

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Meadowlark Wind I LLC
New Frontier Wind Project – McHenry County
Siting Application

Case No. PU-11-69

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

April 25, 2012

Appearances

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

Mollie M. Smith, Fredrikson & Byron, P.A., 200 North 3rd Street, Suite 150, Bismarck, North Dakota 58501-3879, on behalf of the Applicant, Meadowlark Wind I LLC.

Mitchell D. Armstrong, Special Assistant Attorney General, Legal Counsel for the North Dakota Public Service Commission.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

Preliminary Statement

On February 22, 2011, Meadowlark Wind I LLC (Meadowlark) 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 Meadowlark as the New Frontier Wind Project (Project), in McHenry County, North Dakota. In its LOI, Meadowlark 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 March 9, 2011, the Commission acknowledged the LOI, shortened the one year notice period to three months, and assessed a filing fee of \$90,000 due upon the filing of the application.

On August 22, 2011, Meadowlark filed its Application for Certificate of Site Compatibility for the New Frontier Wind Project in McHenry County, North Dakota, Case No. PU-11-69 (Application), requesting authority to construct an up to 102 MW gross wind energy conversion facility.

On October 12, 2011, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for December 15, 2011 at 10:30 a.m. at the Verendrye Electric Cooperative Headquarters, 615 Highway 52, Velva, 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 December 7, 2011, Meadowlark filed a number of proposed hearing exhibits, including a map of the final Project layout and a map of the turbine setbacks from residences.

On December 15, 2011, the public hearing was held as scheduled.

On March 5, 2012, Meadowlark filed with the Commission late-filed Exhibit 6a (e-mail correspondence with the United States Air Force regarding Project review), and late-filed Exhibit 9a (an Addendum Report containing results from the Class III inventory of previously unsurveyed portions of the Project area and the Class II historic structure survey, and a February 22, 2012 letter from the North Dakota State Historical Society, State Historic Preservation Office (SHPO)).

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. Meadowlark is a Delaware limited liability company headquartered in Portland, Oregon.
2. Meadowlark has been authorized to do business in the State of North Dakota since February 11, 2011, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State on February 22, 2011.

3. Meadowlark proposes to construct and operate a wind energy conversion facility known as the New Frontier Wind Project to be located within an area comprised of approximately 11,352 acres of privately-owned land in McHenry County, North Dakota, just north of Ruso, North Dakota.

4. Meadowlark selected the proposed site for the New Frontier Wind Project based on a number of factors, including: the wind resource, landowner interest and support, suitable transmission interconnection capability, avoidance of environmental issues, compliance with the siting criteria set forth in the North Dakota Century Code, construction and other site-specific limitations, and economic considerations.

5. 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 – Federal Aviation Administration (FAA); United States Army Corps of Engineers Omaha District, North Dakota Regulatory Office (USACE); United States Fish and Wildlife Service, North Dakota Field Office (USFWS); United States Air Force (USAF);
- b. State – SHPO; North Dakota Parks and Recreation Department; North Dakota Game and Fish Department; North Dakota Department of Health; North Dakota Department of Transportation; North Dakota State Water Commission; Job Service North Dakota; North Dakota Aeronautics Commission; North Dakota Department of Commerce;
- c. Local – McHenry County; Bjornson Township; Brown Township.

6. 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 Project were raised by any state or federal agencies or any local governmental entities.

7. 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. At the hearing, Meadowlark testified that it is in the process of obtaining a conditional use permit and a building permit for the Project from McHenry County.

Project Design

8. Meadowlark states that the Project will have a nameplate (gross) capacity of approximately 102 MW, with an average annual output of up to 484,000 megawatt hours (MWh) per year, assuming a net capacity factor of approximately 54 percent.

9. Meadowlark is considering the following six turbine models or a turbine model similar to these turbine models: the GE 1.6-82.5; the Vestas V90-1.8; the Gamesa G90 2.0; the Gamesa G97 2.0; the Siemens SWT-2.3-101; and the Siemens SWT-2.3-113. The turbine selected will be between 1.6 and 2.3 MW in size, and will have a hub height of between 78 and 80 meters and a rotor diameter of up to 113 meters.

