

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**EDF Renewable Development Corporation, Inc.  
Merricourt Wind Power Project  
Siting Application**

**Case No. PU-08-932**

**SECOND AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**November 16, 2017**

**Appearances**

Commissioners Brian Kroshus, Randy Christmann, and Julie Fedorchak.

Sara Bergan and Sarah Johnson Phillips, Stoel Rives LLP, 33 South Sixth Street, Suite 4200, Minneapolis, Minnesota 55402, on behalf of the Applicant, EDF Renewable Development, Inc.

Mitchell D. Armstrong, Special Assistant Attorney General, 122 East Broadway Avenue, P.O. Box 460, Bismarck, ND 58502-0460, on behalf of the North Dakota Public Service Commission.

Kevin Pranis, Marketing Manager, 81 East Little Canada Road, St. Paul, MN, 55117, on behalf of Laborers District Council of Minnesota and North Dakota.

Timothy J. Dawson, Chief Administrative Law Judge, Office of Administrative Hearings, 2911 North 4th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On June 8, 2011, the North Dakota Public Service Commission (Commission) adopted Findings of Fact, Conclusions of Law and Order issuing Certificate of Site Compatibility No. 23 (Certificate No. 23), designating an energy conversion facility site for enXco Development Corporation's Merricourt Wind Energy Project (Project) consisting of up to approximately 150 MW of total wind turbine generating capacity and associated facilities in Dickey and McIntosh Counties of North Dakota.

On February 19, 2015, EDF Renewable Development, Inc. (EDF), formerly enXco Development Corporation, filed a certification of continuing site suitability in accordance with North Dakota Century Code section 49-22-17 and section 69-06-09-01 of the North Dakota Administrative Code

On May 27, 2015, the Commission adopted Amended Findings of Fact, Conclusions of Law and Order issuing First Amended Certificate of Site Compatibility for Energy Conversion Facility, Certificate No. 23 (First Amended Certificate No. 23) to EDF. EDF requested the amendment in order to install Vestas V100 2.0 MW turbines rather than

the initially approved GE 1.5 MW turbines, resulting in fewer turbines and revised turbine locations.

On March 3, 2017, EDF filed an Application for Second Amendment to Certificate of Site Compatibility No. 23, requesting further site plan revisions and turbine location flexibility within revised and expanded project area boundaries. The purpose of the amendment is to change the project layout to be consistent with the avoidance and/or minimization measures that EDF committed to for piping plovers and whooping cranes in coordination with the US Fish and Wildlife Service (USFWS) and to request approval of a revised project boundary and facility locations.

On May 10, 2017, the Commission issued a Notice of Opportunity for Hearing (Notice), setting a deadline for written comments and requests for hearing of June 28, 2017.

The Notice identified the following issues to be considered:

1. Will the location 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 impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On June 26, 2017, EDF filed a letter with the Commission requesting that the Commission postpone the hearing scheduled for June 28, 2017 due to the Ashley Tribune's failure to publish the second notice within 20 days of the hearing, pursuant to NDCC § 49-22-13(4).

On June 27, 2017, the Commission approved a motion acknowledging the cancellation of the scheduled hearing due to the publication error.

On July 26, 2017, the Commission issued a Notice of Rescheduled Hearing, which set the rescheduled hearing for September 13, 2017 and identified the same issues to be considered as the Notice.

On September 1, 2017, the Laborers District Council of Minnesota and North Dakota ("Laborers District") petitioned to intervene.

On September 11, 2017, EDF executed a revised Certification Relating to Order Provisions - Wind Energy Conversion Facility Siting (2017 Certification).

On September 12, 2017, ALJ Dawson ordered that the Laborers District is permitted

to appear as an intervenor.

On September 13, 2017 the rescheduled hearing was held at City Hall, 113 1<sup>st</sup> Street NW, Ashley, ND 58413.

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

### **FINDINGS OF FACT**

1. Certificate of Site Compatibility for an Energy Conversion Facility No. 23 was issued to enXco Development Corporation on June 8, 2011.
2. enXco Development Corporation changed its name to EDF Renewable Development, Inc.
3. First Amended Certificate of Site Compatibility for an Energy Conversion Facility No. 23 was issued to EDF on May 27, 2015.
4. EDF anticipates that construction will begin in 2019 with a commercial operation date on or before December 31, 2019.
5. Ownership of the project will be transferred from EDF to Otter Tail Power Company upon the transactional close of an Asset Purchase Agreement (Purchase Agreement), executed on November 16, 2016. Upon Purchase Agreement close, EDF will remain the primary engineering, procurement and construction contractor for the construction of the project and Otter Tail Power Company will assume full ownership of the project as well as all operational responsibilities once the project meets commercial operations. In order to facilitate this transfer, EDF will transfer the amended certificate to Otter Tail Power Company upon the closing under the Purchase Agreement, which would require a future approval from the Commission.

