

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

M-Power, LLC
Electric Generation/Wind-Griggs/Steele County
Siting Application

Case No. PU-08-34

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

October 30, 2008

Appearances

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

Lawrence Bender, Fredrikson & Byron, P.A., 200 North 3rd Street, Suite 150, Bismarck, North Dakota 58501 on behalf of the Applicant, M-Power, LLC

Annette Bendish, Counsel, North Dakota Public Service Commission, State Capitol Building, 12th Floor, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission.

Al Wahl, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On January 16, 2008, M-Power, LLC (M-Power) filed a Letter of Intent (LOI) to submit an application for a Certificate of Site Compatibility to develop a wind energy facility, referred to by M-Power as the Luverne Wind Farm, in Griggs and Steele Counties, North Dakota.

On January 18, 2008, M-Power filed a supplement to its LOI supplying the Commission with additional information and requesting a shortening of the prescribed one-year notice period when the LOI is filed and when the application for a Certificate of Site Compatibility is filed.

On February 27, 2008, the Commission acknowledged the LOI, shortened the one-year notice period to one day, and assessed a filing fee of \$100,000 due upon the filing of the application.

On May 16, 2008, M-Power filed its Application for Certificate of Site Compatibility to Construct a 157.5 MW Wind Farm in Griggs and Steele Counties, North Dakota, known as the Luverne Wind Farm (Application.)

On June 19, 2008, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for July 28, 2008 at 10:00 A.M. CDT at the Cooperstown Country Club, 305 Fairway Drive, Cooperstown, North Dakota. 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?
4. Is it appropriate for the Commission to waive the procedures and time schedules as requested?

The Commission held the public hearing on M-Power's Application as scheduled on July 28, 2008 in Cooperstown, North Dakota. At the hearing, M-Power requested a continuance. The request for a continuance was granted by the Commission and the matter was rescheduled for hearing on August 25, 2008 at 10:00 A.M. CDT at the Cooperstown Country Club, 305 Fairway Drive, Cooperstown, North Dakota. After the hearing, the Commission received certain late-filed exhibits as requested at the hearing, including late-filed Exhibit 12 filed October 17, 2008 with field modifications to proposed Phase II turbine and collector substation locations.

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. M-Power is a North Dakota limited liability company headquartered in Finley, North Dakota. M-Power proposes to construct and operate a wind energy facility (the Luverne Wind Farm) to be located in Griggs and Steele Counties, North Dakota north of the city of Luverne. The nameplate capacity of the wind energy facility would be 157.5 megawatts (MW) comprised of up to 105 wind turbines.
2. M-Power plans to use General Electric 1.5 MW turbines. These are utility grade wind turbines with a nominal name plate rating of 1,500 kW. Each turbine will have an 80 meter (262 feet) hub height and a 77 meter (253 feet) rotor diameter. The turbines begin operating at wind speeds of 3.5 meters per second (7.8 miles per hour) and reach

a rated capacity of 1.5 MW at a wind speed of 14.5 meters per second (32.5 miles per hour).

3. Each turbine is designed to operate at wind speeds of up to 25 meters per second (56 miles per hour) and can withstand wind speeds of over 45 meters per second (100 miles per hour).

4. Each turbine is secured by a concrete foundation. 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. 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. This electricity is collected by sets of underground power collection lines.

5. An underground collection feeder system delivers the electricity to a project collection substation where the voltage is stepped up for transmission over approximately 13 miles of new 230 kV transmission line proposed by M-Power (Case No. PU-08-107) to an interconnection with a new Pillsbury-Fargo transmission line and Pillsbury substation being proposed by Minnkota Power Cooperative, Inc. (Case No. PU-08-48).

6. The Luverne Wind Farm will consist of two separate phases. Phase I will include up to 72 turbines to generate up to 108 MW of power in the southern portion of the proposed project area. Phase II will include up to 33 turbines to generate up to 49.5 MW of power in the northern portion of the proposed project area. The collector substation will be located in the northern portion of the proposed project area in the SW1/4 of Section 35, T 145 N, R 57 W.

7. Construction of both Phases of the proposed Luverne Wind Farm is expected to take six to nine months. Most construction workers would be employees of construction and equipment manufacturing subcontractors. Construction workers and subcontractors would be a combination of local companies and workers as well as subcontractors based outside the state. M-Power estimates that between nine to 11 full-time jobs will be created for operation and maintenance of Phase I and another four to five full-time jobs will be created for operation and maintenance of Phase II after construction is completed and the facility is operational.

