

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

IN THE MATTER OF THE APPLICATION	)	ORDER GRANTING JOINT
BY NORTH BEND WIND PROJECT, LLC	)	MOTION FOR APPROVAL OF
FOR A PERMIT TO CONSTRUCT AND	)	SETTLEMENT STIPULATION;
OPERATE THE NORTH BEND WIND	)	ORDER GRANTING PERMIT TO
PROJECT IN HYDE COUNTY AND	)	CONSTRUCT FACILITY; NOTICE
HUGHES COUNTY, SOUTH DAKOTA	)	OF ENTRY
	)	
	)	EL21-018

On June 23, 2021, the South Dakota Public Utilities Commission (Commission) received a filing from North Bend Wind Project, LLC (North Bend Wind) for an application for a permit to construct the North Bend Wind Project, a wind energy facility located on approximately 46,931 acres of land in Hyde County and Hughes County, South Dakota, in the townships of Butte, Chapelle, Harrold, Holabird, Pleasant Valley, Pratt, and Webster. The total installed capacity of the Project would not exceed 200 megawatts nameplate capacity. The proposed Project includes up to 71 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 230-kV collection substation, a 230-kV interconnection switching station, an aircraft detection lighting system and one permanent meteorological tower. The Project will interconnect to Western Area Power Administration's Fort Thompson-Oahe 230-kV transmission line, which crosses the southern portion of the project area. Applicant estimates the total cost of the Project to be between \$265 and \$285 million.

On June 24, 2021, the Commission electronically transmitted notice of the filing and the intervention deadline of August 23, 2021, to interested persons and entities on the Commission's PUC Weekly Filings electronic listserv. On July 2, 2021, the Commission issued a Notice of Application; Order For and Notice of Public Input Meeting; Notice of Opportunity to Apply for Party Status. On August 11, 2021, the Commission held a public input meeting in Pierre, South Dakota. On September 17, 2021, the Commission granted party status to Judi Bollweg, individually and on behalf of Tumbleweed Lodge and Bollweg Family, LLLP, and Michael Bollweg, individually and on behalf of Bollweg Family, LLLP (Intervenors). On November 11, 2021, the Commission issued an Order Granting Motion for Procedural Schedule. On November 24, 2021, the Commission issued an Order Granting Motion to Extend Deadline. On December 14, 2021, the Commission issued an Order Granting Motion to Adopt Revised Procedural Schedule. On March 8, 2022, the Commission issued an Order Granting Motion to Extend Deadline. On August 17, 2022, North Bend filed a letter Regarding Motion for Scheduling Order and the executed Hughes County Board of Adjustment Conditional Use Permit. On September 19, 2022, North Bend, Intervenors and Commission staff filed a Joint Stipulation and Motion to Adopt Second Revised Procedural Schedule. On September 29, 2022, the Commission issued an Order Granting Joint Stipulation and Motion to Adopt Second Revised Procedural Schedule, setting the evidentiary hearing to begin on December 13, 2022. On November 7, 2022, North Bend filed a Motion to Clarify Hearing Scope. On November 22, 2022, Intervenors filed a letter Regarding Scope of Hearing. On December 6, 2022, Intervenors filed a Motion to Withdraw. On December 9, 2022, North Bend filed a letter Regarding Cancellation of Evidentiary Hearing. On December 13, 2022,

North Bend and Commission staff filed a Settlement Stipulation and a Joint Motion for Approval of Settlement Stipulation.

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

At its regularly scheduled meeting on January 5, 2023, the Commission considered this matter and after questions of the parties by the Commissioners and public discussion among the Commissioners and the parties regarding acceptable edits to the Settlement Stipulation, voted unanimously to grant North Bend Wind and Staff's Joint Motion for Approval of Settlement Stipulation; and to grant a permit to construct the Project to North Bend, subject to the conditions included in the Settlement Stipulation, as revised by the Commission with verbal agreement by the parties. It is therefore

ORDERED, that the Joint Motion for Approval of Settlement Stipulation is hereby granted, and the Settlement Stipulation is hereby approved. The Settlement Stipulation, as revised by the Commission with verbal agreement by the parties and attached below, is incorporated by reference into this Order the same as if it had been set forth in its entirety herein. It is further

ORDERED, that the Applicant is granted the requested permit to construct the wind energy facility subject to the conditions set forth in the Settlement Stipulation as revised by the Commission and attached below.

