

July 2, 2018

VIA ELECTRONIC FILING

Ms. Patricia Van Gerpen
Executive Secretary
South Dakota Public Utilities Commission
500 E Capitol Ave
Pierre, SD 57501-5070

RE: In the Matter of the Application by Dakota Range I, LLC and Dakota Range II, LLC for to the for an Energy Facility Permit in Grant County and Codington County, South Dakota, for the Dakota Range Wind Project EL18-003

Dear Ms. Van Gerpen:

In connection with the above-referenced matter, enclosed please find the following documents:

1. Applicants' Post Hearing Brief (Public Version);
2. Applicants' Post-Hearing Brief (Confidential Version);
3. Applicants' Recommended Permit Conditions;
4. Applicants' Proposed Findings of Fact, Conclusions of Law and Order;
5. Applicants' Recommended Permit Condition 40 and Proposed Findings of Fact 65 (Confidential); and
6. Certificates of Service.

The Post-Hearing Brief (Confidential Version) and Applicants' Recommended Permit Condition 40 and Proposed Findings of Fact 65 (Confidential) contain information relating to the turbine safety manual admitted as confidential Exhibit A22 ("Manual") in accordance with the June 13, 2018 letter from South Dakota Public Utilities Commission attorney Adam de Hueck. The Manual contains propriety trade secret information belonging to Vestas-American Wind Technology, Inc. ("Vestas"). The information contained in the Manual would provide an advantage to a competitor if known. Apex Clean Energy Holdings, LLC ("Apex"), on behalf of

Attorneys & Advisors
main 612.492.7000
fax 612.492.7077
fredlaw.com

Fredrikson & Byron, P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota
55402-1425

Ms. Patricia Van Gerpen
July 2, 2018
Page 2

itself and Vestas, requests that the document be maintained confidential in perpetuity. Questions regarding this confidentiality request can be directed to the undersigned, Mollie Smith. Confidentiality is requested for this trade secret information pursuant to SDCL Section 1-27-1.5 and ARSD 20:10:01:39 – 20:10:01:45. The factual basis that qualifies the information for confidentiality is that the information is proprietary trade secret information and subject to a non-disclosure agreement between Vestas and Apex.

If you have any questions, please let me know.

Sincerely,

/s/ Mollie M. Smith

Mollie M. Smith
Attorney at Law

Direct Dial: 612.492.7270

Email: msmith@fredlaw.com

Enclosures

cc: Certificate of Service/Service Lists (*via e-mail*)

**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**

*
*
*
*
*
*
*

**DAKOTA RANGE I, LLC AND
DAKOTA RANGE II, LLC'S POST-
HEARING BRIEF**

EL18-003

INTRODUCTION

Dakota Range I, LLC and Dakota Range II, LLC (together, “Dakota Range” or “Applicant”) submit this post-hearing brief to the South Dakota Public Utilities Commission (“Commission”) in support of their Application for an Energy Facility Permit for the proposed Dakota Range Wind Project (“Project”). The record in this matter consists of the Application, pre-filed testimony, and detailed evidentiary hearing testimony and exhibits. Taken together, the record evidence demonstrates that the Commission should grant the requested permit for the Project, subject to the conditions set forth in more detail below.

BACKGROUND

I. THE PROJECT.

The Project is an up to 302.4 megawatt (“MW”) wind energy conversion facility proposed to be located in Grant and Codington Counties, South Dakota.¹ The Project consists of up to 72 Vestas V-136-4.2 MW turbines, as well as associated facilities, such as access roads, underground collector lines and fiber-optic cables, a collection substation, operations and maintenance (“O&M”) facility, up to five permanent meteorological towers, and additional

¹ Ex. A1 at 1-1 (Application).

temporary construction areas.² The Project is being developed by Dakota Range I, LLC and Dakota Range II, LLC, which are subsidiaries of Apex Clean Energy Holdings, LLC (“Apex”). In March 2015, Apex acquired the Project from a small local developer and Project assets are now held by the Dakota Range entities.³ Since 2015, Dakota Range has engaged in extensive landowner and community outreach, agency coordination, and environmental analysis to avoid, minimize, and/or mitigate potential Project impacts.⁴

In addition to Commission approval, the Project requires conditional use permits from Grant and Codington Counties. In June 2017, both counties unanimously approved those permits.⁵

II. PROJECT OWNERSHIP.

The Project is owned by the Dakota Range entities. In September 2017, Northern States Power Company, d/b/a/ Xcel Energy (“Xcel Energy”), entered into a Purchase and Sale Agreement (“PSA”) with Apex to acquire the Dakota Range entities.⁶ Once the PSA has closed, which will occur after completion of certain milestones (including obtaining an Energy Facility Permit), Xcel Energy will construct and operate the Project.

