



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

Office of the  
Secretary

Phone: (302) 739-9000  
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**Secretary's Order No.: 2018-W-0060**

**RE: Application of Silver Run Electric, LLC, to construct a 230-kilvolt alternating current (AC) electric transmission line, connecting the PSE&G Hope Creek Substation expansion on Artificial Island, Salem County, New Jersey, to the proposed Silver Run Substation located at 471 Silver Run Road, Middletown, Delaware, thus necessitating Applicant to obtain the following: (1) Wetlands Permit (WE-413/18); and (2) Subaqueous Lands Lease (SL-413/18)**

**Date of Issuance: November 8, 2018**

**Effective Date: November 8, 2018**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6003, 6004, 6006, Delaware's *Wetlands Act* (7 *Del.C.* Chapter 66), Delaware's *Subaqueous Lands Act* (7 *Del.C.* Chapter 72), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department", "DNREC") issues this Order, approving a permit to allow Silver Run Electric, LLC ("Applicant"), to construct a 230-kilovolt alternating current (AC) electric transmission line, connecting the PSE&G Hope Creek Substation expansion on Artificial Island, Salem County, New Jersey, to the proposed Silver Run Substation located at 471 Silver Run Road, Middletown, Delaware ("Application").

This proposed project necessitates the Applicant to obtain from the Department the following: (1) Wetlands Permit (WE-413/18); and (2) Subaqueous Lands Lease (SL-413/18). The Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del. C. Chapter 72), the Department's *Wetlands Regulations* (7 DE Admin. Code 7502) and *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

### **Background and Findings of Fact**

The proposed Delaware portion of this project begins at the Silver Run Substation in Middletown, Delaware, with overhead transmission lines running two (2) miles east, spanning the Appoquinimink River and crossing the Augustine Wildlife Area, until reaching an off-shore transition structure in the Delaware River. From that transition structure, three (3) miles of submarine cables are proposed to be installed via water jetting technology beneath the riverbed until reaching the New Jersey shoreline. Seven (7) transmission line structures will be located in State-regulated wetlands, resulting in 1,920 square feet of temporary impacts and 287.5 square feet of permanent impacts for vibratory caisson foundation construction. The total impact area to the Delaware side of the river is approximately 45.1 acres. Structures in wetlands will be installed via heavy lift helicopter construction and vibratory hammer.

After having been deemed administratively complete, the Application was placed on public notice by the Department on October 10, 2018, formally advising the public at that time (1) where the Application and supporting documents concerning this proposed project could be inspected by the public; (2) to whom comments concerning this Application should be directed; and (3) the date of the public hearing to be held regarding this matter. Accordingly, the Department held its public hearing concerning this matter, as noticed, on November 1, 2018, which was attended by Department staff, representatives of the Applicant, and two individuals from the public. It should be noted that the Department received no comment from the public at any time regarding this proposed project. Proper notice of the hearing was provided as required by law.

Subsequently, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report ("Report"), dated November 7, 2018. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve this Application, subject to the conditions set forth in the following three draft approval documents: (1) Wetlands Permit WE-413/18, to construct the proposed project as set forth in the above described Application; (2) Subaqueous Lands Lease SL-413/18, for the Applicant's use of public subaqueous lands for ten years; and (3) Utility Easement Agreement (Augustine Wildlife Area – Green Tract), to be executed between the State of Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, and Silver Run Electric, LLC ("Agreement"), prior to beginning construction of the utility facilities associated with this project.

### **Reasons and Conclusions**

This Application is for Silver Run Electric, LLC, to construct the aforementioned 230-kilovolt alternating current (AC) electric transmission line, connecting the PSE&G Hope Creek Substation expansion on Artificial Island, Salem County, New Jersey, to the proposed Silver Run Substation located at 471 Silver Run Road, Middletown, Delaware. Preliminarily, I find that the proposed project will require the Applicant to obtain both the above referenced Wetlands Permit (WE-413/18) and Subaqueous Lands Lease (SL-413/18), as well as execute the above referenced Agreement prior to beginning construction of the utility facilities associated with this project. I further find that the Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department's *Wetlands Regulations* (7 DE Admin. Code 7502) and *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

In reviewing the applicable statutes and regulations, the Department's experts in the Division of Water have concluded that the Applicant's proposed project, as described in detail in the Application, and as set forth herein above, complies with the Regulations administered by the Wetlands and Subaqueous Lands Section. As noted previously, no public comment was received from the Department concerning this matter.

It should be noted that the documentation presented by the Applicant at the public hearing of November 1, 2018 (“Hearing Record Ex. 3”) reflects that this proposed project has been the subject of extensive technical review, not only by DNREC, but by Federal and (other) State agencies as well. The Applicant’s proposed project has already received approval from the following:

- Delaware River Basin Commission Docket Approval;
- Delaware Department of Transportation Safety Permit and Use and Occupancy Agreement;
- DNREC Stormwater Notice of Intent Acceptance Letter;
- New Jersey Department of Environmental Protection Coastal Area Facility Review Act Permit;
- New Jersey Department of Environmental Protection Waterfront Development Permit, Coastal Wetlands Permit, and Section 401 Water Quality Certification.
- U.S. Army Corps of Engineers Section 404 and Section 408 Permits.

