

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

Case No. PU-08-34

M-Power, LLC / Ashtabula Wind II, LLC  
Transfer of Site Certificate  
Siting Application

Case No. PU-09-221

**AFFIDAVIT OF SERVICE BY CERTIFIED AND REGULAR MAIL**

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Janet Marquart** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **14<sup>th</sup>** day of **July, 2009**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

**Findings of Fact, Conclusions of Law and Order**

and an original of

**Certificate Number 13**

The envelope was addressed as follows:

Mr. Brian Bjella, Attorney  
Crowley Fleck PLLP  
400 E Broadway, Ste 600  
PO Box 2798  
Bismarck ND 58502-2798

**Cert. No. 7008 1830 0004 1758 9113**

**Janet Marquart** further deposes and says that on the **14<sup>th</sup>** day of **July, 2009**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by certified mail, with postage fully prepaid, securely sealed, containing a photocopy of the same.

Pages: 16

PU-09-528 Filed: 7/14/2009  
Affidavit Certified Regular – Order

Public Service Commission

12

14 **PU-09-221** Filed: 7/14/2009 Pages: 16  
Affidavit Certified Regular – Order

137 **PU-08-34** Filed: 7/14/2009 Pages: 16  
Affidavit Certified Regular – Order

Mr. Lawrence Bender, Attorney  
Fredrikson & Byron PA  
200 N 3<sup>rd</sup> St, Ste 150  
PO Box 1855  
Bismarck ND 58502-1855

**Cert. No. 7008 1830 0004 1758 9120**

**Janet Marquart** further deposes and says that on the **14<sup>th</sup>** day of **July, 2009**, she deposited in the United States Mail, Bismarck, North Dakota, **three** envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Mr. Warren Enyart, Secretary  
M-Power, LLC  
602 Lincoln Ave S  
PO Box 335  
Finley ND 58230-0335

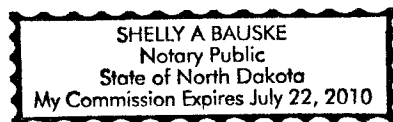
Mr. Lloyd Anderson  
Consultant for M-Power, LLC  
4838 Rocking Horse Circle  
Fargo ND 58104

Mr. Scott Scovill, Dir. of Wind Dev.  
NextEra Energy  
700 Universe Boulevard  
Juno Beach FL 33408

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me  
this **14<sup>th</sup>** day of **July, 2009**.

SEAL



*Janet Marquart*  
\_\_\_\_\_  
*Shelly A Bauske*  
\_\_\_\_\_  
Notary Public

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-08-34**

**M-Power, LLC / Ashtabula Wind II, LLC  
Transfer of Site Certificate  
Siting Application**

**Case No. PU-09-221**

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

**July 8, 2009**

**Appearances**

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

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

Brian R. Bjella, Attorney-at-Law, Crowley Fleck, PLLP, 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of the Intevenor, Ashtabula Wind II, LLC.

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

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

**Preliminary Statement**

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

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

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

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

On June 19, 2008, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing scheduling a public hearing for July 28, 2008, at 10:00 a.m. CDT at the Cooperstown Country Club, 305 Fairway Drive, Cooperstown, North Dakota.

The Commission held the public hearing on M-Power's Application as scheduled on July 28, 2008, in Cooperstown, North Dakota. At the hearing, M-Power requested a continuance. The request for a continuance was granted by the Commission and the matter was rescheduled for hearing on August 25, 2008, at 10:00 a.m. CDT at the Cooperstown Country Club, 305 Fairway Drive, Cooperstown, North Dakota.

On October 30, 2008, the Commission issued its Findings of Fact, Conclusions of Law and Order granting to M-Power the Certificate of Site Compatibility for an Energy Conversion Facility No. 9 for the construction, operation and maintenance of a wind energy facility known as the Luverne Wind Farm, Phase II. M-Power was directed to submit a final Phase I site plan to the Commission for approval prior to issuance of a Certificate of Site Compatibility for Phase I.

By letter dated April 8, 2009, M-Power submitted to the Commission its final site plan for Phase I, indicating construction of 80 turbines, with a total of 82 locations with two to be alternate locations, for a nominal rating of 120 MW of total generating capability.