LEGAL STANDARD

Pursuant to South Dakota Codified Law (“SDCL”) § 49-41B-22, Dakota Range has the burden of proof to establish:

- (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;

² Ex. A1 at 1-1 (Application).

³ Ex. A1 at 1-2, 2-1 (Application).

⁴ Ex. A1 at 2-1 (Application); Ex. A9 at 5-6 (Mauersberger).

⁵ Ex. A1 at 2-2 (Application).

⁶ Ex. A1 at 2-2 (Application).

(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.

The Commission must make complete findings regarding an energy facility permit application and must grant, deny, or grant with conditions or modifications an energy facility permit.⁷ The Commission must find that the Project meets the requirements of SDCL Ch. 49-41B.⁸

DISCUSSION

I. THE PROJECT WILL COMPLY WITH ALL APPLICABLE LAWS AND RULES.

The evidence submitted by Dakota Range demonstrates that the Project will comply with applicable laws and rules. Neither Staff nor Intervenors have submitted evidence to the contrary. Thus, Dakota Range has met its burden of proof with respect to this factor.

II. THE PROJECT DOES NOT POSE A THREAT OF SERIOUS INJURY TO THE ENVIRONMENT OR SOCIAL AND ECONOMIC CONDITIONS IN THE PROJECT AREA.

The evidence demonstrates that the Project does not pose a threat of serious injury to the environment or social and economic conditions in the site proposed for the Project (“Project Area”), and that Dakota Range has adopted numerous avoidance and minimization measures, as well as commitments, to further limit potential environmental impacts. More specifically, Dakota Range has demonstrated that it will avoid and/or minimize impacts to:

- Geological resources;⁹
- Soil resources;¹⁰
- Hydrology;¹¹

⁷ SDCL § 49-41B-25.

⁸ *Id.*

⁹ See Ex. A1 at § 12.1.2 (Application).

¹⁰ See Ex. A1 at § 12.2.2 (Application).

- Vegetation;¹²
- Wildlife;¹³
- Federally- and state-listed species;¹⁴
- Aquatic ecosystems;¹⁵
- Land use;¹⁶
- Recreation;¹⁷
- Conservation easements;¹⁸
- Noise;¹⁹
- Visual resources;²⁰
- Telecommunications;²¹
- Air quality;²²
- Socioeconomic and community resources;²³
- Commercial, industrial, and agricultural sectors;²⁴
- Transportation;²⁵ and,
- Cultural resources.²⁶

¹¹ See Ex. A1 at Ch. 13.0 (Application).

¹² See Ex. A1 at § 14.1.2 (Application).

¹³ See Ex. A1 at § 14.3.2 (Application). At hearing, there were questions posed to Mr. Phillips regarding the South Dakota Game Fish & Park Department’s (“GFP”) recommendation for a one-mile setback for leks. Mr. Phillips testified that Dakota Range recognizes the importance of leks and noted that construction timing is also part of GFP’s recommendation to minimize impacts to leks. While Dakota Range was not able to design the Project to maintain a one-mile setback from one of the two leks in the Project Area (there is a .33 mile setback), Dakota Range will plan construction activities three hours after sunrise to one hour before sunset to minimize impacts to leks. Evid. Hrg. Tr. at 196-197 (Phillips).

¹⁴ See Ex. A1 at §§ 14.3.2.1, 14.3.2.2, 14.3.2.5 (Application).

¹⁵ See Ex. A1 at § 15.2 (Application).

¹⁶ See Ex. A1 at § 16.1.2 (Application).

¹⁷ See Ex. A1 at §§ 13.3.2, 16.2.2, 16.6.2 (Application).

¹⁸ See Ex. A1 at § 16.2.2 (Application).

¹⁹ See Ex. A1 at § 16.3.2 (Application).

²⁰ See Ex. A1 at § 16.6.2 (Application).

²¹ See Ex. A1 at § 16.5 (Application).

²² See Ex. A1 at § 19.2 (Application).

²³ See Ex. A1 at § 21.1.2 (Application).