8. The total cost for construction of the M-Power proposed Luverne Wind Farm for both Phase I and Phase II is estimated to be approximately \$300 million.

9. After a Certificate is issued by the Commission for Phase I of the proposed Luverne Wind Farm, M-Power will proceed to either construct the facility or seek approval to transfer the Certificate to a regional or national developer.

10. Otter Tail Corporation has filed an application for a certificate of public convenience and necessity to construct and own the 33 Phase II turbines and associated facilities totaling 49.5 MW of nameplate generating capacity. That application is pending before the Commission (Case No. PU-08-766).

11. Section 49-22-16(3) of the North Dakota Century Code provides that an applicant for a certificate of site compatibility from the Commission shall obtain all permits that may be required to construct and operate the energy conversion facility.

12. The federal, state, and local departments, agencies, and entities that were consulted and provided comment are as follows:

- a. Federal Agencies – Bureau of Indian Affairs; Federal Aviation Administration; National Park Service; United States Air Force, Grand Forks Air Force Base; United States Army Corps of Engineers, North Dakota Regulatory Office; United States Army Corps of Engineers, St. Paul District Office; United States Fish and Wildlife Service.
- b. State Agencies – Job Service North Dakota, North Dakota Department of Commerce, North Dakota Department of Health, North Dakota Department of Transportation, North Dakota Game and Fish Department, North Dakota Office of the Attorney General, North Dakota Parks and Recreation Department, North Dakota State Water Commission, Senator Kent Conrad, State Historical Society of North Dakota.
- c. Local Entities – Dakota Rural Water District, Griggs County, Steele County, Sisseton Wahpeton Oyate Tribal Historic Preservation Officer, Universal Ensco, Inc.

13. Section 49-22-16(2) of the North Dakota Century Code provides that no energy conversion facility site shall be designated that violates any county or city land use, zoning or building rules, regulations, or ordinances. All necessary rezoning and conditional use permits for the proposed Luverne Wind Farm and its associated facilities have been obtained from either the Griggs County Board of County Commissioners or the Township Boards of both Riverside and Willow Lake Townships in Steele County.

14. Chapter 69-06-08 of the North Dakota Administrative Code sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria as set forth in Section 69-06-08-01 of the North Dakota Century Code are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. An energy conversion facility shall not be sited within an Exclusion Area. An energy conversion facility shall not be sited within an Avoidance Area unless the applicant shows under the circumstances there are no reasonable alternatives. 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; the effective use of resources; and alternative sites. In accordance with the Commission's Section Criteria, a site shall be approved only if it is demonstrated that no significant adverse impacts will result from the location, construction, and operation of the energy conversion facility. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the proposed energy conversion facility.

15. The area designated by M-Power for its proposed facility does not include any geographical area listed as an Exclusion Area; with one exception, portions of the project will be located on Prime Farmland. However, Prime Farmland has been avoided to the maximum extent practicable and impacts to Prime Farmland are expected to affect less than 0.1% of the yearly production for the top five commodities in Griggs and Steele Counties. In addition, the wind project will be located within the general vicinities of Waterfowl Production Areas (WPAs) managed by the U.S. Fish and Wildlife Service (USFWS), but no project facilities will be located closer than 0.25 miles from such areas. There is one parcel of irrigated land within the project area, but no project facilities will be located in that parcel.

16. The area designated by M-Power for its proposed facility, as shown on the attached map, does not include any geographical area listed as an Avoidance Area, except as follows:

