

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Oliver Wind III, LLC  
Oliver III Wind Energy Center – Oliver & Morton  
Siting Application**

**Case No. PU-16-123**

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

**June 22, 2016**

**Appearances**

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

Wade C. Mann and Casey A. Furey, Attorneys at Law, Crowley Fleck, PLLP, 100 West Broadway, Suite 250, Bismarck, ND 58502 on behalf of the Applicant, Oliver Wind III, LLC.

Brian D. Schmidt, Special Assistant Attorney General, as counsel for the North Dakota Public Service Commission (Commission), 600 East Boulevard Avenue, Bismarck, North Dakota 58505.

Patrick J. Ward, Administrative Law Judge, Office of Administrative Hearings, PO Box 1695, Bismarck, ND 58502-1695, as Procedural Hearing Officer.

**Preliminary Statement**

On March 4, 2016, Oliver Wind III, LLC (Oliver Wind III) filed an Application for a Certificate of Site Compatibility for a wind energy conversion facility known as the Oliver III Wind Energy Center (Project) to be located in Oliver and Morton Counties, North Dakota, Case No. PU-16-123.

On April 5, 2016 the Commission consolidated Case Nos. PU-16-123 and PU-16-122 for hearing, and deemed the applications complete conditioned upon filing 1) final turbine locations with detail on residence locations and participating and nonparticipating landowners, 2) cultural resource studies, and 3) natural resource studies, at least 30 days prior to the hearing and issued a Notice of Filings and Consolidated Hearing, and scheduled a public hearing for June 1, 2016, at 9:00 a.m. CDST, at Mandan City Hall, 205 Second Avenue, NW Mandan, North Dakota 58554.

The Notice identified the following issues to be considered in the application for certificate of site compatibility in Case No. PU-16-123 and the applications for certificate of corridor compatibility and route permit in Case No. PU-16-122:

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 26 through April 28, 2016, Oliver Wind III filed its cultural and natural resource studies.

On April 29, 2016, Oliver Wind III filed a condensed Project Boundary map containing the final anticipated layout.

On May 27, 2016 Oliver Wind III filed its Certification Relating to Order Provisions and Tree and Shrub Mitigation for PU-16-123.

On June 15, 2016, Oliver Wind III filed two late filed exhibits. Exhibit 35 discusses the Aircraft Detection and Lighting System as it relates specifically to this Project. Exhibit 36 provides lists of the receptors and the corresponding information regarding shadow flicker and noise that was previously filed in map form.

On June 1, 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**

1. Oliver Wind III, LLC is a Delaware limited liability company and is a wholly owned, indirect subsidiary of NextEra Energy Resources, LLC.
2. Oliver Wind III is authorized to transact business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on April 18, 2011 and a Certificate of Good Standing filed on March 16, 2016, in Case No. PU-16-93.
3. The Project will be owned and operated by NextEra Energy Resources, LLC.

### Size, Type and Preferred Location of Facility

4. The Project will consist of a wind energy facility within approximately 14,386 acres (Project Area) of land in Morton and Oliver Counties, North Dakota, approximately thirteen miles northwest of Bismarck and nine miles south of the city of Center. The Project will consist of up to 48 turbines and have a name-plate generating capacity of up to 100 megawatts (MW). Oliver Wind III expects to use both General Electric (GE) 2.1 MW and 1.79 MW Xle wind turbine generators. Depending on turbine availability and economic considerations, among other factors, Oliver Wind III may select another turbine model. The turbine towers will be conical tubular steel with a hub height of 262 feet. The portion of the above ground foundation is 15 to 16 feet wide at the base of the tower. Each turbine will be grounded and shielded to protect against lightning strike.
5. At the base of each turbine, a pad mounted transformer will be installed to step up the voltage to 34.5 kV. The electricity will run through an underground collection system consisting of buried cables generally located on private property or public right-of-way. The collection system will terminate at the on-site collector substation where the voltage will be stepped up from 34.5 kV to 230 kV.
6. Associated facilities to be constructed within the Project Area include access roads, electrical collection system, an operation and maintenance building, a collector substation, and metrological towers.
7. The total anticipated cost of the Project is \$153 million.