As noted above, the proposed Delaware portion of this project begins at the Silver Run Substation, with overhead transmission lines running two miles east, spanning the Appoquinimink River and crossing the Augustine Wildlife Area, until reaching an off-shore transition structure in the Delaware River. The seven transmission line structures to be located in State-regulated wetlands will result in 1,920 square feet of temporary impacts, and 287.5 square feet of permanent impacts, due to vibratory caisson foundation construction. In order to mitigate this permanent, State-regulated wetland disturbance, the Applicant has agreed to pay a one-time easement payment of \$70,000 to the Department’s Division of Fish and Wildlife prior to beginning construction of the proposed project’s utility facilities. Additionally, Applicant has agreed to purchase and donate to the State of Delaware, Division of Fish and Wildlife, at no cost to Delaware, and prior to beginning construction of the proposed utility facilities, New Castle County Tax Parcel #15-012.00-010 located in Blackbird Hundred, New Castle County, Delaware. This agreement is set forth as a Special Condition in Paragraph #8 of the Utility Easement Agreement (“Agreement”), a copy of which is attached hereto as Appendix “A.”

It is the opinion of the Department's Wetlands and Subaqueous Lands Section that the above described land contribution of the Applicant is sufficient mitigation for the minor wetland disturbance associated with this proposed project. Furthermore, as set forth in the Department's email of November 7, 2018 ("Hearing Record Ex. 4"), the Wetlands and Subaqueous Lands Section recommends issuance of Subaqueous Lands Lease (SL-413/18) to Silver Run Electric, LLC, contingent upon the execution of the aforementioned Agreement.

I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations, as noted herein, and that the Record supports approval of the Application submitted by Silver Run Electric, LLC. Accordingly, this Order approves all permits required for this proposed project, consistent with the Record developed in this matter, and directs that the same be issued by the Department in the customary form, and with appropriate conditions.

Further, the Department concludes and directs the following:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), Delaware's *Wetlands Act* (7 *Del.C.* Ch. 66), Delaware's *Subaqueous Lands Act* (7 *Del.C.* Ch. 72), and all other relevant statutory authority, to make a final determination on the Application, after holding a public hearing and considering all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the Application of Silver Run Electric, LLC, and of the public hearing held on November 1, 2018, and held said hearing in a manner required by the law and regulations;
3. The Department has carefully considered the factors required to be weighed in issuing all permits required by the Applicant's proposed project, and finds that the Record supports approval of the Application and the issuance of all required permits associated with same;

4. The Department shall issue the following permits to the Applicant: (1) Wetlands Permit (WE-413/18); and (2) Subaqueous Lands Lease (SL-413/18). Furthermore, said permits shall include all special conditions as set forth in the Department's draft permits, to ensure that Delaware's environment and public health will be protected from harm;
5. In addition to the permits noted above, Applicant must also execute the Utility Easement Agreement between the State of Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, and Silver Run Electric, LLC, prior to beginning construction of the utility facilities associated with this proposed project;
6. The Department adopts the Report and its attachments as further support for this decision;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall serve and publish its Order on its internet site, and shall provide legal notice of the Order in the same manner that the Department provided legal notice of the Application.



Shawn M. Garvin  
Secretary

## HEARING OFFICER'S REPORT

**TO:** The Honorable Shawn M. Garvin  
Cabinet Secretary, Department of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest <sup>fw</sup>  
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** Application of Silver Run Electric, LLC, to construct a 230-kilovolt alternating current (AC) electric transmission line, connecting the PSE&G Hope Creek Substation expansion on Artificial Island, Salem County, New Jersey, to the proposed Silver Run Substation located at 471 Silver Run Road, Middletown, Delaware, thus necessitating Applicant to obtain the following: (1) Wetlands Permit (WE-413/18); and (2) Subaqueous Lands Lease (SL-413/18)

**DATE:** November 7, 2018

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### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A public hearing was held on Thursday, November 1, 2018, at 6:00 p.m. at the Department of Natural Resources and Environmental Control (“DNREC”, “Department”) Lukens Drive Facility, located at 391 Lukens Drive, New Castle, Delaware, to receive comment on the application of Silver Run Electric, LLC (“Applicant”), to construct a 230-kilovolt alternating current (AC) electric transmission line, connecting the PSE&G Hope Creek Substation expansion on Artificial Island, Salem County, New Jersey, to the proposed Silver Run Substation located at 471 Silver Run Road, Middletown, Delaware (“Application”). This proposed project necessitates the Applicant to obtain from the Department the following: (1) Wetlands Permit (WE-413/18); and (2) Subaqueous Lands Lease (SL-413/18). The Applicant’s proposed project is subject to the requirements of Delaware’s *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department’s *Wetlands Regulations* (7 DE Admin. Code 7502) and *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

The proposed Delaware portion of this project begins at the Silver Run Substation in Middletown, Delaware, with overhead transmission lines running two (2) miles east, spanning the Appoquinimink River and crossing the Augustine Wildlife Area, until reaching an off-shore transition structure in the Delaware River. From that transition structure, three (3) miles of submarine cables are proposed to be installed via water jetting technology beneath the riverbed until reaching the New Jersey shoreline. Seven (7) transmission line structures will be located in State-regulated wetlands, resulting in 1,920 square feet of temporary impacts and 287.5 square feet of permanent impacts for vibratory caisson foundation construction. The total impact area to the Delaware side of the river is approximately 45.1 acres. Structures in wetlands will be installed via heavy lift helicopter construction and vibratory hammer.

After having been deemed administratively complete, the Application was placed on public notice by the Department on October 10, 2018, formally advising the public at that time (1) where the Application and supporting documents concerning this proposed project could be inspected by the public; (2) to whom comments concerning this Application should be directed; and (3) the date of the public hearing to be held regarding this matter. Accordingly, the Department held its public hearing concerning this matter, as noticed, on November 1, 2018, which was attended by Department staff, representatives of the Applicant, and two individuals from the public. It should be noted that the Department received no comment from the public at any time regarding this proposed project. Proper notice of the hearing was provided as required by law.