#### **Size, Type and Preferred Location of Facility**

6. The proposed project boundary and layout revisions were created following coordination with USFWS to implement avoidance and minimization measures that, if implemented, would cause the likelihood of take for these species to be avoided and minimized such that take for the whooping crane and piping plover would be considered discountable.
7. Revisions to the previous project boundary would increase the project area from approximately 10,960 acres to 13,156 acres. The additional acres of land will not add any new landowners to the project.

## Project Design

8. Consistent with First Amended Certificate No. 23, the new project layout includes 75 primary and 6 alternate turbine locations and the proposed facility would be capable of producing up to 150 MW of power.

## Study of Preferred Location

9. EDF performed an updated noise analysis on all residences within one mile of the project boundary. EDF's updated acoustic modeling for the revised layout predicted that sound levels would continue to be less than 50 decibels within 100 feet of all occupied residences.

10. EDF performed an updated shadow flicker analysis on all residences within one mile of the project boundary. EDF's updated the shadow flicker analysis for the new layout predicted that shadow flicker would not exceed 14 hours per year at any occupied residence.

11. Class III Cultural Resource inventories were conducted progressively during layout analysis to identify cultural resources. A view shed analysis was conducted to identify potential impacts to the Whitestone Hill State Historic Site and other standing structures.

12. Numerous wetlands of various hydrology and vegetation exist within the revised project area. Field wetland delineations were completed progressively during layout analysis to determine wetland impacts.

13. EDF commissioned an avian use survey in May 2016 that continued for one year based on the general guidance in the USFWS Eagle Conservation Plan Guidance (ECPG) and Wind Energy Guidelines (WEG). Results of the avian use survey indicated low eagle use in the project area.

## Siting Criteria

14. While the amendment would increase the project area by approximately 2,200 acres, there is no increase in the number of turbines and the permanent impact to prime farmland and farmland of statewide importance collectively remains well under 1% of the total land in the project area. The project is proposed to permanently impact approximately 64 acres of prime farmland or farmland of statewide importance, an amount that would be approximately 0.4% of the total project area. The Commission finds that the prime farmland and farmland of statewide importance expected to be removed from use by the Project is of such a small acreage as to have a negligible impact on agricultural production.

15. Wind turbines, access roads, and associated facilities were sited to avoid significant cultural resource sites and traditional cultural properties (TCP). The North Dakota State Historic Preservation Office (SHPO) concurred with EDF's "No Significant

Sites Affected” determination for the current turbine, access road, and collector line layout.

16. No other Exclusion Areas have been identified within the project area.
17. EDF will avoid all wetlands under easement to the USFWS and impacts to other wetlands will be avoided or minimized to the extent practicable.
18. Trees and shrubs are located within the project footprint. EDF will construct the project to minimize impacts to trees and shrubs to the extent practicable. All trees and shrubs removed during construction will be replaced in accordance with the Commission’s tree and shrub mitigation specifications.
19. No other Avoidance Areas have been identified within the project area.
20. EDF continued to demonstrate its commitment to maximize the benefits of the proposed facility to meet the applicable Policy Criteria in ND Admin. § 69-06-0 8-01(4), including a commitment to train and use available labor in this state for the general and specialized skills required.
21. The amendment will enhance the compatibility of the Project with environmental preservation by adjusting the turbine layout so that each turbine is at least three miles distance from critical piping plover habitat.

#### Measures to Minimize Impact

22. The distance from the closest residence to a turbine under the revised layout is 1531 feet.
23. In coordination with USFWS, EDF agreed to commit to biological avoidance and minimization measures approved in the Western Area Power Association Programmatic EIS for piping plovers and whooping cranes. EDF coordinated with the USFWS and there was agreement that if EDF committed to the avoidance and minimization measures outlined in the Programmatic EIS that the threat of any take of piping plover and whooping crane would be reduced to a discountable level. On September 11, 2015, EDF submitted a letter to the USFWS confirming its commitment to implement these measures. Accordingly, EDF is no longer pursuing incidental take authorization under Section 10 of the Endangered Species Act for the whooping crane or the piping plover. Avoidance and minimization measures for the whooping crane include: monitoring for whooping cranes with curtailment if sighted and worker instruction on identification and reporting. Avoidance and minimization measures for the piping plover include: setbacks of 3 miles from alkali lakes where piping plovers have nested or are designated as critical habitat and not siting project facilities between any such lakes where the out limit of the buffer zones are less than 3 miles.
24. EDF will install lights that are compatible with light mitigation technology. Subject to Federal Aviation Administration approval, EDF plans to install light mitigation

technology suitable to the Commission as soon as practicable after commercial operation and in no event later than December 31, 2021.