On April 22, 2009, the Commission issued a Notice of Hearing, scheduling a public hearing for June 5, 2009, at 10:30 a.m. CDT in the Cooperstown City Hall, Meeting Room, 611 Ninth Street NE, Cooperstown, North Dakota 58425. 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?

By Motion for Substitution of Parties, or in the Alternative, Motion for Intervention, dated May 27, 2009, and filed with the Commission on May 27, 2009, Ashtabula Wind II, LLC (Ashtabula Wind II) reported entering into an agreement under which it would own and construct Phase I of the project. Ashtabula Wind II requested either that it be allowed to be substituted for M-Power, as the Applicant; or in the alternative, that it be granted leave to intervene. By Order Granting Intervention, dated May 30, 2009, the Temporary Administrative Law Judge granted Ashtabula Wind II leave to intervene in this matter.

On June 2, 2009, in Case No. PU-09-221, M-Power and Ashtabula Wind II filed a joint application for transfer of the anticipated Certificate of Site Compatibility for Energy Conversion Facility for Phase I of the project to Ashtabula Wind II. On June 3, 2009, the Commission issued a Notice of Opportunity for Hearing that provided until July 6, 2009 for receiving written comments or hearing requests. No response was received. The notice identified the issues to be considered as whether Ashtabula Wind II agrees and is able to comply with the terms and conditions of the certificate and whether the requested transfer is compatible with the public interest.

A public hearing on the Phase I site plan was held June 5, 2009, in Cooperstown, North Dakota. Due to large public attendance at the hearing, and at the request of members of the public, the hearing was moved to the court room of the Griggs County Courthouse and began at 11:30 a.m. CDT. Notice of the change of meeting place and time was promptly posted at Cooperstown City Hall Meeting Room.

At the hearing, the Commission requested the Applicant/Intervenor to file late-filed Exhibit T indicating whether Turbine Nos. 165, 166, 170, 171, and 172 could be relocated. Ashtabula Wind II filed Exhibit T with the Commission on June 17, 2009.

On June 22 and June 25, 2009, Ashtabula Wind II filed letters with the Commission requesting that construction crews be allowed to begin construction on Access roads for portions of Phase I of the project that are located in Steele County. On July 1, 2009, Ashtabula Wind II withdrew its request for permission to commence road work in Steele County.

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**

#### **Phase I Site Plan:**

1. M-Power's Phase I site plan contemplated in the Commission's October 30, 2008 Findings of Fact, Conclusions of Law and Order in Case No. PU-08-34 was filed April 8, 2009, and introduced at the hearing as Exhibits C through F. The site plan includes 80

primary and two alternate turbine locations within T 144 N and T 145 N, R 57 W and R 58 W in Griggs and Steele Counties of North Dakota.

2. A Class III cultural resource pedestrian survey was conducted for the Phase I site plan and submitted to the State Historic Preservation Office (SHPO). SHPO issued a concurrence letter dated June 2, 2009, indicating there are no “significant sites affected” within the project area.

3. A wetland delineation was conducted for Phase I of the Luverne Wind Farm. Field reconnaissance confirmed the presence of 144 areas which met the delineative criteria of a wetland set forth by the U.S. Army Corps of Engineers. Of these wetland areas, a total of 88 were identified as being federally or state regulated wetlands, consisting of: 20 relatively permanent waters with perennial or seasonal flow under the jurisdiction of the U.S. Army Corps of Engineers, 52 isolated wetlands held in perpetual easements by the U.S. Fish and Wildlife Service, and 16 Private Lands Open to Sportsman (PLOTS) wetlands administered by the North Dakota Game and Fish Department. All impacts to wetlands on the U.S. Fish and Wildlife Service easements on private property have either been avoided entirely or will be bored under for purposes of collection lines, resulting in no impacts. Wetlands will be avoided to the extent practicable during the construction phase of the project.

4. Turbine # 221 of M-Power’s revised Phase I site plan is proposed to be located 237 feet east of Stony Lake. Stony Lake is approximately 74 acres in size. Paragraph 32 b of the Commission’s October 30, 2008 Findings of Fact in Case No. PU-08-34 found as M-Power recommended “No wind turbine would be placed within 500 feet of any large (lacustrine) wetland complex (greater than 50 acres).” The Commission finds this lesser setback from Stony Lake is necessary to avoid turbine wake issues and to maintain adequate setback from a non-participating landowner boundary.

