

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

**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**

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**STAFF'S FIRST SET OF DATA
REQUESTS TO CROCKER WIND
FARM, LLC**

EL17-055

Below, please find Staff's First Set of Data Requests to Crocker Wind Farm, LLC. Please submit responses within 10 business days, or promptly contact Staff to discuss an alternative arrangement. In addition, please specify the responder when answering each interrogatory. Should any response have subparts answered by more than one individual, identify the respondent by subpart.

- 1-1) Provide copies of all data requests submitted by other parties to Crocker Wind Farm, LLC in this proceeding and copies of all responses provided to those data requests. Provide this information to date and on an ongoing basis.**

Melissa Schmit: No data requests have been received to date. Crocker will provide this information to the PUC as they are received.

- 1-2) Refer to Page 135 of the Application, Table 12-1, and ARSD 20:10:22:05. Does the column labeled "Status" on Table 12-1 refer to when the permit will be filed? Please explain.**

Melissa Schmit: This column refers to the timeframe an approval/permit is anticipated to be obtained.

- 1-3) Refer to Page 2 of the Application. When does the Applicant anticipate receiving approval from the USFWS to use the 14 USFWS grassland easements? Please explain.**

Melissa Schmit: The USFWS would issue the permits to allow construction and operation on grassland and wetland easements shortly after the completion of the NEPA process. These permits are anticipated to be received in the second quarter of 2018. This process is further described in Section 9.5.3 of the Application.

- 1-4) Refer to Page 16 of the Application. The applicant states, "At 400 MW, the Project would benefit landowners in the Project Area with average annual lease payments of approximately \$2.3 million for the first 20 years totaling approximately \$46**

million.” Please provide a detailed calculation to support the claim of approximately \$2.3 million in annual lease payments to landowners.

Jay Hesse: The wind lease landowner payments are summarized in the table below. Crocker requests the detailed information provided regarding landowner payments remains confidential and only for the use of the SD PUC. During the construction and operational phases of the wind farm, signed wind leases will be paid primarily through calculating wind turbine rent based on the megawatts (MWs) of turbine capacity installed on the property and acreage rent calculated based on the signed acres in the operational wind lease. Landowners are also paid for the permanent met towers installed as listed in the table below.

*Please note the wind lease table has been redacted from this version.

1-5) Refer to Page 16 of the Application. The applicant states, “wind energy infrastructure will also provide an additional source of revenue in to the State, school districts, county and townships in which the Project is sited. This same size project is estimated to pay approximately \$1.8 million per year in wind farm capacity and production taxes, totaling approximately \$36 million over 20 years.”

a) Please provide a detailed calculation to support the claim of approximately \$1.8 million per year in wind farm capacity and production taxes.

Melissa Schmit/Jay Hesse/Mollie Smith: The yearly tax projection is based on the Wind Farm Production and Capacity tax defined in SD Codified Law (SDCL) Chapter 10-35. The taxes are calculated as follows:

- Nameplate Capacity Tax – An annual tax equal to \$3.00 multiplied by the nameplate capacity (in kilowatts) of the wind farm. SDCL § 10-35-18 (2017).
- Electricity Production Tax – An annual tax of \$.00045 per kilowatt hour of electricity produced by the wind farm. SDCL § 10-35-19.1 (2017).

Both taxes are deposited in a renewable facility tax fund. SDCL § 10-35-20 (2017). All of the nameplate capacity tax, and 20% of the electricity production tax, deposited in the renewable facility tax fund are distributed to the county treasurer where the wind farm is located. SDCL § 10-35-21 (2017). Upon receipt of the taxes, the county auditor apportions the taxes as follows:

- 50% to the school district where each wind tower is located;
- 15% to the organized township where each wind tower is located (if there is not an organized township, this amount goes to the county); and
- 35% to the county.

SDCL § 10-35-21 (2017). All remaining revenue (the other 80% of the electricity production tax) in the renewable facility tax fund is deposited in the state general fund. SDCL § 10-35-21 (2017).

The estimates in the Application are based on Crocker operating 400 MW's of nameplate capacity and conservative production numbers.

- Nameplate Capacity Tax – $\$3.00 \times 400,000 \text{ kW} = \$1,200,000$ annually.
- Electricity Production Tax – $\$.00045 \times \sim 1,334,000,000 \text{ kilowatt hours} = \sim \$600,000$ annually.

The actual amount paid will be based on current law and real operations of the year in question.