10. If the GE turbine model is selected there will be up to 63 turbines used, if the Vestas turbine model is selected there will be up to 56 turbines used, if the Gamesa turbine model is selected there will be up to 49 turbines used, and if the Siemens turbine model is selected there will be up to 44 turbines used. Except for reducing the number of turbine locations utilized, the turbine locations identified in the final Project layout submitted by Meadowlark will remain the same regardless of which of the proposed turbine models Meadowlark ultimately selects.

11. 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 surveys, turbine tower load specifications, and cost considerations. Meadowlark will develop a lighting and marking plan for the turbines and meteorological towers in accordance with FAA requirements.

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

13. Meadowlark will construct and operate the Project in compliance with the National Electric Safety Code.

14. Meadowlark anticipates construction of the proposed Project may begin as soon as the second quarter of 2012 or in 2013 depending on the status of federal production tax credits and the market for the electricity to be generated. Meadowlark does not currently have a customer to purchase the power produced from the New Frontier Wind Project.

15. The estimated life of the Project is over 25 years. In accordance with the Commission's rules, Meadowlark 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.

16. The total cost for construction of Meadowlark's proposed New Frontier Wind Project is estimated to be approximately \$200 million.

Siting Criteria

17. North Dakota Administrative Code Chapter 69-06-08 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 North Dakota Administrative Code Section 69-06-08-01 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. The exception for prime and unique farmland is that if the Commission finds the prime farmland and 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 production, then such exclusion shall not apply. An energy conversion facility must 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.

18. Prime and unique farmland is present within the Project area. However, prime and unique farmlands have been avoided to the maximum extent practicable and impacts are expected to affect less than one (1) acre; thus, the proposed Project will have a negligible impact on agricultural production.

19. The proposed Project and its associated facilities will occupy and disturb up to approximately 65 acres of land, or approximately 0.5 percent of the total Project area, during the life of the Project. Meadowlark 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. No impacts to irrigation or the quality of the agricultural land are anticipated.

20. Meadowlark submitted 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.

21. Meadowlark submitted 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.

Cultural Resources

22. Meadowlark conducted a Class I literature search, a Class II historic structure survey, and a Class III cultural resource inventory within the Project area. Meadowlark identified three cultural resource sites within the Project area that have not been evaluated for National Register of Historic Places (NRHP) eligibility, and Meadowlark's Project layout avoids these three sites.

23. By letter dated February 22, 2012, the SHPO concurred with the determination that no historic properties or significant sites will be affected by the Project so long as the Project avoids the three identified unevaluated cultural resource sites present within the Project area.

Wetlands, Woodlands, and Wildlife

24. The woodlands present in the Project area generally consist of shelterbelts. Turbine locations will avoid woodlands, and less than one acre of woodlands will be impacted by construction of access roads and installation of underground cables.

25. A wetland delineation was conducted for the Project and the results were provided in the Wetland Delineation Report. The Project layout has avoided wetlands to the extent practicable. Meadowlark will obtain any permits required from the USACE.

26. Meadowlark has conducted environmental studies of the Project area, including a Whooping Crane Habitat Review and a Raptor Nest and Lek Survey. No adverse impacts to federally-listed threatened or endangered species are anticipated. Meadowlark has developed an Avian and Bat Protection Plan that identifies measures Meadowlark will take to avoid impacts to avian and bat species.

Mitigative Measures

27. Meadowlark has agreed to a number of steps to mitigate any potential Project impacts, as indicated by the December 8, 2011 Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is attached hereto.

28. Meadowlark has taken measures to avoid impacts with USAF facilities and operations.

29. No wind turbine will be placed within 1,400 feet of any occupied residence, measured from the center of the base of the turbine tower to the closest part of the residence.

30. No wind turbine will be placed within 1.1 times the turbine blade tip height from the edge of any improved road right-of-way maintained and currently being used by the state, county, or township; existing above ground distribution or transmission lines; or adjacent property not under lease by Meadowlark.