5. Members of the public and local land owners presented testimony at the hearing both for and against the proposed turbine locations. Generally, those opposed to certain locations were concerned about turbine noise, vibration, shadow flicker from sunlight shining on spinning blades, reduced property values and other potential adverse effects.

6. Ashtabula Wind II presented into the record Exhibit H, being the Luverne Wind Farm (South Field) Acoustic Assessment. Ashtabula Wind II has designed the final layout for the Luverne Wind Farm so that it will operate in compliance with the Environmental Protection Agency (EPA) noise guidelines. The acoustic assessment factored a minimum 1400 foot setback from any occupied residence. The average distance of homes in Phase I to the nearest turbine array is 2,488 feet, with the nearest residence to a turbine being 1,445 feet. The acoustic assessment determined that there were no residences with sound levels of concern for Phase I. The highest sound level in the project was identified as Receptor No. 26, which is a participant in the wind farm project, the location of which is in compliance with sound recommendations.

7. The acoustic assessment illustrated the worst case scenario (downwind, full rotational speed, high air density, low background and sound levels). The analysis indicates that with respect to occupied residences within or adjacent to the wind farm that the average sound levels will meet EPA guidelines. Although turbines may be periodically audible, the sound will be in compliance with acoustic design goals set by EPA guidelines, which have been developed to protect both health and human welfare. The acoustic modeling demonstrates that the wind farm will also comply with Occupational Safety and Health Administration (OSHA) safety standards at all inhabited residences considered to be noise sensitive areas.

8. The noise standards adopted by the Griggs and Steele County Boards of County Commissioners provides for levels not greater than 50 dBA at the nearest occupied residence. The Commission has also relied on a 50 dBA maximum noise level in other cases. Based upon the acoustic assessment, Ashtabula Wind II has calculated that the 50 dBA standard would be exceeded at distances of less than 190 meters (623 feet) for 1.5 MW turbines. M-Power and Ashtabula Wind II have proposed a minimum setback of 1,400 feet from occupied residences. At that distance, the 50 dBA noise standard should not be exceeded.

9. Ashtabula Wind II presented its Exhibit I, entitled "Results of Shadow Flicker Impact Analysis for the Luverne Wind Farm (South Field)." Ashtabula Wind II performed a shadow flicker impact study to determine potential impacts on occupied residences located in or near the project. Shadows cast by moving blades were assessed for all wind turbines located within 1.5 kilometers of each occupied residence (receptor). The analysis was based assuming worst case conditions for shadow flicker (full sunlight and blades perpendicular to incoming sunlight) so as to conservatively estimate the potential amount of shadow impact hours for a year. The generally acceptable level for allowable shadow flicker is 30-40 hours per year. The results of the Shadow Flicker Impact Analysis indicate there are no occupied residences of nonparticipants in the project that will exceed a potential exposure to shadow flicker in excess of 23 hours per year.

10. Exhibit Q received at the hearing indicates land owner objections to the proposed location for Turbine Nos. 165 and 166 as being too close to a rural bed and breakfast business being operated from a local residence. Turbine No. 165 is proposed at a distance of 2,274.5 feet and Turbine No. 166 is proposed at a distance of approximately 2,820 feet from the business.

11. Exhibits K, L, and O received at the hearing indicate objections to the proposed location for Turbine Nos. 170, 171 and 172 as being too close to a rural dog sled manufacturing business being operated at a local residence. These turbines are proposed to be located within 2,074, 1,908 and 1,952 feet of the rural residence/business, respectively.

12. Ashtabula Wind II submitted late-filed Exhibit T stating that Turbine Nos. 165, 166, 170, 171 and 172 have already been optimally located to have minimal impact on

occupied structures while maximizing the efficiency of the turbine array. Ashtabula Wind II explained that moving these turbines further east and away from the occupied residences would cause overlap of turbine wake such that other turbines would also have to be moved to maximize efficiency of the array and avoid harm to other turbines.

13. North Dakota Administrative Code subsection 69-06-08-01(3)(C)(3) provides that an energy conversion facility site shall be approved in an area only when it is demonstrated to the Commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to rural residences and businesses will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

14. The applicant has not demonstrated that significant adverse effects resulting from Turbine No. 165 being located at a distance of 2,274 feet from the rural bed and breakfast business, would be at an acceptable minimum.

