

September 22, 2010

HAND-DELIVERED

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

RECEIVED

SEP 22 2010

PUBLIC SERVICE COMMISSION

**RE: CPV Ashley Renewable Energy
Company, LLC
Case No. PU-09-370**

Dear Mr. Nitschke:

Please find enclosed herewith for filing an original and ten copies of the following documents in connection with the above-referenced matter:

1. Late Filed Exhibit 11 – Wetlands Delineation Report;
2. Late Filed Exhibit 12 – Class III Archeological Survey Report;
3. Late Filed Exhibit 13 – Class II Architectural Reconnaissance Survey Report;
and
4. Proposed Findings of Fact, Conclusions of Law and Order issuing Certificate of Site Compatibility.

Also enclosed herewith are disks containing the same in PDF format. Should you have any questions, please advise.

Sincerely,



MOLLIE M. SMITH

MS/mms

Enclosures

cc: Mr. John Hafner – (w/enc.) *Via Email*
Mr. Gener Gotiangco – (w/enc.) *Via Email*
Mr. Robert Burke – (w/enc.) *Via Email*
Mr. Sean J. Finnerty – (w/enc.) *Via Email*
Ms. Erika Roberts – (w/enc.) *Via Email*

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56 **PU-09-370** Filed: 9/22/2010 Pages: 18
Proposed Findings of Fact, Conclusions of Law and Order

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Case No. PU-09-370

**IN THE MATTER OF THE APPLICATION
OF CPV ASHLEY RENEWABLE ENERGY
COMPANY, LLC, FOR A CERTIFICATE OF
SITE COMPATIBILITY TO CONSTRUCT AN
UP TO 200.1 MW WIND FARM IN
MCINTOSH COUNTY, NORTH DAKOTA,
KNOWN AS THE ASHLEY WIND ENERGY
PROJECT**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

September ___, 2010

Appearances

Commissioners Kevin Cramer, Tony Clark, Brian P. Kalk.

Lawrence Bender, Fredrikson & Byron, P.A., 200 North 3rd Street, Suite 150, Bismarck, North Dakota 58501-3879, on behalf of the Applicant, CPV Ashley Renewable Energy Company, LLC.

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

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

Preliminary Statement

On June 24, 2009, CPV Ashley Renewable Energy Company, LLC (CPV Ashley), filed a Letter of Intent (LOI) to submit an application for a Certificate of Site Compatibility to develop a wind energy conversion facility, referred to by CPV Ashley as the Ashley Wind Energy Project, in McIntosh County, North Dakota. In its LOI, CPV Ashley requested a shortening of the prescribed one-year notice period between when the LOI is filed and when the application for a Certificate of Site Compatibility is filed.

On July 8, 2009, the Commission acknowledged the LOI, shortened the one year notice period to six months, assessed a filing fee of \$100,000 due upon the filing of the application, and docketed the matter as Case No. PU-09-370.

On November 20, 2009, CPV Ashley filed an updated LOI, in which CPV Ashley notified the Commission that it had signed a 200 megawatt (MW) Power Purchase Agreement (PPA) with the Tennessee Valley Authority (TVA), and that CPV Ashley intended to permit and develop an approximately 200 MW wind energy conversion facility, rather than the up to 487.6 MW project identified in its original LOI. CPV Ashley also provided the Commission with updated project information.

On May 14, 2010, CPV Ashley filed its Application for Certificate of Site Compatibility for the Ashley Wind Energy Project in McIntosh County, North Dakota, Case No. PU-09-370 (Application), requesting authority to construct an up to 200.1 MW wind energy conversion facility.

On June 30, 2010, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for August 23, 2010 at 11:00 A.M. CDT at the McIntosh County Court House, 112 1st St NE, Ashley, 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 impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On August 16, 2010, CPV Ashley filed the following: a map depicting the final Project layout; a map depicting turbine setbacks from residences; a revised version of Section 5.1 of CPV Ashley's Application; a 2010 Spring Avian Survey Report; an Acoustic Assessment Report; a Shadow Flicker Impact Analysis Report; a permits and approvals checklist; a letter from the United States Fish and Wildlife Service (USFWS), dated March 1, 2010; a corrected page 7 for the Whooping Crane Likelihood of Occurrence Report; and an executed Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, and accompanying Tree and Shrub Mitigation Specifications.

