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In re: Bear Paw Energy, LLC
Gas Processing Plants – Williams County
Siting Application
Case No.: PU-10-666
OAH No.: 20110080

Dear Mr. Morrison:

Enclosed please find the Certification and attached Tree and Shrub Mitigation in the above referenced matter. Please provide me with the certification once it is executed. You may also provide the original certification to me at the hearing in this matter if you prefer. Thank you for your attention to this matter. Please do not hesitate to contact me if you wish to discuss this matter further.

Respectfully,



MITCHELL D. ARMSTRONG
Special Assistant Attorney General for
Public Service Commission

Sheldon A. Smith*
Randall J. Bakke***
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jah
enclosures
cc: Patrick Fahn (w/ enc.)

Morrison.1

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RECEIVED

March 28, 2011

MAR 29 2011

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Bear Paw Energy, LLC
Gas Processing Plants – Williams County
Siting Application

Case No. PU-10-666

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

I am _____, a representative of Bear Paw Energy, LLC (Bear Paw) with authority to bind Bear Paw to requirements to be set forth by the Commission in its Order and I certify the following:

1. Bear Paw 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 Bear Paw shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Bear Paw agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Bear Paw representative, its construction supervisor, and a representative of Commission Staff, to ensure that Bear Paw fully understands the conditions set forth in the Commission's order.
3. Bear Paw agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.
4. Bear Paw 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.
5. Bear Paw agrees to inform the Commission of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Bear Paw shall keep the Commission updated of construction activities on a weekly basis.
6. Bear Paw 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.

7. Bear Paw 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.
8. Bear Paw agrees to construct and operate the energy conversion facility in the manner described in Bear Paw's application, in any late filed exhibits and supplemental materials, and in accordance with all applicable safety requirements.
9. Bear Paw agrees to report promptly to the Commission the presence in the permit area of any critical habitat of threatened species, endangered species, bald eagles, or golden eagles that Bear Paw becomes aware of and which were not previously reported to the Commission.
10. Bear Paw understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
11. Bear Paw understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission, and clearance to proceed is given by the Commission.
12. Bear Paw understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Bear Paw to open cut the road.
13. Bear Paw understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
14. Bear Paw understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.

15. During construction, at least 12 inches of topsoil, where available (or topsoil to the depth of cultivation, whichever is greater), over and along areas where facilities will be placed must be stripped and segregated from subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must not be placed within the footprint of the facilities, and must be placed over areas containing topsoil.
16. Bear Paw 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.
17. Bear Paw understands and agrees that its obligation for reclamation and maintenance of energy conversion facility tower locations, associated facilities, roadways and rights-of-way will continue throughout the life of the energy conversion facility.
18. Bear Paw agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
19. Bear Paw understands and agrees that it shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
20. Bear Paw understands and agrees that it shall repair or replace all broken or damaged drainage tile during all phases of construction and operation of the proposed energy conversion facility.
21. Bear Paw understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Bear Paw unless otherwise negotiated with landowners.
22. Bear Paw 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.
23. Bear Paw agrees that it shall, as soon as practicable upon the completion of the construction of each 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.

24. Bear Paw understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
25. Bear Paw understands and agrees that it shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person, the death of any threatened or endangered species, within five business days of such event.
26. Bear Paw understands and agrees that it shall advise the Commission of the discovery of a large number of dead birds or bats on the site within five business days of such event.
27. Bear Paw understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Bear Paw.
28. Upon request, Bear Paw agrees to provide the Commission with engineering design drawings showing surveyed structure prior to construction.
29. Bear Paw understands and agrees that it shall inform the Commission in writing of any modifications to the energy conversion facility, or of any plans to modify the site plan for the energy conversion facility. Bear Paw understands and agrees to obtain written approval from the Commission prior to any additions or modifications to the site plan for the energy conversion facility, associated facility, and roadway locations. Approval may be granted after notice and opportunity for hearing.
30. Bear Paw agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission in this proceeding, and will provide this information within three months after the Certificate of Site Compatibility is issued by the Commission. Bear Paw also agrees to provide, within three months after the Certificate of Site Compatibility is issued by the Commission, an electronic version of the approved site that can be imported into ESRI GIS mapping software. 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.
31. Bear Paw agrees to provide the Commission with both an electronic and a paper copy of the design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within three months of the completion of the construction. Bear Paw also agrees to provide an electronic version of the as-built facility design

specifications 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.

32. Bear Paw 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.
33. Bear Paw 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.
34. Bear Paw understands and agrees that in the event Bear Paw desires to construct, within any site granted by a Certificate of Site Compatibility in this proceeding, a new energy conversion facility that was not requested in Bear Paw's application in this proceeding, Bear Paw shall apply for a Certificate of Site Compatibility for the new facility.

Dated this ____ day of _____, 2011.

BEAR PAW ENERGY, LLC

By _____

Its _____

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Bear Paw Energy, LLC
Gas Processing Plants – Williams County
Siting Application

Case No. PU-10-666

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, except in the case of invasive species or noxious weeds, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.
13. Landowners shall be given the option of having replacement trees or shrubs planted off the right-of-way on the landowner's property or waiving that requirement in writing and allowing those replacement trees or shrubs to be planted at alternative locations.
14. At the conclusion of the project, documentation identifying the actual number, variety, type, location, and date of the replacement plantings shall be filed with the Commission.
15. Tree and shrub replacements shall be inspected once a year for three years, on or 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).