## **II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) four documents introduced by responsible Department staff at the public hearing, and marked accordingly by this Hearing Officer as “DNREC Exhibits 1-4”; (3) documentation introduced by representatives of the Applicant at the time of the aforementioned public hearing, and marked accordingly as “Applicant Exhibit 1”; (4) E-mail from Katie Esposito Environmental Scientist, Wetlands and Subaqueous Lands Section, DNREC Division of Water, dated November 7, 2018.

The Department's persons primarily responsible for reviewing this application, Katie Esposito, Environmental Scientist and Tyler Brown, Environmental Program Manager, along with Steven Smailer, Environmental Program Administrator, DNREC Division of Water, developed the record with the relevant documents in the Department's files. Again, no comment was received by the Department at any time with regard to this proposed project.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

This Application is for Silver Run Electric, LLC, to construct the aforementioned 230-kilovolt alternating current (AC) electric transmission line, connecting the PSE&G Hope Creek Substation expansion on Artificial Island, Salem County, New Jersey, to the proposed Silver Run Substation located at 471 Silver Run Road, Middletown, Delaware. Preliminarily, I find that the proposed project will require the Applicant to obtain (1) Wetlands Permit (WE-413/18); and (2) Subaqueous Lands Lease (SL-413/18). I further find that the Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department's *Wetlands Regulations* (7 DE Admin. Code 7502) and *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

In reviewing the applicable statutes and regulations, the Department's experts in the Division of Water have concluded that the Applicant's proposed project, as described in detail in the Application, and as set forth herein above, complies with the Regulations administered by the Wetlands and Subaqueous Lands Section. As noted previously, no public comment was received from the Department concerning this matter.

It should be noted that the documentation presented by the Applicant at the public hearing of November 1, 2018 (identified as "Hearing Record Ex. 3") reflects that this proposed project has been the subject of extensive technical review, not only by DNREC, but by Federal and (other) State agencies as well. The Applicant's proposed project has already received approval from the following:

- Delaware River Basin Commission Docket Approval;
- Delaware Department of Transportation Safety Permit and Use and Occupancy Agreement;
- DNREC Stormwater Notice of Intent Acceptance Letter;
- New Jersey Department of Environmental Protection Coastal Area Facility Review Act Permit;
- New Jersey Department of Environmental Protection Waterfront Development Permit, Coastal Wetlands Permit, and Section 401 Water Quality Certification.
- U.S. Army Corps of Engineers Section 404 and Section 408 Permits.

As noted above, the proposed Delaware portion of this project begins at the Silver Run Substation, with overhead transmission lines running two miles east, spanning the Appoquinimink River and crossing the Augustine Wildlife Area, until reaching an off-shore transition structure in the Delaware River. The seven transmission line structures to be located in State-regulated wetlands will result in 1,920 square feet of temporary impacts, and 287.5 square feet of permanent impacts, due to vibratory caisson foundation construction. In order to mitigate this permanent, State-regulated wetland disturbance, the Applicant has agreed to pay a one-time easement payment of \$70,000 to the Department's Division of Fish and Wildlife prior to beginning construction of the proposed project's utility facilities. Additionally, Applicant has agreed to purchase and donate to the State of Delaware, Division of Fish and Wildlife, at no cost to Delaware, and prior to beginning construction of the proposed utility facilities, New Castle County Tax Parcel #15-012.00-010 located in Blackbird Hundred, New Castle County, Delaware. This agreement is set forth as a Special Condition in Paragraph #8 of the Utility Easement Agreement ("Agreement"), a copy of which is attached hereto as Appendix "A."

It is the opinion of the Department's Wetlands and Subaqueous Lands Section that the above described land contribution of the Applicant is sufficient mitigation for the minor wetland disturbance associated with this proposed project. Furthermore, as set forth in Ms. Esposito's email of November 7, 2018 (identified above as "Hearing Record Ex. 4" and attached hereto as Appendix "B"), the Department recommends issuance of Subaqueous Lands Lease (SL-413/18) to Silver Run Electric, LLC, contingent upon the execution of the aforementioned Agreement.

I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations, as noted herein, and that the record supports approval of the Application submitted by Silver Run Electric, LLC. In conclusion, I recommend that all permits required for this proposed project, consistent with the record developed in this matter, be issued by the Department in the customary form, and with appropriate conditions.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), Delaware's *Wetlands Act* (7 *Del.C.* Ch. 66), Delaware's *Subaqueous Lands Act* (7 *Del.C.* Ch. 72), and all other relevant statutory authority, to make a final determination on the Application after holding a public hearing, and considering all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the Application of Silver Run Electric, LLC, and of the public hearing held on November 1, 2018, and held said hearing in a manner required by the law and regulations;
3. The Department has carefully considered the factors required to be weighed in issuing all permits required by the Applicant's proposed project, and finds that the Record supports approval of the Application and the issuance of all required permits associated with same;
4. The Department shall issue the following permits to the Applicant: (1) Wetlands Permit (WE-413/18); and (2) Subaqueous Lands Lease (SL-413/18). Furthermore, said permits shall include all special conditions as set forth in the Department's draft permits, to ensure that Delaware's environment and public health will be protected from harm;

5. In addition to the permits noted above, Applicant must also execute the Utility Easement Agreement between the State of Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, and Silver Run Electric, LLC, prior to beginning construction of the utility facilities associated with this proposed project;
6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall serve and publish its Order on its internet site, and shall provide legal notice of the Order in the same manner that the Department provided legal notice of the Application.