Of these amounts, allocations to taxing jurisdictions based on the percentages in SDCL § 10-35-21 (80% of roughly \$600,000 in production tax will go to the State, with the remainder distributed to the County in the proportions noted above) are projected below with conservative production measures:

- State of South Dakota: Approximately \$480,000 per year totaling \$9.6 million over 20 years
- Clark County: Approximately \$462,000 per year totaling \$9.24 million over 20 years
- Townships: Approximately \$198,000 per year totaling \$3.96 million over 20 years
- School Districts: Approximately \$660,000 per year totaling \$13.2 million over 20 years
 - NOTE: Per SDCL Chapter 13-13, after the fifth year of wind farm production, the amount of the wind energy tax revenue that is considered “local effort” in the State school funding formula will increase by 20 percent each year until year 10 of production. After year 10, all wind energy tax revenue will be considered “local effort” in the State school funding formula, which may decrease the amount of State aid needed to meet the districts’ calculated total need. However, 100 percent of the wind tax revenue allocated to the school districts will still be received by the school districts in all years the Project is operational.

Details are also provided on pages 114-115 of the Application (Section 9.7.1.2).

- 1-6) Refer to Pages 19-20 of the Application. The applicant states, “To accommodate this final micrositing, Crocker requests that the permit allow turbines to be shifted within 1,000 feet of their current proposed location, so long as specified noise and shadow flicker thresholds at occupied residences are not exceeded, cultural resources and sensitive species habitat are avoided, and wetland impacts are avoided to the extent practicable. If turbine shifts are greater than 1,000 feet, exceed the noted thresholds, or do not meet the other limitations specified, Crocker would either not use the turbine location or obtain Commission approval of a proposed turbine location change.”**

- a) **Please provide a detailed and thorough explanation as to why 1,000 feet was selected as the appropriate distance a turbine could be shifted without obtaining Commission approval.**

Melissa Schmit/Mollie Smith: Based on the results of Class III cultural resource field surveys obtained in late November 2017, Crocker determined that turbine shifts of up to 1,000 feet would be required to avoid impacts to identified cultural resources. Therefore, in its Application Crocker requested the ability to shift turbines 1,000 feet to allow sufficient flexibility to avoid unanticipated cultural resources identified during construction, as well as to account for the other factors noted in Section 4.2 of the Application (e.g., geotechnical survey results).

- b) **Refer to Docket EL17-028, the Applicant's Motion to Reconsider filed on November 9, 2017, Argument 2, the revised layout. The Applicant stated "Applicant intends to introduce evidence at hearing intended to lead to the Commission granting a condition allowing non-material shifts in turbine locations of less than 325' without further Commission action." Please explain why the Applicant changed its proposed criteria for triggering further Commission action regarding turbine location changes from 325 feet to 1,000 feet. Please include specific evidence in your explanation.**

Melissa Schmit/Mollie Smith: At the time the Motion to Reconsider was filed, Crocker believed 325 feet would allow sufficient flexibility to shift turbines to avoid later-identified cultural resources. However, after the Motion to Reconsider was filed, Crocker received the results of the Class III cultural resource field surveys and determined that 325 feet was insufficient to enable avoidance of cultural resources; instead, up to 1,000 feet was needed. As a result, in its current Application, Crocker requested the ability to shift turbine locations up to 1,000 feet to ensure sufficient flexibility to avoid unanticipated discoveries during construction, as well as to account for the other factors noted in Section 4.2 of the Application (e.g., geotechnical survey results).

- c) **Please describe what the Applicant envisions as the process to obtain Commission approval of a proposed turbine location change.**

Mollie Smith: With respect to the approval of a turbine location change, Crocker proposes the following process:

- Crocker would file with the Commission a request for approval of the change that includes:
 1. An affidavit describing the proposed change, the reason for the change, the reason the change does not comply with one or more turbine flexibility proposal limitations set forth in the Application, and the documentation referenced below;
 2. A map showing both the approved location and the proposed change (in different colors);

3. Documentation demonstrating compliance with local zoning requirements, including setbacks from existing off-site residences, non-participating property lines, and cemeteries, and the noise requirement at existing off-site residences;
 4. Documentation demonstrating compliance with voluntary commitments regarding cultural resources, wetlands, and sensitive species habitat;
 5. Documentation of compliance with, or a waiver by participating landowners of, voluntary commitments regarding noise and shadow flicker.
- Once received, the information would be reviewed by Commission Staff, and a recommendation regarding the request provided to the Commission.
 - The Commission would then issue a decision regarding Crocker's request at its next regularly scheduled Commission meeting.

It should be noted that for any turbine location shifts that comply with the turbine flexibility parameters set forth in the Application, Crocker would provide similar documentation describing the shift and demonstrating compliance with the noted limitations prior to implementing the turbine change. The only difference would be that approval of the change would not be required.