- a. M-Power has conducted a Class I Cultural Resources Inventory (CRI) for historic, cultural, and archaeological resources in both the Phase I and Phase II area of the proposed Luverne Wind Farm. Twenty-five (25) resource areas were identified in the Class I CRI and, in consultation with the North Dakota State Historic Preservation Office (SHPO), as areas to avoid. A Class III CRI was conducted for the Phase II area of the proposed Luverne Wind Farm. The report generated by the Class III CRI was provided to both SHPO and the Commission. SHPO concurred with a "No Significant Sites Affected" determination for Phase II. Once final locations of turbines, roads, electrical collection system, and associated facilities are determined, and before construction commences for Phase I of the proposed Luverne Wind Farm, a Class III CRI will be conducted to further ensure against disturbance of any areas of historic, cultural, or archaeological interest. M-Power will submit the report to the SHPO for review and concurrence prior to construction. M-Power will also provide a copy of the report and SHPO response to the Commission.
- b. Woodlands and wetlands are present in the general vicinity of the wind project. Woodland impacts are not expected, but if final micro-siting requires impacts to woodlands, individual trees or woody vegetation will be replaced at a 2 to 1 ratio in accordance with the Commission's tree mitigation specifications attached to this Order. M-Power will maintain a 500-foot buffer between all project facilities and the large (lacustrine) wetland complexes (greater than 50 acres); it will also avoid all other

wetland areas to the extent practicable. USFWS permits are required for impacts to wetlands on conservation easements that cannot be avoided. The Commission finds no reasonable alternative that would further avoid impacts to woodlands and wetlands.

17. M-Power submitted substantial evidence to demonstrate that the proposed energy conversion facility would not have any significant impact on the Selection Criteria set forth in Section 69-06-08-01(3) of the North Dakota Administrative Code.

18. M-Power submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible to meet the Policy Criteria set forth in Section 69-06-08-01(4) of the North Dakota Administrative Code.

19. M-Power proposes to locate the Luverne Wind Farm on an area of land comprised of approximately 20,480 acres of privately-owned and state land in Griggs and Steele Counties, North Dakota. M-Power has acquired wind energy leases from landowners in the area, which allow M-Power to construct and operate the wind generator facilities in exchange for financial compensation to the landowners and an ownership interest in M-Power. Landowners can continue their farming operations in and around the wind turbines and other wind generator facilities.

20. The proposed Luverne Wind Farm and its related supporting facilities would occupy and disturb approximately 410 acres of land during the life of the plant. The proposed Luverne Wind Farm is located in an area that is zoned exclusively for agricultural use, most of which is planted with small grains, beans, corn and grasses under the United States Department of Agriculture Conservation Reserve Program (CRP), or pasture with native grasses. The facility would have little impact on farm operations. During construction, the project might cause temporary off-site impacts to farming due to an increase in construction-related traffic. Once operational, however, the facility would generate little traffic. The location of facility structures might require changes to farming patterns in the immediate vicinity of the turbine towers and other above-ground facilities, but the facility operation would not cause off-site impact on adjacent lands that would significantly interfere with or increase the cost of farm practices in the area of the proposed project.

21. M-Power expects construction of its proposed Luverne Wind Farm for both Phase I and Phase II will be compatible with farm use and should not affect resource use of the remainder of the parcel or adjacent lands.

22. When the facility is at the end of its useful life M-Power will remove turbine structures and decommission the project area in accordance with all decommissioning rules adopted by the Commission.

23. Lighting would be limited to warning lights required by the Federal Aviation Administration and security lights at the project substation and the operation and maintenance building.

24. The proposed facility would not have significant adverse economic and social consequences. It would not cause any significant adverse impact on the ability of the affected area to provide community service, such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation and traffic safety.

25. Stormwater drainage impacts could occur during construction of new roads, staging areas, and turbine foundations. M-Power would prevent adverse impacts by use of erosion control measures required under National Pollution Discharge Elimination System permit and associated Storm Water Pollution Prevention Plan. Construction of the facility would not have a significant adverse impact on the water quality of any receiving water.

26. The proposed facility would be located entirely on private property. Turbines would not be located closer than 1,400 feet from an inhabited dwelling or closer than 400 feet or the fall zone of the wind turbine, whichever is greater, to any developed road. The turbine towers would have locked access doors and turbine design would preclude climbing. Pad-mounted transformers located at each turbine would be located inside locked metal cabinets.

27. Wind turbines produce noise from the rotation of the turbine blades. Generally, turbine noise increases with wind speed. The noise standard adopted by the Griggs and Steele Counties Board of County Commissioners provides for levels not greater than 50 dBA at the nearest occupied residence. Based on modeling, M-Power has calculated that the 50 dBA standard is exceeded at distances of less than 190 meters (623 feet) for 1.5 MW turbines. M-Power has proposed a setback of 1,400 feet from residences. At that distance, the 50 dBA noise standard adopted by the Griggs and Steele Counties Board of County Commissioners will not be exceeded.