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LISA A. VEST  
Public Hearing Officer

\\ahear\SILVER RUN ELECTRIC LLC WSLs Permit 2018

Attachments/Appendices:

Appendix A: Utility Easement Agreement between DNREC F&W and Silver Run Electric LLC (unexecuted)  
Appendix B: WSLs (Esposito) Email of 11/07/18

**APPENDIX "A"**



**Parcel Numbers: 13-019.00-019  
13-024.00-004**

**Prepared By and Return To:**  
Craig Rhoads  
Delaware Department  
of Natural Resources and  
Environmental Control,  
Division of Fish & Wildlife  
89 Kings Highway  
Dover, DE 19901

**UTILITY EASEMENT AGREEMENT  
Augustine Wildlife Area – Green Tract**

THIS UTILITY EASEMENT AGREEMENT (“Agreement”) made and entered into this 13<sup>th</sup> day of November, 2018, by and between the State of Delaware, acting by and through the Delaware Department of Natural Resources and Environmental Control, Division of Fish and Wildlife (“Delaware”), having an office at 89 Kings Highway, Dover, DE 19901, and Silver Run Electric, LLC (“SRE”), a Delaware limited liability company, having an office at 16150 Main Circle Drive, Suite 310, Chesterfield, MO 63017.

WITNESSETH

WHEREAS, Delaware is the owner of certain tracts of land identified as Tax Parcel 13-019.00-019 and 13-024.00-004, both located in St. Georges Hundred, New Castle County, Delaware (“Property”);

WHEREAS, as of the effective date of this Agreement, SRE is in the process of developing a 230 kilovolt overhead electric transmission line and appurtenances (the “Utility Facilities”) that are deemed advisable and for the public good as they will provide a critical public service;

WHEREAS, SRE desires to obtain a utility easement from Delaware for the Utility Facilities that crosses through the Property; and

WHEREAS, Delaware desires to cooperate with SRE to allow such Utility Facilities to cross through the Property as a public use.

NOW THEREFORE, in consideration of the foregoing, which shall be deemed a substantive part hereof, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereto agree as follows:

1. Delaware hereby grants to SRE, and its agents, employees, contractors, subcontractors, invitees, and assigns (collectively “agents”), a utility easement to construct, install, use,

inspect, maintain, operate, repair, and replace the Utility Facilities within a defined easement area depicted on Exhibit "A" (the "Easement Parcel") and further defined by metes and bounds as delineated by SRE at their sole cost and depicted in Exhibit B ("Legal Description"), both exhibits attached hereto and by reference incorporated herein.

2. SRE shall, at its sole cost, undertake the Utility Facilities within the Easement Parcel in accordance with plans authorized by permits issued by regulatory agencies of proper jurisdiction and in accordance with all applicable governmental rules, regulations and standards. Any and all facilities and appurtenances associated with the Utility Facilities shall at all times be and remain (as between SRE and Delaware) the sole property of SRE and shall be maintained at SRE's sole cost.
3. SRE and its agents shall have the rights of ingress, egress and regress to, from and over the Property as required for the undertaking of the rights granted herein, including the right to make reasonable low-impact improvements to existing roads within the Property for such purposes. Except in case of an emergency, SRE shall give forty-eight (48) hours' notice to the Director of the Delaware Division of Fish and Wildlife, or his or her designee, prior to initiating any activity associated with this agreement. All activities are to be carried out in a responsible and workmanlike manner. Upon completion of any work on the Property, SRE or its agents shall restore, as nearly as reasonably practicable, to its immediately-preceding condition such portion of the Property as may be disturbed by any activities of SRE or its agents in the course of any work performed under this agreement.
4. SRE agrees to exercise the rights herein granted at its own risk and covenants and agrees to hold harmless, indemnify and defend Delaware and its agents (collectively, "Indemnitees") from and against any third-party claim, loss, action, damage, or liability (collectively, "Claims") to the extent that any such Claim is caused by or is the result of (i) the negligent acts and/or omissions of SRE and its agents in connection with (A) the installation of the Utility Facilities or (B) the exercise of any right or privilege hereunder; and (ii) any condition created, maintained or suffered to exist on or about the Property to the extent same is due to the negligent acts or omissions of SRE and its agents. Notwithstanding the foregoing, in no event shall SRE be responsible for indemnifying, defending or holding harmless any Indemnitee to the extent of any Claim caused by, arising from or contributed to by the negligence or willful misconduct of any Indemnitee.
5. Delaware and SRE agree that the Property is subject to public outdoor recreational use and habitat management in perpetuity and that the provisions of this agreement shall allow this use to continue without any impact that is construed as a change in use. Delaware shall retain the right of use of the Easement Parcel, provided, however, that Delaware shall not construct or install any structures or permanent improvements on the Easement Parcel without SRE's prior written consent. Notwithstanding the foregoing, Delaware reserves the following rights, insofar as exercising said rights does not unreasonably interfere with SRE's use:

- a. Delaware reserves the right to grant easements and rights of way across or upon the Easement Parcel.
- b. Delaware reserves the right to create pathways, ponds, or buffer strips within the Easement Parcel, as long as the buffer strip does not include tall, woody vegetation in excess of five feet in height.
- c. Delaware reserves the right of ingress and egress onto and over the Easement Parcel for inspection purposes, for enforcement of all laws, rules and regulations, and for any other lawful purpose.
- d. Delaware reserves the right to allow public access to the Easement Parcel in compliance with Delaware's wildlife area rules and regulations.

Delaware and SRE agree not to unreasonably obstruct, impede, or interfere, one with the other, in the reasonable use of the Easement Parcel.

6. SRE shall use commercially reasonable efforts to minimize its impacts on the Easement Parcel and public users of the Property. Generally, this is to be addressed through regular coordination with Delaware regarding upcoming scheduled utility activities. Specifically, SRE shall:
  - a. Use helicopter construction for the initial installation of transmission structures located in tidal marsh except to the extent that such installation method is impossible or impracticable;
  - b. Cause the initial construction of the Utility Facilities on the Easement Parcel to occur from July 5 through October 10, inclusive, unless otherwise expressly agreed by Delaware;
  - c. Utilize only existing roads on the Property to access the Easement Parcel, constructing no new roads on the Property;
  - d. Maintain existing lanes used for construction or maintenance activities in good working condition;
  - e. Design and construct the Utility Facilities in accordance with applicable recommendations in the Avian Power Line Interaction Committee's "Suggested Practices for Avian Protection On Power Lines: The State of the Art in 2006" and "Reducing Avian Collisions with Power Lines: The State of the Art in 2012;"
  - f. Implement best management practices for stormwater in upland construction areas; and
  - g. Access structures in tidal marsh during regular maintenance activities using watercraft, low-surface pressure vehicles, timber matting, helicopter, or other methods that avoid permanent impacts.
7. Delaware and SRE acknowledge that vegetation management is an important aspect to each other's respective uses of the Easement Parcel. Delaware, among others uses, manages vegetation on the Property for wildlife habitat and to prevent the spread of invasive species. SRE manages vegetation – particularly tall, woody species as defined herein – to prevent electrical safety clearance violations. As such, Delaware agrees to

permit SRE to keep clear the Easement Parcel from tall, woody vegetation as defined herein which, in SRE's sole discretion, does not adhere to SRE's reasonable vegetation management policies. To maintain electrical clearances in accordance with the National Electrical Safety Code or other applicable standards, SRE may use mechanical means to manage woody vegetation within the Easement Parcel. Herbicide use by SRE within the Easement Parcel is prohibited without prior written authorization by Delaware. SRE agrees to permit Delaware to continue its vegetation management practices including but not limited to the use of mechanical, chemical, and prescribed fire methods, and to the extent that SRE's use of the Easement Parcel creates incremental, direct costs to Delaware in implementing such policies, SRE shall reimburse Delaware in a timely manner for such undisputed costs following SRE's receipt of adequate documentation of such costs.

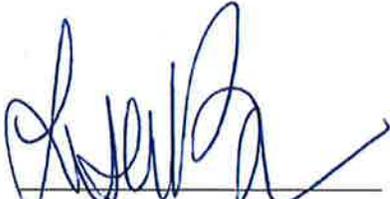
8. SRE agrees to pay Delaware a one-time easement payment of Seventy Thousand and 00/100 Dollars (\$70,000.00) prior to beginning construction of the Utility Facilities on the Property. Payment shall be sent to the Delaware Division of Fish & Wildlife, 89 Kings Highway, Dover, Delaware 19901. SRE further agrees to purchase and donate to Delaware, at no cost to Delaware and prior to beginning construction of the Utility Facilities on the Property, that portion of the certain tract of land identified as Tax Parcel 15-012.00-010 located in Blackbird Hundred, New Castle County, Delaware as depicted in Exhibit C attached hereto and by reference incorporated herein, or a parcel of comparable size and type approved by Delaware, for Delaware's sole use to provide similar wildlife habitats and outdoor recreational uses to those impacted by the Utility Facilities. Failure to provide such payment and land donation as specified herein shall render this agreement null and void.
9. SRE acknowledges that Delaware may lease to third parties certain portions of the Easement Parcel for the purpose of producing agricultural commodities. To the extent that SRE's activities on the Easement Parcel damage agricultural products growing on the Easement Parcel, Delaware shall be entitled to reasonable and timely reimbursement for such damage following SRE's receipt of adequate documentation of the extent and value of such damage.
10. SRE shall have the right to assign any part or all of this agreement and the rights granted hereunder, limited to assignment to a utility company(ies) for use of the Utility Facilities, with prior written notice to Delaware.
11. The covenants and agreements contained herein shall be binding upon the administrators, successors and assigns of the respective parties to this agreement.
12. This writing represents the full, final and entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous negotiations and proposed agreements, whether oral or written. This agreement and the provisions hereof may not be modified or amended except by a written instrument, signed by the parties hereto, expressing such a modification or amendment.

13. Each person signing this agreement on behalf of a party hereto warrants and represents that he or she has the authority to sign on behalf of said party and that this agreement has been validly authorized and constitutes a legally binding and enforceable obligation of said party.
14. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid and addressed as per the introductory paragraph. Upon written notice from a party, or a successor in interest, to the other party hereto, any such notice, demand or other written communication shall be given to that Party or successor at the address indicated in such notice.
15. This Agreement may be terminated in the following manner:
  - a. by the mutual written agreement of the parties;
  - b. by written notice of termination given by SRE or any future assignee for convenience;
  - c. due to material breach:
    - i. the aggrieved party must give written notice of the material breach of an obligation under this Agreement;
    - ii. the responding party has 60 days to cure the breach (or, if such breach is not capable of being cured within such 60 day period, such longer period as may be necessary to complete such cure, so long as the breaching party has commenced the process to cure and is diligently prosecuting such cure);
    - iii. if the breach is cured to the satisfaction of the aggrieved party, such satisfaction not to be unreasonably withheld, termination will not occur;
    - iv. if the parties have a bona fide dispute as to whether a material breach has occurred, the parties will use the dispute resolution procedure as described in paragraph 16;
  - d. upon 30 days written notice given by DNREC that SRE, or any future assignee, is not actively engaged in the business of providing public utility services, such notice not to be given by DNREC unless a final, non-appealable determination has been made by the Delaware Public Service Commission that SRE, or any future assignee, is not permitted to engage in the business of providing public utility services.
16. In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, the parties shall use their best efforts to settle the issue by consulting and negotiating with each other in good faith. If the parties do not reach such a resolution within 30 days, or upon agreement that no such settlement is possible, the parties may agree to attempt mediation. If mediation fails, or they cannot agree to mediation, the case will be brought before the appropriate court of law in the State of Delaware.
17. This agreement is made and entered into in the State of Delaware and shall in all respects be interpreted, enforced and governed under Delaware law.