15. The applicant has demonstrated that significant adverse effects resulting from Turbine Nos. 166, 170, 171 and 172 will be at an acceptable minimum.

16. The Phase I Site Plan should be approved with the exception of the location proposed for Turbine No. 165, which should not be approved.

#### Certificate Transfer:

17. On May 22, 2009, Ashtabula Wind II entered into a Purchase and Sale Agreement with M-Power to purchase Phase I, also known as the South Field. The closing of the transaction had not occurred as of the date of the hearing.

18. By Joint Application, M-Power and Ashtabula Wind II requested that the Certificate of Site Compatibility contemplated to be issued by the Commission to M-Power for Phase I be assigned to Ashtabula Wind II. Pursuant thereto, the Commission issued a Notice of Opportunity for Hearing dated June 3, 2009, in Case No. PU-09-221. No response was received.

19. Ashtabula Wind II agrees and is able to comply with the terms and conditions of the certificate.

20. The requested certificate transfer is compatible with the public interest.

21. The certificate transfer application should be approved and it will be administratively convenient to carry out the transfer by issuing a site certificate directly to Ashtabula Wind II.

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

## **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The energy conversion facility proposed M-Power is an energy conversion facility as defined in North Dakota Century Code § 49-22-03(11).
3. The application submitted by M-Power meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.
4. The location, construction, and operation of the proposed energy conversion facility will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.
6. The proposed energy conversion facility will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
7. The Commission has jurisdiction to ensure compliance with National Electric Safety Code standards in the construction and operation of the proposed energy conversion facility.
8. The proposed project is of such design, location and purpose that it will produce minimal adverse effects

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

## **Order**

The Commission orders:

1. Certificate of Site Compatibility for an Energy Conversion Facility No. 13 is issued to Ashtabula Wind II for the construction, operation, and maintenance of a wind energy facility known as Phase I of the Luverne Wind Farm a/k/a Ashtabula Wind II Energy Center.
2. The site as designated in the application is located near the city of Luverne, North Dakota, and is designated as the site for construction of the energy conversion facility.
3. Within Phase I of the permitted area, Ashtabula Wind II is authorized to site and construct up to 120 MW of wind turbines in 79 proposed and two alternate locations,

along with electric collection and communication lines, access roads and other associated facilities as identified in the application.

4. Proposed Turbine Location No. 165 is not approved.
5. Ashtabula Wind II shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project, including all city, township, and county zoning regulations.
6. Ashtabula Wind II shall obtain all other necessary approvals and permits and provide copies to the Commission prior to any construction activity associated with the energy conversion facility that requires said concurrence, license or permit.
7. Ashtabula Wind II shall conduct a pre-construction conference prior to the commencement of any construction, and must include a Ashtabula Wind II representative, its construction supervisor, and a representative of the Commission staff to ensure that Ashtabula Wind II fully understands the conditions set forth in this Order.
8. Ashtabula Wind II shall inform the Commission of its intent to start construction on the energy conversion facility prior to the commencement of construction, and while construction is underway, Ashtabula Wind II shall keep the Commission updated of construction activities on a weekly basis.
9. Ashtabula Wind II shall construct and operate the energy conversion facility in the manner described in this application, at the hearing, in late-filed exhibits, and in accordance with all applicable safety requirements.
10. Ashtabula Wind II shall construct the energy conversion facility in compliance with the National Electric Safety Code.
11. Ashtabula Wind II shall report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or a bald or golden eagle that Ashtabula Wind II becomes aware of and were not previously reported to the Commission.
12. If any cultural resources, paleontological resources, archeological site, historical resource, or grave site is discovered during construction of the facility, earth disturbing activities in the immediate vicinity of this discovery must be halted. The resource must be marked, preserved, and protected from further disturbance until a professional examination can be made in consultation with the North Dakota SHPO. A report of such examination must be filed with the Commission, and clearance to proceed must be given by the SHPO and the Commission.
13. All pre-existing township and county roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition.

