



**DEPOSIT AGREEMENT**

**between**

**DAKOTA RANGE III, LLC**

**and**

**CITIBANK, N.A., as Bank**

**Dated as of November \_\_\_\_, 2020**

This **DEPOSIT AGREEMENT** (this “Agreement”), dated as of November \_\_\_\_, 2020, by and between Dakota Range III, LLC, a Delaware limited liability company corporation (the “Depositor”), and Citibank, N.A., a national banking association organized and existing under the laws of the United States of America (“Citibank”) and acting through its Agency and Trust Division and solely in its capacity as Bank under this Agreement, and any successors appointed pursuant to the terms hereof (Citibank in such capacity, the “Bank”).

**WHEREAS**, the Depositor is constructing an approximately 151.2 MW wind power generation facility (the “Facility”), comprised of 32 wind turbines in Grant and Roberts Counties, South Dakota, and in connection therewith, entered into a Settlement Stipulation dated February 6, 2019, in EL18-046, with the Staff of the Public Utilities Commission of the State of South Dakota (the “Stipulation”);

**WHEREAS**, pursuant to Section 40 of the Stipulation, the Depositor is required to establish an escrow account to ensure the availability of funds on a timely basis to cover estimated decommissioning costs once the Facility has met its expected design life;

**WHEREAS**, Citibank is a nationally chartered bank with an office located in South Dakota;

**WHEREAS**, the Depositor wishes to appoint Citibank as Bank and Citibank is willing to accept such appointment and to act as Bank, in each case upon the terms and conditions of this Agreement. The Bank shall not be deemed to have any knowledge of nor obligation with respect to the meaning of any capitalized term not defined herein.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and adequacy of which is hereby irrevocably acknowledged, the parties hereto agree as follows:

**1. Establishment of Account.** (a) Within five (5) business days of the execution hereof, Depositor shall deposit with the Bank in immediately available funds an amount equal to US\$5,000 per wind turbine to be constructed and comprising the Facility, and (b) upon each anniversary of the initial deposit date during the term of this Agreement, the Depositor shall, on an annual basis, make an additional deposit in the amount of US\$5,000 per wind turbine comprising the Facility (collectively, the “Deposit”, and together with any investment income or proceeds received from the investment thereof from time to time pursuant to Section 3 below, collectively, the “Property”), and the Bank shall hold the Deposit in an account established with the Bank (the “Account”). The Property will secure, up to the amounts on deposit in the Account, any obligation of the Depositor under the Order to ensure that the Facility (or any part thereof) is properly decommissioned in accordance with that certain Decommissioning Plan dated June 11, 2020 (the “Decommissioning Plan”), prepared by DNV-GL for the Facility. The amounts to be deposited into the Account by Depositor may be modified beginning in the 10<sup>th</sup> year of the commercial operations of the Facility and each 5<sup>th</sup> year thereafter. In such event, the Depositor shall provide written notice of such modification to the Bank, attaching a copy of the applicable order of the PUC approving or directing such modification. Such modification shall apply to the

Deposit and remain in effect until such time as any additional direction is provided by the Depositor.

**2. Claims and Payment; Release from Account.** At the time of the performance of the Decommissioning Plan for the Facility, the Depositor shall have the right, upon delivery of a withdrawal certificate, substantially in the form set forth in Exhibit A attached hereto (each, a “Withdrawal Certificate”), to the Bank, signed by an Authorized Person (as defined below) of the Depositor, to seek withdrawals from the Account in order to pay the costs and expenses to be incurred in connection with the decommissioning activities for the Facility. Such withdrawals shall be payable in accordance with the directions included in such Withdrawal Certificates. Upon receipt of a duly executed and completed Withdrawal Certificate, the Bank shall transfer from the Account to the Depositor, pursuant to account instructions to be delivered as part of such Withdrawal Certificate, the amount set forth in such Withdrawal Certificate, to the extent the funds in the Account are sufficient to make such transfer, provided that the Depositor may in any Withdrawal Certificate direct the Bank to make disbursements from the Account directly to those Facility landowners who own the land on which associated Facility components are located to the extent that such landowners are required to incur and pay such decommissioning costs directly. Upon the receipt of a Withdrawal Certificate by the Bank from an Authorized Person of the Depositor, the Bank shall pay any amounts remaining in the Account upon the completion and performance of all decommissioning activities at the Facility pursuant to the Decommissioning Plan. The Bank may conclusively rely (and shall be fully justified and shall incur no liability in acting upon) on any Withdrawal Certificate and shall not be responsible in any manner for the truth or accuracy of, or be required to independently evaluate or verify, any information or calculation contained therein (including any attachments or schedules attached thereto).