[END OF TEXT; SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have set their Hands and Seals the day and year above first written.

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

  
\_\_\_\_\_  
Witness

BY:   
\_\_\_\_\_

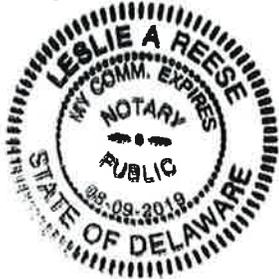
NAME: SHAWN M. GARVIN

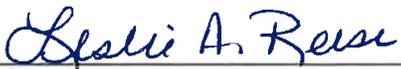
TITLE: Secretary

STATE OF DELAWARE            )  
  ) SS.  
COUNTY OF KENT                )

BE IT REMEMBERED, That on this 13<sup>th</sup> day of November, 2018, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, Shawn M. Garvin, Secretary of the Department of Natural Resources of Environmental Control, State of Delaware, Party of the First Part, known personally to be such, and acknowledged this Agreement to be his act and deed and the act and deed of said Department.

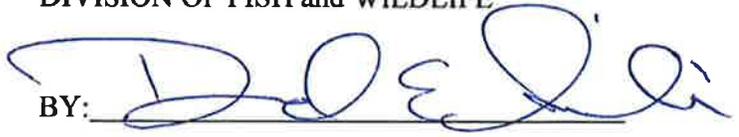
GIVEN under my Hand and Seal of Office, the day and year aforesaid.



  
\_\_\_\_\_  
NOTARY PUBLIC

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL  
DIVISION OF FISH and WILDLIFE

  
\_\_\_\_\_  
Witness

BY: 

NAME: DAVID E. SAVEIKIS

TITLE: Director

STATE OF DELAWARE        )  
  ) SS.  
COUNTY OF KENT         )

BE IT REMEMBERED, That on this 13<sup>th</sup> day of November, 2018, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, David E. Saveikis, Director of the Division of Fish and Wildlife, Department of Natural Resources of Environmental Control, State of Delaware, Party of the First Part, known personally to be such, and acknowledged this Agreement to be his act and deed and the act and deed of said Department.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.



  
\_\_\_\_\_  
NOTARY PUBLIC

SILVER RUN ELECTRIC, LLC

Darrell White

Witness

BY: Casey M. Carroll

NAME: CASEY M. CARROLL

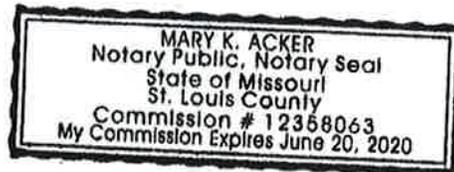
TITLE: Director, Project Development

STATE OF MISSOURI )  
 ) SS.  
COUNTY OF SAINT LOUIS )

BE IT REMEMBERED, That on this 31st day of October, 2018, personally appeared before me, the Subscriber, a Notary Public in and for the State and County aforesaid, Casey M. Carroll, Director, Project Development of Silver Run Electric, LLC, Party of the Second Part, known personally to be such, and acknowledged this Agreement to be his act and deed and the act and deed of said corporation.

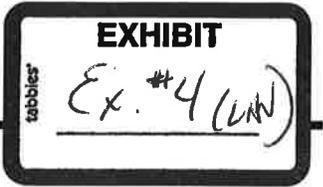
GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Mary K. Acker  
NOTARY PUBLIC



## **APPENDIX "B"**





**Vest, Lisa A. (DNREC)**

**From:** Esposito, Katie (DNREC)  
**Sent:** Wednesday, November 07, 2018 7:56 AM  
**To:** Vest, Lisa A. (DNREC)  
**Cc:** Brown, Tyler (DNREC); Smaller, Steven M. (DNREC)  
**Subject:** Silver Run Electric, LLC project (SL/WE-413/18)  
**Attachments:** LSPowerAugustineAgreementOct30(final).pdf

Hi Lisa,

Please let this email serve as documentation that the above-referenced project application is complete, and compliant with the Wetlands and Subaqueous Lands Section’s regulations. No public questions, comments or concerns were received by the Department at anytime during the authorization process.

Special Condition #8 of the attached Utility Easement Agreement (between Silver Run Electric, LLC and the Division of Fish & Wildlife), states that Silver Run Electric, LLC will purchase and donate New Castle County tax parcel #1501200010 to the State of Delaware, Division of Fish & Wildlife. It is the opinion of the Wetlands and Subaqueous Lands Section that this land contribution is sufficient mitigation for the minimal, permanent State-regulated wetland disturbance (approximately 287.5 square feet).

Therefore, contingent upon the execution the Utility Easement Agreement, the Wetlands and Subaqueous Lands Section recommends the issuance of Subaqueous Lands Lease No. SL-413/18, granted to Silver Run Electric, LLC.

Thank you,

Katie Esposito  
Environmental Scientist  
Wetlands and Subaqueous Lands Section  
Department of Natural Resources and Environmental Control  
(302) 739-9386





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
**DIVISION OF WATER**  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LANDS SECTION

TELEPHONE (302) 739-9943  
FAX (302) 739-6304

Silver Run Electric, LLC  
Attn: Mr. Casey Carroll  
16150 Main Circle Drive, Suite 310  
Chesterfield, MO 63017  
Tax Parcels: 1400300009, 1302400004  
& 1301900019

Wetlands Permit: WE-413/18  
Associated Lease: SL-413/18  
Date of Issuance: 11-14-2018  
Construction Expiration Date: 11-14-2021  
Amended Date: N/A

**WETLANDS PERMIT**

**GRANTED TO:**

**Silver Run Electric, LLC**

**TO CONSTRUCT AND UTILIZE:**

**Seven (7) monopole-supported overhead transmission line structures for the construction of a new 230-kilovolt (kV) alternating current (AC) electric transmission line (the Silver Run Project), connecting the Public Service Electric & Gas (PSE&G) Hope Creek Substation expansion on Artificial Island, Lower Alloways Township, Salem County, New Jersey, to the proposed Silver Run Substation at 471 Silver Run Road, Middletown, New Castle County, Delaware**

**LOCATED IN STATE-REGULATED WETLANDS:**

**In the Augustine Wildlife Area,  
East of Silver Run Road (Route 9),  
Middletown, New Castle County, Delaware**

Pursuant to the provisions of 7 Del. C. §6604, and the Department's Wetlands Regulations, permission is hereby granted on this 14<sup>th</sup> day of November A.D. 2018, to construct the above-referenced project in accordance with the approved plans for this Permit (20 sheets) as approved on November 8 by Secretary's Order No. 2018-W-0060; the application dated August 29, 2017, and received by this Division on August 30, 2017, and with subsequent information received on December 26, 2017, October 9, 2018, and November 1, 2018.

WHEREAS, pursuant to the provisions of 7 Del. C. §6604, the Secretary of the Department of Natural Resources and Environmental Control finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW THEREFORE, this Permit is issued subject to the attached Wetland Permit General Conditions and the following special conditions:

*Delaware's good nature depends on you!*

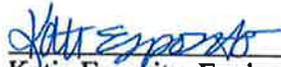
### **SPECIAL CONDITIONS**

1. The activities authorized herein shall be for the explicit purpose of monopole and H-frame, overhead transmission line construction. Any other use without prior Department approval shall constitute reason for this Permit being revoked.
2. Structures installed in the Delaware River as part of the Silver Run Project are authorized by Subaqueous Lands Lease No. SL-413/18.
3. This Permit authorizes up to 287.5 square feet of permanent impacts for caisson foundation installation, and 1,920 square feet of temporary impacts for construction installation.
4. This Permit is contingent upon the execution of the Utility Easement Agreement, for the Augustine Wildlife Area – Green Tract, dated November 1, 2018, between Silver Run Electric, LLC and the State of Delaware including the time-of-year restriction therein stated.
5. To mitigate for the permanent impacts to State-regulated wetlands the Wetlands and Subaqueous Lands Section has determined that the donation of tax parcel 15-012.00-010 to the State of Delaware pursuant to the Utility Easement Agreement between Silver Run Electric, LLC and the State of Delaware offsets the impacts to State-regulated wetlands.
6. Two tax parcels associated with this project are State-owned, (1302400004, 1301900019), and one is privately-owned (1400300009). A Memorandum of Option Agreement (easement) between the property owner, John F. Coleman, Trustee under Revocable Trust Agreement of John F. Coleman dated July 2, 1997, and Silver Run Electric, LLC was executed and recorded by New Castle County on February 11, 2016.
7. All activities related to construction and access shall be by use of helicopter, boat, low-surface pressure vehicle supported by mats and/or foot traffic.
8. Impacts to wetlands associated with this project shall be minimized to the greatest extent practicable.
9. There shall be no unauthorized fill or stockpiling of material in State-regulated wetlands.
10. There shall be no movement of equipment within State-regulated wetlands not specifically authorized by this Permit. Any equipment traversing wetlands as may be authorized by this Permit shall be supported on mats. Any such areas disturbed shall be returned to preconstruction conditions/elevations and appropriately stabilized.
11. The work authorized by this Lease is subject to the terms and conditions of U.S. Army Corps of Engineers Individual Permit No. CENAP-OP-R-2016-00542-75.

IN WITNESS WHEREOF, I, Tyler Brown, the duly authorized representative of Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this 14<sup>th</sup> day of November, 2018.



By Tyler Brown, Section Manager  
the duly authorized representative of the Secretary of the  
Department of Natural Resources and Environmental Control



Katie Esposito, Environmental Scientist  
Wetlands and Subaqueous Lands Section





STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
**DIVISION OF WATER**  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LANDS SECTION

TELEPHONE (302) 739-9943  
FAX (302) 739-6304

Silver Run Electric, LLC  
Attn: Mr. Casey Carroll  
16150 Main Circle Drive, Suite 310  
Chesterfield, MO 63017

Subaqueous Lands Lease: SL-413/18  
Associated Permits: WE-413/18  
Date of Issuance:  
Construction Expiration Date:

**SUBAQUEOUS LANDS LEASE**

**GRANTED TO:**

**Silver Run Electric, LLC**

**AUTHORIZING THE FOLLOWING ACTIVITIES:**

- **To construct an H-frame in-river transition structure approximately 800-feet offshore, by installing eight (8), 30-inch diameter steel pilings for the foundation, and to install twelve (12), 42-inch diameter steel pilings and concrete fenders, encompassing a 13,000 sq. ft. area around the transition structure, for vessel allision protection**
- **To directly-embed nine (9) submarine power cables in seven (7) cable paths, including seven (7), 6-inch diameter power cables and two (2), 1-inch diameter fiber optic cables, beneath the bed of the Delaware River between the in-river transition structure and the Delaware-New Jersey State Line, totaling approximately 7,800 linear feet per cable**