28. Within the project area, land is mostly privately owned and there are no county or state recreational facilities other than a portion of the North Country National Scenic Trail located in sections 30 and 31, T 145 N, R 57 W that will not be impacted by the project. Federally designated wildlife/recreation areas adjacent to the site area include one US Fish and Wildlife Service (USFWS) Waterfowl Production Area (WPA). The WPA will be avoided and no facilities will be placed within 0.25 miles of the WPA. Recreational opportunities in Griggs and Steele Counties include camping, hiking, biking, swimming, golfing, hunting, fishing and nature observation. While the wind turbines within the site area will be visible, they are not likely to cause any significant adverse impact to any recreational opportunities.

29. Wildlife within the project area consists of birds, mammals, fish, reptiles, amphibians, and insects associated with agricultural fields, pasture grasslands, and

wetland areas. M-Power has conducted for Phase II, and will conduct for Phase I, environmental studies of the project site to aid in detailed placement of turbines, roads, and associated facilities to avoid or minimize potential impacts to wildlife and habitat. Construction and operation of the proposed facility is expected to produce minimal impact to the wildlife within the site area.

30. M-Power contacted the USFWS and the North Dakota Parks and Recreation Department to review the project area for threatened or endangered species and unique habitats. In response to this contact, the USFWS identified one federally listed threatened or endangered species potentially present in Griggs County (whooping crane) and no federally listed threatened or endangered species in Steele County. USFWS indicated that the proposed project area is located outside of the 180 mile-wide whooping crane migration corridor where 95% of whooping crane sightings in North Dakota have occurred.

31. The Commission finds that M-Power's proposed turbine locations for Phase II should be approved.

32. M-Power is still evaluating the project area in Phase I comprised of 13,653 acres to determine the best locations for up to 72 wind turbines. As criteria for the specific location of each wind turbine in Phase I, M-Power recommended the following:

- a. No wind turbine would be placed within 0.25 miles of any USFWS WPAs.
- b. No wind turbine would be placed within 500 feet of any large (lacustrine) wetland complex (greater than 50 acres).
- c. No wind turbine would be placed within 1,400 feet of any occupied residence.
- d. No wind turbine would be placed within 400 feet (or the height of the wind turbine, whichever is greater) from any developed road, transmission line or adjacent property not under lease by M-Power.

M-Power recommends no minimum setbacks other than those listed above and approved by Griggs County Board of County Commissioners and the Township Boards of Riverside and Willow Lake Townships in Steele County.

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under Chapter 49-22 of the North Dakota Century Code.
2. The wind energy facility proposed by M-Power is an energy conversion facility as defined in Section 49-22-03(11) of the North Dakota Century Code.
3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined under Section 49-22-05.2 of the North Dakota Century Code.
4. The Application submitted by M-Power meets the site evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.
5. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects of the environment and upon the welfare of the citizens of North Dakota.
6. The proposed energy conversion facility is compatible with the environmental preservation and the efficient use of resources.
7. 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.
8. The proposed energy conversion facility 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 for an Energy Conversion Facility No. 9 is issued to M-Power for the construction, operation, and maintenance of a wind energy facility known as the Luverne Wind Farm, Phase II.
2. M-Power shall submit a final Phase I site plan for Commission approval prior to issuance of a Certificate of Site Compatibility for Phase I.
3. The site description for the Luverne Wind Farm is as follows:

Township 144 North, Range 57 West
Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20 and 30

Township 144 North, Range 58 West
Sections 1, 12, 13, 24, and 25

Township 145 North, Range 57 West
Sections 14, 15, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36

4. Phase I includes the following described lands:

Township 144 North, Range 57 West
Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, and 30

Township 144 North, Range 58 West
Sections 1, 12, 13, 24, and 25

5. Phase II includes the following described lands:

Township 145 North, Range 57 West
Sections 14, 15, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36

6. Within Phase II of the permitted area, M-Power is authorized to construct up to 49.5 MW of wind turbines, electrical collection and communication lines, access roads, an operation and maintenance building, meteorological towers, collector substation and associated facilities identified in the Application for the Luverne Wind Farm and as proposed in the revised Phase II turbine and collector substation locations filed October 17, 2008.