#### NOTICE OF ENTRY

PLEASE TAKE NOTICE that this Final Decision and Order Granting Permit to Construct Facility was duly issued and entered on the 10<sup>th</sup> day of January 2023.

Dated at Pierre, South Dakota, this 10<sup>th</sup> day of January 2023.

<p align="center"><b>CERTIFICATE OF SERVICE</b></p> <p>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.</p> <p>By: <u>Adam DeHueck</u></p> <p>Date: <u>1/10/23</u></p> <p align="center">(OFFICIAL SEAL)</p>
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BY ORDER OF THE COMMISSION:

Kristie Fiegen  
KRISTIE FIEGEN, Commissioner

Gary Hanson  
GARY HANSON, Commissioner

Chris Nelson  
CHRIS NELSON, 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. Applicant shall file an itemized affidavit with the Commission attesting that all permits were properly obtained prior to commercial operation.
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) all applicable 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 within 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 Order and 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.

A copy of the landowner notice letters shall be filed with the Commission to demonstrate compliance with this condition

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 prior to the start of construction.
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 and Hughes Counties 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 and to the satisfaction of affected townships and county. If a 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 prior to excavation of the area of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
  - 12. Prior to the commencement of construction, 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 and be in a form consistent with the South Dakota Department of Agriculture and Natural Resource guidelines for such plans. The SWPPP shall be completed before submittal of an application for a 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 the replacement of the 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) Ensure all excess soils generated during the excavation of the wind 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 and Applicant shall implement the plan.
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 wind turbine locations identified at the time a Facility Permit is issued without prior Commission approval, so long as the 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 wind turbine location adjustment, Applicant will file in the docket an affidavit demonstrating compliance with the limitations set forth above. Any wind turbine location adjustment that does not comply with the aforesaid limitations, or turbine model change, shall 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 material change that includes:

- An affidavit describing the proposed wind turbine location adjustment, the reason for the location adjustment, the reason the location adjustment does not comply with one or more wind 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 location adjustment (in different colors).

- Once received, Staff shall have 10 business days to request further Commission review.
  - If no further review is requested, Applicant may proceed with the location 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 locations and details of access roads, the collector and communication system, meteorological tower(s), Aircraft Detection Lighting System facilities, 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 for 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 North Bend Wind Project (North Bend), exclusive of all unrelated background noise except for that associated with the pre-existing Triple H Wind Project (Triple H), shall not generate a sound pressure level (10-minute equivalent continuous sound level, Leq) of more than 45 dBA when all wind turbines producing full acoustic output, as measured within 25 feet of any residence unless the owner of the residence has signed a waiver or the Commission otherwise orders. Applicant shall, upon Commission formal request, conduct valid 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.

If a field survey and monitoring data is requested by the Commission, the Project owner



shall submit the test protocol to the Commission prior to conducting the survey and sound monitoring for approval. The test protocol shall include and be executed as follows:

- a) The post-construction monitoring survey shall follow the applicable portions of the 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. 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 and/or at specific residences identified in the Commission's formal request. 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 approximately 2 meters above the ground.
- e) The measurement data shall be analyzed as follows:
  - i. Analyze those data acquired when the closest 4 wind turbines to each measurement location associated with North Bend and Triple H Projects 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 and samples measured during periods with precipitation.
  - 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 and 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. The consultant shall be present onsite for a portion of the shutdown tests, as deemed necessary by the consultant and Commission

Staff, to observe and listen during the tests. 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 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 unless the owner has signed a waiver.
- 28. At least 30 days prior to the commencement of construction work in the field for the Project, Applicant will file with the Commission the following information:
  - a) the most current preconstruction design, layout, and plans, including the wind turbine model;
  - 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 wind turbines, it considered how to reduce impacts on non-participating landowners; and
  - e) Such additional Project preconstruction information as 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 12-1 of the Application;
  - b) ArcGIS shapefiles of the final wind turbine and facility layout;
  - c) 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,

- d) a summary of any 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 Order.
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 sheriffs of Hyde and Hughes Counties, and the Hyde and Hughes County Offices of Emergency Management.
33. Applicant shall file a 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.
34. If the Project is decommissioned, Applicant will follow Section 19 of the Application and the Decommissioning Plan and Reclamation Cost Estimate filed on February 3, 2022. The Commission shall be notified prior to any decommissioning action.
35. Applicant shall utilize an Aircraft Detection Lighting System approved by the Federal Aviation Administration.
36. 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 (SDGFP) will be consulted on the procedure to minimize impacts to whooping cranes.
37. The Permit Conditions shall be uniform conditions 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 Permit 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.

