

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Just Wind - Wind Farm Development
Wind Farm – Logan County
Siting Application**

Case No. PU-07-54

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April 29, 2009

Appearances:

Commissioners Susan E. Wefald, Kevin Cramer and Tony Clark.

John C. Kapsner, Attorney at Law, Vogel Law Firm, U.S. Bank Building, 200 North 3rd Street, Suite 20, Bismarck, North Dakota 58502 and Norman L. Jones III, Attorney-at-Law appearing Pro Hac Vice, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota 55402; on behalf of the applicant, Just Wind, LLC.

Annette Bendish, Legal Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On February 8, 2007, Just Wind, LLC (Just Wind) filed a Letter of Intent to File an Application for a Waiver of Procedures and Time Schedules, and a Combined Certificate of Corridor Compatibility and a Transmission Facility Siting Permit (LOI) for a proposed 192 MW wind farm project in Logan County, North Dakota and including a request that the Commission shorten the one-year waiting period required between filing of the LOI and the filing of a siting application.

On February 23, 2007, the Commission acknowledged the LOI, shortened the one-year waiting period between the filing of an LOI and a siting application to one day, and assessed a filing fee of \$100,000.00 due upon filing of an application.

On September 14, 2007, and November 15, 2007, Just Wind filed letters requesting its June 2007 Ten Year Plan Report sent to the Commission on June 23, 2007, be accepted as its application for a Certificate of Site Compatibility, a Certificate of Corridor Compatibility, for a Permit for a Transmission Facility and enclosed a check for the \$100,000 filing fee.

On January 31, 2008, Commission staff sent a letter to Just Wind requesting additional information needed to complete the application.

On August 1, 2008, Just Wind filed a revised application for a certificate of site compatibility for construction of a 368 MW wind farm in Logan County.

On September 8, 2008, Just Wind filed supplemental information and a request for an expedited hearing date.

On September 10, 2008, the Commission deemed the revised application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing to begin October 21, 2008, at 10:30 a.m. CDT in the Logan County Courthouse, 301 Broadway, Napoleon, North Dakota 58561. The Notice identified the following issues to be considered:

1. Will the location, construction and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impacts while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On October 21, 2008, a public hearing was held as scheduled. On January 12 and 26, 2009, Just Wind filed certain late-filed exhibits as ordered at the hearing. On March 4, 2009 and April 7, 2009, Just Wind filed additional information and supplemented its late-filed exhibits with turbine model and turbine location changes.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Just Wind is a Minnesota limited liability company with its headquarters office in Excelsior, Minnesota. Logan County Wind Farm, LLC is a North Dakota limited liability company that was organized by the members of Just Wind, LLC for the purpose of completing development and operation of the Logan County Wind Farm.
2. Just Wind proposes to construct the Logan County Wind Farm consisting of up to 368 MW of nameplate generating capacity from approximately 160 wind turbines and associated facilities in Logan County, North Dakota.

3. Construction of the Logan County Wind Farm is expected to begin in 2009 with an estimated cost of \$950 million.

4. The project site is located to the north, east, and south of Napoleon, North Dakota, and is situated within the Townships of Glendale, Bryant, and Starkey in Logan County. It encompasses approximately 42,000 acres over most of the three Townships. The wind turbines will be placed throughout the project site.

5. Associated facilities to be constructed within the project area include access roads, underground collection and feeder lines, a meteorological tower, a collection substation, and an operations and maintenance building.

6. Just Wind plans to use Mitsubishi 2.4 MW wind turbines. These are utility grade wind turbines with a nominal nameplate rating of 2400 kW. Each turbine will have an 80 meter hub height and a 92 meter rotor diameter. The turbines begin operating at wind speeds of 3 meters per second and reach a rated capacity of 2.4 MW at a wind speed of 12.5 meters per second. Each turbine is designed to operate at sustained wind speeds of up to 25 meters per second.

7. Each turbine is secured by a concrete foundation, typically consisting of a concrete pedestal approximately 15 feet in diameter extending approximately three feet below grade to a concrete spread footing that extends approximately 5.3 feet further below grade with a final diameter of approximately 55 feet.

8. Turbine lighting is limited to warning lights required by the Federal Aviation Administration.

9. The control panel inside the base of each turbine tower houses communication and electronic circuitry. Each turbine is equipped with a wind speed and direction sensor that communicates with the turbine's control system to signal when sufficient winds are present for operation.

10. Electricity generated by each turbine is brought to a pad-mounted transformer where the voltage is stepped up to a power collection line voltage of 34.5 kV. An underground feeder system delivers the electricity to a project collection substation where the voltage is stepped up to an interconnection with the Leland Olds-Groton 345 kV transmission line. All underground collection and feeder lines will be buried to a depth of at least 48 inches to the top of the lines.

