

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

IN THE MATTER OF THE APPLICATION BY) TRIPLE H WIND PROJECT, LLC FOR A) PERMIT OF A WIND ENERGY FACILITY IN) HYDE COUNTY, SOUTH DAKOTA)))	FINAL DECISION AND ORDER GRANTING PERMIT TO CONSTRUCT FACILITY; NOTICE OF ENTRY EL19-007
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APPEARANCES

Commissioners Gary Hanson, Chris Nelson, and Kristie Fiegen.

Brett Koenecke, May, Adam, Gerdes & Thompson LLP, 503 S. Pierre St., Pierre, SD 57501, appeared on behalf of Applicant, Triple H Wind Project, LLC (Triple H or Applicant).

Kristen Edwards, Mikal Hanson, and Amanda Reiss, 500 E. Capitol Ave., Pierre, South Dakota 57501, appeared on behalf of the South Dakota Public Utilities Commission Staff (Staff).

PROCEDURAL HISTORY

On February 6, 2019, the South Dakota Public Utilities Commission (Commission) received a Facility Permit Application (Application) from Triple H Wind Project, LLC (Triple H or Applicant) to construct and operate a wind energy facility to be located in Hyde County, South Dakota (Project).¹ Also on February 6, 2019, Triple H filed the prefiled Direct Testimony and Exhibits of Casey Willis, David Mebane, Leslie Knapp, Ted Guertin, Clayton Derby, Wade Burns, and Tricia Pellerin. On February 7, 2019, Triple H filed the prefiled Direct Testimony of Jason Hellerud.

On February 7, 2019, the Commission electronically transmitted notice of the filing and the intervention deadline of April 8, 2019, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv.

On February 11, 2019, Triple H filed a copy of the Application with the Hyde County auditor.

On February 12, 2019, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status (Order). The Order scheduled a public input hearing for March 19, 2019, at 5:30 p.m., CDT, at the Hyde County Memorial Auditorium, 125 Second St SW, Highmore, South Dakota.

On February 15, 2019, Triple H filed a revised Appendix H and a revised Appendix G.

¹ The Commission's orders in the case and all other filings and documents in the record are available on the Commission's web page for Docket EL19-007 at: <http://puc.sd.gov/Dockets/Electric/2019/el19-007.aspx>

On February 22, 2019, the Commission issued an Order Assessing a Filing Fee; Order Authorizing Executive Director to Enter into Necessary Consulting Contracts.

On March 15, 2019, Triple H filed a Proof of Mailing to affected landowners pursuant to SDCL 49-41B-5.2.

On March 18, 2019, an Affidavit of Publication was filed by Triple H confirming that the Notice of Public Hearing was published in *The Highmore Herald* on February 14 and February 21, 2019.

On March 19, 2019, a public input hearing was held as noticed at the Hyde County Memorial Auditorium, 125 Second St SW, Highmore, South Dakota. No applications for Party Status were received by the Commission.

On March 25, 2019, Affidavits of Publication were filed by Staff confirming that the Notice of Public Hearing was published in *The Highmore Herald* on February 28 and March 14, 2019, and in the *Capital Journal* on February 28 and March 14, 2019.

On April 9, 2019, Staff filed a Motion for Adoption of Procedural Schedule.

On May 8, 2019, the Commission issued an Order Granting Request to Withdraw Motion for Adoption of Procedural Schedule.

On May 21, 2019, a Joint Motion for Approval of Settlement Stipulation and Settlement Stipulation between Triple H and Staff was filed. A Staff Memorandum in Support of Settlement Stipulation and attachments were also filed.

On May 29, 2019, Staff filed the prefiled Direct Testimony and Exhibits of Jon Thurber.

On June 4, 2019, the Commission issued an Order Granting Joint Motion for Approval of Settlement Stipulation; Order Approving Settlement Stipulation. As a result of the Settlement Stipulation and Order, three issues remained for the evidentiary hearing: funding for the decommissioning of the Project, the risk associated with ice throw, and the risk to whooping cranes.

On June 12, 2019, the Commission issued an Order for and Notice of Evidentiary Hearing.

On June 14, 2019, Triple H filed the prefiled Testimony and Exhibits of Matthew McCaulley.

On June 27, 2019, the evidentiary hearing was held as scheduled with Triple H and Staff appearing and presenting evidence and argument.

