

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Brady Wind II, LLC
Brady II Wind Energy Center – Hettinger & Stark
Siting Application**

Case No. PU-16-42

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

July 6, 2016

Appearances

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

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

Zachary E. Pelham, Special Assistant Attorney General Attorney, 314 East Thayer Avenue, Bismarck, North Dakota 58502, on behalf of the North Dakota Public Service Commission.

Patrick J. Ward, Administrative Law Judge, Office of Administrative Hearings, 2911 North 4th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On January 22, 2016, Brady Wind II, LLC (Brady II) filed an application for a certificate of site compatibility concerning a proposed 150 megawatt wind energy conversion facility to be known as the “Brady II Wind Energy Center” (Project). The Project will be located in Hettinger and Stark Counties, North Dakota.

On April 18, 2016, Brady II filed an amended application for a certificate of site compatibility (Application).

On April 20, 2016, the Commission found the Application complete, conditioned on filing by Brady II the following documents at least 30 days prior to a public hearing in the case:

- a final site plan with maps and tables showing distances from the nearest turbine to each occupied residence and indicating whether the property owner is participating or not participating in the Project;
- final noise and shadow flicker studies;

- a wetland delineation report; bat and whooping crane habitat assessment studies;
- a bat acoustic study;
- an avian and grouse lek field inventory; and
- an eagle use survey.

Also on April 20, 2016, the Commission issued a Notice of Filing and Public Hearing (Notice), scheduling a public hearing for June 7, 2016, at 9:00 a.m. Mountain Time, Memorial Hall, 925 Main Street, New England, North Dakota 58647.

The Notice identified the following issues to be considered with respect to the Application:

1. Will the location and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On April 25, 2016, Brady II filed a whooping crane habitat assessment study report concerning the Project.

On May 3, 2016, Brady II filed bat acoustic study and raptor nest survey reports concerning the Project.

On May 4, 2016, Brady II filed supplemental raptor nest information, a bat habitat assessment study, grouse lek field inventory, and eagle use survey reports concerning the Project.

On May 5, 2016, Brady II filed an avian field inventory report concerning the Project.

On May 6, 2016, Brady II filed wetland delineation, acoustic study, and shadow flicker study reports, and supplemental raptor nest and final site plan information concerning the Project.

On June 3, 2016, Brady II filed a Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications.

On June 7, 2016, the public hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes the following findings of fact:

Findings of Fact

1. Brady Wind II, LLC, is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by corporate papers filed with the Commission on January 26, 2016, in Case No. PU-16-49. Brady Wind II, LLC is a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC.

Size, Type and Preferred Location of Facility

2. The Project will consist of a wind energy facility with a nameplate generating capacity of 150 megawatts (MW) to be constructed on approximately 17,762 acres in northern Hettinger County and on approximately 2,554 acres in Stark County. The Project will be located approximately 15 miles south of the City of Dickinson, North Dakota.

3. The Project will be located adjacent to the southern boundary of the Brady Wind Energy Center, sited by the Commission in Case No. PU-15-690.

4. The Project will consist of up to 72 wind turbines. Brady II expects to use 7 General Electric 1.79 MW Xle generators and 65 General Electric 2.1 MW generators.

5. Associated facilities to be constructed within the Survey Area include access roads, underground electrical collection systems and communications cables, and one permanent and four temporary meteorological evaluation towers.

6. Turbine rotor diameters will be 328 feet for the 1.79 MW turbines and 381 feet for the 2.1 MW turbines. Each turbine will be grounded and shielded for lightning protection.

7. Towers will be conical tubular steel with a hub height of up to 262 feet and are designed to operate in wind speeds of between 7.8 miles per hour and 56 miles per hour. Each tower will be secured by a concrete foundation that will vary in design, depending on soil conditions. The above-ground portion of the foundation will be between 15 and 16 feet wide at the base of the tower.