38. Within 30 days of receiving its Permit, 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.
39. 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 account 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 North Bend and the escrow agreement shall include terms providing that the agreement binds North Bend successors, transferees, and assigns. A sale of the Project assets shall include the associated Permit that requires Commission approval per SDCL§ 49-41B-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 risk that the escrow account would be subject to foreclosure, lien, judgement, or bankruptcy, the escrow agreement will be structured to reflect the following factors:
    - i. That North Bend agreed to the creation of the escrow account;
    - ii. North Bend 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.
40. The Project will use two methods to detect icing conditions on wind 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 meteorological sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the wind turbine(s) in icing conditions (per the sensors) or Applicant will manually shut down the wind turbine(s) if icing conditions are identified (using referenced data). Wind 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.
41. Applicant will cooperate with agricultural spray applicators, who inquire, by shutting down wind turbines as needed in order to accommodate safe and effective spray operation and application when conditions allow for aerial spraying.

42. Applicant shall submit monthly reports to Commission staff during construction and shall submit quarterly reports to Commission staff prior to the start of construction and from the date of commercial operation until reclamation is complete. Each of these monthly and quarterly reports shall include the following:
- a) A summary of the work completed to date;
  - b) A summary of the activities to be completed for the project and an associated timeline;
  - c) A summary of consumer contacts, indicating the issue raised in the contact and the action the Applicant took to address the issue; and
  - d) A permit condition checklist including the status of all required filings to the Commission and any other permitting agency.
43. Applicant shall notify Commission of key Project milestones by making the following filings in the docket:
- a) Report the date construction will commence as soon as it is known, but no later than five business days prior to commencement;
  - b) Report the date construction was completed within five business days of completion;
  - c) Report the Commercial Operation Date; and
  - d) Report the date reclamation was completed within five business days of completion,
44. Applicant agrees to undertake one year of pre-construction and two years of post-construction research to evaluate grassland breeding bird displacement along habitat edges in-lieu of post-construction mortality monitoring at the Project. Applicant shall consult with the SDGFP on the proposed survey methodology for the pre and post-construction grassland breeding bird research, and the project must be designed to inform the scientific literature regarding potential effects of wind projects on breeding grassland bird displacement in fragmented habitats. Results of the grassland breeding bird research shall be reported to the SDGFP after the first year of post-construction monitoring and a final report should be compiled and submitted to the SDGFP at the end of the second year of monitoring.
45. Applicant will undertake a minimum of two years of independently-conducted post-construction grouse lek monitoring of known leks that are located less than 1 mile from a wind turbine. Known leks are SDGFP confirmed lek locations and all potential leks documented during any wildlife surveys conducted by Applicant for Project development. The study shall be conducted on the ground. Applicant shall consult with SDGFP on the

proposed survey methodology for the post-construction lek monitoring. Results of the post-construction lek monitoring shall be reported to the SDGFP after the first year of monitoring and a final report should be compiled and submitted to the SDGFP at the end of the second year of monitoring.

Table 1. Summary of Condition Reporting/Notice Requirements		
Condition	Requirement	Timing
1	File affidavit attesting all permits received to the Commission	Prior to commercial operation
4	Send landowner notice letters and file a copy to the Commission	At least 14 days prior to construction
8(e)	File road repair documentation to the Commission	Within 180 days after construction and reclamation
10	Report discovery of critical habitat to Commission	Promptly upon discovery
11	Notify SHPO and Commission if eligible historic/cultural resource cannot be avoided	Prior to excavation of affected area
13	File final cultural resources investigation report to the Commission	Prior to commercial operation
14	File SWPPP to the Commission	Once final project design is completed and SWPPP is finished for NPDES permit
22	File affidavit for wind turbine location changes that are 250 feet or less, if needed, to the Commission	Prior to construction of the affected turbine
22	File request for material change, if needed, to the Commission	Prior to construction of the affected turbine
28	File required preconstruction information to the Commission	30 days prior to construction
29	File post construction report to the Commission	Within 90 days after reaching commercial operations
31	File Emergency Response Plan with Commission	Upon completion of construction
32	Notify public safety agencies	Prior to construction
33	File Bird and Bat Conservation Strategy with the Commission	Prior to construction
34	Notify Commission of decommissioning	Prior to decommissioning
38	Provide copy of Permit and Conditions to local governments	Within 30 days of permit issuance
39	File escrow agreement for Commission approval	At least 60 days prior to commercial operation
42	Reports to Staff	Quarterly: Preconstruction and post construction until reclamation completed  Monthly: During construction
43	Key Project milestone notices to Commission: a) Commencement of Construction b) Construction completion c) Commercial Operation Date	Requirement specific timing: a) As soon as known, but no later than 5 business days prior