25. EDF testified at the hearing that it has obtained all land rights necessary to construct the project as revised.

26. EDF has voluntarily agreed to comply with the Commission's new decommissioning requirements announced on May 2, 2017 as revisions to North Dakota Administrative Code Section 69-09-09.

27. EDF has voluntarily agreed to construct the project such that it complies with the recent change to North Dakota Century Code 49-44-05.1(3) which identifies areas less than one and one-tenth times the height of the turbine from a property line of a nonparticipating landowner and less than three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner as wind specific exclusion areas.

28. In its post-hearing submissions, the Laborers District supported approval of EDF's application, but requested certain findings and an ordering provision related to certain employment issues. The Commission has fully considered the Laborers District's requests and finds they are sufficiently covered by the requirements of the 2017 Certification, or are otherwise not necessary for the Commission's decision. Section 69-06-08-01(6), N.D. Admin. Code, allows the Commission to give preference to an applicant that will maximize benefits of certain policies and practices, and in a proper case, allows the Commission to require the adoption of such policies and practices. However, the Commission is not giving preference to EDF based on those factors and finds this is not a proper case to require adoption of any such policies or practices. Further, the Commission finds the testimony of EDF, the other evidence related to its selection of contractors/employees, and the 2017 Certification will produce minimal adverse effects upon the welfare of the citizens of this state and will minimize adverse human impact as related to the Laborers District's requested findings and ordering provision.

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 wind energy conversion facility proposed by EDF is an energy conversion facility as defined in North Dakota Century Code § 49-22-03(5).

3. The application submitted by EDF meets the site evaluation criteria required by the North Dakota Century Code Chapter 49-22.

4. The location, construction and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota and is otherwise compatible with the environmental preservation and the efficient use of resources.

5. The proposed energy conversion facility location 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.

6. The Commission has jurisdiction to ensure compliance with the National Electric Safety Code standards in the construction and operation of the proposed energy conversion facility.

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

### ORDER

The Commission orders:

1. EDF's request for a second amendment to Certificate of Site Compatibility Number 23 is granted; and EDF is issued Second Amended Certificate of Site Compatibility Number. 23 for the construction, operation and maintenance of the Merricourt Wind Power Project.

2. The authorizations granted by Second Amended Certificate of Site Compatibility Number 23 are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

3. EDF is authorized to construct up to 75 wind turbines producing a total nameplate capacity of 150 MW within the project area as revised, along with associated access roads, underground electrical collection systems and communication cables, substation and operations and maintenance building.

4. In the event the layout is modified, EDF shall complete a Class III cultural resource survey for any previously un-surveyed areas in accordance with SHPO guidance, and shall submit cultural resource findings to the SHPO for review and obtain and file a copy of the SHPO's response with the Commission prior to beginning construction in affected areas.

5. In the event the layout is modified, EDF shall complete a wetland determination of any previously un-surveyed areas affected by project activities, and file a report with the Commission.

6. In the event that project modifications occur that are not covered by its existing acoustic analysis, EDF shall conduct a revised acoustic analysis and file the results of that analysis with the Commission.

7. In the event that project modifications occur that are not covered by its existing

Amended Findings of Fact, Conclusions of Law and Order

Case No. PU-08-932

Page 7

7




shadow flicker analysis, EDF shall conduct a revised shadow flicker analysis and file the results with the Commission.

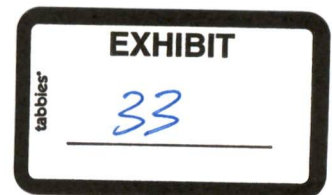
8. EDF shall locate turbines such that shadow flicker at any currently inhabited residence is less than 30 hours per year, unless otherwise agreed to by the landowner in writing.

9. EDF's executed 2017 Certification is incorporated by reference, attached to this Order and supersedes and replaces in full the prior existing Certification to Order Provisions associated with the Certificate No. 23.

10. All provisions and requirements in the Commission's June 8, 2011 Findings of Fact, Conclusions of Law and Order and May 27, 2015 Amended Findings of Fact, Conclusions of Law and Order continue to apply except where altered by this Order.