8. Aggregate-surfaced roads between 16 and 34 feet in width will be constructed to connect each wind turbine to the public road system.

9. All wind turbines will be located in Hettinger County. Facilities to be located in Stark County will include underground electrical collection systems and cables.

10. The Project will utilize an operations and maintenance building. All collection system cables will terminate at substation equipment located within the Brady Wind Energy Center site. The voltage will be stepped up from 34.5 kilovolt to 230 kilovolt, and will be transported by the overhead electric transmission line, sited by the Commission in Case No. PU-15-797.

11. The total anticipated cost of the Project is \$250 million.

Study of Preferred Location

12. Brady II evaluated 21,193 acres in northern Hettinger County and 6,071 acres in Stark County (Study Area) for natural resources, including wildlife, protected species and critical habitats, wetlands and waterbodies, and trees and shrubs.

13. Brady II conducted a field survey of architectural resources located within two miles of the proposed turbines and submitted the report to the North Dakota State Historic Preservation Office (NDSHPO) for review.

14. Brady II conducted a Class III cultural resources field inventory on the Project footprint depicted in "Figure 1: Project Location" of Hearing Exhibit No. 19 (Survey Area) and submitted the Class III report to the NDSHPO for review.

15. Brady II conducted a Class III architectural cultural resources inventory for structures existing within two miles from the Study Area.

16. Brady II conducted spring avian point-count surveys, lek aerial survey, a raptor nest surveys, a habitat assessment, and eagle use surveys. Brady II also conducted a bat desktop habitat assessment and bat acoustic monitoring.

17. Brady II contacted the following federal, state, and local departments, agencies and entities:

- Federal – United States Fish and Wildlife Service (USFWS); the United States Army Corps of Engineers (USACE); and United States Department of Commerce National Teleconference and Information Administration.
- State – North Dakota Department of Agriculture; North Dakota Department of Health, North Dakota Department of Transportation, North Dakota Department of Trust Lands (NDDTL); North Dakota State Water Commission (NDSWC); North Dakota Indian Affairs Commission, North Dakota State Historic Preservation Office (NDSHPO), North Dakota Geological Survey, and North Dakota Game and Fish Department (NDGFD).
- Local – Stark County, Hettinger County, and Central Stark & Western Soil Conservation District.

18. No objections to the Project were raised by any state or federal agencies, or local governmental entities.

19. In a response dated April 18, 2016, the NDGFD indicated that a raptor nest had been reported within the Study Area and requested that Brady II confirm its presence.

20. The Hettinger County Commission issued a Conditional Use Permit for the Project on April 8, 2016. Stark County permitting is not required for the proposed Project, because only underground collection lines will be placed in Stark County.

Siting Criteria

21. The Commission has adopted criteria under North Dakota Administrative Code Chapter 69-06-08 to evaluate the suitability of a proposed energy conversion facility site. The criteria set forth in North Dakota Administrative Code section 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

Exclusion Areas

22. An Exclusion Area is a geographical area that must be excluded in the consideration of a site for an energy conversion facility. Prime and unique farmland is an Exclusion Area, provided, however, that if the Commission finds that the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural productions, the exclusion does not apply.

23. Brady II testified that approximately 277 acres of prime farmland exist within the Survey Area with only 0.1 acres of prime farmland anticipated to be removed from use for the life of the Project. The Commission finds that the prime farmland expected to be removed from use by this energy conversion facility is of such small acreage as to have a negligible impact on agricultural productions, and exclusion does not apply to the 0.1 acres.

24. Brady II cultural resource studies reported 26 archeological cultural resources located outside the Survey Area and four within the Survey Area. Brady II indicated that the four archeological cultural resources within the Survey Area will be avoided by horizontal directional drilling and fencing.

25. In a response dated May 12, 2016, the NDSHPO concurred with a "no significant sites affected" recommendation for the Project, provided Brady II complies with recommendations to avoid four sites located within the Survey Area and the 26 sites located outside the Survey Area.