11. Just Wind contemplates commencing construction in 2009 and reports it has obtained all easements and other property rights necessary to construct the Logan County Wind Farm. Land rights acquired include wind easements, buffer easements, access roads, and underground collection and feeder line easements.

12. Safety factors will be incorporated into the wind turbines. Each turbine will be equipped with Supervisory Control and Data Acquisitions (SCADA) communication technology to control and monitor the turbine. In addition, each turbine is also equipped

with a lightning protection system and is grounded and shielded to protect against lightning. Just Wind testified that it will construct the Logan County Wind Farm in compliance with the National Electric Safety Code.

13. North Dakota Administrative Code Chapter 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria set forth in North Dakota Administrative Code § 69-06-08-01, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. With the exception of prime and unique farm land, an energy conversion facility must not be sited within an Exclusion Area. The exception for prime and unique farm land is if the Commission finds that the prime and unique farm land that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then such exclusion shall not apply. An energy conversion facility must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; efficient use of resources; and alternative sites. In accordance with the Commission's Selection Criteria, an energy conversion facility may be approved if it is demonstrated that no significant adverse impacts will result from the location, construction, and operation of the facility. In accordance with the Commission's policy criteria, preference may be given to an applicant demonstrating certain benefits of the energy conversion facility.

14. Waterfowl production areas administered by the United States Fish and Wildlife Service (USFWS) have not been identified within the project area.

15. There will be minimal Conservation Reserve Program (CRP) and no Grassland Easement areas impacted by the project.

16. Turbines and access roads will avoid wetland basins and Just Wind will obtain appropriate permits as necessary to affect wetlands or construct within wetland easements.

17. All historical resources designated as exclusion or avoidance areas will be avoided. A Class III pedestrian cultural resource survey, including a search of the North Dakota State Historic Preservation Office (SHPO) site and managed files, was conducted by Trefoil Cultural and Environmental Heritage, Sauk Rapids, Minnesota, for the project area. The Class III cultural resource inventory indicated a total of twenty-eight areas containing prehistoric and historic components. Thirteen sites are not eligible for the National Register of Historic Places. Eleven sites are potentially eligible and will be avoided. In addition four isolated finds indicated areas that needed additional investigation to determine National Register Eligibility and will be avoided. SHPO has received and accepted the final historic resources report.

18. Just Wind testified that it will maintain groundwater protection and soil conservation practices to protect topsoil and adjacent resources, and to minimize soil erosion during construction and operation of the project. Just Wind is committed to following best management practices for erosion, and sediment control will be installed to minimize erosion during and after construction.

19. Just Wind submitted evidence to demonstrate that the proposed energy conversion facility would not have any significant impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-01(3).

20. Just Wind submitted evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible so as to meet the Policy Criteria set forth in North Dakota Administrative Code § 69-06-08-01(4).

21. Just Wind proposes to maintain a turbine location setback distance of at least 825 feet from occupied residences or places of business. This exceeds the Logan County Zoning Ordinance requirement of 750 feet, but is less than the 1400 feet setback that the Commission has permitted in previous cases. Just Wind is proposing turbine locations T16, T91, T95, T153, T155 and T156 within 1400 feet and provided consent letters from all six affected residence owners. The Commission finds additional information is necessary before permitting these proposed turbine placements within 1400 feet of occupied residences or places of business.

22. Just Wind provided information indicating that the expected noise level 1000 feet away from a turbine would be less than 45 dB.

23. A minimal amount of agricultural land will be impacted due to turbine placement and access roads. In addition, approximately ten acres will be permanently impacted due to the operations and maintenance building and project substation. Wind turbine configuration will not result in significant impacts to agricultural production. No impacts to the agricultural quality of the crop land are anticipated. The Commission finds that the prime farmland or unique farmland that is to be removed from use for the life of the facility is of such small acreage so as to be of negligible impact on agricultural production.

24. No impacts are expected to animal health or safety, other than the known potential for bird and bat species' collisions with turbines. That impact is expected to be minimal based on studies reviewed by Just Wind's environmental consultant. Just Wind will conduct a spring avian study and implement measures to avoid and minimize effects to wildlife at the proposed site by siting facilities away from wetlands when possible.

25. The USFWS identified a federally listed threatened or endangered species potentially present in the project area (whooping crane). USFWS indicated that the proposed project area is located within a 90 mile-wide whooping crane migration corridor where 75% of whooping crane sightings in North Dakota have occurred. The

USFWS gave guidance about avoiding or minimizing construction on wetland easements, grassland easements and high value habitats. The USFWS gave further guidance about minimizing impacts on migratory birds and asked for Just Wind to apply for an incidental take permit, which would include preparation of a Habitat Conservation Plan. Just Wind has presented information that the project will avoid grassland easements, will avoid permanent impacts on wetland basins, and will cooperate with the USFWS in gaining permission to operate on wetland easements. Just Wind will prepare a Habitat Conservation Plan with regard to Whooping Cranes, which is expected to take into account findings from Just Wind's currently ongoing Sandhill Crane study.