**PUBLIC SERVICE COMMISSION**

|  |  |   |
|--|--|---|
| <br>_____<br><b>Brian Kroshus</b><br>Commissioner | <br>_____<br><b>Randy Christmann</b><br>Chairman | <br>_____<br><b>Julie Fedorchak</b><br>Commissioner |
|--|--|---|



**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**EDF Renewable Development Corporation, Inc.**  
**Merricourt Wind Power Project**  
**Siting Application**

**Case No. PU-08-932**

**CERTIFICATION RELATING TO ORDER PROVISIONS**  
**WIND ENERGY CONVERSION FACILITY SITING**

I am KATHRYN L. O'HAIR, a representative of EDF Renewable Development Corporation, Inc. ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company 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 Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company 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.
3. Company understands and 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.
4. Company 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.
5. Company 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.
6. Company 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.

7. Company is aware that under North Dakota Century Code section 49-02-27 the Commission has rules for decommissioning of wind energy conversion facilities. Company agrees to comply with all decommissioning rules adopted by the Commission.

**Construction:**

8. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
9. Company understands and agrees that all cultural resource mitigation plans must be approved by the North Dakota State Historic Preservation Office prior to the start of any fieldwork and construction activity in the affected area.
10. Company understands and agrees that topsoil removal will begin when the Commission's third party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
11. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a monthly basis.
12. Company 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.
13. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
14. Company understands and 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.
15. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, tower

locations, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

16. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.
17. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
18. Company 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.
19. Company 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 are taken by Company.
20. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

**Restoration and Maintenance:**

21. Company agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion facility, 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.
22. Company 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.

23. Company 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.
24. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
25. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
26. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
27. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
28. Company understands and 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.
29. Company understands and 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.
30. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

**Communication with Landowners and PSC:**

31. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
32. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person, a tower collapse, or a catastrophic turbine failure.
33. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or

endangered species that Company becomes aware of and which were not previously reported to the Commission.

34. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility 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 3 months of the completion of the construction. Company also agrees to provide an electronic version of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
35. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.
36. Company 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.
37. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

**Modification of Energy Conversion Facility or Energy Conversion Site Plan:**

38. Before conducting any construction activities for any modification within the designated site, the Company will file the name and contact information for a key contact person for the purposes of notice and communication during the site modification application and will use the following procedures:
  - A. Before conducting any construction activities for any modification within the designated site, and such **construction activities will not affect any known exclusion or avoidance areas** within the designated site, the Company will file certification and supporting documentation:

1. Affirming that construction activities will not affect any known exclusion or avoidance areas within the designated site;
  2. Including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated site and site modification(s); and
  3. Affirming that Company will comply with the Commission's order, law and rules designating the site.
- B. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known exclusion but **may affect an avoidance area** within the designated site, the Company will file:
1. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
    - a. the designated site and the site modification;
    - b. all exclusion and avoidance areas within the portion of the designated site containing the site modification.
  2. Certification and supporting documentation affirming that construction activities will not affect any known exclusion area.
  3. All field studies performed on the portion of the designated site containing the site modification;
  4. Specific information about any mitigation measures Company will take within the modification area;
  5. Certification that each owner of real property on which the modification is to be located and any applicable governmental entity with an interest in the same modification area do not oppose the modification;
  6. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
  7. Certification that Company will comply with the Commission's order, law and rules designating the site.
39. Company acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

Dated this 11 day of September, 2017.

EDF Renewable Development Corporation, Inc.

By Kathryn L. Ortain

Its VP, Development - North

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**EDF Renewable Development Corporation, Inc.**  
**Merricourt Wind Power Project**  
**Siting Application**

**Case No. PU-08-932**

**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*), must be inventoried before cutting. The inventory must 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, must 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 must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must 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 must be preserved and replaced after construction. Shrubs must 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 must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a 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 must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must 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 must be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The maximum width of clear cuts through windbreaks, shelterbelts and all other wooded areas is 50 feet, 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 must be noted on the inventory.

#### **Replacement**

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-

noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report 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**

**Second Amended Certificate Number 23**

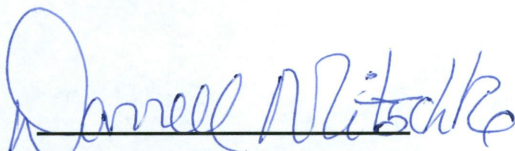
*This is to certify that the Commission has designated an energy conversion facility site for EDF Renewable Development, Inc.'s wind energy project consisting of up to approximately 150 MW of total wind turbine generating capacity and associated facilities in Dickey and McIntosh Counties of North Dakota.*


*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 Findings of Fact, Conclusions of Law and Order of the Commission in Case No. PU-08-932 dated June 8, 2011, the Amended Findings of Fact, Conclusions of Law and Order issued May 27, 2015, and the Second Amended Findings of Fact, Conclusions of Law and Order issued November 16, 2017 and is subject to the conditions and limitations noted in those orders.*

*Bismarck, North Dakota, November 16, 2017.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**