26. No other Exclusion Areas are present within the Survey Area.

Avoidance Areas

27. An Avoidance Area is a geographical area that may not be approved as a site for an energy conversion facility unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should be designated for the construction and operation of an energy conversion facility, the Commission may consider, among other things, the proposed management of adverse impacts, the orderly siting of facilities, system reliability and integrity, the efficient use of resources, and alternative sites. Economic considerations alone will not justify approval of these areas. A buffer zone of a reasonable width to protect the integrity of the area must be included. Natural screening may be considered in determining the width of the buffer zone.

28. Historic farmsteads and cemeteries are present within the Survey Area. All direct impacts to historic resources will be avoided by the Project footprint.

29. Approximately one percent of the Study Area is within the 100-year floodplain. These areas occur primarily within creek beds and will be avoided as practicable or permitted as required by Hettinger and Stark Counties.

30. Wetland determinations were conducted for the Project during November 2015 through April 2016. Wetlands are present within the Survey Area, but permanent impacts to wetlands will be avoided and minimized as practicable.

31. Trees and shrubs are located within the Survey Area, but the Project will be constructed to minimize tree removal to the extent practicable. Tree and shrub removal and replacement will be coordinated with landowners.

32. Brady II's acoustic study for the Project demonstrated that the maximum noise level resulting from wind turbine operation is expected to be 48 decibels at a distance of 100 feet from any of the 114 inhabited residences within the Study Area. 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 unless a waiver is obtained.

Selection Criteria and Policy Criteria

33. In accordance with the Commission's Selection Criteria, an energy conversion facility site shall be designated only if it is demonstrated that any significant adverse

effects resulting from the location, construction, and maintenance of the facility will be at an acceptable minimum or managed and maintained at an acceptable minimum.

34. Brady II submitted evidence to demonstrate that any significant adverse effects resulting from the location, construction, and maintenance of the facility will be at an acceptable minimum or managed and maintained at an acceptable minimum.

35. The Project is expected to disturb approximately 911 acres of land during construction, with 74 acres expected to be permanently occupied during the life of the Project. Brady II 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.

36. 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.

37. A shadow flicker analysis was conducted for the Project, which demonstrated that the maximum shadow flicker resulting from wind turbine operation is expected to be 24 hours and 2 minutes per year at all inhabited residences within the Study Area.

38. No potentially occupied or occupied eagle nests are located within the Survey Area. The 2016 nest surveys reflected a golden eagle was incubating at a previously identified small raptor nest approximately 0.2 miles outside the Survey Area. This was the closest occupied eagle nest to the Survey Area. The nest was reported to both the NDGFD and the USFWS and Brady Wind II applied a half mile buffer around the nest following recommendations from the NDGFD, and obtained flight path data following the recommendations of the USFWS. Based on discussions with both agencies and subsequently obtained flight path data, Brady II voluntarily increased this buffer to 1.3 miles by 1 mile.

39. Brady II's Application states that golden eagles feed on a wide variety of prey species but tend to hunt small to medium-sized mammals, including prairie dogs, depending upon local availability. Brady II has agreed to advise USFWS in writing that sworn testimony was received at the hearing from a landowner concerning the presence of prairie dog towns in Hettinger County at Township 136, Range 97, Section 8, SE ¼ and Stark County at Township 137, Range 95, Section 9, SE ¼. Brady II has agreed to file the correspondence with the Commission upon notifying USFWS.

40. Brady II has agreed to implement the following eagle-related measures:

- Implement a 1.3 mile (east-west) by 1 mile (north-south) nest buffer around the golden eagle nest south of the Survey Area and continue to coordinate with the

NDGFD and USFWS regarding any new developments regarding nesting sites and eagle-related impacts.

- Bury the Project's electrical collection system in accordance with Avian Power Line Interaction Committee Avian Protection Plan Guidelines.