A public hearing on CPV Ashley's Application was held as scheduled on August 23, 2010 in Ashley, North Dakota. After the hearing, the Commission received the following late-filed exhibits: USFWS letter, filed with the Commission on August 20, 2010; Wetlands Delineation Report; Class III Archeological Survey Report; and Class II Architectural Reconnaissance Survey Report.

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. CPV Ashley is a Delaware Limited Liability Company and an direct wholly-owned subsidiary of CPV Renewable Energy Company, LLC. CPV Ashley was registered as a foreign limited liability company in the State of North Dakota effective February 15, 2008, and, as such, is authorized to do business in the State of North Dakota.

2. CPV Ashley proposes to construct and operate a wind energy conversion facility (the Ashley Wind Energy Project or Project) to be located in McIntosh County, North Dakota, approximately six miles north of the city of Ashley and four miles south of the city of Lehr.

3. CPV Ashley has executed a 200 MW PPA with the TVA, and the output of the proposed Ashley Wind Energy Project will be used to satisfy CPV Ashley's obligations under its PPA with the TVA. The proposed Project will help to meet the TVA's renewable energy needs, and is consistent with North Dakota's policy for the development of renewable energy generation resources.

4. CPV Ashley proposes to locate the Ashley Wind Energy Project within an area comprised of approximately 17,400 acres of privately-owned land in McIntosh County, North Dakota, that is subject to wind development lease agreements between landowners and CPV Ashley. The Project will have a nameplate (gross) capacity of approximately 200.1 MW, with projected average annual output between 700,000 and 840,000 megawatt hours (MWh) per year, assuming net capacity factors of between 40 and 48 percent.

5. CPV Ashley selected the proposed site for the Ashley Wind Energy Project based on a number of factors, including: the excellent wind resource, the capability of interconnecting to the electric grid without the need for construction of overhead transmission lines, landowner interest and support, compliance with the siting criteria set forth in the North Dakota Century Code and the Commission's rules and regulations and other site limitations, and economic considerations.

6. CPV Ashley is considering two turbine models: the Siemens Power Generation SWT-2.3-101 and the General Electric 2.5x1. The turbine selected will either be 2.3 MW or 2.5 MW in size, and will have a hub height of 80 to 85 meters and a rotor diameter of up to 103 meters. The turbines will have a Supervisory Control and Data Acquisition (SCADA) system, which will allow for local and remote control monitoring of all turbines, and will have lightning protection in accordance with the manufacturer's specifications. The type of foundation that will be used for the turbines will be determined by geotechnical investigations, but the most common type of foundation used is the spread footing foundation. CPV Ashley will develop a lighting and marking plan for the turbines and meteorological towers in accordance with Federal Aviation Association (FAA) requirements.

7. If the Siemens turbine model is selected, there will be up to 87 turbines used, while if the General Electric turbine model is selected, there will be up to 80 turbines used. Except for reducing the number of turbine locations utilized, the turbine locations identified in

the final Project layout submitted by CPV Ashley will remain the same regardless of which of the proposed turbine models CPV Ashley ultimately selects.

8. In addition to turbines, associated facilities that would be constructed within the Project Area include: access roads, a Project substation, an operations and maintenance (O&M) building, permanent meteorological towers, and a system of underground electrical collection lines.

9. Construction of the proposed Ashley Wind Energy Project is expected to begin as early as mid-2011 and is anticipated to be completed before the end of 2012. CPV Ashley anticipates that the Project will be fully operational by the end of 2012.

10. CPV Ashley will contract with an experienced engineering, procurement and construction (EPC) firm that has a good safety record, experience with wind energy projects, will be committed to utilizing local labor, and will ensure onsite communication with the local community. Most construction workers will be employees of the EPC firm and/or its subcontractors. During construction, CPV Ashley estimates that there will be up to 80 construction jobs created, and approximately 80 percent of those jobs are expected to be filled by individuals from North Dakota or South Dakota.