### Study of Preferred Location

8. Oliver Wind III performed a desk top evaluation of the Project Area for soils, land use, wetlands and waterbodies, trees and shrubs and protected species and critical habitats. The desk top evaluation was used to determine where wetlands and waterbodies were located. Turbines were sited to avoid wetlands and waterbodies.
9. Oliver Wind III also conducted a Class I cultural resource and architectural resource literature search on the Project Area plus a 1-mile buffer (Study Area).
10. The Class III cultural resource study and the natural resource field surveys were conducted over a 500 foot circular area for each turbine, a 200 foot wide corridor for the service road areas, a 50 foot corridor for the electrical collection lines, a 400 foot circular area centered on the meteorological tower layout, a 40 acre area for the operations and maintenance facility, a 10 acre area for the collector substation and 0.5 acre area for each of the 13 haul route turning radii. In total, 806 acres were surveyed. (Survey Area).

11. Oliver Wind III conducted a Class III Cultural Resources Inventory for architectural resources within 2 miles of proposed turbine locations. The Project will not directly impact any architectural resources.

12. A Concurrence from the State Historic Preservation Office (SHPO) has been filed with the Commission.

13. In the event the Project layout changes from the layout provided in Hearing Exhibit No. 7, Oliver Wind III will complete Class III cultural resource survey work for any previously un-surveyed areas per SHPO's guidance; will submit the findings to SHPO for review; and will obtain and file with the Commission a copy of SHPO's response prior to beginning construction in those areas.

14. A wetland determination was completed for the Project. Forty-one wetlands and three ponds were identified. Twenty-eight wetlands and one pond were delineated due to their locations within the Study Area. Turbine locations were chosen to avoid wetlands. Based on the current layout, 10 wetlands intersect the electrical collection lines. Oliver Wind III has committed to boring under these wetlands to avoid impacts. The remaining affected wetlands are impacted by haul roads and the crane paths. Matting and other identified Best Management Practices will be used to minimize impact.

15. In the event the Project layout changes from the layout provided in Hearing Exhibit No. 7, Oliver Wind III will complete a wetland determination of any wetlands that were not previously delineated that may be impacted. Due to the size of the wetlands within the Project Area, any potential impacts are expected to qualify for coverage under the nationwide permits 12 and 14 without pre-construction notification.

16. Oliver Wind III conducted fall and spring point counts, grouse lek surveys, a ground-based raptor nest survey, eagle use survey, a study of bat activity, and an analysis of potential whooping crane habitat in the Project Area. A point count consists of picking points distributed throughout the project area and surveying all birds detected within the area. For this Project, the Company used nine point count locations. Each of these locations covered an 800 meter radius area. No confirmed whooping crane sightings have been documented and the likelihood of whooping cranes is low. The studies demonstrated that no federally endangered, threatened, or candidate species were recorded, and no significant impacts to wildlife are anticipated.

17. North Dakota Century Code § 49-22-16(4) provides that a site shall not be designated that violates the rules of any state agency. 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. Oliver Wind III contacted the following Federal, state and local departments, agencies, and entities:

- a. Federal – United States Fish and Wildlife Service (USFWS); U.S. Army Corps of Engineers (USACE), Federal Aviation Administration (FAA) and National Oceanic and Atmospheric Administration (NOAA);
- b. State – North Dakota Aeronautics Commission; State Historical Society of North Dakota; North Dakota Game and Fish Department (NDGF); North Dakota Parks and Recreation Department; North Dakota Department of Health; North Dakota State Water Commission;
- c. Local – Morton and Oliver Counties.

18. Oliver Wind III has engaged with the FAA regarding a potential line-of-sight radar issue at the Bismarck Airport. Mitigation measures to address such a hazard, if found, would include radar system updates, which Oliver Wind III is committed to complete if the studies determine that such measures are required. A Determination of No Hazard will ultimately be obtained from the FAA on the final Project layout. No other impacts to any radio signals, television signals, satellite or phone signals, GPS signals, air defense radar, homeland security radar, or other weather surveillance radar are anticipated.

19. Agency consultations and comments are noted in the application, exhibits, and testimony presented at the public hearing. With the exception of the feedback listed in paragraph 18 from the FAA, no objections to the Project were raised by any state or federal agencies or local government entities.

20. North Dakota Century Code § 49-22-16 provides that no energy conversion facility site shall be designated if it violates any local land use, zoning or building rules, regulations, or ordinances. Oliver Wind III has obtained conditional use permits from Morton and Oliver Counties.

21. Oliver Wind III represented that all easements and other land rights necessary to build and operate the Wind Project have been obtained. Oliver Wind III represented that it has secured options for the purchase of land for the collection substation and O&M building site.

22. Oliver Wind III has signed a Power Purchase Agreement with Minnkota Power Cooperative, Inc. for purchase of energy produced at the Oliver III Wind Energy Center.

23. The turbines have Supervisory Control and Data Acquisition (SCADA) communication technology to allow control and monitoring of the Wind Project. The SCADA communications system permits automatic, independent operation and remote supervision allowing the simultaneous control of the wind turbines.

24. The Project will be constructed pursuant to National Electric Safety Code requirements.

## Siting Criteria

25. North Dakota Administrative Code Chapter 69-06-08 sets forth criteria to guide the Commission in evaluating the suitability of a proposed energy conversion facility site and proposed transmission facility corridor and route. The criteria set forth in North Dakota Administrative Code § 69-06-08-01 with respect to energy conversion facilities, and in North Dakota Administrative Code § 69-06-08-02 with respect to transmission facility corridors and routes, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

26. With the exception of prime and unique farm land, an energy conversion facility must not be sited within an Exclusion Area. If the Commission finds the prime and unique farm land that will be removed from use is of such small acreage as to be of negligible impact on agricultural production, then such exclusion shall not apply.

27. Less than one percent of the Wind 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.

28. The Commission's setbacks applicable to the Project with respect to roads are one and one-tenth times the height of the turbine from the 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. Oliver Wind III has also agreed to a setback of 1,400 feet from any occupied dwelling and the Morton County setback of 1.5 times turbine height from the property line of non-participating landowners. Furthermore, Oliver Wind III agreed to follow the manufacturer setbacks depicted in Table 3 of Hearing Exhibit No. 29.

29. All setbacks applied will be measured from the center of the base of the turbine to the closest part of the applicable feature.

30. 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.

31. With respect to Avoidance Areas, historical resources are present within the Project Area, but the project will be sited to avoid direct impacts to historical resource sites.

32. Areas that are geologically unstable are potentially present within the Project Area, but the project will be sited to avoid areas known to be geologically unstable

through the use of geotechnical testing prior to construction of any permanent infrastructure.

33. Some trees and shrubs are located within the Project Area, but the Project will be sited to minimize tree removal to the extent practicable. Tree or shrub removal and replacement will be coordinated with landowners and conducted in accordance with the Commission's tree and shrub mitigation specifications.

34. A single location exists within the Project Area where due to operation of the facility, the sound levels within 100 feet of an inhabited residence may exceed 50 decibels (dBA). Oliver Wind III has obtained a written waiver from this resident, who is a participating landowner.

35. The proposed Project will not have a significant adverse impact on the Selection Criteria set forth in North Dakota Administrative Code §§ 69-06-08-01(5) and 69-06-08-02(3). Oliver Wind III has committed to maximize the benefits of the proposed project so far as possible as to meet the Policy Criteria set forth in North Dakota Administrative Code §§ 69-06-08-01(6) and 69-06-08-02(4).

36. The Project and associated facilities are expected to disturb up to approximately 557 acres of land during construction. Approximately 50 acres will be permanently impacted by the Project. No landowners will be displaced. Oliver Wind III 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.

37. During construction, the Project may result in a temporary increase in traffic on county and township roads. The increase in traffic during construction is not expected to be at a volume that will disrupt residents or travel in the Project Area. County and township roads will be restored in accordance with the Certification Relating to Order Provisions – Energy Conversion Facility Siting dated May 27, 2016. During operation, no adverse effects to transportation facilities or networks are anticipated.

38. 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 Projects are expected to be of economic benefit to the affected area through the creation of construction and operation and maintenance jobs; easement payments to landowners; state and local tax revenue; and local expenditures for equipment, fuel, operating supplies, products and services.

39. Energy produced from the Oliver III Wind Energy Center and injected into the Center to Mandan 230 kV line will be delivered into Minnkota Power Cooperative's integrated system to serve electric customers in North Dakota.

40. Oliver Wind III will continue to coordinate with the USFWS with respect to potential mitigation measures. Oliver Wind III will prepare a Wildlife Conservation

Strategy prior to operation of the Project, which will outline specific conservation methods.

41. Oliver Wind III has coordinated with numerous local, state, and federal agencies identified in the Applications. After coordination, neither the USFWS nor NDGF has objected to construction of the Project, or raised any objections to Oliver Wind III's proposed wildlife mitigation measures.

42. A sound analysis was conducted for the Wind Project. The analysis demonstrates sound levels for the Wind 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. The Wind Project meets the Commission's sound level requirement at all but one participating landowner's residence for which a waiver was obtained as demonstrated in Hearing Exhibit No. 25.

43. A detailed shadow flicker analysis was conducted for the Wind Project, using realistic modeling assumptions. Two participating landowners are potentially affected and have signed waivers. Based on the shadow flicker analysis, potential shadow flicker levels are expected to be below 30 hours per year at all non-participating residences.

#### Measures to Minimize Impact

44. Oliver Wind III made certain representations and covenants as contained in the Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting with accompanying Tree and Shrub Mitigation Specifications, which have been filed with the Commission.

45. Oliver Wind III will utilize best management practices to minimize impacts on ground and surface water, and to prevent soil erosion. Erosion control measures required under the National Pollution Discharge Elimination System permit and the associated Stormwater Pollution Prevention Plan will be implemented. Construction of the Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils. Temporarily disturbed areas will be restored and reseeded.

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

47. Oliver Wind III will not utilize turbine site 17 as identified at the public hearing, and instead will activate alternative turbine site ALT 1 as also identified at the public hearing. (See Hearing Exhibit 7 for the turbine locations).

48. Oliver Wind III will avoid heavy equipment traffic on 31½ Avenue in rural Mandan.
49. Oliver Wind III will coordinate with local authorities and first responders regarding emergency response measures as part of the commissioning activities.
50. Oliver Wind III will participate in the North Dakota One-Call Excavation Notice System.
51. Oliver Wind III 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.

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

### **Conclusions of Law**

1. The Commission has jurisdiction over Oliver Wind III, LLC., and the subject matter of these applications under North Dakota Century Code chapter 49-22.
2. The wind energy conversion facility proposed by Oliver Wind III is an energy conversion facility as defined in North Dakota Century Code § 49-22-03(5).
3. The Application submitted by Oliver Wind III meets the site evaluation criteria as 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 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 energy conversion facility is 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 energy conversion facility.