	d) Reclamation Completion Date	b) Within five business days after date reached  c) Upon date reached  d) Within five business days after date reached
44	Bird displacement research report to SDGFP	After years 1 and 2 of study
45	Grouse Lek monitoring report to SDGFP	After years 1 and 2 of study

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

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**IN THE MATTER OF THE  
APPLICATION BY NORTH BEND WIND  
PROJECT, LLC FOR A PERMIT TO  
CONSTRUCT AND OPERATE THE  
NORTH BEND WIND PROJECT IN HYDE  
COUNTY AND HUGHES COUNTY,  
SOUTH DAKOTA**

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**SETTLEMENT STIPULATION**

**EL21-018**

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It is hereby stipulated and agreed by and between the Applicant, North Bend Wind Project, LLC (Applicant or North Bend), and Staff of the South Dakota Public Utilities Commission (Staff), (jointly the Parties), that the following Settlement Stipulation (Stipulation) may be adopted by the South Dakota Public Utilities Commission (Commission) in the above-captioned matter.

The Parties held several negotiating sessions in an effort to arrive at a jointly acceptable resolution of this matter. As a result of those negotiations, the Parties have resolved all issues subject to this proceeding.

**INTRODUCTION**

On June 23, 2021, North Bend Wind Project, LLC (North Bend Wind) filed an application for a permit to construct the North Bend Wind Project, a wind energy facility located on approximately 46,931 acres of land in Hyde County and Hughes County, South Dakota, in the townships of Butte, Chapelle, Harrold, Holabird, Pleasant Valley, Pratt, and Webster. The total installed capacity of the Project would not exceed 200 megawatts nameplate capacity. The proposed Project includes up to 71 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 230-kV collection substation, a 230-kV interconnection switching station, an aircraft detection lighting system and one permanent meteorological tower. The Project will interconnect to Western Area Power Administration's Fort Thompson-Oahe 230-kV transmission line, which crosses the southern portion of the project area. The Project, at the time of filing this application, has not executed a purchase power agreement. Applicant estimates the total cost of the Project to be between \$265 and \$285 million.

**PURPOSE**

This stipulation has been prepared and executed by the Parties for the sole purpose of resolving all issues in Docket EL21-018. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of this Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.
2. This Stipulation includes all terms and conditions of the settlement and is submitted with the condition that, in the event the Commission imposes any material changes or conditions to this Stipulation which are unacceptable to any Party, this Stipulation may, at the option of any Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding nor be used for any other purpose.
3. This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void, and privileged. This Stipulation is intended to relate only to the specific matter referred to herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein. No Party or a representative thereof shall directly or indirectly refer to this Stipulation as precedent in any other current or future proceeding before the Commission.
4. The Parties to this proceeding stipulate that all of North Bend and Staff's pre-filed testimony and exhibits will be made a part of the record in this proceeding. The Parties understand that if these issues had not been settled, the Parties would have moved forward with an evidentiary hearing.
5. The terms and conditions contained in this Stipulation shall inure to the benefit of and be binding upon the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, attorneys, and assigns of the Parties. In addition, the terms and conditions of this Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors and retained professionals.
6. This Stipulation constitutes the entire agreement between the Parties and shall be deemed to supersede any other understanding or agreements, whether written, oral, expressed or implied, relating to the Application. This Stipulation may not be amended, modified, or supplemented, and waivers or consents to departures from the terms and conditions of this Stipulation may not be given without the written consent thereto executed by all Parties.
7. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.

8. This Stipulation may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
9. The Parties agree that subject to the four elements of proof under SDCL 49-41B-22, the Commission has the authority to grant, deny, or grant upon reasonable terms, conditions, or modifications a permit for the construction, operation, and maintenance of the Project. Each Party further agrees that Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a Permit to construct the Project as provided in SDCL 49-41B-24, subject to the following:

#### **TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION**

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. Applicant shall file an itemized affidavit with the Commission attesting that all permits were properly obtained prior to commercial operation.
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) all applicable 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 within 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 Order and 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.