²⁴ See Ex. A1 at § 21.2 (Application).

²⁵ See Ex. A1 at § 21.4.2 (Application).

²⁶ See Ex. A1 at § 21.5.2.

This evidence is set forth in the Application and applicable testimony and will not be restated here; rather, Dakota Range will address those specific and discrete issues which were the focus of the evidentiary hearing.

A. Environment.

1. Compensatory Mitigation.

The primary issue with respect to the natural environment discussed at the evidentiary hearing was compensatory mitigation for direct and indirect impacts to untilled grassland. South Dakota Public Utilities Commission Staff (“Staff”) appears to believe that Dakota Range should be required to provide compensatory mitigation for impacts to undisturbed grasslands. However, the record evidence does not support such a position.

At the evidentiary hearing, Staff witness, Mr. Kirschenmann with the GFP testified:

- GFP has no regulatory authority over permitting wind projects.²⁷
- GFP does not have a grassland mitigation policy.²⁸
- There has been coordination between Dakota Range, GFP, and the U.S. Fish and Wildlife Service.²⁹
- Dakota Range has made efforts to avoid turbine placement on untilled native prairie.³⁰
- While cited, GFP does not endorse the studies referenced in Mr. Kirschenmann’s testimony related to grassland impacts.³¹
- GFP does not have an ownership interest in any of the land under lease for the Project. Rather, the land is all privately owned, and no state law prohibits the landowners from impacting untilled grasslands (e.g., by grazing or tilling).³²

²⁷ Evid. Hrg. Tr. at 104 (Kirschenmann).

²⁸ Evid. Hrg. Tr. at 105 (Kirschenmann).

²⁹ Evid. Hrg. Tr. at 104 (Kirschenmann).

³⁰ Evid. Hrg. Tr. at 104 (Kirschenmann); Evid. Hrg. Tr. at 190 (Phillips).

³¹ Evid. Hrg. Tr. at 105 (Kirschenmann).

³² See Evid. Hrg. Tr. at 106 (Kirschenmann).

Similarly, Dakota Range witness Mr. Phillips testified:

- Dakota Range met with GFP early in the process to discuss measures to avoid and minimize grassland impacts.³³
- Dakota Range used data from Bowman, et al., regarding existing or known potentially untilled grasslands and the Project was designed to avoid native intact prairie habitat. The Project also avoids the majority of the potentially untilled grasslands in the Bowman, et al., dataset.³⁴
- Permanent impacts to potentially untilled grasslands are limited to 9.8 acres as a result of Dakota Range designing the Project so as to site facilities on less optimal grasslands and cultivated croplands to the extent possible.³⁵ Dakota Range took these steps despite the fact that doing so “result[s] in some energy loss and revenue loss for the project over time.”³⁶
- Information regarding indirect impacts on grassland birds is not definitive.³⁷
- If all facilities were sited in cultivated land, ground disturbance would be similar or greater because facilities could be farther apart. In addition, landowners with grasslands would be the most impacted because they would not receive turbine revenue.³⁸
- “There are a lot of species, organisms that are adapted to tilled agricultural, highly disturbed habitats, so by avoiding effects in one habitat you’re actually increasing effects in another.”³⁹

Thus, the record demonstrates that not only does South Dakota lack a compensatory mitigation policy for grassland impacts, Dakota Range has also avoided and/or minimized impacts to potentially undisturbed grasslands. As such, there is no basis to require Dakota Range to provide compensatory mitigation for potential impacts to undisturbed grasslands.

³³ Evid. Hrg. Tr. at 185 (Phillips).

³⁴ Evid. Hrg. Tr. at 185-186 (Phillips).

³⁵ Ex. A8 at 7 (Phillips).

³⁶ Evid. Hrg. Tr. at 193 (Phillips).

³⁷ Evid. Hrg. Tr. at 193 (Phillips).

³⁸ Evid. Hrg. Tr. at 198 (Phillips).

³⁹ Evid. Hrg. Tr. at 198-199 (Phillips).

Through Mr. Kirschenmann, Staff presented testimony regarding a proposed condition which would require Dakota Range to work with GFP to develop a mitigation plan for the Project.⁴⁰ However, as Mr. Kirschenmann testified, GFP does not have a template for a mitigation plan. Further, as discussed above, no state policy exists to guide development of such a plan. As such, the record does not support imposition of such a condition.