7. M-Power 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. Prior to commencing construction of any phase of the proposed project, M-Power shall obtain all other necessary approvals and permits for construction of such phase, and provide copies of the Commission prior to construction of each such phase.

8. M-Power shall conduct a pre-construction conference prior to the commencement of any construction, and must include an M-Power representative, its construction supervisor, and a representative of the Commission staff to ensure that M-Power fully understands the conditions set forth in this Order.

9. M-Power shall inform the Commission of its intent to start construction on the energy conversion facility prior to the commencement of construction, and while construction is underway, M-Power shall keep the Commission updated of construction activities on a weekly basis.

10. M-Power shall construct and operate the energy conversion facility in the manner described in this application, at the hearing, in late filed exhibits, and in accordance with all applicable safety requirements.
11. M-Power shall construct the energy conversion facility in compliance with the National Electric Safety Code.
12. M-Power shall report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or a bald or golden eagle that M-Power becomes aware of and were not previously reported to the Commission.
13. 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 this discovery must be halted. The resource must be marked, preserved, and protected from 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.
14. All pre-existing township and county roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition.
15. 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.
16. Reclamation, fertilization, and reseeding will be completed by M-Power according to the Natural Resource Conservation Service or USFWS recommendations for Conservation Reserve Program (CRP), native prairie and other non-cropped lands unless otherwise specified by the landowner and approved by the Commission.
17. M-Power's obligations for reclamation and maintenance of the site shall continue throughout the life of the energy conversion facility.
18. 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.
19. M-Power shall comply with the Commission's Tree and Shrub Mitigation Specifications attached to this Order.
20. M-Power shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.

21. M-Power shall repair or replace all drainage tile, broken or damaged, during all phases of construction and operation of the proposed energy conversion facility.
22. Staging areas or equipment must not be located on cultivated land unless otherwise negotiated with landowners.
23. M-Power 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.
24. M-Power 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.
25. M-Power 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.
26. M-Power shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
27. M-Power shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, such as tower collapse, extensive 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.
28. M-Power shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by M-Power.
29. All underground electric line crossing of graded roads must be bored unless the responsible governing agency permits M-Power to open cut the road.
30. Where available, at least 12 inches of topsoil over and along open cut 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.
31. M-Power shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
32. M-Power 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.
33. M-Power shall provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction, and

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

M-Power, LLC
Electric Generation/Wind – Griggs/Steele
County
Siting Application

Case No. PU-08-34

M-Power, LLC
230 kV Transmission Line Barnes/Steele County
Siting Application

Case No. PU-08-107

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).

shall obtain approval from the Commission or from Commission staff prior to any changes in those surveyed locations.

34. M-Power shall provide the Commission with as-built drawings within three months after construction of the energy conversion facility is complete.

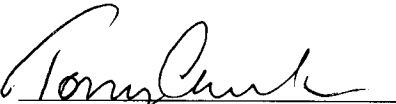
35. Each Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of each Certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.

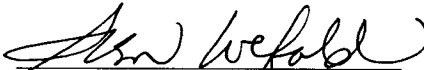
36. M-Power shall maintain records that will demonstrate that it has complied with the requirements of this order and each Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.

37. When the facility is at the end of its useful life M-Power will remove turbine structures and decommission the project area in accordance with all decommissioning rules adopted by the Commission.

38. The authorizations granted by each 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


Susan E. Wefald
President


Kevin Cramer
Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility for Energy Conversion Facility

Certificate Number 9

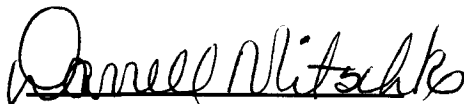
This is to certify that the Commission has designated an energy conversion facility site for Phase II of M-Power, LLC's , Laverne Wind Farm consisting of up to 33 1.5 MW wind turbine generators, collection substation and associated facilities in Griggs and Steele County of North Dakota:

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-08-34 dated October 30, 2008 and is subject to the conditions and limitations noted in the order.

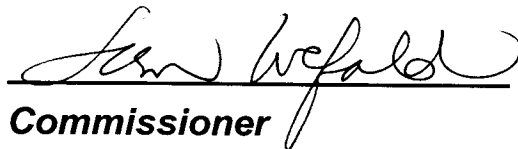
Bismarck, North Dakota, October 30, 2008.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Director



Commissioner