



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

November 29, 2010

John W. Morrison
Crowley Fleck PLLP
Attorneys at Law
P.O. Box 2798
Bismarck, North Dakota 58502-2798

Re: Case No. PU-08-797, Sequoia Energy
150 MW Border Winds Wind Energy Project – Rolette County

Mr. Morrison,

As you know a public hearing on the revised site plan for the Border Winds Project (PU-08-797) is scheduled for December 16, 2010 at 10:00 a.m. CST in Rolla, North Dakota. A review of the docket indicates that on or about October 15, 2009 the enclosed signed "Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting" was filed with the North Dakota Public Service Commission by Sequoia Energy US. However a brief review of the transcript does not indicate whether this document was submitted into the record either on, or after, the November 3, 2009 hearing.

I certainly may be mistaken as to the presence in the record of the enclosed Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting. However, if I am correct, and Mr. Diduch continues to act as an agent for Sequoia Energy US, Inc., then I see no difficulties related to this document being offered as an exhibit at the upcoming December 16th hearing. A recent review by staff of the enclosed Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting determined that

all of the provisions therein remain valid

Please let me know if you have any questions,

A handwritten signature in black ink, appearing to read 'Mark Gruman', with a long, sweeping horizontal line extending to the right.

Mark Gruman
Legal Counsel
North Dakota Public Service Commission

Enc. Certification Relating to Order Provisions – Wind Energy Conversion Facility
Siting
Tree and Shrub Mitigation Specifications

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Sequoia Energy US, Inc.
150 MW Border Winds Energy Project – Rolette County
Siting Application

RECEIVED
Case No. PU-08-797
OCT 15 2009

PUBLIC SERVICE COMMISSION

CERTIFICATION RELATING TO ORDER PROVISIONS - WIND ENERGY
CONVERSION FACILITY SITING

I am Ron Diduch a representative of Sequoia Energy US, Inc. (Sequoia) with authority to bind Sequoia to requirements to be set forth by the Commission in its Order and I certify the following:

1. Sequoia understands and agrees that the Certificate of Site Compatibility will be issued by the Commission subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Sequoia will be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Sequoia agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Sequoia representative, its construction supervisor, and a representative of Commission Staff, to ensure that Sequoia fully understands the conditions set forth in the Commission's order.
3. Sequoia agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.
4. Sequoia agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the energy conversion facility that requires said license or permit.
5. Sequoia understands and agrees that 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.
6. Sequoia agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site

Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.

7. Sequoia agrees to inform the Commission of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Sequoia shall keep the Commission updated of construction activities on a weekly basis.
8. Sequoia agrees to construct and operate the energy conversion facility in the manner described in Sequoia's application, in any late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements.
9. Sequoia agrees to report promptly to the Commission the presence in the permit area of any critical habitat of threatened species, endangered species, bald eagles, or golden eagles that Sequoia becomes aware of and which were not previously reported to the Commission.
10. Sequoia understands that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
11. Sequoia understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.
12. Sequoia understands and agrees that all underground electric line crossings of graded roads shall be bored unless the responsible governing agency specifically permits Sequoia to open cut the road.
13. Sequoia understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or 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 that areas used as temporary roads or working areas during construction must be restored to their original condition.
14. Sequoia is aware that North Dakota law requires that all companies that own or operate electric generation of any size for the primary purpose of resale must comply with the standards of the National Electrical Safety Code in effect at the time of construction of the generation facility, and agrees to comply with that requirement.

15. Sequoia understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. Sequoia understands and agrees that where available, at least 12 inches of topsoil over and along trench areas, roadways, tower locations, and locations of associated facilities shall be stripped and shall be segregated from the subsoil and be replaced only after the subsoil is replaced.
17. Sequoia agrees that it shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
18. Sequoia understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
19. Sequoia understands and agrees that its obligation for reclamation and maintenance of energy conversion facility tower locations, associated facilities, roadways and rights-of-way will continue throughout the life of the energy conversion facility.
20. Attached is a document titled Tree and Mitigation Specifications. Sequoia agrees to comply with these specifications if the Commission chooses to include all or a portion of the requirements and conditions contained in this attachment in its Order.
21. Sequoia agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
22. Sequoia agrees that it shall repair or replace all broken or damaged drainage tile during all phases of construction and operation of the proposed energy conversion facility.
23. Sequoia agrees that staging areas or equipment shall not be located on cultivated land unless otherwise negotiated with landowners.
24. Sequoia agrees that it 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.

25. Sequoia agrees that it 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.
26. Sequoia agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.
27. Sequoia agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
28. Sequoia agrees that it shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, such as a tower collapse, catastrophic turbine failure, injured worker or private individual, the death 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.
29. Sequoia agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Sequoia.
30. Sequoia agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
31. Sequoia is aware that under North Dakota Century Code section 49-02-27 the Commission has rules for decommissioning of wind energy conversion facilities. Sequoia agrees to comply with all decommissioning rules adopted by the Commission.
32. Sequoia agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction, and understands and agrees that it must obtain approval from the Commission or from Commission Staff prior to any changes in the energy conversion facility tower, associated facility, and roadway locations.
33. Sequoia agrees to provide the Commission with a copy of the design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within three months of the completion of the construction.
34. Sequoia understands and agrees that the authorizations granted by the Certificate of Site Compatibility for the energy conversion facility are subject to modification by

order of the Commission if deemed necessary to protect further the public or the environment.

35. Sequoia wind agrees to inform the Commission in writing of any plans to add additional turbines to the energy conversion facility or of any plans to modify the site plan for the energy conversion facility. Any additions or modifications to the site plan for the energy conversion facility must be approved in writing by the Commission or Commission staff. Approval may be granted after notice and opportunity for hearing.

Dated this 6th day of October, 2009.

Sequoia 

By Ron Diduch

Its President and Chief Executive Officer

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Sequoia Energy US, Inc.
150 MW Border Winds Energy Project – Rolette County
Siting Application

Case No. PU-08-797

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, except in the case of invasive species or noxious weeds, 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 or 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).