Measures to Minimize Impact

41. Brady II has agreed to a number of steps to mitigate the impact of the Project as contained in the Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting with accompanying Tree and Shrub Mitigation Specifications filed in this proceeding, which is incorporated by reference and attached to this Order.

42. Brady II testified that all landowners within the Project footprint depicted in "Figure 1: Project Location" of Hearing Exhibit No. 19 are participating in the Project.

43. Brady II indicated that all easements and other land rights necessary to build and operate the Project have been obtained.

44. Brady II has committed to removing, from the Project footprint, parcels upon which Project facilities will not be constructed; and has agreed to maintain participation agreements with the owners of those parcels.

45. Brady II has applied a turbine setback of 2,000 feet from inhabited residences, and has committed to a turbine setback of 2,640 feet from the inhabited residences of all non-participating landowners. Brady II has committed to a turbine setback of 953 feet from any non-participating landowner's property line.

46. Subject to FAA approval, Brady II will use commercially reasonable efforts to install an Aircraft Detection and Lighting System or other technology suitable to the Commission on the Brady II project as soon as practicable after commercial operation, and in any event by no later than December 31, 2018.

47. Brady II indicated that a supervisory control and data acquisition system will be installed for the Project, which will allow turbines to be continuously monitored and controlled both on-site and remotely at a control center located in Juneau Beach, Florida.

48. Brady II indicated that each tower will be grounded and shielded for lightning protection.

49. Construction and operation of the Project will conform to the requirements of the National Electric Safety Code.

50. Brady II indicated that both on-site and corporate personnel will be available to address landowner complaints, and that participating landowners will be provided with written contact information.

51. Brady II indicated that if a complaint concerning noise relating to turbine operation is received, Brady II will undertake mitigative measures such as providing improved sound insulation, landscaping to reduce impacts, or other actions to reduce noise.

52. Brady II indicated that its landowner agreements are exclusive only to wind energy development and do not preclude landowners from entering into agreements with other entities for additional development.

53. Brady II indicated that it will develop a decommissioning plan, and will file the plan with the Commission.

54. Brady II indicated that it will file a financial assurance bond with Hettinger County for the Project.

55. Brady II indicated that vehicular speeds on its access roads within the Project footprint will be limited to 25 miles per hour during both construction and operation of the Project in order to minimize dust.

56. Brady II indicated that it will coordinate with local authorities and first responders regarding emergency response measures as a part of the Project commissioning activities.

57. Brady II indicated that it will participate in the North Dakota one-call excavation notice system.

58. Brady II indicated that it is developing a Bird and Bat Conservation Strategy for the project, which contains a strong emphasis on eagle conservation measures during both construction and operation phases of the Project. Brady II has committed to conducting post construction mortality monitoring surveys for birds and bats for one year following construction of the project. Brady II will file with the Commission a copy of the Bird and Bat Conservation Strategy when completed.

59. Brady II will also prepare a Wildlife Conservation Strategy prior to operation of the Project, which will outline specific conservation methods. Brady II will file with the Commission a copy of the Wildlife Conservation Strategy when completed.

60. Brady II will continue to coordinate with the USFWS and the NDGFD to determine potential wildlife mitigation/minimization measures.

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

Conclusions of Law

1. The Commission has jurisdiction over Brady Wind II, LLC and the subject matter of this application under North Dakota Century Code chapter 49-22.
2. The Project is an energy conversion facility as defined in North Dakota Century Code section 49-22-03(5).
3. The application submitted by Brady II meets the site evaluation criteria required by North Dakota Century Code Chapter 49.22.
4. The location, construction, and operation of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The Project 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 location, construction, and operation of the Project are compatible with environmental preservation and the efficient use of resources.
7. The Commission has jurisdiction to ensure compliance with National Electric Safety Code standards in the construction and operation of the Project.