11. After construction is complete and the Project is fully operational, CPV Ashley will retain the services of and oversee an O&M staff. CPV Ashley will also retain operations personnel from the turbine supplier for the first 2-5 years of operation to perform turbine inspections and maintenance. CPV Ashley estimates that between 10 to 16 full-time jobs will be created for operation and maintenance of the Ashley Wind Energy Project.

12. The estimated life of the Project is over 25 years. In accordance with the Commission's rules, CPV Ashley will file a decommissioning plan with the Commission prior to the Project commencing operations, and decommissioning will be performed in accordance with all applicable rules and regulations. CPV Ashley has committed to removing all equipment to a depth of four feet.

13. The total cost for construction of CPV Ashley's proposed Ashley Wind Energy Project is estimated to be approximately \$440 million.

14. Section 49-22-16(2) of the North Dakota Century Code provides that no energy conversion facility site shall be designated that violates any local land use, zoning or building rules, regulations or ordinances. Neither McIntosh County, nor townships in which the Project is to be located, have enacted zoning ordinances; thus, no conditional use permits or other county or township land-use related permits or approvals are required for the Ashley Wind Energy Project.

15. Section 49-22-16(4) of the North Dakota Century Code provides that a site shall not be designated that violates the rules of any state agency, and that compliance with an agency's rules shall be presumed if the agency fails to present its position with respect to the

proposed facility at the public hearing. The federal, state and local departments, agencies and entities which were consulted and provided comment are as follows:

a. Federal Agencies – Tennessee Valley Authority; Federal Aviation Administration; United States Department of Agriculture Farm Service Agency; United States Environmental Protection Agency; United States Army Corps of Engineers Omaha District, North Dakota Regulatory Office; United States Fish and Wildlife Service, North Dakota Field Office; United States Department of Agriculture, Natural Resources Conservation Service;

b. State Agencies – North Dakota State Historical Society; North Dakota Parks and Recreation Department; North Dakota Game and Fish Department; North Dakota Office of the Attorney General; North Dakota Geological Survey; North Dakota Department of Health; North Dakota Department of Transportation; North Dakota State Water Commission; North Dakota Department of Labor; Job Service North Dakota; North Dakota Aeronautics Commission; North Dakota Department of Commerce;

c. Local Entities – McIntosh County Commissioners; the Mayors of Ashley and Lehr, North Dakota; Ashley Economic Development Coordinator; Wishek Job Development Authority; McIntosh County Wind Energy Committee, LLC; various other McIntosh County officials.

Agency consultations and comments are noted in Appendix E of the Application, as well as in the exhibits and the testimony presented at the public hearing. While comments and suggestions were provided, no objections to the proposed Ashley Wind Energy Project were raised by any state or federal agencies or any local governmental entities.

16. 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 Administrative Code, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. With the exception of prime farmland and unique farmland, an energy conversion facility shall not be sited within an Exclusion Area. With respect to prime farmland and unique farmland, the exclusion shall not apply if the Commission determines that the amount of prime farmland and unique farmland that will be removed from use during the life of the facility is of such small acreage as to be of negligible impact on agricultural productions. An energy conversion facility shall not be sited within an Avoidance Area unless the applicant shows that, under the circumstances, there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative sites. In accordance with the Commission's Section Criteria, a site shall be approved if it is demonstrated that any significant adverse effects resulting from the location, construction, and operation of the energy conversion facility will be at an acceptable minimum or that the effects will be managed and maintained at an acceptable minimum. In accordance with the Commission's Policy Criteria,

preference may be given to an applicant demonstrating certain benefits of the proposed energy conversion facility.