2. Cultural Resources.

The record also demonstrates that potential impacts to cultural resources were appropriately investigated and impacts avoided. Paige Olson, State Historic Preservation Office (“SHPO”), testified that Dakota Range worked cooperatively with her office and that the proposed conditions (Recommended Permit Conditions 11, 12 and 13), agreed to by Dakota Range and Staff, addressed the concerns raised in her testimony that her office could address.⁴¹ She acknowledged that with respect to tribal resources, potential impacts to tribal resources must be addressed at the tribal level.⁴² To assess those potential impacts, Dakota Range reached out directly to the Sisseton-Wahpeton Oyate (“SWO”) Tribal Historic Preservation Office to conduct cultural surveys, and has incorporated the results of those surveys into the turbine configuration.⁴³ Further, Ms. Olson testified that Dakota Range satisfied SHPO’s recommendation that Dakota Range reach out to Native American tribes and consult on tribal resources.⁴⁴

B. Social and Economic Conditions.

The record also demonstrates that the Project will not pose a threat of serious injury to social and economic conditions. With respect to property values, Staff witness Mr. Lawrence

⁴⁰ Evid. Hrg. Tr. at 101-102 (Kirschenmann).

⁴¹ Evid. Hrg. Tr. at 292 (Olson).

⁴² Evid. Hrg. Tr. at 297 (Olson).

⁴³ See Evid. Hrg. Tr. at 183-184 (Phillips); Evid. Hrg. Tr. at 217-218 (Gunderson).

⁴⁴ Evid. Hrg. Tr. at 293 (Olson); Ex. S3 at 4 (Olson).

testified that he had performed his own independent analysis, and that this analysis led him to agree with Dakota Range witness, Mr. MaRous, that the Project would not have negative property value impacts.⁴⁵ Mr. Lawrence and Mr. MaRous, both certified Member Appraisal Institute appraisers who hold South Dakota State Certified General Appraiser licenses, each independently reached this conclusion specific to South Dakota, and it is consistent with analysis from other Midwestern states as well.⁴⁶ This conclusion is also consistent with the Commission's recent finding regarding property values in the Crocker Wind Farm proceeding.⁴⁷ Mr. MaRous also addressed Ms. Kaaz's concerns. He testified that he evaluated Ms. Kaaz's property and noted that the 2017 appraisal for her property did not reference the Project as having any impact on value.⁴⁸

In addition, the record demonstrates that the Project will have positive impacts on the community. For example, as discussed by Mr. Mauersberger, the Project uses a community compensation formula whereby compensation is based more on participating acreage than on hosting Project facilities.⁴⁹ Similarly, both Mr. Falk and Ms. Moyer testified regarding their support for the Project due, in part, to the stable source of additional income for landowners and increased tax revenue for the community.⁵⁰

III. THE PROJECT WILL NOT SUBSTANTIALLY IMPAIR HEALTH, SAFETY, OR WELFARE.

The record demonstrates that the Project will not substantially impair health, safety, or welfare. Further, the record demonstrates that the Project has been designed to limit the potential

⁴⁵ Evid. Hrg. Tr. at 289-290 (Lawrence); Ex. S6 at 4-5 (Lawrence).

⁴⁶ See Ex. A13 at 4-5, 6, 8 (MaRous); Ex. A14 at 11 (MaRous); Ex. S6 at 4-5 (Lawrence).

⁴⁷ *In the Matter of the Application by Crocker Wind Farm, LLC for a Permit of a Wind Energy Facility and a 345 kV Transmission Line in Clark County, South Dakota, for Crocker Wind Farm*, EL 17-055, Final Decision and Order Granting Permit to Construct Facilities and Notice of Entry at 14 (June 12, 2018).

⁴⁸ Evid. Hrg. Tr. at 173-174, 175 (MaRous).

⁴⁹ Evid. Hrg. Tr. at 92-93, 97 (Mauersberger).

⁵⁰ See Ex. A11 at 2 (Moyer) and Ex. A12 at 2-3 (Falk); see also Evid Hrg. Tr. at 140-141 (Falk) and 161(Moyer).

for health, safety, and welfare impacts. The primary issues addressed at the evidentiary hearing are discussed in more detail below.

A. Noise.

Dakota Range's sound expert, Mr. O'Neal, and Staff's expert, Mr. Hessler, testified that they agreed with the condition related to sound proposed by Staff and Dakota Range.⁵¹ There is no testimony or other evidence in this record showing that the condition is not reasonable or that the Project will have unacceptable sound impacts.

In addition, no credible evidence was presented showing any adverse health effects from wind turbine sound. Mr. Hessler testified that, based on the Cape Bridgewater Study by Steven Cooper of the Acoustics Group in Australia, he believes there may be individuals who have sensitivity to low frequency sound.⁵² However, his belief is not well-founded. Dr. Roberts and Mr. O'Neal testified regarding the multiple flaws in the Cape Bridgewater Study, which did not follow scientific methodology.⁵³ First, it is not a peer-reviewed study published in a scientific journal. Second, it is a report on six individuals who had complained about the wind farm, resulting in selection bias, as those who have complained in the past already formed an opinion about the wind farm. Third, "[n]otably, the participants in the study indicated complaints both when the wind farm was operating and when it was not operating. This observation raises significant questions about the validity of their noise complaints."⁵⁴

Furthermore, Dr. Roberts testified regarding multiple national studies that found no health effects from infrasound. For example, a 2016 German study concluded that "[t]he

⁵¹ See Evid. Hrg. Tr. at 270-271 (Hessler); Evid. Hrg. Tr. at 237-238 (O'Neal).

⁵² Ex. S5 at 7-8 (Hessler).

⁵³ Ex. A3 at 2-3 (Roberts) and Ex. A6 at 8-9 (O'Neal); see also *Williams v. Invenergy, LLC*, No. 2:13-CV-01391-AC, 2016 WL 1725990 at *9 (D. Oregon, April 28, 2016) (noting that the author of the "Cape Bridgewater Acoustic Testing Program" case study was not holding out his conclusions as medical conclusions).

⁵⁴ Ex. A6 at 8 (O'Neal).

infrasound levels generated by [wind turbines] lie clearly below the limits of human perception. There is no scientifically proven evidence of adverse effects in this level range.”⁵⁵

B. Shadow Flicker.

Dakota Range conducted shadow flicker modeling to ensure that no non-participating residence would experience more than 30 hours of shadow flicker per year. Dakota Range has also committed that it “will take reasonable steps to mitigate shadow flicker concerns at the residences that could experience shadow flicker levels above 30 hours per year.”⁵⁶

Ms. Mogen expressed concerns regarding potential health impacts of shadow flicker, particularly related to epilepsy and autism.⁵⁷ In response, Dr. Roberts testified that, as recognized by the Epilepsy Foundation, the frequency of shadow flicker is such that it does not induce epileptic seizures.⁵⁸ Dr. Roberts also testified that research regarding the potential health effects of wind turbines has not identified an association between wind turbines and adverse health effects among children with autism.⁵⁹ Thus, the record indicates that shadow flicker from the Project will not substantially impair health, safety, or welfare.

[CONFIDENTIAL DATA BEGINS...

⁵⁵ Ex. A3 at 4 (Roberts).

⁵⁶ Ex. A18 at ¶ 28 (Proposed Decommissioning Conditions).

⁵⁷ See Evid. Hrg. Tr. at 329 (Mogen); Mogen Pre-filed Testimony at 2.

⁵⁸ See Ex. A3 at 4-5 (Roberts); *see also* Evid. Hrg. Tr. at 26-27, 28, 44-45 (Roberts); Ex. A2 at 15 (Roberts).

⁵⁹ Ex. A2 at 15 (Roberts); Evid. Hrg. Tr. at 27 (Roberts).

...CONFIDENTIAL DATA ENDS]

IV. THE PROJECT WILL NOT UNDULY INTERFERE WITH ORDERLY DEVELOPMENT IN THE REGION.

The record demonstrates that the Project will not unduly interfere with orderly development in the vicinity of the Project. As an initial matter, as discussed above, the evidence shows that the Project will have substantial positive economic benefits in the area. Further, Grant and Codington Counties have both issued conditional use permits for the Project and, as such, determined that the Project complies with each County's requirements.

Ms. Kaaz raised concerns regarding the proximity of the turbines to her land, and requested a two-mile setback. However, Ms. Kaaz offered no evidence to support her two-mile setback request. Additionally, the closest turbine (Turbine 67) is 2,010 feet from Ms. Kaaz's home and 1,271 feet from Ms. Kaaz's property line.⁶⁵ Thus, the proposed turbine locations are well beyond the counties' setback requirement of 1,000 feet from non-participating residences, and the counties' and state's setback requirement of 1.1 times turbine tip height from non-participating property lines.⁶⁶ Additionally, Ms. Gunderson testified that Dakota Range would commit to using no more than three of the four turbine locations closest to Ms. Kaaz's property (Turbines 67, 68, 69 and A26).⁶⁷ In accordance with this commitment, Dakota Range proposes Recommended Permit Condition No. 41: "Dakota Range may construct turbines on only three of the following four turbine locations: Turbines 67, 68, 69 and A26."

Thus, while Dakota Range understands Ms. Kaaz has concerns regarding the Project, nothing in the record supports a two-mile setback from non-participating properties, and the

⁶⁵ Ex. A17 (Dakota Range Responses to Teresa Kaaz's Data Requests).

⁶⁶ SDCL 43-13-24. Codington County, Ordinance 65 §5.22.03(1)(d)(c) and Grant County Compiled Zoning Ordinances, § 1211.04(2)(c).

⁶⁷ Evid. Hrg. Tr. at 220 (Gunderson).

Project has been designed to exceed applicable setbacks in proximity to Ms. Kaaz's home and property line.

V. OTHER ISSUES.

A. Proposed Turbine Shifts.

Since submitting the Application in January 2018, Dakota Range has continued to conduct study and coordination activities, including engaging in tribal resource surveys with the SWO in May 2018.⁶⁸ As a result, Dakota Range identified three proposed turbine shifts, and requested approval of the shifts during the evidentiary hearing. One of these shifts is to address concerns the SWO raised, the second is to address potential bat habitat, and the third is to accommodate a landowner request that a turbine be located between two of his fields.⁶⁹ Dakota Range also removed certain turbine locations and plans to use alternates in place of certain primary turbine locations that were removed.⁷⁰

The updated configuration for which Dakota Range seeks Commission approval was submitted as Exhibit A25 at the evidentiary hearing and Dakota Range provided evidence to demonstrate that the proposed turbine shifts comply with all applicable siting requirements.⁷¹ Staff agrees that the shifts are appropriate, and has agreed to Recommended Permit Condition No. 39.⁷² No evidence in opposition to the proposed shifts was presented. Therefore, Dakota Range requests that the Commission approve the turbine shifts identified in Recommended Permit Condition No. 39.

⁶⁸ Ex. A15 at 3 (Gunderson).

⁶⁹ See Evid. Hrg. Tr. at 214, 216-218 (Gunderson).

⁷⁰ See Evid. Hrg. Tr. at 217-220 (Gunderson).

⁷¹ See Evid. Hrg. Tr. at 401-402 (O'Neal); Ex. A15-3 (Constraints Map); Ex. A24 (Updated Wind Turbine Coordinates); Ex. A25 (Updated Wind Turbine Map).

⁷² See Recommended Permit Condition 40.

B. Micrositing Flexibility.

The record demonstrates that it is reasonable for the Commission to grant Dakota Range post-permit flexibility to make certain shifts in turbine locations without Commission approval. As discussed in pre-filed testimony and at the evidentiary hearing, this flexibility would help Dakota Range avoid cultural resources (including those resources identified through coordination with the SWO), address the results of geotechnical surveys, enable installation of new microwave towers, and be responsive to landowner feedback.⁷³

Dakota Range previously requested that it be allowed to shift turbines up to 500 feet without further Commission approval.⁷⁴ However, after review of the condition imposed in the Crocker Wind Farm proceeding and discussions with Staff, Dakota Range requests that it be allowed to shift turbines up to 325 feet without Commission approval.⁷⁵ Staff and Dakota Range have agreed to Recommended Permit Condition 22, and Dakota Range requests that the condition be incorporated into the permit issued.

Dakota Range also requested flexibility to shift the access roads, collector system, O&M facility, Project substation, and temporary facilities. Staff and Dakota Range agreed to Recommended Permit Condition 23, and Dakota Range requests that the condition be incorporated into the permit issued.

C. Aircraft Detection Lighting System.

At the hearing, the aircraft detection lighting system (“ADLS”) was discussed. As Mr. Mauersberger testified, Dakota Range does not propose to use ADLS for the Project because it is a new technology that remains largely untested and poses liability concerns.⁷⁶ Further, the

⁷³ See Ex. A15 at 2-4 (Gunderson); Evid. Hrg. Tr. at 218, 226-227 (Gunderson).