**3. Investment of Funds.**

(a) Initially, until otherwise directed by the Depositor, the Bank shall hold the deposit in an interest-bearing account insured by the Federal Deposit Insurance Corporation (“FDIC”) to the applicable limits. The Depositor acknowledges that the initial interest rate is subject to change from time to time and shall be reflected in the monthly statement provided. The Bank shall have no liability for any loss sustained as a result of any investment made pursuant to this Agreement, or for any loss, cost or penalty as a result of any liquidation or sale of the Property.

Alternatively, if instructed by the Depositor, the Bank shall invest the Deposit in a money market mutual fund (subject to the availability of such investment with the Bank). The Bank shall invest the Deposit on the date of deposit, provided that it is received on or before 11:00 a.m. New York City time. Any Deposit received by the Bank after 11:00 a.m. New York City time shall be treated as if received on the following Business Day. For purposes of this Agreement, “*Business Day*” shall mean any day that the Bank is open for business. The Bank is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Agreement. The Bank shall have no responsibility or liability for any loss in the value of any investment made pursuant to this Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Property. The Bank is hereby authorized to execute purchases and sales of investments through the facilities of its own trading or capital markets operations or those of any affiliated entity. The Bank does not have a duty nor will it undertake any duty to provide investment advice.

#### **4. Tax Matters.**

(a) The Depositor agrees that, unless otherwise specified in this Agreement, any earnings or proceeds received on or distributions of earnings or proceeds from the Property during a calendar year period shall be treated as the income of the Depositor and shall be reported on an annual basis by the Bank on the appropriate United States Internal Revenue Service (“IRS”) Form 1099 (or IRS Form 1042-S), as required pursuant to the Internal Revenue Code of 1986, as amended (“Code”) and the regulations thereunder. The Depositor and the Bank agree that the Bank will not be responsible for providing tax reporting and withholding for payments which are for compensation for services performed by an employee or independent contractor.

(b) If IRS imputed interest requirements apply, the Depositor is solely responsible to inform the Bank, provide the Bank with all imputed interest calculations, and direct the Bank to disburse imputed interest amounts. The Bank shall rely solely on such provided calculations and information and shall have no responsibility for the accuracy or completeness of any such calculations or information or for the failure of the Depositor to provide such calculations or information.

(c) The Depositor shall upon the execution of this Agreement provide the Bank with a duly completed and properly executed IRS Form W-9 or applicable IRS Form W-8, in the case of a non-U.S. person, for each payee, together with any other documentation and information requested by the Bank in connection with the Bank’s tax reporting obligations under the Code and the regulations thereunder. With respect to the Bank’s tax reporting obligations under the Code, the Foreign Account Tax Compliance Act and the Foreign Investment in Real Property Tax Act and any other applicable law or regulation, the Depositor understands that, in the event valid U.S. tax forms or other required supporting documentation are not provided to the Bank, the Bank may be required to withhold tax from the Property and report account information on any earnings, proceeds or distributions from the Property.

(d) Should the Bank become liable for the payment of taxes, including withholding taxes relating to any funds, including interest and penalties thereon, held by it pursuant to this Agreement or any payment made hereunder, the Bank shall satisfy such liability to the extent possible from the Property. The Depositor agrees to indemnify and hold the Bank harmless pursuant to Section 6(c) hereof from any liability or obligation on account of taxes, assessments, interest, penalties, expenses and other governmental charges that may be assessed or asserted against the Bank.

(e) The Bank’s rights under this Section shall survive the termination of this Agreement or the resignation or removal of the Bank.

#### **5. Concerning the Bank.**

(a) Bank Duties. Depositor acknowledges and agrees that (i) the duties, responsibilities and obligations of the Bank shall be limited to those expressly set forth in this Agreement, each of which is administrative or ministerial (and shall not be construed to be fiduciary) in nature, and no duties, responsibilities or obligations shall be inferred or implied, (ii)

the Bank does not have any fiduciary obligation towards Depositor, the PUC, or any other party contemplated hereunder with respect to this Agreement or any of the agreements referred to or described herein or the transactions contemplated thereby, (iii) the Bank shall not be responsible for any of the agreements referred to or described herein (including without limitation the Order, or for determining or compelling compliance therewith, and shall not otherwise be bound thereby, and (iv) the Bank shall not be required to expend or risk any of its own funds to satisfy payments from the Property hereunder. The Bank shall furnish the Depositor with monthly account statements, showing starting and ending balances and all deposits and withdrawals made during such month.