A copy of the landowner notice letters shall be filed with the Commission to demonstrate compliance with this condition

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 prior to the start of construction.
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 and Hughes Counties 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 and to the satisfaction of affected townships and county. If a 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 prior to excavation of the area of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
  12. Prior to the commencement of construction, 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 and be in a form consistent with the South Dakota Department of Environment and Natural Resource guidelines for such plans. The SWPPP shall be completed before submittal of an application for a 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 the replacement of the 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) Ensure all excess soils generated during the excavation of the wind 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 and Applicant shall implement the plan.
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 wind turbine locations identified at the time a Facility Permit is issued without prior Commission approval, so long as the 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 wind turbine location adjustment, Applicant will file in the docket an affidavit demonstrating compliance with the limitations set forth above. Any wind turbine location adjustment that does not comply with the aforesaid limitations, or turbine model change, shall 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 material change that includes:



- An affidavit describing the proposed wind turbine location adjustment, the reason for the location adjustment, the reason the location adjustment does not comply with one or more wind 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 location adjustment (in different colors).
  - Once received, Staff shall have 10 business days to request further Commission review.
  - If no further review is requested, Applicant may proceed with the location 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 locations and details of access roads, the collector and communication system, meteorological tower(s), Aircraft Detection Lighting System facilities, 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 for 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 North Bend Wind Project (North Bend), exclusive of all unrelated background noise except for that associated with the pre-existing Triple H Wind Project (Triple H), shall not generate a sound pressure level (10-minute equivalent continuous sound level, Leq) of more than 45 dBA when all wind turbines producing full acoustic output, as measured within 25 feet of any residence unless the owner of the residence has signed a waiver or the Commission otherwise orders. 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 changed result in a reasonable assumption of higher turbine sound levels.

If a field survey and monitoring data is requested by the Commission, the Project owner shall submit the test protocol to the Commission prior to conducting the survey and sound monitoring for approval. The test protocol shall include and be executed as follows:

- a) The post-construction monitoring survey shall follow the applicable portions of the 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. 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 and/or at specific residences identified in the Commission's formal request. 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 approximately 2 meters above the ground.
- e) The measurement data shall be analyzed as follows:
  - i. Analyze those data acquired when the closest 4 wind turbines to each measurement location associated with North Bend and Triple H Projects 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 and samples measured during periods with precipitation.
  - 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 and 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. The consultant shall be present onsite for a portion of the shutdown tests, as deemed necessary by the consultant and Commission Staff, to observe and listen during the tests. 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 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 unless the owner has signed a waiver.
- 28. At least 30 days prior to the commencement of construction work in the field for the Project, Applicant will file with the Commission the following information:
  - a) the most current preconstruction design, layout, and plans, including the wind turbine model;
  - 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 wind turbines, it considered how to reduce impacts on non-participating landowners; and
  - e) Such additional Project preconstruction information as 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 12-1 of the Application;

- b) ArcGIS shapefiles of the final wind turbine and facility layout;
  - c) 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,
  - d) a summary of any 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 Order.
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 sheriffs of Hyde and Hughes Counties, and the Hyde and Hughes County Offices of Emergency Management.
33. Applicant shall file a 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.
34. If the Project is decommissioned, Applicant will follow Section 19 of the Application and the Decommissioning Plan and Reclamation Cost Estimate filed on February 3, 2022. The Commission shall be notified prior to any decommissioning action.
35. Applicant shall utilize an Aircraft Detection Lighting System approved by the Federal Aviation Administration.
36. 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 (SDGFP) will be consulted on the procedure to minimize impacts to whooping cranes.

37. The Permit Conditions shall be uniform conditions 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 Permit 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.
38. Within 30 days of receiving its Permit, 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.
39. 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 account 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 North Bend and the escrow agreement shall include terms providing that the agreement binds North Bend successors, transferees, and assigns. A sale of the Project assets shall include the associated Permit that requires Commission approval per SDCL § 49-41B-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 risk that the escrow account would be subject to foreclosure, lien, judgement, or bankruptcy, the escrow agreement will be structured to reflect the

following factors:

