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

**IN THE MATTER OF THE APPLICATION BY SWEETLAND WIND FARM, LLC FOR FACILITY
PERMITS FOR A WIND ENERGY FACILITY AND A 230-KV TRANSMISSION FACILITY IN HAND
COUNTY, SOUTH DAKOTA FOR THE SWEETLAND WIND FARM PROJECT**

STAFF MEMORANDUM

DOCKET EL19-012

Commission Staff (Staff) submits this Memorandum regarding the proposed Escrow Agreement filed by the Applicant, Sweetland Wind Farm, LLC (Applicant) in the above-captioned docket.

On September 1, 2023, Applicant filed a proposed Escrow Agreement as required by Condition 42 of the Permit. Condition 42 requires an Escrow Agreement to be filed with the Commission at least sixty days prior to commercial operation of the Project and for Applicant to obtain Commission approval of the agreement. It is Staff's understanding that Applicant intends for the Project to begin commercial operation on or about November 1, 2023.

As noted in their filing letter, Applicant filed an updated Escrow Agreement on September 27, after discussions with Staff. The information in this Memorandum is intended to provide an explanation of those discussions and any notable changes to the Escrow Agreement which differ from recently approved agreements. The Escrow Agent under the proposed Escrow Agreement is U.S. Bank National Association (US Bank of Escrow Agent).

In Section 1 of the Escrow Agreement, the word "custodian" was removed from the second line. In recent agreements, it was stated that the applicant "hereby appoints Escrow Agent as its agent and custodian...". Staff discussed this change with Applicant but does not take a position on the change.

Subsection C of Section 2 is a new paragraph. Applicant explained to Staff that the reason for the addition was the Escrow Agent's desire to clarify that it has no responsibility to act as a collections agent. Staff agrees that it is not the responsibility of the Escrow Agent to seek to collect funds should Applicant fail to make a required deposit. Staff, therefore, does not object to this addition.

At the request of Staff, a subsection was added to Section 7 to clarify that the Escrow Agent maintains an office in the State of South Dakota. Previous agreements have required the escrow agent to maintain an office in this state throughout the term of the agreement, and such a requirement did not appear in the agreement filed on September 1. The purpose of the physical location requirement is to ensure that the Escrow Agent is subject to the personal jurisdiction of this Commission and of courts in this state and that the Escrow Agent may be served with process in this state. It is Staff's understanding that the Escrow Agent was not comfortable with the binding language suggested by Staff as used in prior agreements. However, the language of Condition 42f nonetheless puts the burden on Applicant to ensure that it utilizes an escrow agent with an office located in South Dakota. Because the burden would be on Applicant to notify the Commission and seek relief from Condition 42f or to find a new

Escrow Agent should US Bank no longer maintain an office within this state and because the Escrow Agreement states that any action would be venued in this state and governed by the laws of this state, Staff is comfortable with the change.

Much of subsection E of Section 7 is new. It appears that the new language is intended to protect Escrow Agent from liability. Staff does not oppose the language, as it includes a requirement that the Escrow Agent be acting in good faith.

Finally, Schedule D and a reference to Schedule D were removed in the September 27 version. Schedule D was not included in previous agreements and did not appear to be necessary, therefore, Applicant and Staff agreed that it should be removed.