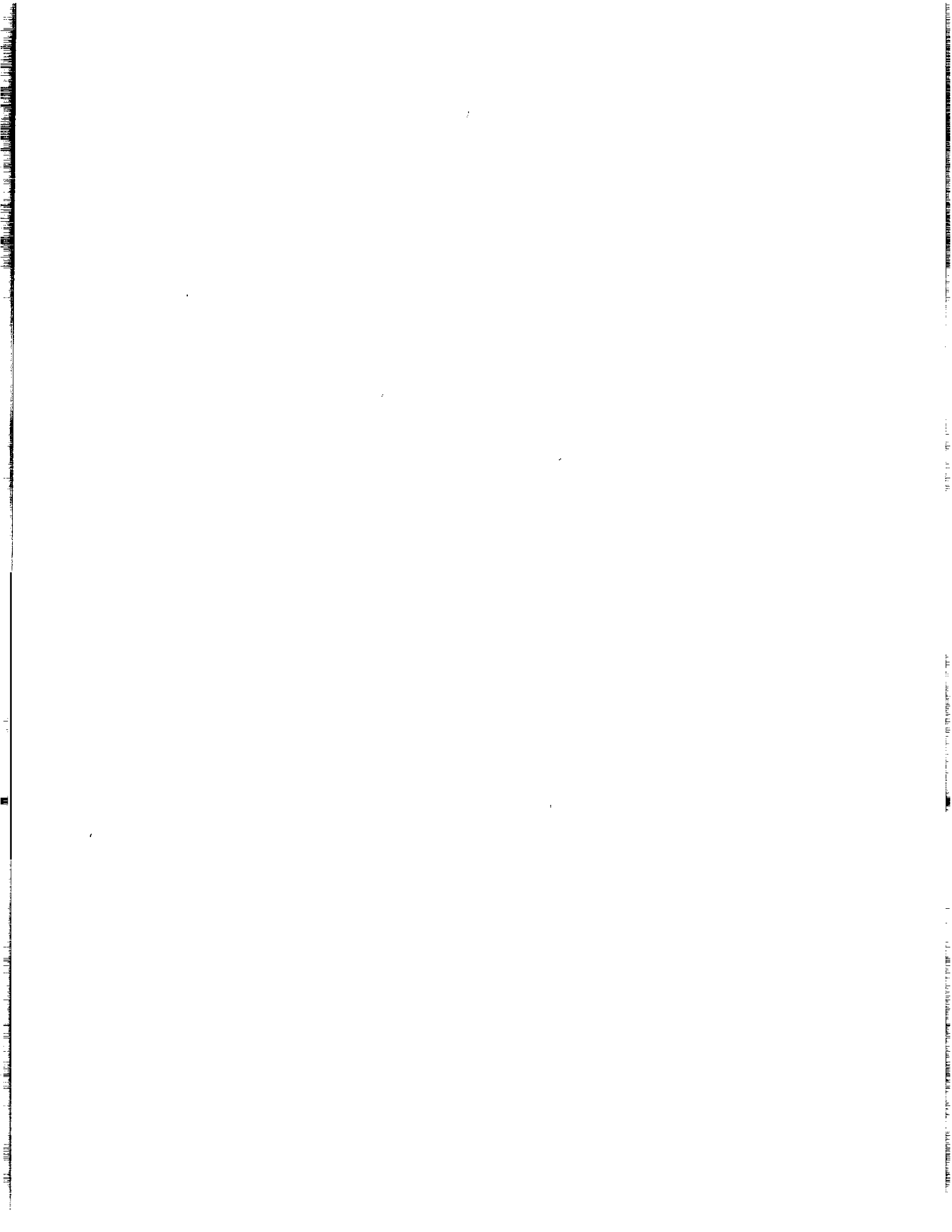
28. Applicant will take steps to mitigate shadow flicker concerns at residences that could experience shadow flicker levels above 30 hours per year.
29. Not less than 30 days prior to commencement of construction work in the field for the Project, Applicant will provide to Commission staff the following information:
 - a) the most current preconstruction design, layout, and plans, including 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 30 hours per year at any residence, absent a waiver agreement executed by the residence owner(s); and
 - d) such additional Project preconstruction information as Commission staff requests.
30. Within 90 days after the Project's commercial operation date, 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 the setbacks required by state and local governments and the voluntary commitments set forth in Table 10-1 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.