On July 9, 2019, the parties filed a letter stating they had agreed to conditions to resolve the issues of risk associated with ice throw and the potential impacts to whooping cranes.

On July 9, 2019, Triple H filed an updated acoustic analysis memorandum, an updated shadow flicker analysis memorandum, and a delivery flow plan.

On July 9, 2019, at its regularly scheduled meeting, the parties made oral arguments. After questions of the parties by the Commissioners and public discussion among the Commissioners, the Commission voted unanimously to grant a permit to construct the Project to Triple H, subject to the approved Permit Conditions.

On July 19, 2019, Triple H notified Staff by email that they wished to waive findings of fact and conclusions of law in this matter.

The Project is a wind energy facility located in Hyde County, South Dakota. The Project would be located on 27,247.5 acres of privately held land, approximately 3.2 miles southwest of Highmore in the townships of Eagle, Chapelle, Highmore, and Holabird, South Dakota (Project Area). The total installed capacity of the Project would not exceed 250.24 megawatts (MW) of nameplate capacity. The proposed Project includes up to 92 wind turbine generators, access roads to turbines and associated facilities, underground 34.5-kilovolt (kV) electrical collector lines, underground fiber optic cable, a 34.5-kV to 345-kV collection substation, one permanent meteorological tower, a 345-kV interconnection switching station, a Sonic Detection and Ranging Unit, and an operations and maintenance facility. The Project will interconnect to the high-voltage transmission grid via the Leland Olds to Fort Thompson 345-kV transmission line, which crosses the Project Area. Applicant has entered into two 30-year power purchase agreements, one with Walmart for 150 MW and one for 48 MW with a confidential institutional buyer. The remaining 52 MW will be sold on a merchant basis. The Project is expected to be completed in 2020. Applicant estimates the total cost of the Project to be \$300 million.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26, 15-6, and 49-41B, specifically, 49-41B-1, 49-41B-2, 49-41B-2.1, 49-41B-4, 49-41B-5.2, 49-41B-12 through 49-41B-19, 49-41B-22, 49-41B-25, 49-41B-26, 49-41B-35, 49-41B-36, and ARSD Chapters 20:10:01 and 20:10:22.

Determining a reasonable method for funding the decommissioning of a wind energy project rests primarily on sound judgment after considering all of the various options that may be used to fund decommissioning. At the evidentiary hearing, Applicant's expert witness, Matthew S. McCaulley, advocated the financing of decommissioning for the Triple H Wind Farm with a parent guaranty or an irrevocable letter of credit. Mr. McCaulley testified that resolution of the issue of financial security relative to decommissioning is in the Commission's province.

As for the various forms of financial security available for funding decommissioning, the Commission finds that the use of a surety bond is a concern if the bond is insufficient to cover the costs of decommissioning or if the bond were to expire. The Commission further finds that it would be possible for a letter of credit to expire prematurely relative to the project life span, or for some clause to appear in a form that does not trigger an obligation under the instrument. The Commission also finds that issues with a parent guaranty could arise if the parent experienced financial difficulties, and that the strength of the guaranty depends on the strength of the guarantor relative to the actual or perceived risk. Finally, the Commission finds that the evidence submitted by Applicant was not sufficient for the Commission to impose a condition regarding decommissioning different from that imposed in previous wind energy facility permits, and with respect to financial security for decommissioning, an escrow account is an appropriate financial assurance to cover decommissioning costs. It is therefore

ORDERED, that a permit to construct the Triple H Wind Project is granted to Triple H Wind, LLC for the construction and operation of the Project. It is further

ORDERED, that Applicant shall comply with all the attached Permit Conditions, which are incorporated by reference into this Order the same as if they had been set forth in their entirety herein. It is further

ORDERED, that the previously approved Stipulation is incorporated by reference into this Order the same as if it had been set forth in its entirety herein.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that this Final Decision and Order Granting Permit to Construct Facility was duly issued and entered on the 24th day of July 2019.

Dated at Pierre, South Dakota, this 24th day of July 2019.

CERTIFICATE OF SERVICE
The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.
By: <u>Karen E. Bremer</u>
Date: <u>07/24/19</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Gary Hanson
GARY HANSON, Chairman

Chris Nelson
CHRIS NELSON, Commissioner

Kristie Fiegen
KRISTIE FIEGEN, Commissioner

PERMIT CONDITIONS

1. Applicant will obtain all governmental permits which reasonably may be required by any township, county, state agency, or federal agency, or any other governmental unit for construction and operation activity of the Project prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by Applicant shall be filed with the Commission.
2. 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 Final Decision and Order Granting Permit to Construct Facility, and Attached Permit Conditions, (5) any applicable industry standards, and (6) any permits issued by a federal, state, or local agency.
3. Applicant agrees that the Commission's complaint process as set forth in ARSD Chapter 20:10:01 shall be available to landowners and 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. Participating landowners are free to use the complaint process free from retribution or consequence regardless of any private easement term to the contrary.
4. At least 14 days prior to commencement of construction, Applicant shall provide each participating and non-participating landowner in the Project Area and one-half mile outside the Project Area, using the addresses designated to receive the property tax bill sent by the county treasurer, with the following information:
 - a) A copy of the Final Decision and Order Granting Permit to Construct Facility with attached Permit Conditions;
 - b) Detailed safety information describing:
 - i. Reasonable safety precautions for existing activities on or near the Project;
 - ii. Known activities or uses that are presently prohibited near the Project, and
 - iii. Other known potential dangers or limitations near the Project;
 - c) Construction/maintenance damage compensation plans and procedures (only to participating landowners);
 - d) The Commission's address, website, and phone number;
 - e) 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 Permit Conditions, Applicant shall comply with all mitigation measures set forth in the Application and Applicant's responses to Commission staff's data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
7. Applicant will negotiate road use agreements with Hyde County and all affected townships, if required. Applicant will follow the terms of all road use agreements. When using haul roads specified in applicable 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.
8. In accordance with applicable road use agreements or applicable law, 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) Within 180 days of completing construction and reclamation of the Project, Applicant shall submit documentation to the Commission identifying that the roads were repaired in accordance with this Condition 8 and to the satisfaction of affected townships and county. If the townships or county will not provide such documentation, then Applicant shall provide a report to the Commission on the outstanding road repair issues and how those issues will be resolved.
 - f) Privately owned areas used as temporary roads or crane paths during construction will be restored to their preconstruction condition, except as otherwise requested or agreed to by the landowner.
 - g) Should Applicant need to widen any existing roadways during construction of the Project, Applicant shall return the roadways back to original width after completion of the Project, unless otherwise agreed upon with the federal, state, county, or township entities, or the landowner.
9. Applicant shall provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent edition of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.

10. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the Project Area that Applicant becomes aware of and that was not previously reported to the Commission.
11. Applicant agrees to avoid direct impacts to cultural resources that are unevaluated, eligible for or listed in the National Register of Historic Places (NRHP). When a NRHP unevaluated, eligible, or listed resource cannot be avoided, Applicant shall notify the South Dakota 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.
12. Applicant agrees to develop an unanticipated discovery plan for cultural resources and follow SDCL 34-27-25, 34-27-26, and 34-27-28 for the discovery of human remains.
13. Applicant shall file the final cultural resources report with the Commission prior to commercial operation. If any potential adverse impacts to NRHP unevaluated, listed, or eligible cultural resources are identified in the final cultural resources report, Applicant shall file with the Commission a report describing the SHPO-approved planned measures to ameliorate those impacts.
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 shall be completed as required by the National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. All contractors to be engaged in ground disturbing activities will be given a copy of the SWPPP and the requirements will be reviewed with them prior to the start of construction.
15. Applicant shall repair and restore areas disturbed by the construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration shall 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 Permit Condition, Applicant shall:
 - a) Strip the topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing (e-mail is sufficient), in all areas disturbed by the Project; however, with respect to access roads, Applicant may remove less than the actual depth of the topsoil to ensure roads remain low-profile and the contours align with the surrounding area;
 - b) Store the topsoil separate from the subsoil in order to prevent mixing of the soil types;
 - c) All excess soils generated during the excavation of the turbine foundations shall remain on the same landowner's land, unless the landowner requests, and the landowner agrees otherwise; and
 - d) When revegetating non-cultivated grasslands, Applicant shall use a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, unless otherwise agreed upon with 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 the appropriate federal, state, and/or local government agency. All excess (non-permanent) construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees 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 upon 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 4 feet, or deeper if necessary, 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, invitees, or other representatives.
22. Applicant may make turbine adjustments of 250 feet or less from the turbine locations identified at the time a Facility Permit is issued without prior Commission approval, so long as specified noise and shadow flicker thresholds are not exceeded, cultural resource impacts and documented habitats for listed species are avoided, and wetland impacts are avoided or are in compliance with applicable U.S. Army Corps of Engineers (USACE) regulations. Prior to implementing the turbine adjustment, Applicant will file in the docket an affidavit demonstrating compliance with the limitations set forth above. Any turbine adjustment that does not comply with the aforesaid limitations, or turbine model change, would be considered a "material change," and Applicant shall file a request for approval of the "material change" prior to making the adjustment pursuant to the following approval process:

Applicant will file with the Commission and serve on the official Service List a request for approval of the adjustment that includes:

- An affidavit describing the proposed turbine adjustment, the reason for the adjustment, the reason the adjustment does not comply with one or more turbine flexibility limitations set forth above, and information regarding compliance with all other applicable requirements; and
 - A map showing both the approved location and the proposed adjustment (in different colors);
 - Once received, the information would be reviewed by Commission staff, and Commission staff will have 10 calendar days within which to request further Commission review.
 - If no further review is requested, Applicant may proceed with the adjustment.
 - If further review is requested, the Commission will issue a decision regarding Applicant's request at its next available regularly scheduled Commission meeting, subject to notice requirements, after the request for further review is made by Commission staff.
23. Applicant may adjust access roads, the collector system, meteorological towers, the operations and maintenance facility, the Project substation, and temporary facilities, so long as they are located on land leased for the Project, cultural resources are avoided or mitigated in consultation with the SHPO; documented habitats to listed species are avoided; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met.
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. The Project, exclusive of all unrelated background noise, shall not generate a sound pressure level (10-minute equivalent continuous sound level, Leq) of more than 45 dBA when all turbines are producing full acoustic output, as measured within 25 feet of any residence unless the owner of the residence has signed a waiver. Applicant shall, upon Commission formal request, conduct field surveys or provide post-construction monitoring data verifying compliance with specified noise level limits. If the measured wind turbine noise level exceeds 45 dBA at any residence, then the Project Owner shall take whatever steps are necessary in accordance with prudent operating standards to rectify the situation. Sound monitoring will not be repeated in a representative area during any five-year period unless operational or maintenance changes result in a reasonable assumption of higher turbine sound levels.

The post-construction monitoring survey, upon Commission formal request, shall be executed as follows:

- a) The post-construction monitoring survey shall follow the applicable portions of American National Standards Institute (ANSI) standard S12.9 Part 3, and other acoustical standard relating to equipment and calibration specifications.
- b) Noise levels shall be measured continuously for at least two weeks, or until such time that a sufficient number of valid 10-minute Leq periods are acquired to determine compliance to a reasonable degree of scientific certainty. At a minimum, data must be collected for multiple 10-minute periods on at least two different nights when the nearest turbines are operating at full acoustic emissions, and background noise levels are sufficiently low such that the measured total noise level can be assumed to equal the turbine-only noise level. During the post-construction monitoring survey, windscreens will be used to protect microphones and minimize effects from self-generated wind-induced noise.
- c) Measurements shall be conducted at a select number of non-participating and participating residences (where access can be arranged) with the highest expected noise levels based on acoustic modeling. Typically, 4 to 6 measurement locations total.
- d) Measurements shall be conducted using sound level meters meeting ANSI Type 1 specifications. An anemometer shall be placed within 20 feet of each microphone, and at a height of 2 meters above the ground.
- e) The measurement data shall be analyzed as follows:
 - i. Analyze those data acquired when the approximately 4 turbines nearest to each measurement location are operating at full capacity (80% electric power or more, which typically occurs at a hub-height wind speed of 10 m/s or greater).
 - ii. Discard those samples measured when the 10-minute average ground wind speed is 5 m/s or greater.
 - iii. Remove transient background noise (i.e. occasional traffic, activities of residents, farming activities, and wind gusts) per ANSI S12.9 Part 3.
 - iv. Remove continuous background noise by conducting turbine shut-downs, where the background noise is measured directly. Shut down testing will be conducted in a controlled manner, where consultant's staff will be present on site to observe and listen during the tests. Shut down testing shall continue until enough data has been collected when ground wind speeds are between approximately 2 and 5 m/s that a repeatable pattern is observed in the measured background noise level. Background noise levels will be subtracted from total noise levels measured during these wind conditions to calculate turbine-only noise levels.
 - v. Review of the frequency spectra of potential turbine-only samples to identify and remove outliers (spectral shape clearly differing from those

samples measured under very low (less than 2 m/s) ground wind conditions, which are the samples most representative of turbine-only noise).

