

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Brady Wind, LLC  
Brady Wind Energy Center – Stark County  
Siting Application

Case No. PU-15-690

**AFFIDAVIT OF SERVICE BY REGULAR OR ELECTRONIC 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 **17th day of June, 2016**, she deposited in the United States Mail, Bismarck, North Dakota, **16** envelopes by first class mail, fully prepaid and **49** addressees electronically mailed a copy of:

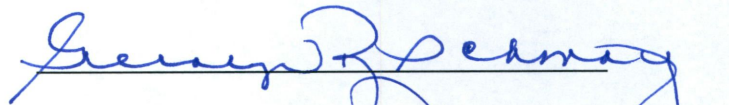

**Findings of Fact, Conclusions of Law and Order**

The envelopes and electronic mails respectively were addressed as follows:

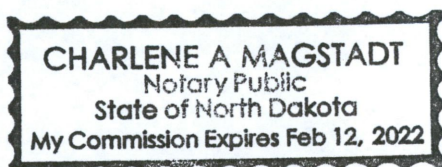
**See attached list.**

Each post office address shown is the respective addressee's last reasonably ascertainable post office address and each email address is the respective addressee's last reasonably ascertainable electronic mailing address.

Subscribed and sworn to before me  
this **17th day of June, 2016**.

  
  
Notary Public

SEAL



127 PU-15-690 Filed: 6/17/2016 Pages: 28  
Affidavit of Service, Reg. or E-mail – Order

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**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Brady Wind, LLC  
Brady Wind Energy Center – Stark County  
Siting Application**

**Case No. PU-15-690**

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

**June 16, 2016**

**Appearances**

Commissioners Julie Fedorchak, Randy Christmann and Brian P. Kalk.

Brian R. Bjella and Stephanie Dassinger, Attorneys at Law, Crowley Fleck, PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of the Applicant, Brady Wind, LLC.

Zachary Pelham, Attorney at Law, Pearce Durick PLLC, 314 E. Thayer Ave., Bismarck, North Dakota 58502, Special Assistant Attorney General on behalf of the North Dakota Public Service Commission.

Patrick J. Ward, Administrative Law Judge, PO Box 1695, Bismarck, North Dakota 58502-1695.

Matthew T. Collins, Attorney at Law, Fabyanske, Westra, Hart & Thompson, 333 South Seventh Street, Suite 2600, Minneapolis, MN 55402, on behalf of Intervenor Concerned Citizens of Stark County.

**Preliminary Statement**

On December 4, 2015, Brady Wind, LLC (Brady Wind) filed with the North Dakota Public Service Commission (Commission) an Application for a Certificate of Site Compatibility for a wind energy conversion facility located in Stark County, North Dakota (Project).

On January 20, 2016, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for March 2, 2016, at 11:00 a.m. Mountain Time at the Dickinson City Hall, 99 2<sup>nd</sup> Street East, Dickinson, North Dakota 58601.

On February 12, 2016, Concerned Citizens of Stark County (CCSC) filed a Petition for Intervention. By Order Granting Petition to Intervene dated February 25, 2016, Administrative Law Judge Timothy J. Dawson granted CCSC's Petition to Appear as an intervenor.

On February 19, 2016, Brady Wind filed with the Commission its anticipated final site plan.

On February 23, 2016, CCSC filed a Motion for Continuance of the hearing scheduled for March 2, 2016. On February 25, 2016, the Commission granted the motion for continuance.

On February 25, 2016, the Commission issued its Notice of Continued Hearings indicating that the public hearing previously scheduled for March 2, 2016, is continued to March 30, 2016, at 8:00 a.m. at City Hall, 99 2<sup>nd</sup> Street East, Dickinson, North Dakota 58601. The notice identified the following issues to be considered in Case No. PU-15-690:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects upon 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 impacts while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On March 9, 2016, Brady Wind filed its Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, dated March 4, 2016, with accompanying Tree and Shrub Mitigation Specifications.

A public hearing was held as scheduled on March 30, 2016.

On May 27, 2016, the Commission issued a Notice of Intent to Consider Information Not Presented at a Hearing, which provided ten days for parties to file a request to examine the information or evidence or present their own information or evidence or to cross-examine the person furnishing the information or evidence. No response was received.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, including late filed exhibits, the Commission makes its:

## Findings of Fact

1. The applicant, Brady Wind, LLC, is a Delaware limited liability company headquartered in Juno Beach, Florida, and is registered to do business in the State of North Dakota.
2. Brady Wind proposes to construct a wind energy facility known as the Brady Wind Energy Center located in Stark County, North Dakota, approximately 15 miles south of the city of Dickinson, North Dakota. Brady Wind reduced its proposed Project area to include only the lands of participating landowners. As a result, the Project area consists of approximately 17,965 acres. Wind turbines will be placed throughout the Project area. Brady Wind has requested that the Project area, as depicted in Late Filed Exhibit No. 14, be designated as the site for the Project.
3. Brady Wind selected the proposed site for the Project based on a number of factors, including: the quality of wind resource, landowners' support, suitable transmission interconnection capability, avoidance of environmental issues, compliance with the Commission's siting criteria; compliance with Stark County's zoning requirements, and economic considerations.
4. 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. Federal, state and local departments, agencies and entities that were contacted include:
  - (a) Federal – U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, Federal Aviation Administration;
  - (b) State – North Dakota Aeronautics Commission, North Dakota Department of Agriculture, North Dakota Department of Health, North Dakota Department of Transportation, North Dakota Department of Trust Lands, North Dakota State Water Commission, North Dakota Geological Survey, North Dakota Indian Affairs Commission, North Dakota Parks and Recreation Department, State Historical Society of North Dakota, and the North Dakota Game and Fish Department;
  - (c) Local – Stark County.
5. Agency consultations and comments are noted in the application, and in testimony presented at the public hearing. No objections to the Project were raised by any state or federal agencies, or local governmental entities.

6. North Dakota Century Code § 49-22-16 provides that no energy conversion facility site shall be designated if it violates any county or city land use, zoning, building rules, regulations or ordinances. The Stark County Commission issued a Conditional Use Permit for the Project on December 22, 2015.

### Project Design

7. The Project will have a name-plate generating capacity of up to 150 megawatts (MW). The Project will consist of up to 87 turbines. Brady Wind expects to use both General Electric (GE) 1.715 MW Xle and GE 1.79 MW Xle wind turbine generators. Depending on turbine availability and economic considerations, among other factors, Brady Wind may select another turbine model.

8. The turbines have Supervisory Control and Data Acquisitions (SCADA) communication technology to allow control and monitoring of the wind farm. The SCADA communications system permits automatic, independent operation and remote supervision allowing the simultaneous control of many wind turbines.

9. The towers will be conical tubular steel with a hub height of up to 262 feet. The portion of the foundation that is above ground is 15 to 16 feet wide at the base of the tower. Each turbine will be grounded and shielded to protect against lightning strike.

10. At the base of each turbine, a step-transformer will be installed to step up the voltage to the collection line voltage of 34.5 kV. The electricity from these transformers will be run through an underground collection system consisting of various sized buried cables generally located alongside the Project access roads. Collection lines will be buried 42 to 48 inches deep and will not affect farming equipment. At the point where the access and public roads meet, the collection system will continue as underground lines. All collection system cables will terminate at an on-site collector substation, which includes a transformer to step up the voltage from 34.5 kV to 230 kV for interconnection to the transmission grid.

11. Associated facilities to be constructed within the Project area include access roads, electrical collection systems, an operation and maintenance building, a collection substation, and metrological towers. Brady Wind will construct an approximately 19-mile, 230-kilovolt (kV) overhead transmission line to connect the Project with the Belfield to Rhame 230-kV transmission line, in Section 29 of Township 137 North, Range 98 West. The transmission line is being permitted separately and is the subject of North Dakota Public Service Commission Case No. PU-15-797.

12. The Project collection substation will be located along 109<sup>th</sup> Avenue SW in the northwest quarter of Section 25 in Township 137 North, Range 96 West and will be connected to the 230-kV overhead transmission line.

13. The site for the Project was selected based on its wind resource, land-use patterns, and low presence of environmentally sensitive features. Part of the site selection process included consultation and coordination with a variety of community leaders and government officials to identify and either avoid or minimize concerns over siting.

14. Construction of the Project is expected to take approximately six months and cost an estimated \$250 million. Brady Wind anticipates construction will start in the spring of 2016, subject to permitting, road restrictions and weather.

15. Brady Wind reports all easements and other land rights necessary to build and operate the Project have been obtained.

16. Construction and operation of the Brady Wind Energy Center will conform to the requirements of the National Electric Safety Code.

#### 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 the certificate of site compatibility. The criteria set forth in North Dakota Administrative Code § 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. With the exception of prime and unique farm land, an energy conversion facility must not be sited within an Exclusion Area. The exception for prime and unique farm land is if the Commission finds that the prime and unique farm land 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 alternate sites. In accordance with the Commission's Selection Criteria, an energy conversion facility shall be approved only if it is demonstrated that no significant adverse impacts will result from the location, construction, and operation of the facility. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the energy conversion facility.

## Exclusion Areas

18. Less than 1% of the project area consists of prime farmland. Prime farmland has been avoided to the extent practical. The Commission finds that the prime farmland which may be disturbed by this energy conversion facility is of such small acreage as to be of negligible impact on agricultural production.

19. The eastern portion of the Project area is within the whooping crane migration corridor, but there is no designated critical habitat in the Project area.

## Avoidance Areas

20. With respect to avoidance areas, historic farmsteads are present within the Project area. Direct impacts to all historic resources will be avoided.

21. A small portion of the project area will be within the 100-year flood plain. These areas are primarily within creek beds and will be avoided or permitted as required by Stark County. The Commission finds that Brady Wind will avoid flood plains to the extent practical, the area affected is of negligible impact, and impacts must be permitted by Stark County prior to construction.

22. Wetlands are present within the Project area, but permanent impacts to wetlands will be avoided and minimized as practicable.

23. Few woodland impacts are anticipated, and all tree removal and replacement will be conducted in accordance with the Commission's tree and shrub mitigation specifications.

## Selection and Policy Criteria

24. Brady Wind submitted evidence to demonstrate that the proposed energy conversion facility will not have a significant impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-01(5).

25. The Project and associated facilities are expected to occupy and disturb up to 110 acres of land that will be permanently impacted by the Project. No landowners will be displaced. Brady Wind will continue to work with landowners to minimize land use disruptions from the facilities. No impacts to irrigation or quality of the agricultural land are anticipated.

26. Brady Wind submitted evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility so far as possible so as to meet the Policy Criteria set forth in North Dakota Administrative Code § 69-06-08-01(6).

27. No significant adverse impact is foreseen on the ability of the affected areas to provide community services, such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation or public safety. The proposed Project is expected to be of economic benefit to the affected area, and area schools. A portion of the energy to be produced from the project is committed for use in North Dakota.

#### Cultural Resources (Archaeology and Architectural History)

28. Brady Wind has completed a Class I literature search and a Class III cultural resources inventory for both archaeological and architectural history resources in the current Project. Brady Wind has submitted its Class III cultural resources inventory report for archaeology to the North Dakota State Historic Preservation Office ("SHPO") and filed a copy of SHPO's response indicating concurrence. Brady Wind has submitted its Class III cultural resources inventory report for architectural history resources for review, and will file a copy of SHPO's response when available.

29. During the Class III pedestrian survey, Tetra Tech documented 29 archaeological sites within the Project Area and 1 mile survey corridor and assessed impacts on 22 historic sites potentially eligible for the National Register within 2 miles of the Project Area. Brady Wind has designed the layout of the wind facility to avoid direct impacts to all cultural resources that are potentially eligible for listing on the National Register of Historic Places, sites that may be deemed culturally sensitive, and sites that have not been evaluated for National Register eligibility. Brady Wind will avoid impacts on sites within or near the construction easement by fencing them during construction to ensure that they are not inadvertently disturbed.

30. In the event that the Project layout changes from the layout provided in Late Filed Exhibit No. 14, Brady Wind will complete Class III cultural resource survey work for archaeology and architectural history resources for any previously un-surveyed areas, per SHPO's guidance; will submit the findings to the Commission and SHPO for review; and will obtain and file with the Commission a copy of SHPO's response prior to beginning construction in those areas.

31. The Project facilities will avoid impacts to cultural resource sites and cultural resources are not expected to be impacted by the project.

#### Wetlands and Wildlife

32. Brady Wind has consulted with numerous local, state and federal agencies, which are identified in the Application. Brady Wind has engaged in consultation with the United States Fish and Wildlife Service (USFWS) and North

Dakota Game and Fish Department (NDGFD). No agencies have objected to construction of the Project.

33. A wetland survey report has been completed and submitted. Wetland delineations were conducted for the Project in October and November 2015. Brady Wind has indicated it is committed to making any design changes needed to avoid permanent impacts to wetlands as much as feasible. As a result, minimal impacts anticipated to jurisdictional wetlands are expected to qualify for coverage under Nationwide Permits 12 and 14 without requiring pre-construction notification. In the event the Project layout changes, Brady Wind will complete a wetland delineation of any previously un-surveyed areas as necessary. Brady Wind will minimize permanent wetland impacts from the Project to the extent practicable, and will obtain any permits required.

34. Brady Wind conducted an avian survey, Lek aerial survey, a raptor survey and a study of bat activity. No federally endangered, threatened or candidate species were recorded. The nearest occupied bald eagle nest is located approximately 3 miles east of the Project Area and the nearest occupied golden eagle nest is located approximately 2 miles south of the Project Area as indicated in Late Filed Exhibit 16. No significant impacts are anticipated.

35. Brady Wind performed an analysis of potential whooping crane habitat in the area of the wind energy facility and concluded that the likelihood of whooping cranes occurring within the project area is low based on its location along the outer edge of the migration corridor.

36. Brady Wind conducted environmental studies of the Project area, and impacts to wildlife are anticipated to be minimal. Among the studies conducted were a bat desktop habitat assessment, bat acoustic monitoring, fall avian point-count and eagle use surveys, a ground-based raptor nest survey, and aerial and follow-up ground-based raptor nest surveys. A desktop likelihood assessment for whooping crane was also conducted. Brady Wind will continue to coordinate with the USFWS to determine potential mitigation/minimization measures. Brady Wind will prepare a Bird and Bat Conservation Strategy prior to operation of the Project, which will outline specific conservation methods.

37. Neither the USFWS nor the NDGFD have raised any objections to Brady Wind's proposed wildlife mitigation measures.

#### Noise and Shadow Flicker Studies

38. Brady Wind conducted a sound analysis for the Project. This analysis demonstrates that the sound levels for the Project will comply with the Commission's Avoidance Area requirement that sound levels within 100 feet of an inhabited residence or community building not exceed 50 dBA.

39. In the event Project modifications occur that are not covered by the current sound analysis, Brady Wind will conduct a sound analysis to ensure that the Project complies with the Commission's Avoidance Area sound requirement.

40. Brady Wind completed a shadow flicker study for the Project. There are only two occupied receptors with shadow flicker impacts greater than 30 hours per year. Both of these residences are owned by landowners that are participating in the Project and have granted an easement for shadow flicker effects on the property. Based upon the analysis, shadow flicker impacts in the Project area are expected to be minor and within acceptable ranges for avoidance of nuisance or health hazards.

41. In the event Project modifications occur that are not covered by the current shadow flicker analysis, Brady Wind will conduct a shadow flicker analysis to ensure that no currently occupied residences experience a shadow flicker impact of more than 30 hours per year, unless otherwise agreed by the homeowner.

#### Further Mitigative Measures

42. For purposes of this Project, Brady Wind has adopted setbacks established by Stark County, to the extent they are more restrictive than Commission regulations. The Commission's road setbacks are applicable to this Project. The Project will be constructed to comply with the Stark County setbacks of 2000 feet from turbines to currently occupied residences and 2.5 rotor diameters from the property boundaries of non-participating land owners. Additionally, Brady Wind has committed to increasing setbacks from non-participating property boundaries to 1,000 feet for all but three turbines. Since the hearing Brady Wind has renumbered turbine sites. The three renumbered sites where setbacks are not being increased are now labelled Alt2, 45 and 82.

43. The Commission's setbacks applicable to the Project with respect to roads are one and one-tenth times the height of the turbine from interstate or state roadway right-of-way; and one and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway.

44. Brady Wind has agreed to implement the following eagle-related measures:

- a. Requiring Project operations and maintenance personnel to implement a wildlife reporting program during the life of the Project that documents avian and other wildlife injuries or fatalities;

- b. Requiring Project operations and maintenance personnel to adhere to a speed limit when driving within the Project area to minimize the potential for wildlife strikes resulting in carrion that could attract eagles to the Project area;
  - c. Training Project operations and maintenance personnel to be aware of eagle activity in the Project area and identify potential eagle attractants;
  - d. During operations, minimizing to the extent practicable Project equipment and material storage within the Project area outside of the Project operations and maintenance yard, as it can provide cover for eagle prey sources; and
  - e. Burying the Project's electrical collection system and constructing any Project-related overhead transmission lines owned by Brady Wind in accordance with Avian Power Line Interaction Committee Avian Protection Plan Guidelines.
45. Brady Wind will maintain groundwater protection and soil conservation practices to protect topsoil and adjacent resources, and to eliminate soil erosion during construction and operation of the Project. Best Management Practices for erosion and sediment control will be used to minimize wind and water erosion in the Project area during and after construction. Only land needed for the facility will be impacted. Temporarily disturbed areas will be restored and reseeded.
46. Subject to FAA approval, Brady Wind will use commercially reasonable efforts to install an Aircraft Detection and Lighting System or other technology suitable to the Commission on the Brady Wind project as soon as practicable after commercial operation, and in any event by no later than December 31, 2018.
47. Brady Wind will not utilize turbine sites 17, 82, 83 and 84 as those sites were originally labelled when identified at the public hearing, and instead activate alternative turbine sites.
48. Brady Wind will participate in the North Dakota one-call excavation notice system.
49. Brady Wind will file a decommissioning plan with the Commission prior to the commencement of operation of the Project, and decommissioning will be performed in accordance with all applicable rules and regulations.

50. Brady Wind will coordinate with local authorities and first responders regarding emergency response measures as a part of the Project commissioning activities.

51. Brady Wind made certain representations and covenants as contained in the Certification Relating to Order Provisions-Wind Energy Conversion Facility Siting executed by Brady Wind and filed with the Commission on March 9, 2016, which are incorporated into these Findings of Fact.

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

### **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The energy conversion facility proposed by Brady Wind is an energy conversion facility as defined in North Dakota Century Code § 49-22-03(5).
3. The application submitted by Brady Wind 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 only 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 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. 48 is issued to Brady Wind, LLC for the construction, operation and maintenance of an energy conversion facility known as the Brady Wind Energy Center corresponding to the Project area depicted in Late Filed Exhibit No. 14.
2. Within the permitted area, Brady Wind is authorized to site and construct up to 150 megawatts within the designated area consisting of up to 87 wind turbines in proposed and alternate locations, as identified in Late Filed Exhibit No. 14, along with electric collection and communication lines, a project substation, access roads, an operations and maintenance building, an interconnection yard, along with other associated facilities as identified in the application and at the hearing.
3. Brady Wind shall file with the Commission a copy of the SHPO concurrence letter for architectural history when received.
4. If modifications are made to the Project layout, Brady Wind shall complete a Class III cultural resource survey for archeology and architectural history resources 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.
5. If modifications are made to the Project layout, Brady Wind shall complete a wetland delineation of any previously unsurveyed areas affected by Project-related activities, as necessary, and file the report with the Commission.
6. In the event Project modifications occur that are not covered by its current sound analysis, Brady Wind 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.
7. Brady Wind 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 otherwise agreed to by the landowner. In the event Project modifications occur that are not covered by its current shadow flicker analysis, Brady Wind shall conduct a shadow flicker analysis and file a report with the Commission to ensure this requirement is met.
9. Brady Wind shall implement the eagle-related measures set forth in the findings above. .

10. The March 4, 2016, Certification Relating to Order Provisions – Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications are incorporated by reference and attached to this Order.

**PUBLIC SERVICE COMMISSION**

  
A horizontal line is drawn across the page, with three handwritten signatures written above it. From left to right, the signatures are: Randy Christmann, Julie Fedorchak, and Brian P. Kalk.

**Randy Christmann  
Commissioner**

**Julie Fedorchak  
Chairman**

**Brian P. Kalk  
Commissioner**

**PUBLIC SERVICE COMMISSION**

**STATE OF NORTH DAKOTA**

**Certificate of Site Compatibility Number 48**

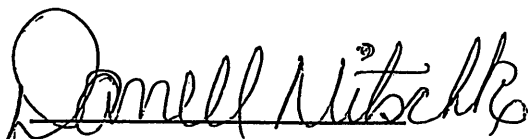
*This is to certify that the Commission has designated a site for Brady Wind, LLC, for the construction, operation and maintenance of a wind energy conversion facility and associated facilities in Stark County, North Dakota.*

*This certificate is issued in accordance with the Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-15-690 dated June 16, 2016 and is subject to the conditions and limitations noted in the order.*

*Bismarck, North Dakota, June 16, 2016.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**

1  
v

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

**Brady Wind, LLC**  
**Brady Wind Energy Center – Stark County**  
**Siting Application**

**Case No. PU-15-690**

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

I am John DiDonato, a representative of Brady Wind, LLC ("Company") with authority to bind the 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 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 reseedling 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 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.
35. 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.
36. 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.
37. 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.
38. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

Dated this 4 day of March, 2016.

Brady Wind, LLC

By   
Its  John DiDonato  
Vice President

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

**Brady Wind, LLC**  
**Brady Wind Energy Center – Stark County**  
**Siting Application**

**Case No. PU-15-690**

**Brady Wind, LLC**  
**230 kV Transmission Line – Stark County**  
**Siting Application**

**Case No. PU-15-797**

**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).