⁷⁴ See Ex. A1 at 9-2 (Application).

⁷⁵ Evid. Hrg. Tr. at 218, 226-227 (Gunderson).

⁷⁶ Evid. Hrg. Tr. at 68-69, 78 (Mauersberger).

lighting system Dakota Range proposes to use for the Project is Federal Aviation Administration (“FAA”) approved and meets all applicable requirements.⁷⁷ In contrast, ADLS is not required by state or federal law, and the FAA has not automatically approved ADLS for use on every wind farm.⁷⁸ Rather, a separate FAA study and approval process is required, and there is no guarantee that the FAA would approve ADLS to be used on the Project.⁷⁹ 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.⁸⁰ Therefore, the record does not support requiring ADLS for the Project.

D. Decommissioning.

The issue of Project decommissioning was raised in pre-filed testimony and discussed in more detail at the evidentiary hearing.⁸¹ At the hearing, Dakota Range submitted a proposed decommissioning condition that recognized that Xcel Energy, a regulated public utility, is anticipated to own Dakota Range; the proposed condition also, however, provided for a scenario in which Xcel Energy does not purchase Dakota Range.⁸² After the hearing, Staff proposed the following decommissioning conditions:

- If the Project is decommissioned, Applicant will follow Section 24 of the Application, the decommissioning plan laid out in Appendix P of the Application, as supplemented by the Applicant in Exhibit A4-2, and answers to Staff’s Data Requests in Exhibit S1. The Commission shall be notified prior to any decommissioning action.
- If the Applicant is purchased by Northern States Power Company, d/b/a Xcel Energy, as stated in Section 7.0 of the Application, Xcel Energy will assume financial responsibility for decommissioning and provide funding for the decommissioning and removal of the Project. As a regulated electric utility, the projected financial cost of decommissioning

⁷⁷ Ex. A1 at 21-12 – 21-13 (Application); Evid. Hrg. Tr. at 309 (Thurber).

⁷⁸ See Evid. Hrg. Tr. at 68-69, 78 (Mauersberger) and 309 (Thurber).

⁷⁹ See Evid. Hrg. Tr. at 78 (Mauersberger).

⁸⁰ See Evid. Hrg. Tr. at 309 (Thurber).

⁸¹ See, e.g., Ex. A9 at 17-18 (Mauersberger); Ex. A4 at 2-2 (Pardo); Ex. S1, JT-1 at 16-17 (Thurber); Evid. Hrg. Tr. at 88; Evid. Hrg. Tr. at 233-234 (Gunderson).

⁸² See Ex. A21 (Proposed Decommissioning Conditions).

will be reviewed when Xcel Energy requests recovery of the Project investment and associated decommissioning cost from customers in a rate proceeding. The Commission may review and adjust the Project decommissioning cost recovered from customers in subsequent Xcel Energy rate proceedings using the most current information available regarding decommissioning. In the event that Xcel Energy does not purchase the Applicant, the Applicant shall file a decommissioning plan with a proposal for financial assurance, at least sixty days prior to construction, for Commission approval. No construction may occur until the Commission approves the decommissioning plan.

Dakota Range has consulted with Xcel Energy regarding these conditions, and believes they are reasonable. Therefore, Dakota Range requests that these conditions be incorporated into the permit issued, in lieu of Dakota Range's previously proposed condition.⁸³

CONCLUSION

The record demonstrates that Dakota Range has met its burden of proof to establish that: (1) the Project will comply with applicable laws and rules; (2) the Project does not pose a threat of serious injury to the environment or social and economic conditions; (3) the Project will not substantially impair health, safety, or welfare; and (4) the Project will not unduly interfere with orderly development. The record further demonstrates that, in addition to meeting those criteria, the Project will benefit local landowners and the community. Accordingly, Dakota Range respectfully requests that the Commission grant an Energy Facility Permit for the Project on the terms and conditions set forth in the accompanying Recommended Permit Conditions.

Dated this 2nd day of July, 2018.

By /s/ Mollie M. Smith

Mollie M. Smith

Lisa A. Agrimonti

FREDRIKSON & BYRON, P.A.

Attorneys for Applicants

200 South Sixth Street, Suite 4000

Minneapolis, MN 55402

Phone: (612) 492-7270

Fax: (612) 492-7077

⁸³ See Evid. Hrg. Tr. at 318-319 (Thurber).