**For the construction of a new 230-kilovolt (kV) alternating current (AC) electric transmission line (the Silver Run Project), connecting the Public Service Electric & Gas (PSE&G) Hope Creek Substation expansion on Artificial Island, Lower Alloways Township, Salem County, New Jersey, to the proposed Silver Run Substation at 471 Silver Run Road, Middletown, New Castle County, Delaware**

**LOCATED IN PUBLIC SUBAQUEOUS LANDS:**

**In the Delaware River,  
Between the Augustine Wildlife Area and the Delaware-New Jersey State Line  
East of Middletown, New Castle County, Delaware**

Pursuant to the provisions of 7 Del. C. §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this 13<sup>th</sup> day of November A.D. 2018, to construct the above-referenced project in accordance with the approved plans for this Lease (20 sheets) as approved on November 8, 2018 by Secretary's Order No. 2018-W-0060; and the application dated August 29, 2017, and received by this Department on August 30, 2017, and with subsequent information received on December 26, 2017, October 9, 2018, and November 1, 2018.

*Delaware's good nature depends on you!*

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, Silver Run Electric, LLC, has applied for permission to occupy public subaqueous lands for the construction of a new 230 kV electric transmission line; and

WHEREAS, pursuant to the provisions of 7 Del. C. §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This Lease shall be continued for a period of ten (10) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

NOW THEREFORE, this Lease is issued subject to the attached Subaqueous Lands Lease General Conditions and the following special conditions:

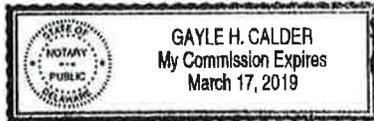
#### **SPECIAL CONDITIONS**

1. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
2. This Lease authorizes only the activities described herein. This Lease does not authorize repairs, additions or modifications to the approved structures. Such activities require separate, written authorization from the Department.
3. This Lease may not be transferred without the prior written consent of the Department. Failure to obtain such written consent may result in the revocation of this Lease.
4. In accordance with 68 Delaware Laws, Volume 1, Chapter 86, Section 14, this Lease is subject to an annual lease fee. The in-river transition structure and associated 13,000 sq. ft. vessel allusion protection system is subject to a fee of \$1.00/sq. ft. /year. The submarine cable transmission lines, seven (7) 6-inches or greater in diameter, are each subject to a fee of \$2.00/linear ft. /year. The lessee shall agree to pay the State of Delaware the sum of \$122,200.00/year, for a total of \$1,222,000.00 during the ten-year term of this Lease. A payment of \$122,200.00 shall be billed annually in September.
5. This Lease authorizes the lessee to construct and maintain the approved structures on/under public subaqueous lands for a period of ten years after the executed date of this Lease.
6. This Lease is granted for the purpose of constructing, operating, and maintaining an electric transmission line. Any other use without prior approval shall constitute reason for this Lease being revoked.

7. To protect Atlantic sturgeon (*Acipenser oxyrinchus*), shortnose sturgeon (*Acipenser brevirostrum*), striped bass (*Morone saxatilis*), and American shad (*Alosa sapidissima*), no in-water work shall occur from March 1<sup>st</sup> through June 30<sup>th</sup> of any given year.
8. This Lease is contingent upon the execution of the Utility Easement Agreement, for the Augustine Wildlife Area – Green Tract, dated November 1, 2018, between Silver Run Electric, LLC and the State of Delaware.
9. Seven (7) submarine cable paths are authorized. As stated in the application, the two (2), 1-inch diameter fiber optic cables will be bundled with two (2) of the seven (7) power cables.
10. Pile-driving activities shall begin with a 20-minute “soft start” to allow time for species protected under the Endangered Species Act to leave the project vicinity prior to increases in sound pressure.
11. The submarine cables shall be installed using a barge-mounted vertical injector and jetting sled. The Department shall be notified prior to any changes in these methods.
12. Construction activities and/or structure shall not interfere with safe passage and navigation in the Delaware River.
13. Submarine cable installation below the Federal Navigation channel shall maintain a minimum 25-foot depth below the authorized navigation channel to a horizontal distance of 50-feet beyond the channel limit. Outside of the Federal Navigation channel and 50-foot buffer, burial depths shall be at minimum 15 feet below the river bottom; 10 feet below the river bottom approximately 1,400 feet riverward of the in-river transition structure, gradually decreasing shoreward to the river bottom adjacent to the transition structure.
14. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook, so as to minimize entry and dispersal of sediment and other contaminants in surface waters.
15. Upon construction completion, the lessee shall furnish the Department with certification that the in-river transition structure and submarine cables have been installed in compliance with the approved plans. The certification shall include a survey, conducted by a licensed surveyor, showing the as-built location and dimensions of the in-river transition structure, as well as the alignment and installation depths for each submarine cable from the in-river transition structure to the Delaware-New Jersey State Line.
16. The enclosed Contractors Completion Report shall be filled out and returned to the Wetlands and Subaqueous Lands Section within 10 days of completion of the authorized work.
17. The work authorized by this Lease is subject to the terms and conditions of U.S. Army Corps of Engineers Individual Permit No. CENAP-OP-R-2016-00542-75.

IN WITNESS WHEREOF, I, Casey Carroll, the duly authorized representative of Silver Run Electric, LLC, have caused this instrument to be executed on this 13 day of NOVEMBER, 2018.

By: *Casey Carroll*  
Casey Carroll  
Silver Run Electric, LLC (Lessee)



(Notary Seal)

sworn and Subscribed before me on  
this 13<sup>th</sup> day of November, 2018

*Gayle Calder*  
Notary

IN WITNESS WHEREOF, I, Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this 13<sup>th</sup> day of November, 2018.

*Shawn M. Garvin*  
Shawn M. Garvin, Secretary  
Department of Natural Resources and Environmental Control