

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-18-281**

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

**February 6, 2019**

**Appearances**

Commissioners Brian Kroshus, Julie Fedorchak and Randy Christmann.

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, in Case No. PU-18-281, Emmons-Logan Wind, LLC (Emmons-Logan Wind) filed an application with the Commission for a Certificate of Corridor Compatibility and Route Permit (Application) concerning a 230 kV electric transmission line and associated facilities to be located in Emmons County, North Dakota ("Project").

Also on July 19, 2018, in Case No. PU-18-280, Emmons-Logan Wind filed an application with the Commission 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 (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 Applications 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 4<sup>th</sup> 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, a residence setback waiver and a wetland delineation report with the Commission.

On December 7, 2018, a consolidated 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 approximately 6.85 miles of 230 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 an interconnection to the existing Montana Dakota Utilities 230 kV Heskett-Wishek transmission line in Emmons County, North Dakota.

5. 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.

6. The Project will be constructed in compliance with the National Electrical Safety Code.

7. All easement agreements and options necessary for the siting and construction of the Project and associated facilities have been obtained.

8. Emmons-Logan Wind intends a December 2019 in-service date for the Project.

#### Study of Preferred Location

9. 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.

10. 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.

11. 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.

12. Emmons-Logan Wind conducted a Class I Literature Search within a 1-mile buffer on the Project route to identify previously recorded archaeological sites.

13. 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 indicating no significant sites will be affected as a result of the Project.

14. 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.

15. 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.

16. Emmons-Logan Wind undertook an outreach and consultation with Native American Tribes to address potential cultural concerns and avoid potential impacts to resources of tribal or cultural significance.

#### Siting Criteria

17. 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.

18. Emmons-Logan Wind evaluated the Project with respect to the Exclusion, Avoidance, Selection and Policy Criteria of the Commission.

19. 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.

20. There are no Exclusion Areas present within the Project Corridor.

21. 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.

22. 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 wiring.

23. 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.

24. No additional Avoidance Areas are located within the Project Corridor.

25. 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.

26. Permanent impacts from the Project will be approximately five acres.

27. 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.

28. 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.

29. 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

30. 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.

31. Emmons-Logan Wind will use 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 Storm water 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.

32. Overhead lines and guyed structures will be outfitted with bird flight diverters and follow Avian Protection Interaction Committee guidelines to prevent bird mortality.

33. During construction, road speed within the Project Corridor will be limited to 25 miles per hour.

34. 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 this 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 its:

## Order

The Commission orders:

1. Emmons-Logan Wind shall construct and operate the facility in accordance with the Commission's findings of fact.
2. Certificate of Corridor Compatibility No. 208 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.
3. Route Permit No. 218 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.
4. 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.
5. 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

  
Julie Fedorchak  
Commissioner

  
Brian Kroshus  
Chairman

  
Randy Christmann  
Commissioner

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

**Route Permit Number 218**

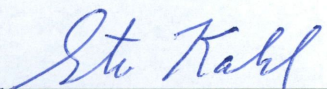
*This is to certify that the Commission has designated a route for Emmons-Logan Wind, LLC for the construction of approximately 6.85 miles of 230 kV electric transmission line and associated facilities in Emmons County, North Dakota extending from the Emmons-Logan Wind Energy Center to an interconnection with Montana Dakota Utilities Co.'s existing 230 kV Heskett-Wishek transmission line.*

*This permit is issued in accordance with the Commission's Findings of Fact, Conclusion of Law and Order dated February 6, 2019 in Case No. PU-18-281 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, April 29, 2015.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Interim Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Certificate of Corridor Compatibility Number 208**

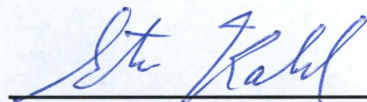
*This is to certify that the Commission has designated a transmission facility corridor for Emmons-Logan Wind, LLC for the construction of approximately 6.85 miles of 230 kV electric transmission line and associated facilities in Emmons County, North Dakota extending from the Emmons-Logan Wind Energy Center to an interconnection with Montana Dakota Utilities Co.'s existing 230 kV Heskett-Wishek transmission line.*

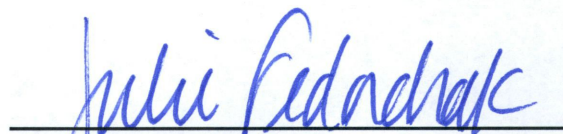
*This certificate is issued in accordance with the Commission's Findings of Fact, Conclusions of Law and Order dated February 6, 2019 in Case No. PU-18-281 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, February 6, 2019.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Interim Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

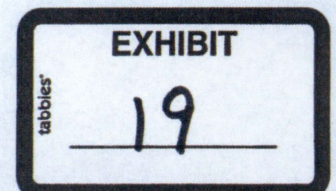
Emmons-Logan Wind, LLC  
Emmons-Logan 230 kV Transmission Line - Emmons  
Siting Application

Case No. PU-18-281

CERTIFICATION RELATING TO ORDER PROVISIONS  
TRANSMISSION FACILITY SITING

I am John DiDonato, a representative of Emmons-Logan Wind, LLC ("Company") with authority to bind the Company to requirements to be set forth by the Commission in its Order and I certify the following:

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



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

**Construction:**

7. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
8. Company understands and agrees that all cultural resource mitigation plans must be submitted to the North Dakota State Historic Preservation Office and approved prior to the start of any fieldwork and construction activity in the affected area.
9. Company understands and agrees that topsoil removal will begin when the Commission's third-party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the transmission facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated on construction activities on a monthly basis.
11. Company understands and agrees that all topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas where cuts will be made, must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must also be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
12. Company understands and agrees that all buried facility crossings of graded roads must be bored unless the responsible governing agency specifically permits Company to open cut the road.

13. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
14. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made and a report of such examination is filed with the Commission and the State Historical Society.
15. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
16. Company understands and agrees that the Commission has authority to stop Project construction activities in the event of a probable violation of the siting laws, siting rules, or applicable Commission Orders if, in the opinion of the Commission, construction activities are likely to result in irreparable or significant harm.

**Restoration and Maintenance:**

17. Company understands and agrees that it shall, as soon as practicable upon the completion of the construction of the transmission facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
18. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the transmission facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
19. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
20. Company will fulfill its obligation for reclamation and maintenance of the approved transmission facility right-of-way, transmission facility, and associated facilities continuing throughout the life of the transmission facility.
21. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the transmission facility.

22. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the transmission facility.
23. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
24. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the transmission facility.
25. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
26. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the transmission facility.

**Communication with Landowners and PSC:**

27. Company understands and agrees that, prior to beginning construction of the transmission facility at a location, it shall send a letter to each landowner with whom an easement was executed for that location specifying the name and phone number of the company representative who is responsible for receiving and resolving landowner issues for the life of the easement.
28. Company understands and agrees that it will file with the commission the name and phone number of the current company representative who is responsible for receiving and resolving landowner issues for the transmission facility. The company will update this information whenever there is a change to the current company representative for the life of all easements for the transmission facility.
29. Upon request, Company agrees to provide the Commission with engineering design drawings of the transmission facility prior to construction.
30. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the transmission facility, including injuries to any person.
31. Company agrees to report to the Commission, as soon as reasonably possible, the presence in the permit area of any critical habitat or threatened or endangered species of which Company becomes aware and which were not previously reported to the Commission.

32. Company understands and agrees that it shall inform the Commission in writing of any plans to modify the transmission facility or of any plans to modify the site plan for the transmission facility.
33. Company agrees to provide the Commission with both an electronic and a paper copy of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the corridor approved by the Commission and the facility design specifications for the construction of the transmission facility showing the location of the transmission facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
34. Company shall notify the Commission as soon as reasonably possible if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.

**Route Adjustments Before or During Construction:**

35. Company agrees to utilize the following procedures if Company seeks a route adjustment before or during construction of the transmission line.
36. Company will file the name and contact information for a key contact person for the purposes of notice and communication during the adjustment application.
37. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:
  - a. Certification and supporting documentation affirming that construction activities will be within the designated corridor, will not affect any known exclusion or avoidance areas within the designated corridor;

- b. Certification and supporting documentation, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, route and the route adjustment;
- c. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

38. **ROUTE ADJUSTMENT WITHIN DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of an electric transmission line within the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route within the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - i. the designated corridor, route and the route adjustment;
  - ii. all exclusion and avoidance areas within the portion of the designated corridor containing the route adjustment
- b. Certification and supporting documentation affirming:
  - i. That construction activities will be within the designated corridor
  - ii. That construction activities will not affect any known exclusion area
- c. All field studies performed on the portion of the designated corridor containing the route adjustment;
- d. Specific information about any mitigation measures Company will take within the adjustment area;
- e. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- f. Certification that unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist;
- g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

39. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of an electric transmission line outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. Certification and supporting documentation affirming that construction activities will not affect any known exclusion or avoidance areas,
- b. Certification and supporting documents stating the length of the proposed route outside of the corridor and a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated corridor, corridor adjustment, designated route and the route adjustment;
- c. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment; and
- d. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

40. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, AVOIDANCE AREA AFFECTED:** Before adjusting the route of an electric transmission line outside the designated corridor that may affect an avoidance area, and before conducting any construction activities for any adjustment to the designated route outside the designated corridor, the Company will file:

- a. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - i. the designated corridor, corridor adjustment, route and the route adjustment;
  - ii. all exclusion and avoidance areas within the adjustment area
- b. Certification that construction activities will not affect any known exclusion area;
- c. Certification that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist within the designated corridor and route;
- d. Certification that each owner of real property on which the adjustment is to be located and any applicable governmental entity with an interest in the same adjustment area do not oppose the adjustment;
- e. Provide specific information about any mitigation measures Company will take within the adjustment area;
- f. Detailed field studies indicating exclusion and avoidance areas for the proposed adjustment area; and

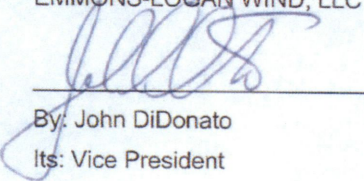
g. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

Company acknowledges and agrees that:

41. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.
42. Company acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

Dated this 4 day of December, 2018.

EMMONS-LOGAN WIND, LLC

  
By: John DiDonato

Its: Vice President

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

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

**Case No. PU-18-281**

**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 150 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 and approved by the Commission.
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).