- 1-7) Refer to Page 24 of the Application. The applicant states, "Crocker is in the process of identifying the best haul route to the Project site and where existing road improvements may be required. Crocker will work with the appropriate Federal, State, and/or local agencies to obtain the permits required for these improvements."**
- a) When does the Applicant anticipate finishing the process of identifying the best haul route to the Project?**

Melissa Schmit: Identifying the best haul routes will occur in conjunction with road agreements through coordination with road authorities. Crocker expects to have road agreements executed by the second quarter of 2018.

- b) Please provide the best haul route when finalized.**

Melissa Schmit: Planned haul routes will be provided when finalized.

- 1-8) Refer to Page 38 of the Application. The applicant states, "The sale of the electricity may take the form of a power purchase agreement or a sale of the Project to a utility. Crocker's target completion for the initial phases of this sale is in the first quarter of 2018. This sale will drive the timelines for many of the major financial commitments such as equipment procurement and construction contracting improvements." Since the time schedule may be modified based on the sale of the electricity, please provide updates on the sale of the electricity and modifications to the time schedule as information becomes available.**

Melissa Schmit: Updates on the sale of electricity and modifications to the time schedule will be provided as requested. At this time, Crocker's target completion for the initial phases of the sale remains the first quarter of 2018.

1-9) Refer to Page 46 of the Application regarding the Clark County Conditional Use Permit.

a) Provide the Clark County Conditional Use Permit obtained in April 2017.

Melissa Schmit: See attached.

b) Please summarize the permit terms that the Applicant is seeking clarification in Circuit Court.

Melissa Schmit: Crocker has requested the Clark County Board of Adjustment clarify terms of the following conditions (numbers 1, 2, 6) to accurately represent the intent of the Board. The condition and summary of amendment requested follows.

Condition #1: The setback distance from existing off-site, non-participating residences shall be ¼ mile measured from the wall line of the neighboring principal building to base of the WES tower, unless otherwise negotiated pursuant to the zoning ordinance.

- Certain terms in this condition are not defined in the Clark County Zoning Ordinance for a Wind Energy System or in the CUP. As a result, Crocker has requested clarification from the County as to those residences intended to be included within the setback.

Condition #2: The construction and operation of the WES shall be done in a manner so as to not interfere with the maintenance and operation of other utility and telecommunications lines, specifically incorporating and terms and conditions contained in the Resolution proposed by Interstate Telecommunications Cooperative which resolution is part of the file in this matter.

- The Resolution provided by the ITC at the hearing on March 7, 2017 contains provisions that require further negotiation. Crocker is working with the ITC to reach agreeable terms and has requested that the Board accept the revised Resolution once these negotiations are finalized.

Condition #6: The applicant shall, at a minimum, meet all standards in the zoning ordinance or proposed in its application if more stringent than the zoning ordinance, including but not limited to the following categories: Mitigation measures; Roads, Setbacks, Electromagnetic Interference; Lighting; Turbine Spacing; Footprint Minimization; Collector Lines; Feeder Lines; Decommissioning; Abandoned Turbines; Height from Ground Surface; Tower Design; Noise; Permit Expiration Limitation of three years; and any other conditions the Board of Adjustment deems necessary.

- As directed by the First District Association of Local Governments in Watertown (which advises regarding matters of local government within the First District), Crocker requested in its CUP application immediate approval of the CUP with the condition that the three-year term commence once all conditions in the permit were met. Given this request and the wording of Condition #6, the intent regarding whether the Project must commence on-site construction within three years of issuance is unclear. Therefore,

Crocker has requested clarification that the Permit Expiration Limitation of three years will commence once all conditions have been met.

- c) Provide the status and timeline of the pending litigation in Circuit Court regarding the Clark County Conditional Use Permit. Please consider this an ongoing request and provide updates as information becomes available.**

Brett Koenecke: The Clark County litigation is pending and on hold. The Project has advised the County that the setbacks are no longer at issue. The parties continue dialogue between them in order to finally resolve the remaining issues. There is no timeline at present.

- 1-10) Refer to ARSD 20:10:22:13 regarding environmental information. Please identify any irreversible changes which are anticipated to remain beyond the operating lifetime of the facility.**

Melissa Schmit: No irreversible changes are anticipated to remain beyond the operating lifetime of the Project. At the end of commercial operation, the Project will be decommissioned and restored as detailed in Section 5.0 of the Application.

