

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Emmons-Logan Wind, LLC
230 kV Transmission Line – Emmons County
Siting Application**

Case No. PU-18-281

[PROPOSED] FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

December ____, 2018

Appearances

Commissioners Randy Christmann, Julie Fedorchak, and Brian Kroshus.

Casey A. Furey and Wade C. Mann, Attorneys at Law, Crowley Fleck, PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58502, on behalf of the Applicant, Emmons-Logan 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, Office of Administrative Hearings, P.O. Box 1695, Bismarck, North Dakota 58502, as Procedural Hearing Officer.

Preliminary Statement

On July 19, 2018, Emmons-Logan Wind, LLC (“Emmons-Logan Wind”) filed an application with the North Dakota Public Service Commission (“Commission”) in Case No. PU-18-281 for a Certificate of Corridor Compatibility and Route Permit (“Application”) concerning an electric transmission line and associated facilities to be located in Emmons County, North Dakota (“Project”).

On July 19, 2018, Emmons-Logan Wind also filed an application with the Commission in Case No. PU-18-280 for a Certificate of Site Compatibility concerning a 298.1 megawatt (“MW”) wind energy conversion facility to be located in Emmons and Logan Counties, North Dakota (“the Emmons-Logan Wind Energy Center”).

On October 10, 2018, the Commission consolidated for public hearing under North Dakota Administrative Code § 69-02-04-04, Case Nos. PU-18-280 and PU-18-281, and deemed the Application complete conditioned upon filing thirty days prior to the public hearing: 1) Sound and shadow flicker analysis with detail on residence locations and participating and nonparticipating landowners, 2) Class III Cultural Resource Survey reports, and 3) Wetland delineation reports.

Also on October 10, 2018, the Commission issued a Notice of Filings and Consolidated Hearing and scheduled a public hearing for December 7, 2018 at 10:00 a.m. CST, at the Emmons County Courthouse Auditorium, 100 4th Street SW, Linton, North Dakota 58552.

The Notice of Filings and Consolidated Hearing identified the following issues to be considered for the Application in PU-18-281:

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 November 7, 2018, with respect to filings applicable to PU-18-281, Emmons-Logan Wind filed a Class III Cultural Resource Survey summary report, and a wetland delineation report with the Commission.

On December 7, 2018, 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. Emmons-Logan Wind is a Delaware limited liability company and is a wholly owned, indirect subsidiary of NextEra Energy Resources, LLC.
2. Emmons-Logan Wind is authorized to transact business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission in case No. PU-18-293.

Size, Type, and Preferred Location of Facility

3. Emmons-Logan Wind proposes to construct, own, and operate the Project, an approximately 6.85 mile long 230 kilovolt (“kV”) electric transmission line and associated facilities in Emmons County, North Dakota.
4. The 150-foot Project corridor (“Project Corridor”) encompasses approximately 124.5 acres. The Project will originate at the Emmons-Logan Wind Energy Center (Case No. PU-18-280) and terminate at the interconnection to the existing Montana Dakota Utilities 230 kV Heskett-Wishek transmission line.

5. Emmons-Logan Wind has entered into a 25-year power purchase agreement with Great River Energy for the full output of energy produced at the Emmons-Logan Wind Energy Center.
6. The Project will be constructed using steel monopole structures. The average height of the single pole structures will range from 90 to 120 feet depending on final engineering design. Each steel monopole structure will be directly embedded into the ground, with an overall foundation diameter of approximately six feet and an embedded length of approximately 15 to 20 feet. The pole locations will be placed approximately 950 feet apart depending on site specific considerations. Guyed structures will be required at approximately three locations, with up to eight guy wires required per structure, each up to 25 feet from the pole structure.
7. The Project will be constructed pursuant to National Electrical Safety Code requirements.
8. All easement agreements and options necessary for the siting and construction of the Project and associated facilities have been obtained.
9. Emmons-Logan Wind intends a December 2019 in-service date for the Project.

Study of Preferred Location

10. Emmons-Logan Wind performed a desktop evaluation centered on the Project Corridor for soils, land use, wetlands and waterbodies, trees and shrubs, and protected species and critical habitats.
11. Emmons-Logan Wind conducted a Class I Literature Search within a 1-mile buffer on the Project route.
12. Emmons-Logan Wind completed a Class III Cultural Resource Inventory for archaeological resources in the Project Corridor. Emmons-Logan Wind submitted its Class III Cultural Resources Inventory Report for archaeology to the State Historic Preservation Office (“SHPO”). Emmons-Logan Wind filed a copy of SHPO's concurrence letter with the Commission (Exhibit 25) indicating no significant sites will be affected as a result of the Project.
13. Emmons-Logan Wind conducted natural resource field surveys within the Project Corridor. The field surveys gathered information on soils, land use and vegetation, wetlands and waterbodies, trees and shrubs, and wildlife, including protected species and critical habitats.
14. Emmons-Logan Wind conducted large bird point count surveys, grassland breeding bird surveys, grouse lek aerial surveys, aerial- and ground-based raptor nest surveys, a bat habitat study, a grasslands analysis, and an analysis of potential whooping crane habitat in the area of the Project. 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.

