

Nelson Proposed Condition Amendments for Triple H

1. Adopt applicant and staff stipulated conditions regarding whooping cranes and ice detection.

2. At least 60 days prior to commencement of commercial operation, Applicant shall file an escrow agreement with the Commission for Commission approval that provides a decommissioning escrow account. The escrow agreement shall incorporate the following requirements:
 - a) The escrow account is funded by the turbine owner annually at a rate of \$5,000 per turbine per year for the first 30 years, commencing no later than the commercial operation date.
 - b) Beginning in year ten following commercial operation of the project and each fifth year thereafter, the turbine owner shall submit to the Commission an estimated decommissioning date, if established, and estimated decommissioning costs and salvage values. Based on the verification of the information in the filing the Commission may determine that funds in escrow are sufficient to cover the costs of decommissioning and that reduced or no additional deposits are required. The Commission also may determine that additional funding is required and may require additional funding equal to the estimated amount needed for decommissioning.
 - c) All revenues earned by the account shall remain in the account.
 - d) An account statement shall be provided annually to the Commission and become a public record in this docket.
 - e) The escrow account obligations will be those of Triple H Wind and the escrow agreement shall include terms providing that the agreement binds Triple H Wind's successors, transferees, and assigns. A sale of project assets shall include the associated Permit that requires Commission approval per SDCL § 49-41 B-29.
 - f) The escrow account agent shall be a South Dakota chartered state bank or a nationally chartered bank with an office located in South Dakota.
 - g) The escrow agreement shall be subject to the laws of South Dakota and any disputes regarding the agreement shall be venued in South Dakota.
 - h) To minimize the risk that the escrow account would be subject to foreclosure, lien, judgment, or bankruptcy, the escrow agreement will be structured to reflect the follow factors:
 - 1) That Triple H Wind agreed to the creation of the escrow account;
 - 2) Triple H Wind exercises no (or the least amount possible of) control over the escrow;
 - 3) The initial source of the escrow;
 - 4) The nature of the funds put into the escrow;
 - 5) The recipient of its remainder (if any);
 - 6) The target of all its benefit; and
 - 7) The purpose and its creation.
 - i) Account funds are to be paid to the project owner at the time of

decommissioning, to be paid out as decommissioning costs are incurred and paid.

j) If the project owner fails to execute the decommissioning requirement found in this section of the Conditions, the account is payable to the landowner who owns the land on which associated project facilities are located as the landowner incurs and pays decommissioning costs.