(b) Liability of Bank. The Bank shall not be liable for any damage, loss or injury resulting from any action taken or omitted in the absence of gross negligence or willful misconduct (as finally adjudicated by a court of competent jurisdiction). In no event shall the Bank be liable for indirect, incidental, consequential, punitive or special losses or damages (including but not limited to lost profits), regardless of the form of action and whether or not any such losses or damages were foreseeable or contemplated. The Bank shall be entitled to rely upon any instruction, notice, request or other instrument delivered to it without being required to determine the authenticity or validity thereof, or the truth or accuracy of any information stated therein. The Bank may act in reliance upon any signature believed by it to be genuine and may assume that any person purporting to make any statement, execute any document, or send any instruction in connection with the provisions hereof has been duly authorized to do so. The Bank may consult with counsel satisfactory to it, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it in good faith and in accordance with the opinion and advice of such counsel. The Bank may perform any and all of its duties through its agents, representatives, attorneys, custodians and /or nominees. The Bank shall not incur any liability for not performing any act or fulfilling any obligation hereunder by reason of any occurrence beyond its control (including, without limitation, any provision of any present or future law or regulation or any act of any governmental authority, any act of God or war or terrorism, or the unavailability of the Federal Reserve Bank wire services or any electronic communication facility).

(c) Reliance on Orders. The Bank is authorized to comply with final orders issued or process entered by any court with respect to the Property, without determination by the Bank of such court's jurisdiction in the matter. If any portion of the Property is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Bank is authorized to rely upon and comply with any such order, writ, judgment or decree which it is advised is binding upon it without the need for appeal or other action; and if the Bank complies with any such order, writ, judgment or decree, it shall not be liable to the Depositor or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

**6. Compensation, Expense Reimbursement and Indemnification.**

(a) Compensation. The Depositor covenants and agrees to pay the Bank's compensation specified in Schedule A. The Depositor covenants and agrees to pay the Bank all out-of-pocket expenses incurred by the Bank in the performance of its role under this Agreement (including, but not limited to, any attorney's fees incurred in connection with the preparation and negotiation of this Agreement, which shall be due and payable upon the execution of this Agreement).

(b) Indemnification. The Depositor covenants and agrees to indemnify the Bank and its employees, officers, directors, affiliates, and agents (each, an "Indemnified Party") for, hold each Indemnified Party harmless from, and defend each Indemnified Party against, any and all claims, losses, actions, liabilities, costs, damages and expenses of any nature incurred by any Indemnified Party, arising out of or in connection with this Agreement or with the administration of its duties hereunder, including but not limited to attorney's fees, costs and expenses, except to the extent such loss, liability, damage, cost or expense shall have been finally adjudicated by a court of competent jurisdiction to have resulted solely from the Indemnified Party's own gross negligence or willful misconduct. The foregoing indemnification and agreement to hold harmless shall survive the termination of this Agreement and the resignation or removal of the Bank.

7. Dispute Resolution. In the event of any disagreement among the Depositor and any other person, resulting in adverse claims or demands being made with respect to the subject matter of this Agreement, or in the event that the Bank, in good faith, is in doubt as to any action it should take hereunder, the Bank may, at its option, refuse to comply with any claims or demands and refuse to take any other action hereunder, so long as such disagreement continues or such doubt exists, and in any such event, the Bank shall not be liable in any way or to any person for its failure or refusal to act, and the Bank shall be entitled to continue to so refuse to act and refrain from acting until the Bank shall have received (i) a final, non-appealable order, judgment or decree by a court of competent jurisdiction or (ii) an instruction executed by the Depositor detailing the resolution of such disagreement, in which case the Bank shall be authorized to disburse the Property in accordance with such final court order, judgment, decree or instruction. The Bank shall be entitled to receive (from and at the expense of the Depositor) an opinion of counsel to the effect that any order, judgment or decree is final and not subject to appeal. The Bank shall have the option, after 30 calendar days' notice to the Depositor of its intention to do so, to petition (by means of filing an action in interpleader or any other appropriate method) any court of competent jurisdiction, for instructions with respect to any dispute or uncertainty, and to the extent required or permitted by law, pay into such court the Property for holding and disposition in accordance with the instructions of such court. The costs and expenses (including reasonable attorneys' fees and expenses) incurred by the Bank in connection with such proceeding shall be paid by the Depositor.

8. Exclusive Benefit. This Agreement constitutes the entire agreement between the parties and sets forth in its entirety the obligations and duties of the Bank with respect to the Property. This Agreement is for the exclusive benefit of the parties to this Agreement and their respective permitted successors, and shall not be deemed to give, either expressly or implicitly, any legal or equitable right, remedy, or claim to any other entity or person whatsoever. No party

may assign any of its rights or obligations under this Agreement without the prior written consent of the other parties.