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

## Order

The Commission orders:

1. If modifications are made to the Project layout, Oliver Wind III shall complete a Class III cultural resource survey for any previously un-surveyed portions of the designated site affected by Project-related construction activities, in accordance with SHPO guidance; shall submit cultural resource findings to SHPO for review; and shall obtain and file a copy of SHPO's response with the Commission prior to beginning construction in said areas.
2. Certificate of Site Compatibility for an Energy Conversion Facility No. 49, is issued to Oliver Wind III, LLC for the construction, operation, and maintenance of an energy conversion facility known as the Oliver III Wind Energy Center corresponding to the Project Area depicted in Hearing Exhibit No. 7.
3. Within the permitted area, Oliver Wind III is authorized to site and construct up to 100 megawatts within the designated area consisting of up to 48 wind turbines in proposed and alternate locations, as identified in Hearing Exhibit No. 7, 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.
4. In the event Project modifications occur that are not covered by its current sound analysis, Oliver Wind III shall conduct a sound analysis and file a report with the Commission to ensure the Project complies with the Commission's avoidance area.
5. Oliver Wind III shall locate 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.
6. In the event Project modifications occur that are not covered by its current shadow flicker analysis, Oliver Wind III shall conduct a shadow flicker analysis and file a report with the Commission to ensure this requirement is met.
7. The Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting with accompanying Tree and Shrub Mitigation specifications as filed with the Commission on May 27, 2016, is incorporated by reference and attached to this Order.
8. Prior to commencing construction of any portion of the proposed Project, Oliver Wind III, LLC shall obtain all other necessary licenses and permits for construction of such portion, and provide copies to the Commission prior to construction of that portion of the Wind Project to include A Determination of No Hazard from the FAA on the final Project layout.

9. Oliver Wind III, LLC shall file their one year post construction wildlife study with the Commission.

**PUBLIC SERVICE COMMISSION**

  
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**Randy Christmann  
Commissioner**

**Julie Fedorchak  
Chairman**

**Brian P. Kalk  
Commissioner**

# **PUBLIC SERVICE COMMISSION**

## **STATE OF NORTH DAKOTA**

### **Certificate of Site Compatibility Number 49**

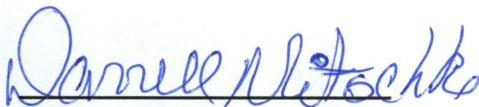
*This is to certify that the Commission has designated a site for Oliver Wind III, LLC, for the construction, operation and maintenance of a wind energy conversion facility and associated facilities in Morton and Oliver Counties, North Dakota.*

*This certificate is issued in accordance with the Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-16-123 dated June 22, 2016 and is subject to the conditions and limitations noted in the order.*

*Bismarck, North Dakota, June 22, 2016.*

**ATTEST:**

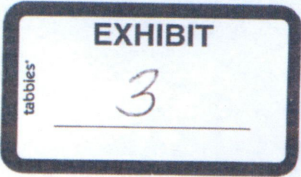
**PUBLIC SERVICE COMMISSION**



**Executive Secretary**



**Commissioner**



STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Oliver Wind III, LLC  
Oliver III Wind Energy Center – Oliver & Morton  
Siting Application

Case No. PU-16-123

CERTIFICATION RELATING TO ORDER PROVISIONS  
WIND ENERGY CONVERSION FACILITY SITING

I am Brian Tobin, a representative of Oliver Wind III, LLC ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

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

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

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

**Construction:**

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

15. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, tower locations, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
16. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.
17. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
18. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission.
19. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
20. Company 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.

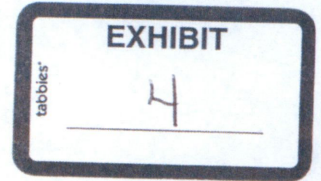
33. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or endangered species that Company becomes aware of and which were not previously reported to the Commission.
34. Company understands and agrees 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 27 day of May, 2016.

Oliver Wind III, LLC

By 

Its Vice President



STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Oliver Wind III, LLC  
Oliver III Wind Energy Center – Oliver & Morton  
Siting Application

Case No. PU-16-123

**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).