

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Burke Wind, LLC
Burke Wind Transmission Line
Burke and Mountrail Counties
Siting Application**

Case No. PU-18-302

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

April __, 2019

Appearances

Commissioners 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, Burke Wind, LLC.

Brian Schmidt, Attorney at Law, Smith Porsborb Schweigert Armstrong Moldenhauer & Smith, 122 E. Broadway Ave., Bismarck, North Dakota 58502, Special Assistant Attorney General on behalf of the North Dakota Public Service Commission.

Timothy Dawson, Administrative Law Judge, Office of Administrative Hearings, P.O. Box 1695, Bismarck, North Dakota 58502, as Procedural Hearing Officer.

Preliminary Statement

On August 9, 2018, Burke Wind filed a Consolidated Application for a Certificate of Corridor Compatibility and Route Permit (“Application”) with the North Dakota Public Service Commission (“Commission”) concerning a 37-mile long 345 kilovolt (“kV”) electric transmission line and associated facilities to be located in Burke and Mountrail Counties, North Dakota (“Project”), docketed as Case No. PU-18-302.

On November 14, 2018, Burke Wind also filed an Amended Application for a Certificate of Site Compatibility for a 200 megawatt wind energy conversion facility to be located in Burke County, North Dakota, (“Burke County Wind Energy Center”), docketed in Case No. PU-18-344.

On January 23, 2019, the North Dakota Public Service Commission (“Commission”) consolidated Case Nos. PU-18-344 and PU-18-302 for public hearing under North Dakota

Administrative Code § 69-02-04-04, and deemed the Application complete conditioned upon filing thirty days prior to the public hearing: 1) Maps showing final site plan with turbines, access roads, collector lines, transmission line structures and all residential receptor points labeled 2) Class II and Class III cultural resource survey reports or summaries showing areas surveyed and SHPO cultural site numbers recommended for avoidance; and 3) Wetland delineation reports.

Also on January 23, 2019, the Commission issued a Notice of Filings and Consolidated Hearing, and scheduled a public hearing for March 8, 2019 at 9:00 a.m. CST, at Memorial Hall, 100 Main Street NW Bowbells, ND 58721.

The Notice of Filings and Consolidated Hearing identified the following issues to be considered for the Application in PU-18-302:

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 February 6, 2019, with respect to the Project, Burke Wind filed a final site plan, a Class III cultural resource summary, and a wetland delineation and determination report.

On March 8, 2019, 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. Burke Wind is a Delaware limited liability company and is a wholly owned, indirect subsidiary of NextEra Energy Resources, LLC.
2. Burke 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-18-303.

Size, Type, and Preferred Location of Facility

3. Burke Wind proposes to construct, own, and operate the Project, an approximately 37-mile long 345 kV electric transmission line and associated facilities in Burke and Mountrail Counties, North Dakota.
4. The 150-foot to 200-foot Project corridor (“Project Corridor”) encompasses approximately 729 acres. The Project will originate at the Burke County Wind Energy Center (Case No. PU-18-344) and terminate at the interconnection to the existing Basin Electric Power Cooperative (“Basin”) Tande Substation in Mountrail County.
5. Burke Wind has entered into a 30-year power purchase agreement with Basin for the full output of energy produced at the Burke County Wind Energy Center.
6. The Project will be constructed using steel monopole structures. The average height of the single pole structures will range from 80 to 160 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 8000 feet apart depending on site specific considerations. Guyed structures will be required at approximately 48 locations, with up to eight guy wires required per 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. Burke Wind intends a December 2019 in-service date for the Project.

Study of Preferred Location

10. Burke 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. Burke Wind conducted a Class I Literature Search within a one-mile buffer on the Project route.
12. Burke Wind completed a Class III Cultural Resource Inventory for archaeological resources in the Project Corridor. Burke Wind submitted its Class III Cultural Resources Inventory Report for archaeology to the State Historic Preservation Office (“SHPO”). Burke Wind filed a copy of SHPO's concurrence letter with the Commission (Exhibit 19, Docket 48) indicating no significant sites will be affected as a result of the Project.
13. Burke 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. Burke 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. Burke Wind committed to marking the transmission line with bird diverters and avoided all impacts to suitable stopover wetland habitat. Burke Wind has avoided, minimized, and mitigated impacts for wildlife, and no significant impacts to wildlife are anticipated.
15. Burke 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. Burke Wind coordinated with and received feedback from the following federal and state departments, agencies, and entities:
 - a. Federal: United States Fish and Wildlife Service; U.S. Department of Defense; U.S. Federal Aviation Administration; and U.S. Army Corps of Engineers.
 - b. State: North Dakota Game and Fish Department; 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.
17. Agency consultations and comments are noted in the Application, exhibits, and testimony presented at the public hearing. Burke Wind has avoided, minimized, and mitigated all issues raised by state and federal agencies.

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. Burke 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. With respect to Exclusion Areas, designated and registered archaeological sites are located within the Project Corridor; however, Burke Wind has sited the Project to avoid impacts to these sites.
22. No additional Exclusion Areas are located within the Project Area.

23. 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.
24. 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.
25. One inhabited residence is located within 500-feet of the outermost edge of the widest structure along the Project route and right-of-way. Burke Wind has obtained a waivers from this landowner and filed a copy with the Commission.
26. Areas that are geologically unstable are an Avoidance Area. One landslide area and one reclaimed quarry are located within the Project Corridor but are spanned by the Project; therefore, no impacts to geologically unstable areas are anticipated.
27. No additional Avoidance Areas are located within the Project Corridor.
28. 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.
29. Permanent impacts from the Project will be approximately 0.5 acres.
30. Wetland delineations were completed on all aspects of the Project (Exhibit 34, Docket No. 54). Seven potentially jurisdictional wetlands were identified within the Project Corridor. The Project has been designed to span the seven potentially jurisdictional wetlands, thus avoiding temporary and permanent impacts.
31. Burke Wind has sited the Project to avoid temporary and permanent impacts to isolated prairie potholes to the maximum extent practicable.
32. Burke 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.
33. 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.

34. Burke 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

35. Burke Wind has agreed to certain steps to mitigate the impact of the Project as indicated by its February 27, 2019 execution of the Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications, which has been filed with the Commission (Exhibit 3, Docket No. 45).

36. Burke 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.

37. Overhead lines and guyed structures will be outfitted with bird flight diverters following Avian Protection Interaction Committee guidelines to prevent bird collision.

38. Burke Wind has avoided all direct impacts to field-verified suitable Dakota skipper habitat.

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

40. Burke 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 Burke Wind and the subject matter of the Application under North Dakota Century Code Chapter 49-22.

2. Burke 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 Burke 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 Burke Wind, LLC designating a corridor area 150 to 200-feet-wide centered for the construction, operation, and maintenance of the Burke Wind 345 kV transmission line and associated facilities in Burke and Mountrail Counties, North Dakota, as identified in Exhibit 2, Docket No. 44.
2. Route Permit No. ____ is issued to Burke Wind, LLC designating a route in Burke and Mountrail Counties, North Dakota, for the construction and operation of an approximately 37-mile 345 kV transmission line. The designated route for this purpose is as identified in Exhibit 2, Docket No. 44.
3. The January 27, 2019 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 January 27, 2019 Tree and Shrub Mitigation Specifications may be modified upon the mutual agreement of the Commission and Burke Wind.
4. To the extent there are any conflicts or inconsistencies between Burke Wind's Application and the Certification, the Certification provisions control.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Brian Kroshus
Chairman

Julie Fedorchak
Commissioner

