

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

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

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

**JUNE 16, 2016**

**Appearances**

Commissioners Julie Fedorchak 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 8, 2015, Brady Wind, LLC (Brady Wind) filed with the North Dakota Public Service Commission (Commission) applications for a Certificate of Corridor Compatibility, Route Permit and a Waiver of Procedures and Time Schedules for an electric transmission line to be located in Stark County, North Dakota,

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 9:00 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 23, 2016, CCSC filed a Motion for Continuance of the hearings 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, was continued to March 30, 2016, at 5:00 p.m. at City Hall, 99 2<sup>nd</sup> Street East, Dickinson, North Dakota 58601.

The issues to be considered in the application for a waiver of procedure and time schedules are:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The issues to be considered in the applications for corridor certificate and route permit are:

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 – Transmission Facility Siting, dated March 4, 2016.

A public hearing was held as scheduled on March 30, 2016. Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes its:

### **Findings of Fact**

1. 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, own, and operate an approximately 19 miles of 230 kV electric transmission line and associated facilities in Stark County, North Dakota (Project).
3. The Project includes a new 30-acre switchyard at the western terminus of the transmission line. The Project would connect the Brady Wind Energy Center to the Belfield to Rhame 230-kV transmission line in the southwest corner of the southeast quarter of Section 20 of Township 139 North, Range 98 West. The Brady Wind Energy Center is the subject of North Dakota Public Service Commission Case No. PU-15-690.
4. The approximately 19-mile, single circuit, alternating current 230-kV transmission line will be constructed using approximately 126 steel monopole structures. The average height of the single-pole structures will range from 70 to 130 feet, depending on the final engineering design. The span between structures will average 800 feet and will vary depending on geological or engineering design.
5. The transmission line will be constructed pursuant to National Electric Safety Code requirements.
6. The transmission line will include a shield wire strung at the top of the poles to provide lightning protection. The shield wire will contain a fiberoptic core that forms a part of the communication system for the transmission line, allowing for monitoring and remote control of substation and interconnection facility components.
7. Voluntary easements with landowners have been secured for the entire route, and the land for the 30-acre switchyard has been purchased.
8. The approximate cost of the Project is \$20.5 million.
9. Brady Wind has signed a Power Purchase Agreement with Basin Electric Power Cooperative to deliver energy produced at the Brady Wind Energy Center through the

transmission line to an interconnection point on the Belfield to Rhame 230-kV transmission line.

10. Brady Wind evaluated a proposed one-mile-wide Study Area within which it identified the proposed Project Route.

11. Other alternatives were considered for the Project Route. Brady Wind believes that the proposed location is the most viable route alternative based on landowner preferences, following existing road ROWs and section lines where practicable, and it is the most direct route that minimizes impacts on the exclusion, avoidances, selection, and policy criteria.

12. Brady Wind plans an in-service date in October 2016.

13. Pursuant to the Stark County Zoning Code, a county permit is not required for the Project.

#### Siting Criteria

14. North Dakota Administrative Code Chapter 69-06-08-02 sets forth criteria to guide and govern the preparation of the inventory of exclusion and avoidance areas, and the corridor and route suitability evaluation process for transmission facilities. The criteria set forth are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

15. Exclusion Areas must be excluded in the construction and the consideration of a route for a transmission facility. Exclusion Areas may be located within the corridor, but at no point encompass more than 50% of the corridor width unless there is no reasonable alternative. A buffer zone of a reasonable width to protect the integrity of an Exclusion Area must be included in the siting of the transmission facility.

16. As to exclusion areas, archeological sites have been identified within the 1-mile Study Area, project corridor and adjacent to the Project Route. All archeological sites will be avoided or spanned. National Register-eligible sites within or adjacent to the construction easement will be protected during construction to avoid impacts.

17. Avoidance Areas may not be considered in routing of a transmission facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a transmission 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 routes.

18. 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.

19. In accordance with the Commission's Selection Criteria, a transmission facility shall be approved only if it is demonstrated that no significant adverse impacts will result from the location, construction, and maintenance of the transmission facility.

20. A wetland delineation was conducted along the proposed Project Route. Permanent impacts to wetlands are avoided and minimized as much as possible as a result of transmission line structure placement. Wetlands will be avoided as much as feasible by spanning and placing structures in upland areas. Any potential impacts are expected to qualify for coverage under Nationwide Permits 12 and 14 without pre-construction notification (PCN).

21. Brady Wind submitted information in its Application and through testimony that any significant adverse effects from the location, construction and maintenance of the transmission facility as they relate to the Selection Criteria listed at N.D.A.C. §69-06-08-02(3) will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum.

22. With respect to agricultural production only approximately 30 acres of land, which includes the switchyard, will be permanently impacted. Approximately 345 acres will be temporarily impacted during construction.

23. Based upon the Federal Aviation Administration's online Department of Defense Preliminary Screening Tool, no impacts to any radar systems, radio signals, television signals, satellite or phone signals, GPS signals, air defense radar, homeland security radar, or weather surveillance radar are anticipated.

24. Brady Wind performed an analysis of potential whooping crane habitat in the area of the wind energy facility and the transmission line. No confirmed whooping crane sightings have been documented.

25. The Project will not have a significant impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-02(3). Once the Project is completed, Brady Wind will restore all disturbed areas.

26. In accordance with the Commission's Policy Criteria, preference will be given to an applicant that maximizes benefits resulting from the adoption of certain policies and practices. The Project will transmit energy produced from the Brady Wind Energy Center committed to serve electric customers in North Dakota.

27. Brady Wind has demonstrated its commitment to maximize the benefits of the project so as to meet the Policy Criteria set forth in North Dakota Administrative Code § 69-06-08-04(4) by designing and locating the project in a manner as to maximize operational efficiency and economic benefits while minimizing impacts on agriculture, extractible resources, health and safety, plant and animal life, communications, and the visual effect on the surrounding area.

28. Brady Wind has consulted with federal, state, and local agencies, including the United States Fish and Wildlife Service and the North Dakota Game and Fish Department, with respect to the siting of the proposed transmission line. Brady Wind is continuing to work with the wildlife agencies to minimize and reduce impacts associated with the Project.

#### Additional Measures to Minimize Impacts

29. Brady Wind has agreed to certain steps to mitigate the impact of the project as indicated by its execution of the Certification Relating to Order Provisions – Transmission Line Facility with accompanying Tree and Shrub Mitigation Specifications, which have been filed with the Commission.

30. Brady Wind will implement various measures to protect the right-of-way or mitigate the adverse effects of right-of-way preparation and transmission line construction, operation and maintenance on the human and natural environments.

31. Brady Wind will participate in the North Dakota One-Call Excavation Notice System.

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

### **Conclusions of Law**

1. The Commission has jurisdiction over this matter pursuant to North Dakota Century Code Chapter 49-22.
2. The proposed transmission line and associated facilities are transmission facilities as defined by North Dakota Century Code § 49-22-03(12).
3. The location, construction and operation of the proposed transmission facilities will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
4. The application submitted by Brady Wind meets the corridor and route evaluation criteria required by North Dakota Century Code Chapter 49-22.
5. The proposed transmission facility corridor and route 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.
6. The proposed transmission facilities are compatible with the environmental preservation and the efficient use of resources.
7. The requested waivers of procedures and time schedules are justified based upon the minimal impacts on the environment and the welfare of the citizens of North Dakota; the lack of objection to the proposed transmission facility by federal, state and local government bodies and agencies; the lack of objection by landowners along the proposed corridor and route; and the objective to have a reliable, integrated transmission system in North Dakota.
8. The proposed transmission corridor and route are of such length, design, location and purpose that they will produce minimal adverse effects.

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

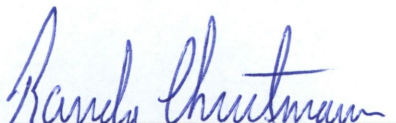
### **Order**

The Commission orders:

1. Brady Wind's application for waiver of procedures and time schedules is granted.

2. Certificate of Corridor Compatibility No. 188 is issued to Brady Wind designating a corridor for the construction, operation and maintenance of the proposed 230 kV transmission line and associated facilities in Stark County, North Dakota. For purposes of the Certificate, the corridor will consist of a 250 foot wide area.
3. Route Permit No. 200 is issued to Brady Wind granting authority to construct and operate the proposed approximately 19 mile 230 kV transmission line and associated facilities in Stark County, North Dakota, as described in the application, supplements to the application, at the public hearing, and in late-filed exhibits.
4. Brady Wind shall file with the Commission a copy of the SHPO concurrence letter for architectural history when received.
5. The Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigation specifications dated March 4, 2016, as filed with the Commission on March 9, 2016, are incorporated by reference and attached to this Order.

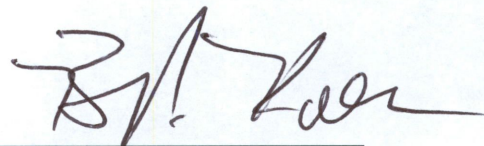
**PUBLIC SERVICE COMMISSION**



**Randy Christmann  
Commissioner**



**Julie Fedorchak  
Chairman**



**Brian P. Kalk  
Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 188**

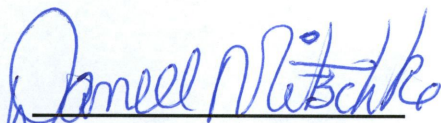
*This is to certify that the Commission has designated a transmission facility corridor for Brady Wind, LLC for the construction of Approximately 19 miles of 230 kV electric transmission line and associated facilities in Stark County, North Dakota*

*This certificate is issued in accordance with the Order of the Commission dated June 16, 2016 in Case No. PU-15-797 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**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Route Permit Number 200**

*This is to certify that the Commission has designated a transmission facility route for Brady Wind, LLC for the construction of approximately 19 miles of 230 kV electric transmission line and associated facilities in Stark County, North Dakota*

*This permit is issued in accordance with the Order of this Commission dated June 16, 2016 in Case No. PU-15-797 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**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

Case No. PU-15-797

CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION 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 any Certificate of Corridor Compatibility or Route Permit issued by the Commission will be 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 transmission 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 transmission facility that requires said license or permit.
4. Company understands and agrees that any Certificate of Corridor Compatibility or Route Permit issued by the Commission 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 issuing a Certificate of Corridor Compatibility or Route Permit, 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 any Certificate of Corridor Compatibility or Route Permit issued by the Commission for

the transmission facility are subject to modification by order of the Commission if deemed necessary to protect further the public or the environment.

**Construction:**

7. 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.
8. Company 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.
9. 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.
10. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission 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 on construction activities on a monthly basis.
11. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also 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.
12. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.

13. 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.
14. 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 and a report of such examination is filed with the Commission and the State Historical Society.
15. 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.
16. 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:**

17. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission 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.
18. 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 transmission 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.
19. 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.
20. Company will fulfil its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.

21. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.
22. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
23. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
24. 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 transmission facility.
25. 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.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

**Communication with Landowners and PSC:**

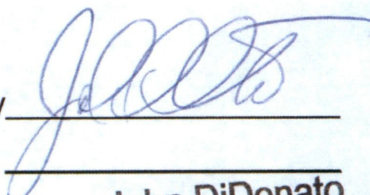
27. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
28. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
29. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. 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 transmission facility, including injuries to any person.
31. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered

species of which Company becomes aware and which were not previously reported to the Commission.

32. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
33. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission 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 corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission 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.
34. 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.

Dated this 4<sup>th</sup> 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).