26. Just Wind consulted with numerous other local, state and federal agencies listed in Section B, of its application. One agency that responded in writing was the North Dakota Game and Fish Department. The North Dakota Game and Fish Department indicated that its primary concern is with the disturbance of native prairie and wetland protection. The disturbance of native prairie and wetlands will be minimal. No significant impacts to any of these resources are anticipated.

27. Just Wind will maintain setbacks of at least 200 feet from existing transmission lines and road and railroad rights of way.

28. North Dakota Century Code § 49-22-16(3) provides that no energy conversion facility site shall be designated that violates any county or city land use, zoning, building rules, regulations or ordinances. Just Wind has obtained or will obtain all required permits and will comply with all applicable county and city zoning, building rules, regulations and ordinances.

29. Just Wind has a legal obligation to decommission the wind energy facilities.

30. Just Wind has made certain other representations and agreements as contained in the Certification Relating to Order Provisions - Wind Energy Conversion Facility Siting executed by Just Wind and filed with the Commission on October 17, 2008, which is incorporated in these Findings of Fact.

From the foregoing Findings of Fact, the Commission makes its:

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The energy conversion facility proposed by Just Wind is an energy conversion facility as defined in North Dakota Century Code § 49-22-03(11).
3. The application submitted by Just Wind meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.

4. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.
6. The proposed energy conversion facility will minimize adverse human and environmental impact, while ensuring continuing system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
7. The Commission has jurisdiction to ensure compliance with National Electric Safety Code Standards in the construction and operation of the proposed energy conversion facility.
8. The proposed project is of such design, location and purpose that it will produce minimal adverse effects

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order

The Commission orders:

1. Certificate of Site Compatibility No. 11 for an energy conversion facility is issued to Just Wind authorizing the construction, operation, and maintenance of its proposed wind energy conversion facility known as the Logan County Wind Farm.
2. The site as described in the application is located north, east and south of the City of Napoleon, North Dakota, and is designated as the site for construction of the Energy Conversion Facility.
3. Within the permitted area, Just Wind is authorized to site and construct up to 368 MW of wind turbines in proposed locations, along with electric collection and communication lines, a project substation, a project operations and maintenance building, a meteorological tower, access roads, and other associated facilities as proposed in the application.
4. Just Wind's proposed turbine locations T16, T91, T95, T153, T155 and T156 that are less than 1400 feet from an occupied residence or place of business are not approved and not included in the authorizations granted by this Order or Certificate of Site Compatibility No. 11.
5. Just Wind shall conduct a pre-construction conference prior to the commencement of any construction, which must include a Just Wind representative, its construction supervisor, and a representative of the Commission staff to ensure that Just Wind fully understands the conditions set forth in this Order.

Findings of Fact, Conclusions of Law and Order

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6. Just Wind shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project, including all city, township and county zoning regulations.
7. Prior to commencing construction of any phase of the proposed project, Just Wind shall obtain all other necessary approvals and permits for construction of such phase, and provide copies to the Commission prior to construction of each such phase.
8. The Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the Certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
9. Just Wind shall maintain records which will demonstrate that it has complied with the requirements of this order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
10. Just Wind shall inform the Commission of its intent to start construction on the energy conversion facility prior to commencement of construction. Once construction has started, Just Wind shall keep the Commission updated of construction activities on a weekly basis.
11. Just Wind shall construct and operate the energy conversion facility in the manner described in its application, at the hearing, in late filed exhibits, and in accordance with all applicable safety requirements.
12. Just Wind shall report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles, that Just Wind becomes aware of and were not previously reported to the Commission.
13. Just Wind shall file a copy with the Commission of its USFWS approved Habitat Conservation Plan and resulting Incidental Take Permit issued under Section 10 of the federal Endangered Species Act.
14. If any cultural resources, paleontological resources, archeological site, historical resource, or grave site is discovered during construction of the facility, earth disturbing activities in the immediate vicinity of the discovery must be halted. The resource must be marked, preserved, and protected from any further disturbance until a professional examination can be made in consultation with the North Dakota SHPO and clearance to proceed is given by SHPO. A report of such examination must be filed with the Commission.
15. All underground electric line crossing of graded roads must be bored unless the responsible governing agency permits Just Wind to open cut the road.

16. All pre-existing township and county roads and lanes used during construction must be restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition.