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

Order

The Commission orders:

1. Brady II will file with the Commission a revised Project footprint to exclude parcels upon which Project facilities will not be constructed.
2. Certificate of Site Compatibility Number 50, is issued to Brady Wind II, LLC designating a site for the construction, operation, and maintenance of an energy conversion facility in Hettinger and Stark Counties North Dakota, to be known as the "Brady II Wind Energy Center". The designated site is depicted by the revised Project footprint to filed with the Commission.

3. Brady II is authorized construct up to 72 wind turbines producing a total nameplate capacity of 150 megawatts within the designated site, along with associated access roads, underground electrical collection systems and communications cables, and one permanent and four temporary meteorological evaluation towers.
4. In the event the Project layout is modified, Brady II shall complete a Class III cultural resource survey for any previously un-surveyed areas affected by Project-related activities, in accordance with NDSHPO guidance, and shall submit cultural resource findings to NDSHPO for review and obtain and file a copy of NDSHPO's response with the Commission prior to beginning construction in affected areas.
5. In the event the Project layout is modified, Brady II shall complete a wetland determination of any previously un-surveyed 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 existing acoustic analysis, Brady II shall conduct a revised acoustic analysis and file the results of that analysis with the Commission.
7. Brady II shall locate turbines such that shadow flicker at any currently inhabited residence is 30 hours or less per year, unless otherwise agreed to by the landowner.
8. In the event Project modifications occur that are not covered by its existing shadow flicker analysis, Brady II shall conduct a revised shadow flicker analysis and file the results of that analysis with the Commission.
9. Brady II shall obtain, and file copies with the Commission, NDSHPO responses regarding the field survey report of architectural resources prior to beginning construction of the Project.
10. Brady II shall implement the eagle-related measures set forth in this Order.
11. Brady II shall file with the Commission copies of its Bird and Bat Conservation Strategy and its Wildlife Conservation Strategy.
12. The June 3, 2016 Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting with accompanying Tree and Shrub Mitigation Specifications is incorporated by reference and attached to this Order.

13. To the extent that there are any conflicts or inconsistencies between Brady II's application in this proceeding and the Certification, the Certification provisions control.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian P. Kalk
Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility Number 50

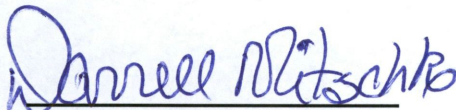
This is to certify that the Commission has designated a site for Brady Wind II, LLC, for the construction, operation and maintenance of a wind energy conversion facility and associated facilities in Hettinger and Stark Counties, North Dakota.

This certificate is issued in accordance with the Findings of Fact, Conclusion of Law and Order of the Commission in Case No. PU-16-42 dated July 6, 2016 and is subject to the conditions and limitations noted in the order.

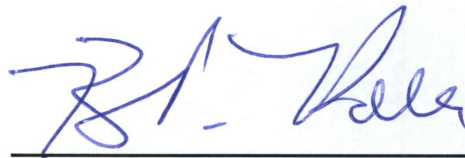
Bismarck, North Dakota, July 6, 2016.

ATTEST:

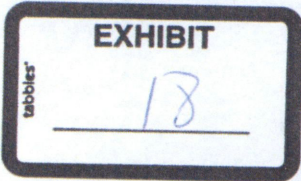
PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner



STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Brady Wind II, LLC
Brady Wind Energy Center – Hettinger & Stark County
Siting Application

Case No. PU-16-42

CERTIFICATION RELATING TO ORDER PROVISIONS
WIND ENERGY CONVERSION FACILITY SITING

I am Tom Broad, a representative of Brady Wind II, 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 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 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 3 day of June, 2016.

Brady Wind II, LLC

By Tom Broad

Its Tom Broad
~~Vice President~~
Engineering and Construction

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Brady Wind II, LLC
Brady II Wind Energy Center – Hettinger & Stark County
Siting Application

Case No. PU-16-42

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).