- 1-11) Refer to ARSD 20:10:22:33 regarding decommissioning. Please provide the estimated amount of land irretrievably committed.**

Melissa Schmit: No land will be irretrievably committed. While some project facilities will be removed to a depth of 48 inches and left in place (foundation or collection), the excavation will be filled with clean subgrade material of quality comparable to the immediate surrounding area. A four-foot depth of removal ensures foundation or collection will not interfere with farming, root zones of crops typically grown within the Project Area, or the construction of roads and the installation of utilities.

- 1-12) Refer to SDCL 49-41B-5.2 regarding the notification of area landowners by mail. Specifically, "The applicant shall notify, in writing, the owner of record of any land that is located within one-half mile of the proposed site where the facility is to be constructed. For purposes of this section, the owner of record is limited to the owner designated to receive the property tax bill sent by the county treasurer. The notice shall be mailed by certified mail. The notice shall contain a description of the nature and location of the facility. Any notification required by this section shall state the date, time, and location of the public hearing and shall be made no later than thirty days prior to the date of the public hearing."**

- a) Provide a proof of mailing that the public hearing notice was mailed via certified mail to the individuals within one-half mile of the proposed site no later than 30 days prior to the date of the public hearing.**

Brett Koenecke: Proof of mailing is or soon will be filed in the docket by Project counsel.

b) Provide a list of the individuals provided the mailed notice.

Brett Koenecke: A list is attached. It is the same list which was used for the prior Crocker docket.

c) Confirm or deny that all individuals provide in 4-1b received the mailing via certified return receipts.

Brett Koenecke: The mailing went by certified mail, return receipt requested, pursuant to law. It was sent to all on the list. Some accepted it, some rejected it, some were forwarded, and some returned.

d) Provide a copy of the letter sent to landowners.

Brett Koenecke: A copy is attached.

1-13) Provide the status of the study required by Clark County on the feasibility of installing an aircraft detection lighting system (ADLS) on the Crocker Wind Farm. Provide the study when completed.

Melissa Schmit: To determine the feasibility of implementing ADLS, Crocker was required to refile the Project turbine locations with the FAA to ensure implementation of the technology at the site will satisfy the FAA requirements for ADLS as described in the Advisory Circular 70/7460-1L Chapter 14: Aircraft Detection Lighting Systems.¹ On December 15, 2017, Crocker received "Determinations of No Hazard" responses for proposed turbine locations up to 499 feet with ADLS technology. Crocker has been working with vendors and a study has been prepared. The study will be provided to Clark County by the end of January and Crocker will provide the study to the PUC once it has been transmitted to the county.

1-14) In Section 2.3.2, Applicant asserts that 250 jobs are anticipated at peak. When is peak construction anticipated to occur, and what is the anticipated duration of peak construction?

Jay Hesse: Crocker anticipates peak construction jobs to occur when construction is in process simultaneously for the various wind farm and transmission facilities. Peak construction jobs are anticipated through June, July, and August of 2019. The timing of peak construction would be subject to change based on the final construction schedule, the turbine selected, weather, procurement schedule or other factors.

1-15) Clark County hosts natural gas transmission facilities that may require regular flyovers. Has Applicant coordinated with the operator of those facilities, Northern Border Pipeline Company, to ensure this can be done in a safe manner?

¹ Technical requirements for radar activated control of obstruction lighting are described in FAA Advisory Circular AC/70/7460-1L, Chapter 14 at: [https://www.faa.gov/documentLibrary/media/Advisory Circular/AC 70 7460-1L .pdf](https://www.faa.gov/documentLibrary/media/Advisory%20Circular/AC%2070%207460-1L.pdf).

Jay Hesse: Crocker has coordinated with Northern Border Pipeline Company. Due to the setback from the pipeline they do not anticipate any problems with fly-overs. The Project design includes wind farm facility setbacks from the pipeline that are consistent with other projects developed by Geronimo Energy that are now successfully operating with Northern Border Pipeline facilities going through the project.

1-16) How will Applicant ensure that field tile is protected during construction and/or any damage corrected after construction?

Jay Hesse: Crocker has been coordinating with project landowners on the location of their field tile and, overall, the Crocker Project Area has very limited field drain tile. Crocker will continue coordination with landowners, including field visits with landowners as needed, ahead of construction activities to identify tile locations. The Project will use commercially reasonable efforts to avoid impacts when possible and Crocker will ensure that tile is repaired if impacted by construction or operation. Crocker will have a qualified contractor undertake all tile repair work.

Melissa Schmit: Updated agency correspondence from Western Area Power Administration and the National Telecommunications and Information Administration are also attached to this Data Request.

Dated this 17th day of January 2018.



Melissa Schmit