17. The area designated by CPV Ashley for its proposed Project, as shown on the attached map, does not include any geographical area listed as an Exclusion Area, except as follows:

a. Waterfowl Production Areas (WPAs) managed by the USFWS are present within the Project Area outer boundary, but are not located on any land that CPV Ashley has under easement for the Project. CPV Ashley has incorporated a 0.25 mile setback for turbines, the Project substation, and the O&M building from all WPAs.

b. During a Class I Cultural Resources Investigation, one previously recorded archeological site located within the Project area was identified in the State Historic Preservation Office (SHPO) files. CPV Ashley has avoided the archeological site, which consists of a series of prehistoric stone circles, in order to preserve the site's integrity.

c. Prime farmland and unique farmland are present within the Project area. There will be no permanent or temporary impacts to prime farmland. Portions of the Project will be located on unique farmland (*i.e.*, Farmland of Statewide Importance). However, Farmland of Statewide Importance has been avoided to the maximum extent practicable and impacts to Farmland of Statewide Importance are expected to affect less than 0.4 acre; thus, the proposed Project will have a negligible impact on agricultural productions.

18. The area designated by CPV Ashley for its proposed Project, as shown on the attached map, does not include any geographical area listed as an Avoidance Area, except as follows:

a. Historical resources in the project area that are not designated as exclusion areas include two cemeteries and two mapped historic structures (a school and a church). CPV Ashley has avoided these cultural features in designing its Project layout.

b. CPV Ashley conducted a Class I Cultural Resources Investigation, a Class III Archeological Survey and a Class II Architectural Reconnaissance Survey for historic, cultural, archeological, and architectural resources within the Project area. No archeological or standing structure sites listed or eligible for listing as National Registered Historic Places (NRHP) were found within the Project area, and the Class II Architectural Reconnaissance Survey Report recommended a finding of No Historic Properties Affected. No prehistoric or historic artifacts were observed during the pedestrian survey or the shovel tests conducted as part of the Class III Archeological Survey, but four new archeological sites were identified: one historic cemetery, two possible prehistoric stone circles, and one possible prehistoric stone cache. CPV Ashley has avoided the archeological sites identified. CPV Ashley will also develop a Site Protection Plan to be implemented during construction, which may include such measures as placing temporary fencing around the four archeological sites

identified during construction to prevent possible ground disturbance to the sites. CPV Ashley has also developed an Unanticipated Discoveries Plan in the event archeological resources are unexpectedly uncovered during Project construction. The Class I Cultural Resources Investigation Report, the Class III Archeological Survey Report, and the Class II Architectural Reconnaissance Survey Report, along with the Site Protection Plan and the Unanticipated Discoveries Plan developed by CPV Ashley, were submitted to the TVA, which coordinates review of the reports and plans with the SHPO.

c. Woodlands and wetlands are present in the general vicinity of the Project. The woodlands present within the Project area generally consist of shelterbelts. Impacts to woodlands are not anticipated due, in part, to CPV Ashley's use of a minimum setback of 1,400 feet from residences, near which most shelterbelts are located. A wetlands delineation was conducted for the Project in accordance with United States Army Corps of Engineers (USACE) guidelines, and 82 wetlands were delineated within the study area. Based on careful examination in the field, none of the wetlands appear to have a hydrologic connection (*i.e.*, significant nexus) to a traditional navigable water (TNW). For this reason, CPV Ashley's environmental consultant has concluded that none of the wetlands are within the jurisdiction of the USACE and, therefore, no permit from the USACE is required for permanent impacts to wetlands under Section 404 of the Clean Water Act. The Project layout has avoided wetlands to the extent practicable.

19. CPV Ashley submitted substantial evidence to demonstrate that any significant adverse effects resulting from the location, construction, and operation of the Project as they relate to the Selection Criteria set forth in Section 69-06-08-01(3) of the North Dakota Administrative Code will be at an acceptable minimum or managed and maintained at an acceptable minimum.

20. CPV Ashley 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.

21. The proposed Ashley Wind Energy Project and its associated facilities will occupy and disturb approximately 73 acres of land, or 0.4 percent of the total Project area, during the life of the Project. The Project will be located in an area that is primarily used for agricultural use, consisting of pasture and cultivated cropland (wheat, soybeans, sunflowers, and corn) with a few rural residences and farmsteads. CPV Ashley expects that construction of its proposed Ashley Wind Energy Project will be compatible with farm use and will not affect resource use of the remainder of the parcel or adjacent lands. Landowners will be able to conduct grazing and farming operations up to the turbines and between the turbines strings. CPV Ashley will continue to work closely with landowners during the development phase of the project to minimize land use disruptions from the siting of the facilities. CPV Ashley will also work with landowners to avoid impacts on drainage tiles. No impacts to irrigation are anticipated. In addition, CPV Ashley's lease payments to landowners are expected to offset any

potential financial losses from the removal of land from agricultural production and substantially increase landowner income.