**9. Resignation and Removal.**

(a) The Depositor may remove the Bank at any time by giving to the Bank thirty (30) calendar days' prior written notice of removal signed by an Authorized Person of the Depositor. The Bank may resign at any time by giving the Depositor thirty (30) calendar days' prior written notice of resignation.

(b) Within thirty (30) calendar days after giving the foregoing notice of removal to the Bank or within thirty (30) calendar days after receiving the foregoing notice of resignation from the Bank, the Depositor shall appoint a successor bank and give notice of such successor bank to the Bank. If a successor bank has not accepted such appointment by the end of such 30-day period, the Bank may either (A) safe keep the Property until a successor bank is appointed, without any obligation to invest the same or continue to perform under this Agreement, or (B) apply to a court of competent jurisdiction for the appointment of a successor bank or for other appropriate relief.

(c) Upon receipt of notice of the identity of the successor bank, the Bank shall either deliver the Property then held hereunder to the successor bank, less the Bank's fees, costs and expenses, or hold such Property (or any portion thereof) pending distribution, until all such fees, costs and expenses are paid to it. Upon delivery of the Property to the successor bank, the Bank shall have no further duties, responsibilities or obligations hereunder.

**10. Governing Law; Jurisdiction; Waivers.** This Agreement is governed by and shall be construed and interpreted in accordance with the laws of the State of South Dakota without giving effect to the conflict of laws principles thereof. The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the federal and state courts located in the State of South Dakota, for any proceedings commenced regarding this Agreement. The parties irrevocably submit to the jurisdiction of such courts for the determination of all issues in such proceedings and irrevocably waive any objection to venue or inconvenient forum for any proceeding brought in any such court. The parties irrevocably and unconditionally waive any right to trial by jury with respect to any proceeding relating to this Agreement.

**11. Representations and Warranties.** The Depositor represents and warrants that it has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder; and this Agreement has been duly approved by all necessary action and constitutes its valid and binding agreement enforceable in accordance with its terms, except as may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditor's rights and subject to general equity principles.

**12. Notices; Instructions.**

(a) Any notice or instruction hereunder shall be in writing in English, and may be sent by (i) secure file transfer or (ii) electronic mail with a scanned attachment thereto of an executed notice or instruction, and shall be effective upon actual receipt by the Bank in accordance

with the terms hereof. Any notice or instruction must be executed by an authorized person of the Depositor (the person(s) so designated from time to time, the “Authorized Persons”). Each of the applicable persons designated on Schedule B have been duly appointed to act as Authorized Persons hereunder and individually have full power and authority to execute any notices or instructions, to amend, modify or waive any provisions of this Agreement, and to take any and all other actions permitted under this Agreement, all without further consent or direction from, or notice to, it or any other party. Any notice or instruction must be originated from a corporate domain. Any change in designation of Authorized Persons shall be provided by written notice, signed by an Authorized Person, and actually received and acknowledged by the Bank. Any communication from the Bank that the Bank deems to contain confidential, proprietary, and/or sensitive information shall be encrypted in accordance with the Bank’s internal procedures. The Depositor agrees that the above security procedures are commercially reasonable.

If to the Depositor:

Dakota Range III, LLC  
1360 Post Oak Blvd., Suite 400  
Houston, TX 77056  
Attn.: Dakota Range III Asset Manager  
Phone: 713.636.0000  
Email: chad.campbell@engie.com

With a copy to:

Dakota Range III, LLC  
1360 Post Oak Blvd., Suite 400  
Houston, TX 770056  
Attn.: General Counsel, Renewables  
Phone: 713.636.0000  
Email: engiena-legal@engie.com

If to the Bank:

Citibank, N.A.  
Agency & Trust  
388 Greenwich Street  
New York, NY 10013  
Attn.: Nerlie Delly  
Telephone: 212-816-6846  
E-mail: cts.spag@citi.com

(b) Any funds to be paid by the Bank hereunder shall be sent by wire transfer pursuant to the instructions set forth on Schedule C, or as otherwise may be instructed by the Depositor.



(c) Payments to the Bank shall be sent by wire transfer pursuant to the following instructions: **CITIBANK, N.A.**, ABA: 0210-0008-9; Account Name: Escrow Concentration Account; A/C#: 36855852; Ref: 12618700.

**13. Amendment, Waiver.** Any amendment of this Agreement shall be binding only if evidenced by a writing signed by each of the parties to this Agreement. No waiver of any provision hereof shall be effective unless expressed in writing and signed by the party to be charged.