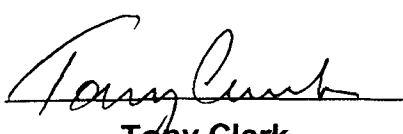
14. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.
15. Reclamation, fertilization, and reseeding will be completed by Ashtabula Wind II according to the Natural Resource Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
16. Ashtabula Wind II's obligations for reclamation and maintenance of the site shall continue throughout the life of the energy conversion facility.
17. When the energy conversion facility is retired, structures and other facilities must be removed in accordance with applicable rules and the areas restored to as near as original condition as is practicable.
18. Ashtabula Wind II shall comply with the Commission's Tree and Shrub Mitigation Specifications attached to this Order.
19. Ashtabula Wind II shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
20. Ashtabula Wind II shall repair or replace all drainage tile, broken or damaged, during all phases of construction and operation of the proposed energy conversion facility.
21. Staging areas or equipment must not be located on cultivated land unless otherwise negotiated with landowners.
22. Ashtabula Wind II 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.
23. Ashtabula Wind II 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.
24. Ashtabula Wind II shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility, and any restriction of possible danger concerning the proposed energy conversion facility.
25. Ashtabula Wind II shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

26. Ashtabula Wind II shall advise the Commission of any extraordinary events that take place at the site of the energy conversion facility, such as tower collapse, extensive turbine failure, injured worker or private individual, mortality events of any threatened or endangered species, or the discovery of a large number of dead birds or bats on the site within five business days of such event.
27. Ashtabula Wind II shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Ashtabula Wind II.
28. All underground electric line crossing of graded roads must be bored unless the responsible governing agency permits Ashtabula Wind II to open cut the road.
29. Where available, at least 12 inches of topsoil over and along open cut areas, roadways, tower locations, and locations of associated facilities must be stripped and segregated from the subsoil and be replaced only after the subsoil is replaced.
30. Ashtabula Wind II shall work with landowners and residents in the area to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
31. Ashtabula Wind II shall provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction, and shall obtain approval from the Commission or from Commission staff prior to any changes in those surveyed locations.
32. Ashtabula wind shall 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.
33. Ashtabula Wind II shall provide the Commission with as-built engineering design drawings and an electronic version of the as-built drawings that can be imported into ESRI GIS mapping software within six months after construction of the energy conversion facility is complete.
34. 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 each Certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
35. Ashtabula Wind II shall maintain records that will demonstrate that it has complied with the requirements of this Order and each Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.

36. When the facility is at the end of its useful life Ashtabula Wind II shall remove turbine structures and decommission the project area in accordance with all decommissioning rules adopted by the Commission and as delineated under North Dakota Century Code § 49-02-27.

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

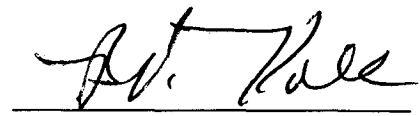
**PUBLIC SERVICE COMMISSION**



**Tony Clark  
Commissioner**



**Kevin Cramer  
President**



**Brian P. Kalk  
Commissioner**

**STATE OF NORTH DAKOTA**  
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**Tree and Shrub Mitigation Specifications**

**Inventory**

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

### **Clearing for Construction**

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.
8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the Commission.
9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

### **Replacement**

10. Prior to replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the Commission for approval.
11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.
12. Trees and shrubs shall be replaced by the same species or similar species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.
13. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing those replacement trees or shrubs to be planted at alternative locations.
14. At the conclusion of the project, documentation identifying the actual number, variety, type, location, and date of the replacement plantings shall be filed with the Commission.
15. Tree and shrub replacements shall be inspected once a year for three years, on about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the Commission documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the Commission may order additional planting(s).

**PUBLIC SERVICE COMMISSION**

**STATE OF NORTH DAKOTA**

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

**Certificate Number 13**

*This is to certify that the Commission has designated an energy conversion facility site for Ashtabula Wind II, LLC, for Phase I of the Luverne Wind Farm consisting of up to 80 1.5 MW wind turbine generators and associated facilities in Griggs and Steele 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 Finding of Fact, Conclusion of Law and Order of the Commission in Case Nos. PU-08-34 and PU-09-221 dated July 8, 2009, and is subject to the conditions and limitations noted in that order.*

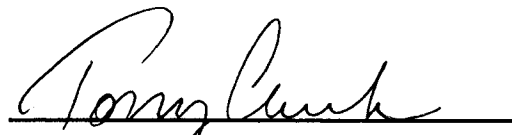
*Bismarck, North Dakota, July 8, 2009.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**