22. During construction, the Project will likely result in a temporary increase in traffic on local county and township roads; however, based on the existing traffic use and the rural nature of the area, the impacts from the additional construction-related traffic are expected to be minimal. Any impacts on county roads and their restoration will be addressed in accordance with the Road Use and Maintenance Agreement between McIntosh County and CPV Ashley. Once operational, the facility will generate little traffic.

23. The Project will benefit the local economy through the construction and operations and the maintenance jobs created by the Project, as well as the state and local tax payments CPV Ashley will make. On average, the Project is expected to provide over one million dollars of tax revenue per year between the state and county via property, payroll, sales, and income taxes, of which, on average, approximately \$300,000 is expected to go to schools. Compensation paid to landowners who receive lease payments will also provide revenue to supplement income earned from agricultural operations.

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

25. All electrical equipment associated with the turbines, with the exception of pad-mounted transformers, will be contained within the solid steel enclosed tubular towers on which the turbines are mounted. Access to the towers will be restricted to a single solid steel door that will be locked when not in use. The Project substation will be fenced and locked, and will have applicable warning signs.

26. One microwave beam path was identified as crossing the Project area, and CPV Ashley has designed its Project to avoid that microwave beam path. No adverse impacts with respect to AM/FM stations, TV coverage, or Land Mobile Radio (LMR) are anticipated.

27. Stormwater drainage impacts could occur during construction of access roads, underground electrical collector lines, turbine pads, and the O&M building. CPV Ashley will prevent adverse impacts by use of erosion control measures required under a National Pollution Discharge Elimination System (NPDES) permit and associated Storm Water Pollution Prevention Plan. Construction of the Project will not have a significant adverse impact on surface water or floodplain resources.

28. Every electrical device generates both electric and magnetic fields in its vicinity, which, in combination, are referred to as electromagnetic fields (EMFs). CPV Ashley will set back wind turbines a minimum distance of 1,400 feet from all occupied residences, will bury electrical collector lines to a depth of approximately four feet, and will fence off and place warning signs around the Project substation. As a result, the EMFs will decrease to background

levels at potential receptors (*i.e.*, occupied residences) and the EMFs generated by the proposed Project are anticipated to have no impact on public health and safety.

29. Although there are no county, state or federal noise requirements specific to wind energy facilities within the State of North Dakota, CPV Ashley had an acoustic modeling analysis performed for the Project area. The acoustic modeling analysis utilized sound data for both the Siemens Power Generation and the General Electric turbine models, and evaluated impacts to receptors within 1.5 kilometers of any Project turbine based upon an 87-turbine Project layout. The analysis demonstrated that, inclusive of a number of conservative assumptions and several engineering design safety factors, the Project has been adequately designed to operate in compliance with Environmental Protection Agency (EPA) guideline limits. Likewise, operational sound generated from the Project will not approach Occupational Safety and Health Administration (OSHA) noise exposure limits, even in very close proximity to turbine locations. CPV Ashley is utilizing a minimum turbine siting setback of 1,400 feet from any residence, which minimizes the potential noise impacts on sensitive receptors (*i.e.*, occupied residences). Sound from the Project, when audible, should not be deemed excessive or unusually loud.

30. Shadow flicker impacts are not regulated in applicable state or federal law, and there is no permitting trigger with regard to hours per year of anticipated impacts to a receptor from a wind energy conversion facility. However, a general precedent has been established in the industry both abroad and in the United States that fewer than 30 hours per year of shadow flicker impacts is acceptable to receptors in terms of nuisance and is well below health hazard concerns. A Shadow Flicker Impact Analysis was conducted for the Ashley Wind Energy Project. The analysis shows that shadow flicker impacts on nearby receptors (*i.e.*, residences) within the study area are expected to be minor and well within acceptable ranges that present no concerns for nuisance or health hazards. Only one receptor would potentially exceed 30 hours per year of shadow flicker exposure, and CPV Ashley has confirmed with the landowner, who has executed a wind lease with CPV Ashley, that the receptor is an unoccupied home that has been vacant since 1999 and is no longer habitable. In the unlikely event that flicker mitigation is necessary, CPV Ashley will work with individual landowners to address issues, and the mitigation measures employed may include adding vegetative screening or installing curtains or blinds on the windows facing the turbine casting shadows.

