

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

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Geralyn R. Schmaltz** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **11th day of May, 2017**, she deposited in the United States Mail, at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing photocopy of:

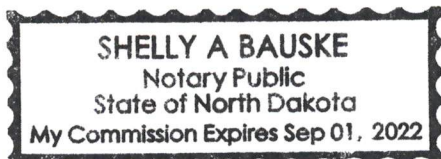
- **Order on Continuing Suitability**

The envelope was addressed as follows:

Mollie Smith  
Fredrikson & Byron, P. A.  
200 South Sixth Street Suite 4000  
Minneapolis, MN 55402-1425  
**Cert. No. 7016 1970 0001 1484 4146**

The addresses shown are the respective addressee's last reasonably ascertainable mailing address.

Subscribed and sworn to before me  
this **11th day of May, 2017**.

  
Notary Public

SEAL

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

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

**Case No. PU-11-69**

**ORDER OF CONTINUING SUITABILITY**

**May 10, 2017**

**Preliminary Statement**

On April 25, 2012, the North Dakota Public Service Commission (Commission) issued Certificate of Site Compatibility No. 29 to Meadowlark Wind I LLC (Meadowlark) for the New Frontier Wind Project (Project), in McHenry County, North Dakota.

On November 22, 2016, Meadowlark filed with the Commission a Certification of Continuing Suitability with supporting documentation (Certification), certifying that the site designated for the Project continues to meet the conditions upon which Certificate of Site Compatibility No. 29 was issued.

On December 14, 2016, the Commission issued a Notice of Opportunity for Hearing (Notice), which provided until January 31, 2017 for receiving written comments or hearing requests. No requests for hearing were received. The Notice identified the issues to be considered in this matter are whether the site continues to meet the evaluation requirements and conditions under which Certificate of Site Compatibility Number 29 was issued and if so then during what time period should construction be authorized to begin.

The Commission held an informal hearing at 1:30 pm on February 7, 2017 CST in the Commission Hearing Room, State Capitol, 12th Floor, Bismarck, North Dakota 58505.

Having considered this matter, the Commission finds the site designated in Certificate of Site Compatibility No. 29 for the New Frontier Wind Project continues to meet the conditions upon which the Certificate was issued and the evaluation requirements of Chapter 49-22 of the North Dakota Century Code and Article 69-06 of the North Dakota Administrative Code.

Therefore, the Commission makes the following:

## Order

The Commission orders:

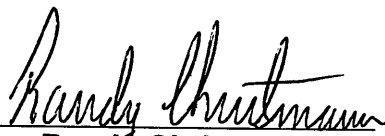
1. Meadowlark Wind I LLC is authorized to begin construction of the New Frontier Wind Project pursuant to Certificate of Site Compatibility No. 29 as early as the Third Quarter 2017 and no later than the Second Quarter 2020.
2. The site designated under Certificate of Site Compatibility No. 29 is modified to correspond to the updated Figure 1 (Docket Entry #88) presented by Meadowlark at the February 7, 2017 informal hearing.
3. Within the designated site, Meadowlark is authorized to site, construct, operate, and maintain wind turbines and associated equipment, electrical collection and communication lines, access roads, an operations and maintenance building, a Project substation, meteorological towers, and any other associated facilities identified in the Certification and documents referenced therein, at the informal hearing, and in any supplemental filings.
4. Meadowlark shall comply with the following requirements:
  - a. Meadowlark shall construct no more than 49 turbines and no more than 102 MW within the designated site.
  - b. Meadowlark shall comply with the siting criteria set forth in the version of Section 69-06-08-01 of the North Dakota Administrative Code in effect as of the date of this Order.
  - c. Meadowlark shall site turbines at least 1,400 feet from currently occupied residences.
  - d. Meadowlark shall site Project turbines so as to meet a shadow flicker goal of 30 hours per year or less at each currently occupied residence, considering site-specific conditions, unless a written acknowledgment is obtained from the landowner.
  - e. Meadowlark shall use commercially reasonable efforts to install an aircraft detection and lighting system or other suitable lighting technology on the Project by December 31, 2019 or upon commencement of operation, whichever is later.
  - f. Meadowlark has executed and shall comply with the March 10, 2017 Certification Relating to Order Provisions – Wind Energy Conversion Facility, with accompanying Tree and Shrub Mitigation Specifications.

5. If modifications are made to the Project layout, Meadowlark shall complete a Class III cultural resource survey for any previously un-surveyed portions of the designated site affected by Project-related construction activities, in accordance with SHPO guidance; shall submit cultural resource findings to SHPO for review; and shall obtain and file a copy of SHPO's response with the Commission prior to beginning construction in said areas.
6. If modifications are made to the Project layout, Meadowlark shall complete a wetland delineation of any previously un-surveyed areas affected by Project-related activities, as necessary, and file the report with the Commission.
7. In the event Project modifications occur that are not covered by its current sound analysis, Meadowlark shall conduct a sound analysis and file a report with the Commission to ensure that the Project complies with the Commission's Avoidance Area Sound Requirement.
8. In the event Project modifications occur that are not covered by its current shadow flicker analysis, Meadowlark shall conduct a shadow flicker analysis and file a report with the Commission to ensure that the Project complies with the commitment in Order Paragraph No. 4(d).
9. The December 8, 2011 Certification Relating to Order Provisions – Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, is superseded in its entirety by the March 10, 2017 Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, and the latter is incorporated by reference and attached to this Order.
10. Except to the extent superseded or modified by this Order, the Conclusions of Law and Order provisions of the Commission's April 25, 2012 Order issuing Certificate of Site Compatibility No. 29 remain in effect.

**PUBLIC SERVICE COMMISSION**



**Brian Kroshus**  
Commissioner



**Randy Christmann**  
Chairman



**Julie Fedorchak**  
Commissioner

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

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

I am William R. Behling, a representative of Meadowlark Wind I LLC (“Company”) with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that the Certificate of Site Compatibility will be issued by the Commission subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the energy conversion facility that requires said license or permit.
4. Company understands and agrees that the Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by the Certificate of Site Compatibility for the energy conversion facility are subject to modification by

order of the Commission if deemed necessary to protect further the public or the environment.

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

**Construction:**

8. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
9. Company understands and agrees that all cultural resource mitigation plans must be approved by the North Dakota State Historic Preservation Office prior to the start of any fieldwork and construction activity in the affected area.
10. Company understands and agrees that topsoil removal will begin when the Commission's third party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
11. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a monthly basis.
12. Company is aware that North Dakota law requires that all companies that own or operate electric generation of any size for the primary purpose of resale must comply with the standards of the National Electrical Safety Code in effect at the time of construction of the generation facility, and agrees to comply with that requirement.
13. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
14. Company understands and agrees that it shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.

15. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, tower locations, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
16. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.
17. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
18. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission.
19. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
20. Company agrees that the Commission's third-party construction inspector will be allowed to stop Project construction activities to prevent an imminent hazard from occurring before the Commission could take formal action with respect to said activities. For purposes of this provision, "imminent hazard" means a condition that presents a substantial likelihood of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment. Other Project construction activities would be allowed to continue. ~~Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.~~

**Restoration and Maintenance:**

21. Company agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
22. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
23. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
24. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
25. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
26. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
27. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
28. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
29. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
30. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

**Communication with Landowners and PSC:**

31. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
32. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the energy conversion facility, including injuries to any person, a tower collapse, or a catastrophic turbine failure.
33. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or endangered species that Company becomes aware of and which were not previously reported to the Commission.
34. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
35. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.
36. Company agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.

37. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

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

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

39. Company acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

Dated this 10<sup>th</sup> day of March, 2017.

Meadowlark Wind I LLC



By William R. Behling

Its Project Manager

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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*), must be inventoried before cutting. The inventory must record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, must be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1 inch diameter at breast height (dbh) or greater must be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way must be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs must be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil must be preserved and replaced after construction. Shrubs must be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared must be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by a sampling method that will properly represent the woody vegetation

population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission) and approved prior to the start of construction must define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots must be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

#### **Clearing for Construction**

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

#### **Replacement**

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

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

13. Tree and shrub replacement must not be conducted within a 20 to 30 foot wide path over the pipeline to facilitate visual inspections of the right-of-way in accordance with U.S. Department of Transportation safety regulations.
14. Landowners must be given the option of having replacement trees and shrubs planted on the landowner's property, either on or off the right-of-way. The landowner must also be given the opportunity to waive those options in writing in order to have replacement trees and shrubs planted off the landowner's property.
15. At the conclusion of the project, documentation identifying the actual number, variety, type, location and date of the replacement plantings must be filed with the Commission.
16. Tree and shrub replacements must be inspected annually, in September, for three years. The first annual inspection must be at least one year from the anniversary date of the original plantings. A report of each annual inspection must be submitted to the Commission by October 1 of each year, documenting the condition of plantings and any woodlands work completed as of September of each year. If after the third annual report the survival rate is less than 75%, the Commission may order additional planting(s).