**14. Severability.** The invalidity, illegality or unenforceability of any provision of this Agreement shall in no way affect the validity, legality or enforceability of any other provision. If any provision of this Agreement is held to be unenforceable as a matter of law, the other provisions shall not be affected thereby and shall remain in full force and effect.

**15. Mergers and Conversions.** Any corporation or entity into which the Bank may be merged or converted or with which it may be consolidated, or any corporation or entity resulting from any merger, conversion or consolidation to which the Bank will be a party, or any corporation or entity succeeding to the business of the Bank will be the successor of the Bank hereunder without the execution or filing of any paper with any party hereto or any further act on the part of any of the parties hereto except where an instrument of transfer or assignment is required by law to effect such succession, anything herein to the contrary notwithstanding.

**16. Termination.** This Agreement shall terminate and the Account shall be closed upon the distribution of all Property from the Account established hereunder in accordance with the terms of this Agreement, subject, however, to the survival of obligations specifically contemplated in this Agreement to so survive.

**17. Counterparts.** This Agreement may be executed simultaneously in two or more counterparts, any one of which need not contain the signatures of more than one party, but all such counterparts taken together shall constitute one and the same agreement. Scanned signatures on counterparts of this Agreement shall be deemed original signatures with all rights accruing thereto except in respect to any non-US entity, whereby originals are required.

*[Signatures on following page]*

IN WITNESS WHEREOF, each of the parties has caused this Agreement to be executed by a duly authorized representative as of the day and year first written above.

**CITIBANK, N.A.,**  
as Bank

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**DAKOTA RANGE III, LLC**  
as Depositor

By: \_\_\_\_\_  
Name:  
Title:  
Date:

**SCHEDULE A**  
**BANK FEE SCHEDULE**

## SCHEDULE B

### AUTHORIZED LIST OF SIGNERS

Each of the following person(s) is authorized to execute documents and to direct the Bank as to all matters, including funds transfers, on the Depositor's behalf.

**[ PARTY ]**

	Specimen Signature	Please check <sup>(1)</sup> :
		Upload    Maker    Checker
Name _____		<input type="checkbox"/>
Title _____		<input type="checkbox"/>
Phone _____		<input type="checkbox"/>
E-mail Address* _____		
Name _____		<input type="checkbox"/>
Title _____		<input type="checkbox"/>
Phone _____		<input type="checkbox"/>
E-mail Address* _____		
Name _____		<input type="checkbox"/>
Title _____		<input type="checkbox"/>
Phone _____		<input type="checkbox"/>
E-mail Address* _____		

The Bank may confirm the instructions received by return call to one of the telephone numbers listed below.

<i>Telephone Number (including Country code)</i>	<i>Name</i>

**\*must be a corporate domain**

<sup>(1)</sup>Secure File Transfer Designation Descriptions:  
 UPLOAD ONLY: The individual is authorized to upload such notices or instructions to the SFTP site. (NO CHECKER REQUIRED)  
 MAKER: The individual is authorized to create and upload such notices or instructions to the SFTP site.  
 CHECKER: The individual is authorized to authenticate and approve such notices or instructions to the SFTP site

**SCHEDULE C**

If to the [Depositor]:

Bank:  
ABA#:  
Account Name:  
A/C#:  
Ref:

**EXHIBIT A**

**FORM OF WITHDRAWAL CERTIFICATE**

[Date]

Citibank, N.A., as Bank  
Agency & Trust  
388 Greenwich Street  
New York, NY 10013  
Attn: Nerlie Delly  
Email: [cts.spag@citi.com](mailto:cts.spag@citi.com) / [nerlie.delly@citi.com](mailto:nerlie.delly@citi.com)

RE: Deposit Agreement, dated as of November [ ], 2020 (“Deposit Agreement”), by and between Dakota Range III, LLC (“Depositor”) and Citibank, N.A., as bank (“Bank”).

Dear Ms. Delly:

Pursuant to Section 2 of the Deposit Agreement, the Depositor hereby instructs the Bank to withdraw and transfer \$[ ] from the Account to:

[the Depositor in accordance with the wire payment instructions set forth in Schedule C to the Deposit Agreement][in accordance with the following payment instructions:]

*[Insert payment instructions]*

[the following Facility landowners in accordance with the following payment instructions:]

*[Insert payees and payment instructions]*

The Depositor confirms that it is unconditionally entitled pursuant to the terms of the Deposit Agreement to submit such Withdrawal Certificate and to request the transfer contained herein, which transfer is permitted pursuant to the Deposit Agreement.

Capitalized terms used but not defined herein shall have the meaning given to such terms in the Deposit Agreement.

Sincerely,

DAKOTA RANGE III, LLC

By: \_\_\_\_\_  
Name:  
Title: