

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

IN THE MATTER OF THE APPLICATION BY)	
WIND QUARRY OPERATIONS, LLC, FOR A)	STIPULATION
WIND ENERGY FACILITY PERMIT FOR)	
THE WILLOW CREEK WIND ENERGY)	EL15-020
FACILITY AND ASSOCIATED FACILITIES)	

It is hereby stipulated and agreed by and between Wind Quarry Operations, LLC (Applicant), a wholly-owned subsidiary of Wind Quarry, LLC, and the Staff of the South Dakota Public Utilities Commission (Staff), (jointly Party or Parties), that the following Settlement Stipulation (Stipulation) may be adopted by the South Dakota Public Utilities Commission (Commission) in the above-captioned matter. In support of its Application for a Wind Energy Facilities Permit (Permit) for the 103 megawatt (MW) Willow Creek Wind Energy Facility and associated facilities (Project), the Applicant hereby offers this Stipulation, the Application filed May 27, 2015, and all of the responses submitted by the Applicant to the Staff's data requests. Staff offers no answering testimony or exhibits, conditioned upon the Commission accepting the following Stipulation and the Terms and Conditions without any material condition or modification.

I. INTRODUCTION

The Applicant proposes to construct and operate a wind energy electric generating facility and associated facilities, approximately 10 miles northeast of Newell, South Dakota. The Project includes 45 wind turbines, associated access roads, a new collector substation, an operations and maintenance facility, and associated transmission interconnection facilities. The Project would interconnect to the Western Area Power Administration Maurine to Rapid City 115-kilovolt transmission line, which extends through the project. The Project would generate utility-scale electric power for residential, commercial, and industrial consumers.

The Application was filed on May 27, 2015, and on June 1, 2015, the Public Utilities Commission (Commission) issued an order setting a public hearing date of July 9, 2015, to be held at the Newell School Multi-purpose Room located at 501 Dartmouth Ave., Newell, South Dakota. Through the same order, the Commission set an intervention deadline of July 27, 2015. The public input hearing was held in accordance with the order and provided the public with the opportunity to comment on the Project. No parties filed for intervention in this proceeding.

II. PURPOSE

This Stipulation has been prepared and executed by the Parties for the sole purpose of resolving Docket No. EL15-020. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of the 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 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 any Party, this Stipulation may, at the option of any 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 to this proceeding stipulate that all docket filings, as well as 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, attorneys, 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 understandings 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 all 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 a permit 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 a permit to construct the Project as provided in SDCL 49-41B-25, subject to the following:

III. TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION

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

7. Applicant shall comply with and implement any Commitments set forth in the Environmental Assessment.
8. Applicant will negotiate road use agreements with Butte County, and all affected townships, if required. Applicant will follow the terms of all road use agreements. Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being windblown, and the removal of any soils or mud deposits by construction equipment when necessary.
9. Applicant shall comply with the following conditions regarding road protection:
 - a) Applicant shall acquire all necessary permits authorizing the crossing of federal, state, county, and township roads.
 - b) Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
 - c) Applicant shall implement a regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public.
 - d) After construction Applicant shall repair and restore deteriorated roads resulting from construction traffic, or compensate governmental entities for their repair and restoration of deteriorated roads, such that the roads are returned to their preconstruction condition.
 - e) Privately owned areas used as temporary roads during construction will be restored to their preconstruction condition, except as otherwise requested or agreed to by the landowner.
 - f) Should applicant need to widen any existing roadways during construction of the Project, the Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
 - g) Should the Environmental Assessment identify any mitigation measures to be implemented by Applicant during road construction activities, Applicant shall implement said measures as required.
 - h) Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways. Before commencing construction, the Applicant shall furnish an indemnity bond in the amount of \$500,000 to comply with the requirements of SDCL 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the transmission facilities. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicant shall give notice of

the existence and amount of this bond to all counties, townships and other governmental entities whose property is crossed by the transmission facilities.