- i. That North Bend agreed to the creation of the escrow account;
    - ii. North Bend 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.
40. The Project will use two methods to detect icing conditions on wind 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 meteorological sources that will be used to determine if ice accumulation is occurring. These control systems will either automatically shut down the wind turbine(s) in icing conditions (per the sensors) or Applicant will manually shut down the wind turbine(s) if icing conditions are identified (using referenced data). Wind 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.
41. Applicant will cooperate with agricultural spray applicators, who inquire, by shutting down wind turbines as needed in order to accommodate safe and effective spray operation and application when conditions allow for aerial spraying.
42. Applicant shall submit monthly reports to Commission staff during construction and shall submit quarterly reports to Commission staff prior to the start of construction and from the date of commercial operation until reclamation is complete. Each of these monthly and quarterly reports shall include the following:
- a) A summary of the work completed to date;

- b) A summary of the activities to be completed for the project and an associated timeline;
  - c) A summary of consumer contacts, indicating the issue raised in the contact and the action the Applicant took to address the issue; and
  - d) A permit condition checklist including the status of all required filings to the Commission and any other permitting agency.
43. Applicant shall notify Commission of key Project milestones by making the following filings in the docket:
- a) Report the date construction will commence as soon as it is known, but no later than five business days prior to commencement;
  - b) Report the date construction was completed within five business days of completion;
  - c) Report the Commercial Operation Date; and
  - d) Report the date reclamation was completed within five business days of completion,
44. Applicant agrees to undertake one year of pre-construction and two years of post-construction research to evaluate grassland breeding bird displacement along habitat edges in-lieu of post-construction mortality monitoring at the Project. Applicant shall consult with the SDGFP on the proposed survey methodology for the pre and post-construction grassland breeding bird research, and the project must be designed to inform the scientific literature regarding potential effects of wind projects on breeding grassland bird displacement in fragmented habitats. Results of the grassland breeding bird research shall be reported to the SDGFP after the first year of post-construction monitoring and a final report should be compiled and submitted to the SDGFP at the end of the second year of monitoring.
45. Applicant will undertake a minimum of two years of independently-conducted post-construction grouse lek monitoring of known leks that are located less than 1 mile from a wind turbine. Known leks are SDGFP confirmed lek locations and all potential leks documented during any wildlife surveys conducted by Applicant for Project development. The study shall be conducted on the ground. Applicant shall consult with SDGFP on the proposed survey methodology for the post-construction lek monitoring. Results of the post-construction lek monitoring shall be reported to the SDGFP after the first year of monitoring and a final report should be compiled and submitted to the SDGFP at the end of the second year of monitoring.

Dated this 13<sup>th</sup> day of December 2022.

  
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Table 1. Summary of Condition Reporting/Notice Requirements		
Condition	Requirement	Timing
1	File affidavit attesting all permits received to the Commission	Prior to commercial operation
4	Send landowner notice letters and file a copy to the Commission	At least 14 days prior to construction
8(e)	File road repair documentation to the Commission	Within 180 days after construction and reclamation
10	Report discovery of critical habitat to Commission	Promptly upon discovery
11	Notify SHPO and Commission if eligible historic/cultural resource cannot be avoided	Prior to excavation of affected area
13	File final cultural resources investigation report to the Commission	Prior to commercial operation
14	File SWPPP to the Commission	Once final project design is completed and SWPPP is finished for NPDES permit
22	File affidavit for wind turbine location changes that are 250 feet or less, if needed, to the Commission	Prior to construction of the affected turbine
22	File request for material change, if needed, to the Commission	Prior to construction of the affected turbine
28	File required preconstruction information to the Commission	30 days prior to construction
29	File post construction report to the Commission	Within 90 days after reaching commercial operations
31	File Emergency Response Plan with Commission	Upon completion of construction
32	Notify public safety agencies	Prior to construction
33	File Bird and Bat Conservation Strategy with the Commission	Prior to construction
34	Notify Commission of decommissioning	Prior to decommissioning
38	Provide copy of Permit and Conditions to local governments	Within 30 days of permit issuance
39	File escrow agreement for Commission approval	At least 60 days prior to commercial operation
42	Reports to Staff	Quarterly: Preconstruction and post construction until reclamation completed  Monthly: During construction
43	Key Project milestone notices to Commission: a) Commencement of Construction b) Construction completion c) Commercial Operation Date d) Reclamation Completion Date	Requirement specific timing: a) As soon as known, but no later than 5 business days prior b) Within five business days after date reached c) Upon date reached d) Within five business days after date reached
44	Bird displacement research report to SDGFP	After years 1 and 2 of study
45	Grouse Lek monitoring report to SDGFP	After years 1 and 2 of study