

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

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

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**SETTLEMENT STIPULATION  
EL 19-012**

It is hereby stipulated and agreed to by and between the Applicant, Sweetland Wind Farm, LLC (Applicant or Sweetland), 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**

Sweetland proposes to construct an approximately 200-megawatt (MW) wind energy conversion facility (Wind Farm) and an up to approximately 5-mile 230-kilovolt (kV) generation tie-in transmission facility (Gen-Tie Line) (collectively, the Project). The Project will be situated within an approximately 20,979-acre area (Project Area) located in Hand County, South Dakota. The Gen-Tie Line Route is wholly within the Project Area. The Project would have an aggregate nameplate capacity of approximately 200 MW and would include: up to 71 wind turbine generators; access roads to turbines and associated facilities; an operations and maintenance facility; up to four permanent meteorological towers; underground 34.5-kV electrical collector lines; underground fiber-optic cable; a 34.5-kV to 230-kV collection substation; a switchyard; an approximately 5-mile long 230-kV Gen-Tie Line; and additional temporary construction areas, including crane paths, pull sites, access roads, a batch plant, and a laydown yard. The Gen-Tie Line would connect from the Project substation located in Section 18, Township 111N, Range 66W at the intersection of Vayland Road (a.k.a., 369th Avenue, or Highway 9) and 205th Street in Hulbert Township, to the switchyard located in Section 9, Township 110N, Range 66W in Rose Hill Township. At the switchyard, the Project would interconnect to Western Area Power Administration's existing Fort Thompson to Huron 230-kV transmission line in Rose Hill Township and be able to deliver approximately 200 MW of electricity. The Project is expected to be operational by December 31, 2020. The Applicant estimates the total cost of the Project to be approximately \$240 million.

## **PURPOSE**

This Stipulation has been prepared and executed by the Parties for the sole purpose of resolving all issues in Docket EL 19-012. 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 pre-filed testimony, exhibits, and responses to Staff data requests will be made a part of the record in this proceeding. The Parties understand that if this matter had not been settled, the Parties may have filed further testimony.
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-25, subject to the following:

#### **TERMS AND CONDITIONS OF THE 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. 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 Facilities, and the conditions set forth in the Stipulation, (5) any applicable industry standards, and (6) any applicable permits issued by a federal, state, or local agency.
3. Applicant shall complete the Western Area Power Administration (WAPA) environmental review process as required by the National Environmental Policy Act. Further, Applicant shall comply with and implement any requirements or commitments set forth in the WAPA NEPA review. Applicant expects the environmental review to be composed of an Environmental Assessment (EA) and that Applicant would be required to comply with mitigation measures set forth in the Upper Great Plains Wind Energy Programmatic Environmental Impact Statement to the extent applicable and included in the EA. This requirement does not prohibit activities allowed by WAPA as interim actions.
4. 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.

5. At least 14 days prior to commencement of construction, Applicant shall provide each participating and non-participating landowner, located within one-half mile of 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 Facilities with attached Permit Conditions;
  - b) Detailed safety information describing:
    - 1) Reasonable safety precautions for existing activities on or near the Project;
    - 2) Known activities or uses that are presently prohibited near the Project; and
    - 3) 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.
6. 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.
7. 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 data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
8. Applicant will negotiate road use agreements with Hand 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.

9. 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.
  - h) Before commencing construction of the transmission facility, Applicant shall furnish an indemnity bond in the amount of \$500,000 to comply with the requirements of SDCL 49-41B-38. Such bond shall be issued in favor of, and for the benefit of, all such townships, counties, and other governmental entities whose property is crossed by the transmission facility. The bond shall remain in effect until released by the Commission, which release shall not be unreasonably denied following completion of the construction and repair period. Applicant shall give notice of the existence and the amount of this bond to all counties, townships, and

other governmental entities whose property is crossed by the transmission facility.

10. Applicant shall provide signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration.
11. 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.
12. 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.
13. Applicant has developed an unanticipated discovery plan for cultural resources and for human remains. Applicant will comply with SDCL 34-27-25, 34-27-26, and 34-27-28 for the discovery of human remains.
14. Applicant has filed the final cultural resources report with the Commission. If any potential adverse impacts to NRHP unevaluated, listed, or eligible cultural resources are identified, Applicant shall file with the Commission a report describing the SHPO-approved planned measures to ameliorate those impacts.
15. 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.
16. 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 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.
17. 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 said plan.
  18. 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.
  19. 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.
  20. Applicant shall bury the underground collector system at a minimum depth of 3.5 feet, or deeper if necessary, to ensure the current land use is not impacted.

21. 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.
22. 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.
23. 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 the turbine shifts comply with county and State setback requirements and commitments; specified noise and shadow flicker thresholds are not exceeded; cultural and tribal resource impacts are avoided or mitigated in consultation with SHPO; 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 a turbine model change (which does not include a megawatt output adjustment), 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:
  - For turbine adjustments, Applicant will file with the Commission and serve on the official Service List a request for approval of a material change 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).



- For turbine model changes, Applicant will file with the Commission and serve on the official Service List a request for approval of the material change that includes the information outlined in Paragraph 30(a)-(d).
  - 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.
24. Applicant may adjust access roads, the underground collection/communication systems, meteorological towers, the operations and maintenance facility, the Project substation, switchyard, laydown yard, 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; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met.
25. With respect to the Gen-Tie Line, Applicant may adjust structures so long as they remain within the 150-foot-wide right-of-way identified in the Application and cultural resources are avoided or mitigated in consultation with the SHPO; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met. Any adjustments that fall outside of the 150-foot-wide right-of-way identified in the Application, or that do not meet the above-stated limitations, are considered a "material change." If a "material change" is proposed, Applicant shall follow the same process for review of the proposed "material change" as is outlined in Paragraph 23.
26. 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.
27. 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.

28. 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 50 dBA when all turbines are producing full acoustic output at any currently occupied participating residence unless the owner of the residence has signed a waiver, or more than 45 dBA at any currently occupied non-participating 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 non-participating residence or 50 dBA at any participating residence where the owner of the residence has not signed a waiver, 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 standards 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 or equal to 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 and 50 dBA limits. Compliance shall be demonstrated if all samples are less than the applicable limits.
29. Shadow flicker resulting from Project wind turbines at currently occupied residences shall not exceed 30 hours per year, unless the owner of the residence has signed a waiver.
30. 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.
31. 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 9-1 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.
32. For purposes of this Project and the commitments herein, "residences/dwellings" and "structures" shall include only those that are in existence and in use as of the date of the Commission's order issuing a permit.
33. 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.
34. 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 Hand County, and the Hand County Office of Emergency Management.

35. 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 reports and all further such reports to the United States Fish and Wildlife Service, South Dakota Department of Game, Fish, and Parks, and the Commission.
36. Applicant shall file the Bird and Bat Conservation Strategy (BBCS) with the Commission prior to beginning construction of the Project. The BBCS shall be implemented during construction and operation of the Project.
37. The Project will use the following methods to detect icing conditions on turbine blades: (1) Applicant will install sensors on the nacelle and instrumentation that will measure air temperature, wind speed, and power output. That information, in addition to monitoring for deviations in each turbine's power curve, will then be used by an algorithm in the software system to assess whether there is ice buildup on the blades. (2) Applicant will also utilize meteorological data from on-site permanent meteorological towers, on-site anemometers, and other relevant meteorological sources to determine if ice accumulation is occurring. These control systems would either automatically shut down the turbine(s) in icing conditions, or Applicant would manually shut down turbine(s) if icing conditions are identified. Turbines would not return to normal operation until the control systems indicate icing is no longer a concern. Applicant will pay for any documented damage caused by ice thrown from a turbine blade.
38. Applicant shall utilize an Aircraft Detection Lighting System approved by the Federal Aviation Administration.
39. 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 construction and the operational life of the Project and shutting down turbines and/or construction activities as follows:
  - a) During Project construction, the Applicant shall conduct construction monitoring during whooping crane migration seasons, and stop construction activities within 2 miles of observed whooping cranes until the crane leaves and is greater than 2 miles away.
  - b) During Project operation, the Applicant shall conduct operational monitoring during whooping crane migration seasons; operations staff will be trained to identify whooping cranes, and turbines will

be shut down within 2 miles of any whooping crane identified until it leaves and is greater than 2 miles away.

40. Applicant agrees not to construct a turbine in the location identified as Turbine 55 on Revised Figure A-2 – Project Layout (filed in the docket on April 24, 2019) and Applicant shall not construct a turbine within ½ mile of the Lichty property (Southeast Quarter of Section 16, Township 111 North, Range 066 West).
41. If the Project is decommissioned, Applicant will follow Section 23 of the Application and the decommissioning plan laid out in Appendix P of the Application, with the exception that Applicant will remove from the site all Project towers, turbine generators, transformers, foundations, and buildings to a depth of 4 feet. The Commission shall be notified prior to any decommissioning action.
42. 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 Sweetland and the escrow agreement shall include terms providing that the agreement binds Sweetland's successors, transferees, and assigns. A sale of 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 the risk that the escrow account would be subject to foreclosure, lien, judgment, or bankruptcy, the escrow agreement will be structured to reflect the following factors:
    - i. That Sweetland agreed to the creation of the escrow account;
    - ii. Sweetland exercises no control over the escrow account;
    - 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 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.
43. If Applicant is purchased by an electric utility which is rate regulated by the Commission, Paragraph 42 of these conditions will not apply. Instead, the purchasing utility will assume financial responsibility and provide funding for the decommissioning and removal of the Project. As a regulated electric utility, the projected financial cost of decommissioning will be reviewed when the purchasing utility requests recovery of the Project investment and associated decommissioning cost from customers in a rate proceeding. The Commission may review and adjust the Project decommissioning cost recovered from customers in subsequent rate proceedings using the most current information available regarding decommissioning.

44. 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.
45. Applicant shall provide a copy of the Commission's Final Decision and Order Granting Permit to Construct Facilities; Notice of Entry and Permit Conditions in this docket to the affected county, townships, and municipalities in the Project Area.

Dated this 17th day of July, 2019.

Sweetland Wind Farm, LLC

By: /s/ Mollie M. Smith

Its: Counsel of Record

Public Utilities Commission Staff

By: /s/ Kristen N. Edwards

Its: Staff Attorney

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