10. Applicant will provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration
11. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the siting area that Applicant becomes aware of and that was not previously reported to the Commission.
12. Applicant agrees to avoid cultural resources sites not evaluated or eligible for listing on or already listed on or that are eligible for listing on the National Register of Historic Places (NRHP), and those that are not evaluated for listing on the NRHP. When NRHP-eligible or listed sites cannot be avoided, Applicant will notify the State Historic Preservation Office (SHPO) and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
13. If during construction Applicant discovers what may be a cultural resource, human skeletal remains, or associated funerary objects, Applicant or its agent shall immediately cease work at the location and notify the landowner(s), the SHPO, and other authorities as appropriate (per SDCL 34-27-25 and SDCL 34-27-28 in the case of human burials). If it is determined, in coordination with SHPO, that a significant resource is present, Applicant shall develop a plan that is acceptable to the landowner and SHPO that minimizes the impact or threat to the resource.
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 will be given a copy of the SWPPP and requirements will be reviewed with them prior to the start of construction.
15. Applicant will repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical. In order to facilitate compliance with this Condition, the Applicant shall:
 - a) Strip topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing, in all areas disturbed by the Project ;
 - b) Store topsoil separate from subsoil in order to prevent mixing of the soil types;
 - c) Remove all excess soils generated during the excavation of the WTG foundations from the site, unless the landowner requests, and/or agrees, otherwise; and

- d) When revegetating non-cultivated grasslands, the Applicant shall use a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, and agreed upon by the landowner in writing.
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 appropriate federal, state, and/or local government agency. All excess construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees to 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 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 four feet, or deeper if necessary, in order 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 or other representatives.
 22. Applicant shall seek approval from the Commission prior to making any material deviations to the Project. For purposes of this paragraph, the term "material deviations" shall mean any action or activity outside the reasonable parameters of this Permit (such as, for example, if the Project is constructed differently than described in the Application).
 23. The terms and conditions of the Permit shall be made a uniform condition of construction, subject only to an affirmative written request for an exemption addressed to the Commission. A request for an exemption shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis

which evaluation shall be completed within 60 days unless exigent circumstances require action sooner.

24. 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.
25. 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.
26. Not less than 30 days prior to commencement of construction work in the field, Applicant will provide to Staff the most current preconstruction design, layout and plans. Applicant will also provide such additional Project preconstruction information as Staff requests.
27. Within 90 days of the Project's completion, Applicant shall submit a report to the Commission that provides the following information:
 - a) as-built location of structures and facilities, including drawings clearly showing compliance with setbacks required by state and local governments and that the modeled, incremental noise attributable to any WTG at any residence, business or public building does not exceed 50 dBA (unless Applicant retains written consent from the property owner to lesser distance or greater noise levels);
 - b) the status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulted from construction activities; and
 - c) a summary of known landowner complaints and Applicant's plan for resolving those complaints.
28. The Applicant shall, upon Commission request, conduct field surveys verifying compliance with requisite noise levels.
29. Applicant shall seek local input to properly and effectively coordinate an emergency response plan consistent with local resources and response abilities. Upon completion of construction, a Project operation emergency response plan shall be provided to Staff to make available to the general public in the manner they choose.
30. Prior to construction, Applicant will notify public safety agencies providing a schedule and location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public safety, the Sheriff of Butte County, and the Butte County Office of Emergency Management.
31. If the Project is decommissioned, Applicant will follow the decommissioning plan laid out in Section 23.0 of the Application as supplemented by the answers to Staff's Data Requests 1-26 and 2-4. The Commission shall be notified prior to any decommissioning action.

Dated: Nov. 6, 2015

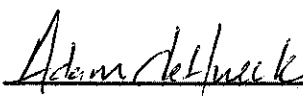
Wind Quarry, LLC



Patrick O'Meara
Chief Executive Officer

Dated: Nov. 12, 2015

South Dakota Public Utilities Commission



Adam de Hueck
Staff Attorney