17. Just Wind shall construct the energy conversion facility in compliance with the National Electric Safety Code.

18. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.

19. Where available, at least 12 inches of topsoil over and along trench areas, roadways, tower locations, and locations of associated facilities must be stripped and segregated from the subsoil and be replaced only after the subsoil is replaced.

20. Reclamation, fertilization and reseeding will be completed by Just Wind according to the Natural Resource Conservation Service or USFWS recommendations for CRP, native prairie and other non-cropped lands unless otherwise specified by the landowner and approved by the Commission.

21. Just Wind's obligations for reclamation and maintenance of turbine locations, associated facilities, roadways and rights of way shall continue throughout the life of the energy conversion facility.

22. When the energy conversion facility is retired, structures and other facilities must be removed and the site decommissioned in accordance with applicable rules of the Commission.

23. Just Wind shall comply with the Tree and Shrub Mitigation Specifications attached to this Order.

24. Just Wind shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.

25. Just Wind shall repair or replace all drainage tile, broken or damaged, during all phases of construction and operation of the proposed energy conversion facility.

26. Staging areas or equipment must not be located on cultivated land unless otherwise negotiated with landowners.

27. Just Wind shall remove all waste that is a product of construction and operation, restoration and maintenance of the site, and properly dispose of it on a regular basis.

28. Just Wind shall, as soon as practicable, upon the completion of the construction of each wind turbine, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.

29. Just Wind shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility, and any restriction of possible danger concerning the proposed energy conversion facility.

30. Just Wind shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

31. Just Wind shall advise the Commission of any extraordinary events that take place at the site of the energy conversion facility, such as tower collapse, catastrophic turbine failure, injured worker or private individual, mortality events of any threatened or endangered species or the discovery of a large number of dead birds or bats on the site within five business days of such event.

32. Just Wind shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Just Wind.

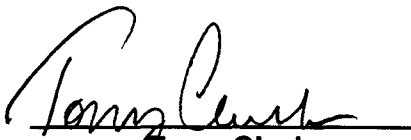
33. Just Wind shall work with landowners and residents in the area to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.

34. Just Wind shall provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction, and shall obtain approval from the Commission or from Commission staff prior to any changes in those surveyed locations.

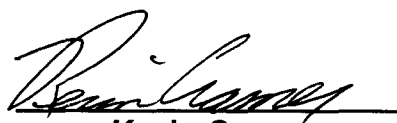
35. Just Wind shall provide the Commission with as-built engineering design drawings and an electronic version of the as-built drawings that can be imported into ESRI GIS mapping software within six months after construction of the energy conversion facility is complete.

36. The authorizations granted by the Certificate of Site Compatibility for this energy conversion facility are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

PUBLIC SERVICE COMMISSION



Tony Clark
Commissioner



Kevin Cramer
President



Brian P. Kalk
Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Just Wind – Wind Farm Development
Wind Farm – Logan County
Siting Application**

Case No. PU-07-54

Tree and Shrub Mitigation Specifications

Inventory

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (e.g., *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), shall be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts, and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, shall be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1-inch diameter at breast height (dbh) or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way shall be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs shall be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil shall be preserved and replaced after construction. Shrubs shall be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared shall be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission), and approved prior to the start of construction shall define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots shall be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

Clearing for Construction

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.

8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the Commission.

9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

Replacement

10. Prior to replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the Commission for approval.

11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.

12. Trees and shrubs shall be replaced by the same species or similar species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing those replacement trees or shrubs to be planted at alternative locations.

14. At the conclusion of the project, documentation identifying the actual number, variety, type, location, and date of the replacement plantings shall be filed with the Commission.

15. Tree and shrub replacements shall be inspected once a year for three years, on about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the Commission documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the Commission may order additional planting(s).

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility for Energy Conversion Facility

Certificate Number 11

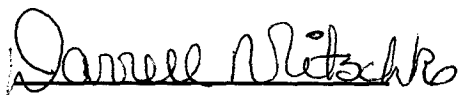
This is to certify that the Commission has designated an energy conversion facility site for Just Wind, LLC's Logan County Wind Farm consisting of up to 368 MW of wind turbine generating capacity, collection substation and associated facilities in Logan County, North Dakota.

The facility may be sited in this designated location in compliance with the energy conversion facility siting criteria. This certificate is issued in accordance with the Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-07-54 dated April 29, 2009 and is subject to the conditions and limitations noted in the order.

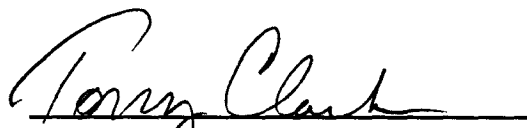
Bismarck, North Dakota, April 29, 2009.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner