

RECOMMENDED PERMIT CONDITIONS

1. The Applicant will obtain all governmental permits which reasonably may be required by any township, county, state or federal agency or any other governmental unit for construction and operation activity prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by the Applicant shall be sent to the Commission.
2. The 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 Terms and Conditions of the Permit to Construct Facilities, (5) any applicable industry standards, and (6) any permits issued by a Federal, State, or Local agency.
3. Applicant agrees that the Commission's complaint process as set forth in ARSD 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. The Applicant shall provide each landowner on whose property the Project is to be constructed with the following information:
 - a) A copy of the Commission Order Granting Permit to Construct Facilities;
 - 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;
 - d) The Commission's address, website and phone number;
 - e) Contact person for Applicant, including name, e-mail address, and phone number.
5. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors, and agents of Applicant involved in this Project be made aware of the terms and conditions of this Permit.

6. Except as otherwise provided in the conditions, the Applicant shall comply with all mitigation measures set forth in the Application and Applicant responses to Staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.
7. The Applicant will negotiate road use agreements with Grant County, Codington County, and all affected townships, if required. The Applicant will follow the terms of all road use agreements. The 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. The Applicant shall comply with the following conditions regarding road protection:
 - a) The Applicant shall acquire all necessary permits authorizing the crossing of federal, state, county, and township roads.
 - b) The Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
 - c) The 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, the 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, the Applicant shall submit documentation to the Commission identifying that the roads were repaired in accordance with condition 8 and to the satisfaction of affected townships and counties. If the townships or counties will not provide such documentation, then the 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 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, the Applicant shall return the roadways back to original width after completion of the Project, unless agreed upon otherwise with the federal, state, county, or township entities, or the landowner.
 - h) The Applicant shall use appropriate preventative measures to prevent damage to paved roads and to remove excess soil or mud from such roadways.

9. The Applicant will 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.
10. The Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the Project area that the Applicant becomes aware of and that was not previously reported to the Commission.
11. Sites identified as potentially eligible for NRHP listing will be addressed by microsites to avoid impacts. If complete avoidance cannot be achieved, the Applicant will work with the South Dakota State Historical Society, State Historic Preservation Office (SHPO) to minimize impacts.
 - a) An example of an avoidance measure that may be implemented is rerouting a collector line road around a resource, or boring under it to avoid ground disturbance.
 - b) If sites must be impacted that are afforded regulatory protection and would require mitigation, SHPO will be engaged to ensure regulatory compliance is achieved.
12. The Applicant agrees to follow the unanticipated discovery plan outlined in the document entitled 'Cultural Resources Monitoring and Management Plan for the Dakota Range I Wind Project' (CRMMP), and follow South Dakota Codified Laws 34-27-25, 34-27-26, and 34-27-28.
13. The Applicant shall file the final cultural resources report with the Commission prior to construction. If any potential adverse impacts to National Register of Historic Places (NRHP) unevaluated, listed, or eligible cultural resources are identified in the final cultural resources report, the Applicant shall comply with the requirements of the CRMMP.
14. The 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 will 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 requirements will be reviewed with them prior to the start of construction.
15. The Applicant will repair and restore areas disturbed by construction or maintenance of the Project. Except as otherwise agreed to by the landowner, restoration will 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 Condition, the Applicant shall:
 - a) Strip 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, the Applicant may remove less than the actual depth of topsoil to ensure roads remain low-profile and contours align with the surrounding area;

- b) Store topsoil separate from subsoil in order to prevent mixing of the soil types;
 - c) All excess soils generated during the excavation of the WTG foundations shall remain on the same landowner's land, unless the landowner requests, and/or agrees, otherwise; and
 - d) When revegetating non-cultivated grasslands, the 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. The Applicant shall work closely with landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds.
 - 17. The Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between the Applicant and landowner or the Applicant and appropriate federal, state, and/or local government agency. All excess 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, the 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. The Applicant shall take appropriate precautions to protect livestock and crops during construction. The Applicant shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed with the landowner or designee. The Applicant shall be responsible for the repair of private roads damaged when moving equipment or when obtaining access to the right-of-way.
 - 19. The Applicant shall bury the underground collector system at a minimum depth of three and one-half feet, or deeper if necessary, in order to ensure the current land use is not impacted.
 - 20. The 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. The 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 the Applicant and affected landowners where such agreements exist.
 - 21. The 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 the 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. The Applicant may make turbine adjustments of ____ feet or less from the turbine locations identified in the Application without prior Commission approval, so long as said turbine shifts comply with county and state setback requirements, comply with specified noise and shadow flicker requirements, cultural resource impacts are avoided or minimized per the CRMMP, environmental setbacks are adhered to as agreed upon with the United States Fish and Wildlife Service (USFWS) and the South Dakota Game Fish and Parks (GFP), and wetland impacts are avoided. Prior to implementing the turbine adjustment, the 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 would be considered a “material change,” and the Applicant shall file a request for approval of the “material change” prior to making the adjustment pursuant to the following approval process:
- The Applicant would file with the Commission and serve on the official Service List a request for approval of the adjustment that includes:
 - o 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
 - o A map showing both the approved location and the proposed adjustment (in different colors);
 - Once received, the information would be reviewed by Commission Staff, and Commission Staff would have 10 calendar days within which to request further Commission review.
 - If no further review is requested, then the Applicant may proceed with the adjustment.
 - If further review is requested, the Commission would then issue a decision regarding the 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. The Applicant may adjust access roads, the collector system, O&M facility, Project substation, and temporary facilities, so long as they are located on leased land, cultural resource impacts are avoided or minimized per the CRMMP, environmental setbacks are adhered to as agreed upon with the USFWS and the GFP, wetland impacts are avoided or are in compliance with applicable regulations and requirements, and all other applicable regulations and requirements are met.
24. The terms and conditions of the Permit shall be made a uniform condition of construction, 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.

25. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, the 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.
26. The 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.
27. The Project, exclusive of all unrelated background noise, shall not generate a long-term average sound pressure level (equivalent continuous sound level, Leq), as measured over a period of at least two weeks defined by Commission staff that includes all integer wind speeds from cut in to full power, of more than 45 dBA within 25 feet of at any non-participating residence or more than 50 dBA within 25 feet of at any participating residence. The Applicant shall, upon Commission formal request, conduct field surveys or provide post-construction monitoring data verifying compliance with specified noise level limits using applicable American National Standards Institute (ANSI) methods. Unless operational or maintenance changes result in a reasonable assumption of higher turbine sound levels than modeled, such requests for field surveys or post-construction monitoring data shall be limited to situations where complaints have been made by landowners whose homes had a modeled sound level of 40 dBA or higher based on the Sound Level Modeling Report in Appendix I of the Applicant's Application, or any subsequent iteration thereof provided pursuant to Paragraphs 22 or 28(c). If the long-term average level exceeds 45 dBA at any non-participating residence or 50 dBA at any participating residence, then the Project Owner shall take whatever steps are reasonably necessary and 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.
28. The Applicant will take reasonable steps to mitigate shadow flicker concerns at the residences that could experience shadow flicker levels above 30 hours per year.
29. Not less than 30 days prior to commencement of construction work in the field for the Project, the Applicant will provide to Staff the following information:
 - a) the most current preconstruction design, layout and plans, including the specifications of the turbine model selected;
 - b) a sound level analysis showing compliance with the applicable sound level requirements;
 - c) a shadow flicker analysis showing the anticipated shadow flicker levels will not exceed the Applicant's voluntary commitment of 30 hours per year at any non-participating residence; and
 - d) such additional Project preconstruction information as Staff requests.

30. Within 90 days of the Project's commercial operation date, the 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 setbacks required by state and local governments and voluntary commitments set forth in Table 10-1 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 the Applicant's plan for resolving those complaints.
31. For purposes of this Project and the commitments herein, "residences," "businesses," and "buildings owned and/or maintained by a governmental entity" shall include only those that are in existence and in use as of the date of the Commission's order issuing a permit.
32. The 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 Staff to make available to the general public in the manner they choose.
33. Prior to the construction of the Project, the Applicant will notify public safety agencies by providing a schedule and location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public safety, the Sheriff of Codington County, the Sheriff of Grant County, the Codington County Office of Emergency Management, and the Grant County Office of Emergency Management.
34. The Applicant agrees to undertake one year of independently-conducted post-construction avian mortality monitoring for the Project, and to provide a copy of the report to the USFWS, GFP, and the Commission. Based on the results of said monitoring, the need for and scope of an additional year of independently-conducted post-construction avian mortality monitoring will be determined in coordination with USFWS and GFP.
35. The Applicant shall file the Bird and Bat Conservation Strategy (BBCS) prior to beginning construction of the Project. The BBCS shall be implemented during construction and operation of the Project.
36. The Applicant shall provide a public liaison officer, approved by the Commission, to facilitate the exchange of information between the Applicant, including its contractors, and landowners, local communities, and residents and to facilitate prompt resolution of complaints and problems that may develop for landowners, local communities, and residents as a result of the Project. The Applicant shall file with the Commission its proposed public liaison officer's credentials for approval by the Commission prior to the commencement of construction. After the public liaison officer has been approved by the Commission, the public liaison officer may not be removed by the Applicant without the

approval of the Commission. The public liaison officer shall be afforded immediate access to the Applicant's on-site project manager, its executive project manager, and to contractors' on-site managers and shall be available at all times to the Staff via mobile phone to respond to complaints and concerns communicated to the Staff by concerned landowners and others. As soon as the Applicant's public liaison officer has been appointed and approved, the Applicant shall provide contact information for him/her to all landowners in the Project area and to law enforcement agencies and local governments in the vicinity of the Project. The public liaison officer's contact information shall be provided to landowners in each subsequent written communication with them. If the Commission determines that the public liaison officer has not been adequately performing the duties set forth for the position in this Order, the Commission may, upon notice to the Applicant and the public liaison officer, take action to remove the public liaison officer. The public liaison's services shall terminate ninety days after the Project commences commercial operations, unless the appointment is extended by order of the Commission.

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

**IN THE MATTER OF THE
APPLICATION BY DAKOTA RANGE
I, LLC AND DAKOTA RANGE II,
LLC FOR AN ENERGY FACILITY
PERMIT IN GRANT COUNTY AND
CODINGTON COUNTY, SOUTH
DAKOTA, FOR THE DAKOTA
RANGE WIND PROJECT**

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CERTIFICATE OF SERVICE

EL 18-003

Mollie M. Smith, of Fredrikson & Byron, P.A., hereby certifies that on the 12th day of June, 2018, a true and correct copy of Exhibit A18 and this Certificate of Service were served electronically on the persons listed below:

Ms. Patricia Van Gerpen Executive Director South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 patty.vangerpen@state.sd.us	Ms. Kristen Edwards Staff Attorney South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 Kristen.edwards@state.sd.us
Ms. Amanda Reiss Staff Attorney South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 amanda.reiss@state.sd.us	Mr. Darren Kearney Staff Analyst South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 darren.kearney@state.sd.us
Mr. Jon Thurber Staff Analyst South Dakota Public Utilities Commission 500 E. Capitol Ave. Pierre, SD 57501 jon.thurber@state.sd.us	Mr. Mark Mauersberger - Representing: Dakota Range I, LLC and Dakota Range II, LLC Senior Development Manager Apex Clean Energy Holdings, LLC 8665 Hudson Blvd. N, Ste. 110 Lake Elmo, MN 55402 mark.mauersberger@apexcleanenergy.com

Mr. Scott Koziar - Representing: Dakota Range I, LLC and Dakota Range II, LLC Vice President of Development, West Apex Clean Energy Holdings, LLC 8665 Hudson Blvd. N, Ste. 110 Lake Elmo, MN 55402 scott.koziar@apexcleanenergy.com	Ms. Mollie Smith - Representing: Dakota Range I, LLC and Dakota Range II, LLC Fredrikson & Byron, P.A. 200 S. 6th St., Ste. 4000 Minneapolis, MN 55402 msmith@fredlaw.com
Ms. Jennifer Bell - Representing: Dakota Range I, LLC and Dakota Range II, LLC Senior Environmental Scientist Burns & McDonnell Engineering Company, Inc. 9785 Maroon Circle, Ste. 400 Centennial, CO 80112 jbell@burnsmcd.com	Ms. Lisa M. Agrimonti - Representing: Dakota Range I, LLC and Dakota Range II, LLC Fredrikson & Byron, P.A. 200 South Sixth Street, Suite 4000 Minneapolis, MN 55402-1425 lagrimonti@fredlaw.com
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/s/ Mollie M. Smith

Mollie M. Smith

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June 13, 2018

VIA ELECTRONIC FILING

Ms. Patricia Van Gerpen
Executive Secretary
South Dakota Public Utilities Commission
500 E Capitol Ave
Pierre, SD 57501-5070

**RE: In the Matter of the Application by Dakota Range I, LLC and Dakota Range II, LLC for an Energy Facility Permit in Grant County and Codington County, South Dakota, for the Dakota Range Wind Project
EL 18-003**

Dear Ms. Van Gerpen:

In connection with the above-referenced matter, enclosed please find Applicants' Exhibit A20 (Confidential).

If you have any questions, please let me know.

Sincerely,

/s/ Mollie M. Smith

Mollie M. Smith
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Enclosures

cc: Certificate of Service/Service List (*via e-mail*)

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