31. Per McHenry County zoning regulations, the wind turbines, substation and Project O&M building will be at least 150 feet away from all improved section lines.

32. An acoustic modeling analysis with conservative assumptions (full rotational speed, flat terrain, includes alternate turbines) was performed for the Project. The results of the acoustic modeling were compared to the US Environmental Protection Agency environmental noise guideline of 55 dBA. The expected operational sound levels at nearby residences will vary from less than 32.6 dBA to 48.5 dBA. The highest expected sound level for a non-participating residence is 42.1 dBA.

33. A shadow flicker analysis was conducted for the Project using a "worst case" scenario. The analysis shows that most residences in the Project area are anticipated to have less than 30 hours per year of shadow flicker. Three residences owned by participating landowners may see shadow flicker levels of over 30 hours a year; however, Meadowlark testified that it has communicated this information to the landowners, and no concerns were raised. In the event that flicker mitigation is necessary, Meadowlark 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.

34. Meadowlark will utilize best management practices (BMPs) to minimize impacts on ground and surface water, and to prevent soil erosion. Meadowlark will implement the erosion control measures required under the National Pollution Discharge Elimination System (NPDES) permit and the associated Storm Water Pollution Prevention Plan. Construction of the Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils.

35. 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.

36. Meadowlark will participate in the North Dakota One-Call Excavation Notice System.

37. Meadowlark will coordinate with local authorities and first responders regarding emergency response measures as part of the Project commissioning activities.

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 Meadowlark is an energy conversion facility as defined in North Dakota Century Code Section 49-22-03(5).

3. The Application submitted by Meadowlark 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 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.

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.

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

Order

The Commission orders:

1. Certificate of Site Compatibility for an Energy Conversion Facility No. 29 is issued to Meadowlark Wind I LLC for the construction, operation and maintenance of a wind energy facility known as the New Frontier Wind Project.

2. That the site described in the Application, located just north of Ruso, North Dakota, is designated as the site for construction of the New Frontier Wind Project.

3. Within the permitted area, Meadowlark is authorized to site and construct up to 102 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. That the December 8, 2011 Certification Relating to Order Provisions – Transmission Facility Siting be incorporated by reference and attached to the Order issued by the Commission.

PUBLIC SERVICE COMMISSION



Kevin Cramer
Commissioner



Tony Clark
Chairman



Brian P. Kalk
Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility Number 29

This is to certify that the Commission has designated an energy conversion facility site for Meadowlark Wind I, LLC's New Frontier Wind Project of up to 102 MW of wind turbine generators and associated facilities in McHenry County, 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 No. PU-11-69 dated April 25, 2012 and is subject to the conditions and limitations noted in the order.

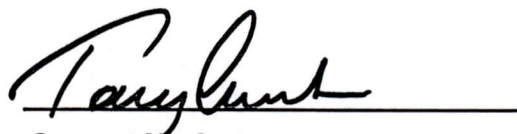
Bismarck, North Dakota, April 25, 2012.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Meadowlark Wind I LLC
New Frontier Wind Energy Project—McHenry County
Siting Application**

Case No. PU-11-69

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

I am Christopher Taylor, a representative of Meadowlark Wind I LLC ("Meadowlark") with authority to bind Meadowlark to requirements to be set forth by the Commission in its Order and I certify the following:

1. Meadowlark 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 Meadowlark shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Meadowlark agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Meadowlark representative, its construction supervisor, and a representative of Commission Staff, to ensure that Meadowlark fully understands the conditions set forth in the Commission's order.
3. Meadowlark 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. Meadowlark 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. Meadowlark agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Meadowlark shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a weekly basis.
6. Meadowlark 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. Meadowlark 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. Meadowlark agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
9. Meadowlark agrees to construct and operate the energy conversion facility in the manner described in Meadowlark's application, in any late filed exhibits, and supplemental materials (Application). To the extent there are any conflicts or inconsistencies between Meadowlark's Application and the provisions in this Certification Relating to Order Provisions, the Certification provisions control.
10. Meadowlark 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 Meadowlark becomes aware of and which were not previously reported to the Commission.
11. Meadowlark 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.
12. Meadowlark 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.
13. Meadowlark understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Meadowlark to open cut the road.
14. Meadowlark 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.

15. Meadowlark understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures approved by the Commission are taken.
16. Meadowlark understands and agrees that where available, at least 12 inches of topsoil over and along trench areas, roadways, tower locations, and locations of associated facilities shall be stripped and shall be segregated from the subsoil and be replaced only after the subsoil is replaced.
17. Meadowlark understands and agrees that it shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
18. Meadowlark understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
19. Meadowlark understands and agrees that its obligation for reclamation and maintenance of energy conversion facility tower locations, associated facilities, roadways and rights-of-way will continue throughout the life of the energy conversion facility.
20. Meadowlark is aware that North Dakota law requires that all companies that own or operate electric generation of any size for the primary purpose of resale must comply with the standards of the National Electrical Safety Code in effect at the time of construction of the generation facility, and agrees to comply with that requirement.
21. Meadowlark agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
22. Meadowlark 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.
23. Meadowlark understands and agrees that it shall repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
24. Meadowlark 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.

25. Meadowlark understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Meadowlark unless otherwise negotiated with landowners.
26. Meadowlark 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.
27. Meadowlark agrees that it shall, as soon as practicable upon the completion of the construction of each wind turbine, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
28. Meadowlark agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.
29. Meadowlark understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
30. Meadowlark 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, a tower collapse, or a catastrophic turbine failure, within five business days of such event.
31. Meadowlark 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.
32. Meadowlark understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Meadowlark.
33. Meadowlark agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
34. Meadowlark understands and agrees that it shall inform the Commission in writing of any plans to modify the energy conversion facility, or of any plans to modify the site plan for the energy conversion facility. Meadowlark understands and agrees to obtain written approval from the Commission prior to any modifications to the site

plan or the energy conversion facility, associated facilities, and roadway locations. Approval may be granted after notice and opportunity for hearing.

35. Meadowlark 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 3 months of the completion of the construction. Meadowlark 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.
36. Meadowlark is aware that under North Dakota Century Code section 49-02-27 the Commission has rules for decommissioning of wind energy conversion facilities. Meadowlark agrees to comply with all decommissioning rules adopted by the Commission.
37. Meadowlark 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.
38. Meadowlark understands and agrees that in the event Meadowlark desires to construct, within any site granted by a Certificate of Site Compatibility in this proceeding, an energy conversion facility that was not requested in Meadowlark's application in this proceeding, Meadowlark shall apply for a Certificate of Site Compatibility for the facility.
39. Meadowlark shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Meadowlark shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined and clearance to proceed has been given by the Commission.
40. The certificate of site compatibility is subject to suspension or revocation and may, after hearing, be suspended or revoked for failure to comply with the Commission's order, requirements of the One-Call Excavation Notice System under North Dakota

Century Code Chapter 49-23, the conditions and criteria of the certificate or permit or subsequent modification, or failure to comply with applicable statutes, or rules, regulations, standards, and permits of other state or federal agencies.

Dated this 8th day of December, 2011.

Meadowlark Wind I LLC

By: Element Power US, LLC

By _____


Chris Taylor

Its **Chief Development Officer** _____

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Meadowlark Wind I, LLC
New Frontier Wind Energy Project—McHenry County
Siting Application**

Case No. PU-11-69

Tree and Shrub Mitigation Specifications

Inventory

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

Clearing for Construction

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

Replacement

10. Prior to tree and shrub replacement, documentation identifying the number and variety of trees and shrubs removed, as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings, must be filed with the Commission for approval.
11. Two 2-year-old saplings must be planted for every one tree removed. Two shrubs (stem cuttings) must be planted for every one shrub removed.
12. Except in the case of invasive or noxious species, trees and shrubs must be replaced by the same species or similar species, suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service. Invasive or noxious species must be replaced by similar non-invasive or non-noxious species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.
13. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
14. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
15. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).