

EXHIBIT 5

South Dakota County Ordinances (lines 60-74)

EXHIBIT COVER PAGE RELATIVE TO
PRE-FILED DIRECT TESTIMONY OF MATTHEW MCCAULLEY
ON BEHALF OF ENGIE NORTH AMERICA, INC.
SD PUC DOCKET EL19-007

The owner or operator of a LWES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities. The decommissioning plan shall clearly identify the responsible party.

B. Useful Life.

A Wind Energy System shall be presumed to be at the end of its useful life if the facility generates no electricity for a continuous period of nine (9) months and notice of such shall be made at that time. The presumption may be rebutted by submitting to the Board of Adjustment for approval of a plan outlining the steps and schedule for returning the system to service within three (3) months of the submission.

C. Decommissioning Period.

The facility owner or operator shall begin decommissioning a LWES facility within nine (9) months after the time the facility or turbine reaches the end of its useful life.

D. Decommissioning Requirements.

Decommissioning and site restoration includes dismantling and removal of all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty-two (42) inches; and removal of surface road material and restoration of the roads and turbine sites to substantially the same physical condition that existed immediately before construction of the LWES. To the extent possible, the site must be restored and reclaimed to the topography and topsoil quality that existed just prior to the beginning of the construction of the commercial wind energy conversion facility or wind turbine. Disturbed earth must be graded and reseeded, unless the landowner requests in writing that the access roads or other land surface areas be retained.

E. Decommissioning Plan.

Prior to commencement of operation of a LWES facility, the facility owner or operator shall file with the Board of Adjustment the estimated decommissioning cost per turbine, in current dollars at the time of the application, for the proposed facility and a decommissioning plan that describes how the facility owner will ensure that resources are available to pay for decommissioning the facility at the appropriate time. The Board of Adjustment shall review a plan filed under this section and shall approve or disapprove the plan within six (6) months after the decommissioning plan was filed. The Board of Adjustment may at any time require the owner or operator of a LWES to file a annual report describing how the LWES owner or operator is fulfilling this obligation.

F. Financial Assurance.

The Board of Adjustment shall require performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board of Adjustments to cover the anticipated costs of decommissioning the LWES facility within any of the first ten (10) years of the project. Unless required prior to the tenth year by the Board, the LWES facility owner or operator shall file the assurance no later than the 10th tenth anniversary of its conditional use permit approval.

G. Failure to Decommission

If the LWES facility owner or operator does not complete decommissioning, the Board of Adjustment may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board of Adjustment may take such action as may be necessary to decommission a LWES facility and seek additional expenditures necessary to do so from the facility owner.

Section 9-104 to 199, inclusive. Reserved

Sections 10-101 to 106, inclusive. Airport Noise A - general provisions.

Section 10-101. Official Airport Noise Zone Map and Description.

The location, size, shape, and boundaries of the zones to which the provision of the text of this ordinance are applicable, shall be indicated on the Official Airport Noise Zone Map in the Zoning Administrator's Office and by description incorporated herein and by this reference made apart thereof and said map, after being adopted by reference as a part of this ordinance, and so certified by the County Auditor together with the text, shall be maintained by the Zoning Administrator and said map shall be the official zoning map for the purpose of enforcement of this ordinance. In case of doubt or dispute, the description of said zones shall govern.

Section 10-102. Legal boundary descriptions for Airport Noise Zone A.

Reserved.

Section 10-103. Statement of purpose for Airport Noise Zone A.

This zone provides for development around the airport that will allow the highest use of the land, yet will be compatible with airport operations. Airport Noise Zone A is a relatively high noise area best suited for agricultural use or industrial use when a high noise level can be tolerated. This zone limits or restricts the uses, which are permitted for the zoning districts, which lie within the boundaries of Airport Noise Zone A. Any structural development must meet the criteria for height restrictions as well as compatibility.

Section 10-104. Principal permitted uses.

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cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.

4. **Lighting.** Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.
5. **Turbine Spacing.** The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.
6. **Footprint Minimization.** The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
7. **Electrical Cables.** The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. **Feeder Lines.** The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.
9. **Decommissioning/Restoration/Abandonment**
 - a. **Decommissioning Plan.** Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing

the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The decommissioning plan shall include the requirement that Permittee post a bond or other adequate security sufficient to pay the entire cost of the decommission process.

- b. **Site Restoration.** Upon expiration of this permit, or upon earlier termination of operation of the WES, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty two (42) inches. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.
10. **Abandoned Turbines.** The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
11. **Height from Ground Surface.** The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
12. **Towers.**
 - a. **Color and Finish.** The finish of the exterior surface shall be non-reflective and non-glass.
 - b. **All towers shall be singular tubular design.** With the exception of those towers identified in Section 12.15.01.
13. **Noise & Shadow Flicker.**
 - a. **Noise level shall not exceed 45 dBA average A-Weighted Sound pressure** at the perimeter of existing residences, for non-participating residences.

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6. **Footprint Minimization.** The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.
7. **Collector Lines.** Collector lines are the conductors of electric energy from the Wind Energy System to the feeder lines. When located on private property, the permittees shall place electrical lines, known as collectors, and communication cables underground between the WES and the feeder lines. The exception to this requirement is when the total distance of collectors from the substation requires an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.
8. **Feeder Lines.** Feeder lines are the conductors of electric energy from the collector lines to the main electric terminal. The permittees shall place overhead electric lines, known as feeders, on public rights-of-way or private property. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction. Feeder line support structures (power poles) shall be placed on private property where concrete or other similar materials are used as an exposed or above-ground permanent foundation.
9. **Decommissioning/Restoration/Abandonment**
 - a. **Decommissioning Plan.** Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. The County may at any time request the permittees to file a report with the County describing how the permittees are fulfilling this obligation.
 - b. **Site Restoration.** The decommissioning of the WES shall begin within eight (8) months of the expiration of this permit, or earlier termination of operation of the WES and be completed within eighteen (18) months of the expiration of this permit or earlier termination of operation of the WES. The permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of four (4) feet. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner shall be submitted to the County prior to

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completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.

- c. **Cost Responsibility.** The owner or operator of a WES is responsible for decommissioning that facility and for all costs associated with decommissioning that facility and associated facilities.
 - d. **Financial Assurance.** After the tenth (10th) year of operation of a WES facility, the Board may require a performance bond, surety bond, letter of credit, corporate guarantee or other form of financial assurance that is acceptable to the Board to cover the anticipated costs of decommissioning the WES facility.
 - e. **Failure to Decommission.** If the WES facility owner or operator does not complete decommissioning, the Board may take such action as may be necessary to complete decommissioning, including requiring forfeiture of the bond. The entry into a participating landowner agreement shall constitute agreement and consent of the parties to the agreement, their respective heirs, successors, and assigns, that the Board may take such action as may be necessary to decommission a WES facility.
10. **Abandoned Turbines.** The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.
11. **Height from Ground Surface.** The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.
12. **Towers.**
- a. **Color and Finish.** The finish of the exterior surface shall be non-reflective and non-glass.
 - b. All towers shall be singular tubular design.
13. **Noise.** Noise level shall not exceed 50 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.
14. **Permit Expiration.** The permit shall become void if no substantial construction has been completed within three (3) years of issuance.
15. **Required Information for Permit.**
- a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.
 - b. Map of easements for WES.
 - c. Affidavit attesting that necessary easement agreements with landowners have been obtained.