31. Within the Project area, land is, for the most part, privately-owned, and there are no county or state recreational facilities. Federal recreational areas adjacent to the Project area include USFWS WPAs, including one WPA present as an inholding of non-leased land within the Project area boundary. The WPAs will be avoided and wind turbines, the Project substation, and the O&M building will not be placed within 0.25 miles of the WPAs. Recreational opportunities in McIntosh County include fishing, hunting, wildlife/bird observation, boating, skiing, and camping. While the wind turbines within the site area will be visible, they are not likely to cause significant adverse impact to any recreational opportunities.

32. A total of 82 wetlands were delineated within the area surveyed for the Project. Based on careful examination in the field, none of the wetlands appear to have a hydrologic connection (*i.e.*, significant nexus) to a TNW. For this reason, CPV Ashley's environmental

consultant has concluded that none of the wetlands are within the jurisdiction of the USACE and, therefore, no permit from the USACE is required for permanent impacts to wetlands under Section 404 of the Clean Water Act. Impacts to wetlands within USFWS wetland easements will either be avoided or CPV Ashley will obtain the necessary permits and approvals from the USFWS. CPV Ashley's Project layout has avoided wetlands to the extent practicable.

33. Wildlife within the Project area consists of birds, mammals, fish, reptiles, amphibians and insects, both resident and migratory, which utilize the site habitat for foraging, migratory stopover, breeding and/or shelter. CPV Ashley has conducted environmental studies of the Project area, including Spring and Fall Avian Point Count Surveys, a Whooping Crane Likelihood of Occurrence Survey, a Bat Likelihood of Occurrence Survey, and a Native Prairie Survey, to aid in micrositing of turbines, roads, and associated facilities to avoid or minimize potential impacts to wildlife and habitat. CPV Ashley is also coordinating with the North Dakota Game and Fish Department and the USFWS regarding avian monitoring and minimization of impacts on WPAs and other areas.

34. No federally-listed threatened or endangered species were identified in the Project area, and no adverse impacts to federally-listed threatened or endangered species, including the whooping crane, are anticipated. CPV Ashley has received significant input from the USFWS, and is coordinating with the TVA and the USFWS as required under Section 7 of the Endangered Species Act. While bald eagles were observed near the Project area during the Fall and Spring Avian Point Count Surveys, they are unlikely to be nesting within or near the Project area due to the lack of suitable trees in proximity to large water bodies. In the unlikely event impacts to federally-listed threatened or endangered species or bald eagles do occur, impacts will be minimized by the proposed avoidance and minimization measures CPV Ashley is developing in coordination with the TVA and the USFWS in the form of an Avian and Bat Protection Plan, an Adaptive Management Plan, and a Wildlife Response Reporting System.

35. In addition to the criteria set forth in Chapter 49-22 of the North Dakota Century Code and Section 69-06-08-01 of the North Dakota Administrative Code, CPV Ashley utilized the following criteria when micrositing for the Ashley Wind Energy Project:

a. No wind turbine, substation, or O&M building would be placed within 0.25 miles of any USFWS WPAs.

b. No wind turbine would be placed within 1,400 feet of any occupied residence.

c. No wind turbine would be placed within 1.1 times the turbine blade tip height from the edge of any road right-of-way acquired, maintained and currently being used by the state or county; existing above ground transmission lines; or adjacent property not under lease by CPV Ashley.