15. Emmons-Logan Wind undertook a voluntary outreach and consultation with Native American Tribes to address potential cultural concerns and avoid potential impacts to resources of tribal or cultural significance.
16. Emmons-Logan Wind coordinated with and received feedback from the following federal and state departments, agencies, and entities:
 - a. Federal: United States Fish and Wildlife Service (USFWS); Federal Aviation Administration.
 - b. State: North Dakota Game and Fish Department (NDGF); North Dakota Department of Health, North Dakota State Historical Society; North Dakota Department of Trust Lands; North Dakota Department of Health; North Dakota State Water Commission; and North Dakota Department of Transportation.
 - c. Other: City of Linton Industrial Development Corporation.
17. Agency consultations and comments are noted in the Application, exhibits, and testimony presented at the public hearing. No state or federal agency or local government entity has indicated that it opposes the Project.

Siting Criteria

18. The Commission has established criteria pursuant to North Dakota Century Code § 49-22-05.1 to guide the Commission in evaluating the suitability of granting a Certificate of Corridor Compatibility and Route Permit. The criteria, as set forth in North Dakota Administrative Code § 69-06-08-02 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.
19. Emmons-Logan Wind evaluated the Project with respect to the Exclusion, Avoidance, Selection and Policy Criteria of the Commission.
20. A transmission facility route must not be sited within an Exclusion Area. Exclusion Areas may be located within the corridor, but at no given point may such an area or areas encompass more than 50 percent of the corridor unless there is no reasonable alternative.
21. There are no Exclusion Areas present within the Project Corridor.
22. An Avoidance Area is a geographical area that may not be considered in the 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 alternative routes.

23. Areas within 500 feet of an inhabited rural residence are designated as an Avoidance Area. Pursuant to North Dakota Century Code § 49-22-05.1(2), the 500-foot Avoidance Area for an inhabited rural residence may be waived by the owner of the residence in writing.
24. One inhabited residence is located within 500 feet of the Project route. Emmons-Logan Wind has obtained a waiver from this landowner and filed a copy of the waiver with the Commission (Exhibit 22).
25. No additional Avoidance Areas are located within the Project Corridor.
26. In accordance with the Commission's Selection Criteria, a transmission facility shall be approved only if it is determined that any significant adverse effects that will result from the location, construction, and operation of the facility as they relate to the Selection Criteria will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum.
27. Permanent impacts from the Project will be approximately five acres.
28. Emmons-Logan Wind has analyzed the impacts of the Project in relation to all relevant Selection Criteria. No significant adverse impact will result from the location, construction, and operation of the Project.
29. In accordance with the Commission's Policy Criteria, the Commission may give preference to an applicant that will maximize the benefits that result from the adoption of various policies designated within the Commission's Policy Criteria.
30. Emmons-Logan Wind has demonstrated its commitment to maximize the benefits of the Project to meet the Commission's Policy Criteria by designing and locating the Project in a manner as to maximize operational efficiency and economic benefits while minimizing Project impacts.

Mitigation to Minimize Impact

31. Emmons-Logan Wind has agreed to certain steps to mitigate the impact of the Project as indicated by its December 4, 2018 execution of the Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications, which has been filed with the Commission (Exhibit 19).
32. Emmons-Logan Wind 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.

33. Overhead lines and guyed structures will be outfitted with bird flight diverters following Avian Protection Interaction Committee guidelines to prevent bird collision.
34. During construction, road speed within the Project Corridor will be limited to 25 miles per hour.
35. Emmons-Logan Wind will participate in the North Dakota One-Call Excavation Notice System.

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

Conclusions of Law

1. The Commission has jurisdiction over Emmons-Logan Wind and the subject matter of the Application under North Dakota Century Code Chapter 49-22.
2. Emmons-Logan Wind is a utility as defined in North Dakota Century Code § 49-22-03(14).
3. The Project is a transmission facility as defined in North Dakota Century Code § 49-22-03(6).
4. The Application submitted by Emmons-Logan Wind meets the corridor and route evaluation criteria required by North Dakota Century Code Chapter 49-22.
5. 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.
6. The location, construction, and operation of the Project are compatible with the environmental preservation and the efficient use of resources.
7. 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.

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

Order

The Commission orders:

1. Certificate of Corridor Compatibility No. ____ is issued to Emmons-Logan Wind designating a corridor for the construction, operation, and maintenance of the Emmons-Logan Wind 230 kV transmission line and associated facilities in Emmons County, North Dakota, as

identified in Figure 1-1 of Hearing Exhibit No. 18. For purposes of the Certificate, the corridor is an area 150-foot wide centered on the route designated in this Order.

2. Route Permit No. ____ is issued to Emmons-Logan Wind designating a route in Emmons County, North Dakota, for the construction and operation of an approximately 6.85 mile 230 kV transmission line. The designated route for this purpose is as identified in Figure 1-1 of Hearing Exhibit No. 18.

3. The December 4, 2018 Certification Relating to Order Provisions – Transmission Facility Siting with accompanying Tree and Shrub Mitigation Specifications is incorporated by reference and attached to this Order. The December 4, 2018 Tree and Shrub Mitigation Specifications may be modified upon the mutual agreement of the Commission and Emmons-Logan Wind.

4. To the extent there are any conflicts or inconsistencies between Emmons-Logan Wind's Application and the Certification, the Certification provisions control.

PUBLIC SERVICE COMMISSION

Brian Kroshus
Commissioner

Randy Christmann
Chairman

Julie Fedorchak
Commissioner