- f) Compare the resulting turbine-only noise levels to the 45-dBA limit. Compliance shall be demonstrated if all samples are less than the limits.
27. Shadow flicker at any receptor shall not exceed 30 hours per year within an established dwelling and 40 hours per year from any occupied structure.
28. Not less than 30 days prior to commencement of construction work in the field for the Project, Applicant will provide to Commission staff the following information:
- a) the most current preconstruction design, layout, and plans, including the turbine model selected;
 - b) a sound level analysis showing compliance with the applicable sound level requirements;
 - c) a shadow flicker analysis showing compliance with the applicable shadow flicker requirements;
 - d) Applicant shall also demonstrate that in selecting locations for other turbines, it considered how to reduce impacts on non-participating landowners; and
 - e) such additional Project preconstruction information as Commission staff requests.
29. Within 90 days after the Project's commercial operation date, 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 the setbacks required by state and local governments and the voluntary commitments set forth in Table 5-1 of the Application;
 - b) the status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulting from Project construction activities; and
 - c) a summary of known landowner complaints and Applicant's plan for resolving those complaints.
30. For purposes of this Project and the commitments herein, "residences/dwellings," "businesses," "structures," "schools," "churches," and "buildings owned and/or maintained by a governmental entity" shall include only those that are in existence and in use as of the date of the Commission's order issuing a permit. "Business" shall not include agricultural uses.
31. Applicant shall seek input from local emergency response personnel 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 Commission staff to make available to the general public on the Commission's website.

32. Prior to the construction of the Project, Applicant will notify public safety agencies by providing a schedule and the location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public Safety, the sheriff of Hyde County, and the Hyde County Office of Emergency Management.
33. Applicant agrees to undertake a minimum of two years of independently-conducted post-construction avian and bat mortality monitoring for the Project, and to provide a copy of the report and all further reports to the United States Fish and Wildlife Service, South Dakota Game, Fish and Parks, and the Commission.
34. Applicant shall file the Bird and Bat Conservation Strategy (BBCS) prior to beginning construction of the Project. The BBCS shall be implemented during construction and operation of the Project.
35. If the Project is decommissioned, Applicant will follow Section 19 of the Application and the decommissioning plan laid out in Appendix L of the Application, as modified in Applicant's response to Commission staff's data request 2-3. The Commission shall be notified prior to any decommissioning action.
36. Applicant shall utilize an Aircraft Detection Lighting System approved by the Federal Aviation Administration.
37. Applicant shall establish a procedure for preventing whooping crane collisions with turbines during operations by establishing and implementing formal plans for monitoring the Project site and surrounding area for whooping cranes during spring and fall migration periods throughout the operational life of the Project and shutting down turbines and/or construction activities within 2 miles of whooping crane sightings. The South Dakota Game, Fish and Parks will be consulted on the procedure to minimize impacts to whooping cranes.
38. The terms and conditions of the Permit shall be made a uniform condition of construction and operation, 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.
39. Applicant shall provide a copy of the Commission's Final Decision and Order Granting Permit to Construct Facility; Notice of Entry and attached Permit Conditions in this docket to the affected county, townships, and municipalities in the Project Area.
40. 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:
 - i. That Triple H Wind agreed to the creation of the escrow account;
 - ii. Triple H Wind exercises no (or the least amount possible of) control over the escrow;
 - iii. The initial source of the escrow account;
 - iv. The nature of the funds put into the escrow account;
 - v. The recipient of its remainder (if any);
 - vi. The target of all its benefit; and
 - vii. 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 Permit 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.
41. The Project will use two methods to detect icing conditions on turbine blades: (1) sensors that will detect when blades become imbalanced or create vibration due to ice accumulation; and (2) meteorological data from on-site permanent meteorological towers, on-site anemometers, and other relevant sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the turbine(s) in icing conditions (per the sensors) or Applicant will manually shut down turbine(s) if icing conditions are identified (using referenced data). Turbines will not return to normal operation until the control systems no longer detect an imbalance or when weather conditions either remove icing on the blades or indicate icing is no longer a concern. Applicant will pay for any documented damage caused by ice thrown from a turbine.