36. CPV Ashley's proposed Project is currently undergoing a National Environmental Protection Act (NEPA) review. The TVA, as a federal agency, has triggered a federal nexus due to its PPA with CPV Ashley. As such, the TVA is required to complete an environmental review

of the Project under NEPA prior to undertaking the federal action (*i.e.*, buying the power). The federal nexus also requires the TVA to consult with the USFWS under Section 7 of the Endangered Species Act and the SHPO under Section 106 of the National Historic Preservation Act prior to making a determination on the Project. As part of the NEPA review process, the TVA is preparing an Environmental Assessment (EA) for the proposed Project, and the Draft EA is expected to be made available for public comment in the Fall of 2010. It is anticipated that the TVA will issue a finding of no significant impact (FONSI) for the Project by the end of 2010.

37. The USFWS filed a letter with the Commission that was offered and accepted as an exhibit at the public hearing. The letter discussed the USFWS's involvement with the TVA and CPV Ashley with respect to the Federal review of the Project, identified the issues currently being discussed with CPV Ashley that would need be resolved prior to Project construction, and recommended that the Commission ask CPV Ashley to confirm its compliance with all Federal environmental laws and regulations before presenting its Project to the Commission. Per the USFWS's suggestions, CPV Ashley was asked at the public hearing to confirm its compliance with all Federal environmental laws and regulations, which it did. CPV Ashley was also asked about the risk for significant changes to the Project due to the ongoing Federal review, and CPV Ashley testified that it did not anticipate that the Federal review would result in significant changes. The Commission also requested that CPV Ashley update the Commission and supplement the record, as necessary, with respect to the Federal review process and discussions with the USFWS, which CPV Ashley agreed to do.

38. On August 13, 2010, CPV Ashley executed the Commission's Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications. The executed Certification was filed with the Commission on August 16, 2010, and is incorporated by reference into these Findings of Fact.

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 conversion facility proposed by CPV Ashley is an energy conversion facility as defined in Section 49-22-03(5) of the North Dakota Century Code.
3. The Application submitted by CPV Ashley meets the site evaluation criteria required by Chapter 49-22 of the North Dakota Century Code and Section 69-06-08-01 of the North Dakota Administrative Code. With respect to the unique farmland exclusion set forth in Section 69-06-08-01(1)(d) of the North Dakota Administrative Code, since the unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, said exclusion shall not apply.

4. The location, construction, and operation of the proposed energy conversion facility will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The proposed energy conversion facility is compatible with the environmental preservation and the efficient use of resources.

6. 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.

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

Order

The Commission orders:

1. Certificate of Site Compatibility No. _____ for an Energy Conversion Facility is issued to CPV Ashley Renewable Energy Company, LLC, for the construction, operation and maintenance of a wind energy facility known as the Ashley Wind Energy Project.

2. That the site described in the Application, located north of Ashley, North Dakota, is designated as the site for construction of the Ashley Wind Energy Project, and is as follows:

Township 131 North, Range 69 West, McIntosh County, ND
Sections 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26,
27, 28, 29, and 30

Township 131 North, Range 70 West, McIntosh County, ND
Sections 1, 2, 11, 12, 13, 14, 23, and 24

Township 132 North, Range 69 West, McIntosh County, ND
Sections 31 and 32

Township 132 North, Range 70 West, McIntosh County, ND
Sections 35 and 36

3. Within the permitted area, CPV Ashley is authorized to site and construct up to 200.1 MW of wind turbines, electrical collection and communication lines, access roads, an operation and maintenance building, a Project substation, meteorological towers, and other associated facilities identified in the Application, at the hearing, in any supplemental filings and in any late-filed exhibits.

4. The issuance of a Certificate of Site Compatibility to CPV Ashley for the Ashley Wind Energy Project is 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 CPV Ashley is responsible for compliance with this Order and conditions and criteria set forth in the applicable laws and rules.

5. CPV Ashley shall hold a preconstruction conference prior to the commencement of any construction, which must include a CPV Ashley representative, CPV Ashley's construction supervisor, and a representative of Commission Staff, to ensure that CPV Ashley fully understands the conditions set forth in this Order.

6. CPV Ashley shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the Ashley Wind Energy Project, including all city, township, and county zoning regulations.

7. CPV Ashley 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 Ashley Wind Energy Project that requires said license or permit.

8. CPV Ashley shall file with the Commission a copy of the final federal Environmental Assessment and resulting findings prior to beginning construction of the Ashley Wind Energy Project.

9. 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.

10. CPV Ashley shall maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site Compatibility, and it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.

11. CPV Ashley shall inform the Commission of its intent to start construction on the energy conversion facility prior to the commencement of construction and, once construction has started, CPV Ashley shall keep the Commission updated of construction activities on a weekly basis.

12. CPV Ashley shall construct and operate the Ashley Wind Energy Project in the manner described in CPV Ashley's Application, in any late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements.

13. CPV Ashley shall 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 CPV Ashley becomes aware of and which were not previously reported to the Commission.

14. All cultural resource mitigation plans must be submitted to the SHPO and approved prior to the start of any fieldwork and construction activity in the affected area.

15. 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 SHPO, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.

16. All underground electric line crossings of graded roads shall be bored unless the responsible governing agency specifically permits CPV Ashley to open cut the road.

17. 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 Ashley Wind Energy Project and that will accommodate their previous use, and areas used as temporary roads or working areas during construction must be restored to their original condition.

18. CPV Ashley shall construct the Ashley Wind Energy Project in compliance with the National Electrical Safety Code in effect at the time of construction of the Project.

19. 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.

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

21. CPV Ashley shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.

22. Reclamation, fertilization, and reseeding shall be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

23. CPV Ashley's obligation for reclamation and maintenance of the Ashley Wind Energy Project's tower locations, associated facilities, roadways and rights-of-way will continue throughout the life of the Project.

24. CPV Ashley shall comply with the Commission's Tree and Shrub Mitigation Specifications, attached to this Order.

25. CPV Ashley shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the Ashley Wind Energy Project.

26. CPV Ashley shall repair or replace all broken or damaged drainage tile during all phases of construction and operation of the Ashley Wind Energy Project.

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

28. CPV Ashley 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.

29. CPV Ashley 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.

30. CPV Ashley shall provide, if requested, educational material for landowners within the site boundaries about the Ashley Wind Energy Project and any restriction or danger concerning the Project.

31. CPV Ashley shall provide any necessary safety measures for traffic control or to restrict public access to the Ashley Wind Energy Project.

32. CPV Ashley shall advise the Commission of any extraordinary events which take place at the site of the Ashley Wind Energy Project, 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.

33. CPV Ashley shall implement a procedure for how complaints concerning the Ashley Wind Energy Project will be handled by CPV Ashley.

34. CPV Ashley shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the Ashley Wind Energy Project.

35. Pursuant to Section 49-02-27 of the North Dakota Century Code, the Commission has the power to adopt rules for decommissioning of wind energy conversion facilities, and CPV Ashley must comply with all decommissioning rules adopted by the Commission.

36. CPV Ashley shall provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction, and must obtain approval from the Commission or from Commission Staff prior to any changes in the Ashley Wind Energy Project's tower, associated facility, and roadway locations.

37. CPV Ashley shall provide the Commission with a copy of the design specifications for the construction of the Ashley Wind Energy Project showing the location of the energy conversion facility as built, and will provide this information within three months of the completion of the construction.

38. The authorizations granted by the Certificate of Site Compatibility for the Ashley Wind Energy Project are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

39. CPV Ashley shall inform the Commission in writing of any plans to add additional turbines to the Ashley Wind Energy Project or of any plans to modify the site plan for the Project. Any additions or modifications to the site plan for the Ashley Wind Energy Project must be approved in writing by the Commission or Commission staff, and approval may be granted after notice and opportunity for hearing.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Kevin Cramer
Chairman

Brian P. Kalk
Commissioner

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PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

**Certificate of Site Compatibility for Energy Conversion Facility
Number __**

This is to certify that the Commission has designated an energy conversion facility site for CPV Ashley Renewable Energy Company, LLC's Ashley Wind Energy Project in McIntosh County, North Dakota.

This facility may be sited in the 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-09-370 dated September __, 2010 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, September __, 2010.

ATTEST:

PUBLIC SERVICE COMMISSION

Executive Director

Commissioner