31. For purposes of this Project and the commitments herein, “residences/dwellings,” “businesses,” “structures,” “schools,” “churches,” and “buildings owned and/or maintained by a governmental entity” shall include only those that are in existence and in use as of the date of the Commission’s order issuing a permit. “Business” shall not include agricultural uses.
32. Applicant shall seek input from local emergency response personnel 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 Commission staff to make available to the general public on the Commission’s website.
33. Prior to the construction of the Project, Applicant will notify public safety agencies by providing a schedule and the location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public Safety, the sheriff(s) of Grant and Roberts Counties, the Roberts County Office of Emergency Management, and the Grant County Office of Emergency Management.
34. Applicant agrees to undertake a minimum of two years of independently-conducted post-construction avian and bat mortality monitoring for the Project, and to provide a copy of the report and all further reports to the United States Fish and Wildlife Service, South Dakota Game, Fish, and Parks, and the Commission.
35. Applicant shall file the Bird and Bat Conservation Strategy (BBCS) prior to beginning construction of the Project. The BBCS shall be implemented during construction and operation of the Project.
36. At least 30 days prior to commencement of construction, Applicant shall submit the identity and qualifications of a public liaison officer to the Commission for approval to facilitate the exchange of information between Applicant, including its contractors, landowners, local communities, and residents, and to facilitate prompt resolution of complaints and problems that may develop for landowners, local communities, and residents as a result of the Project. Applicant shall file with the Commission its proposed public liaison officer’s credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by Applicant without the approval of the Commission. The public liaison officer shall be afforded immediate access to Applicant’s on-site project manager, its executive project manager, and to the contractors’ on-site managers and shall be available at all times to Commission staff via mobile phone to respond to complaints and concerns communicated to the Commission staff by

concerned landowners and others. As soon as Applicant's public liaison officer has been appointed and approved, Applicant shall provide contact information for him/her to all landowners in the Project area and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to Applicant and the public liaison officer, take action to remove the public liaison officer. The public liaison's services shall terminate 90 days after the Project commences commercial operations, unless the appointment is extended by order of the Commission.

37. If the Project is decommissioned, Applicant will follow Section 24 of the Application and the decommissioning plan laid out in Appendix M of the Application. The Commission shall be notified prior to any decommissioning action.
38. Applicant will use two methods to detect icing conditions on turbine blades: (1) sensors that will detect when blades become imbalanced or create vibration due to ice accumulation; and (2) meteorological data from on-site permanent meteorological towers, on-site anemometers, and other relevant sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the turbine(s) in icing conditions (per the sensors) or Applicant will manually shut down turbine(s) if icing conditions are identified (using referenced data). Turbines will not return to normal operation until the control systems no longer detect an imbalance or when weather conditions either remove icing on the blades or indicate icing is no longer a concern. Applicant will pay for any documented damage caused by ice thrown from a turbine.
39. Applicant shall utilize an Aircraft Detection Lighting System if approved by the Federal Aviation Administration.
40. At least 60 days prior to commencement of commercial operation, Applicant shall file an escrow agreement with the Commission for Commission approval that provides a decommissioning escrow account. The escrow agreement shall incorporate the following requirements:
 - a) The escrow account is funded by the turbine owner annually at a rate of \$5,000 per turbine per year for the first 30 years, commencing no later than the commercial operation date.


- b) Beginning in year ten following commercial operation of the project and each fifth year thereafter, the turbine owner shall submit to the Commission an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in the filing the Commission may require additional funding equal to the estimated amount needed for decommissioning.
- c) All revenues earned by the account shall remain in the account.
- d) An account statement shall be provided annually to the Commission and become a public record in this docket.
- e) The escrow account obligations will be those of Dakota Range III and the escrow agreement shall include terms providing that the agreement binds Dakota Range III's successors, transferees, and assigns. A sale of project assets shall include the associated Permit that requires Commission approval per SDCL § 49-41B-29.
- f) The escrow account agent shall have an office located in South Dakota.
- g) The escrow agreement shall be subject to the laws of South Dakota and any disputes regarding the agreement shall be venued in South Dakota.
- h) To minimize the risk that the escrow account would be subject to foreclosure, lien, judgment, or bankruptcy, the escrow agreement will be structured to reflect the follow factors:
 - 1) That Dakota Range III agreed to the creation of the escrow account;
 - 2) Dakota Range III exercises no (or the least amount possible of) control over the escrow;
 - 3) The initial source of the escrow;
 - 4) The nature of the funds put into the escrow;
 - 5) The recipient of its remainder (if any);
 - 6) The target of all its benefit; and
 - 7) The purpose and its creation.



- i) Account funds are to be paid to the project owner at the time of decommissioning, to be paid out as decommissioning costs are incurred and paid.
 - j) If the project owner fails to execute the decommissioning requirement found in section 40 of the Conditions, the account is payable to the landowner who owns the land on which associated project facilities are located as the landowner incurs and pays decommissioning costs.
41. The terms and conditions of the Permit shall be made a uniform condition of construction and operation, 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.
42. Applicant shall provide a copy of the Commission's Final Decision on the Permit Application and Notice of Entry in this docket to the affected Counties, Townships, and Municipalities in the Project Area.

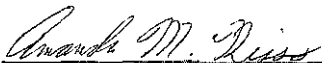
Dated this 6th day of February 2019.

Dakota Range III, LLC

By: 

Its: Vice President

Public Utilities Commission Staff

By: 

Its: Staff Attorney

