

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Northern Divide Wind, LLC
Northern Divide Wind Energy Center
Burke County
Siting Application**

Case No. PU-19-376

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

May ____, 2020

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Casey A. Furey, Attorney at Law, Crowley Fleck PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58502 on behalf of the Applicant, Northern Divide Wind, LLC.

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

Kevin Pranis, 81 East Little Canada Road, St. Paul, Minnesota 55117, representative of Intervenor Laborers District Council of Minnesota and North Dakota.

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, P.O. Bismarck, North Dakota 58502, as Procedural Hearing Officer.

Preliminary Statement

On December 05, 2019, in Case No. PU-376, Northern Divide Wind, LLC (“Northern Divide Wind”) filed an Application for a Certificate of Site Compatibility for an approximately 200 megawatt (“MW”) wind energy conversion facility (the “Application”) known as the Northern Divide Wind Energy Center (“Wind Project”), to be located in Burke County, North Dakota, docketed as Docket No. 1 in Case No. PU-19-376.

Also on December 05, 2019, in Case No. PU-19-377, Northern Divide Wind filed a combined Consolidated Application for a Certificate of Corridor Compatibility and Route Permit concerning an approximately 41-mile long 345 kilovolt (“kV”) electric transmission line and associated facilities (“Transmission Project”) in Burke and Mountrail Counties, North Dakota, which extends from the Wind Project collection substation in Burke County to Basin Electric Power Cooperative’s (“Basin”) Tande Substation located in Mountrail County docketed as Docket No. 1 in Case No. PU-19-377.

On February 19, 2020, the North Dakota Public Service Commission (“Commission”) consolidated Case Nos. PU-19-376 and PU-19-377 for public hearing and deemed both applications for the Wind Project and Transmission Project complete.

Also on February 19, 2020, the Commission issued a Notice of Filings and Consolidated Hearing, and scheduled a public hearing for April 17, 2020 at 9:30 a.m. CDT, at Memorial Hall, 100 Main Street NW, Bowbells, North Dakota 58721.

On March 13, 2020, North Dakota Governor Doug Burgum issued Executive Order 2020-03 and declared a state of emergency in North Dakota in response to the public health crisis resulting from the novel coronavirus (COVID-19).

On March 30, 2020, North Dakota Governor issued Executive Order 2020-16 suspending the physical location requirements under N.D.C.C. § 44-04-19 for meetings held by governing bodies attending via remote means.

On April 2, 2020, the Laborers District Council of Minnesota and North Dakota (“LIUNA”) filed a Petition to Intervene in Case Nos. PU-19-376 and PU-19-377.

On April 8, 2020, North Dakota Governor issued Executive Order 2020-25 suspending the operation of N.D.C.C. § 44-22-13 requiring the Commission to hold public hearings on permit applications in specific locations.

On April 9, 2020, the Commission, finding that a state of emergency has been declared to prevent and contain the spread of COVID-19 and that guidance has been provided by the State Health Officer and Director of Emergency Services limiting group gatherings to no more than 10 people, adopted a motion to relocate the April 17 hearing to a remote location in accordance with Governor Burgum’s Executive Order 2020-25.

Also on April 9, 2020, the Commission issued Amended Notice of Filings and Consolidated Hearing amending the location of the April 17, 2020 9:30 a.m. CDT public hearing to be held via remote means (“Amended Notice”). The Amended Notice provided as follows:

A consolidated Public Hearing on the applications in Case No. PU-19-376 and Case No. PU-19-377 was noticed to be located at Memorial Hall, 100 Main Street NW Bowbells, ND 58721. Due to the state of emergency, the Public Hearing will be held remotely to begin April 17, 2020 at 9:30 a.m. CDT. The public is encouraged to view the hearing electronically via <https://psc.nd.gov/public/meetings/live.php> or listen telephonically via 1-888-585-9008 with room code 259-316-322.

Public testimony received by the Commission will be placed into the record for consideration. The Commission will receive testimony through the following methods:

Written - Written public testimony may be submitted beginning on April 17, 2020 through April 27, 2020 through email via ndpsc@nd.gov or by mail addressed to: Public Service Commission, 600 E. Boulevard Ave., Dept. 408 Bismarck, ND 58505-0480

Telephonic - The public may testify over the phone by calling 701-328-4081 to be placed on a list. Following the testimony by Northern Divide Wind, LLC, on April 17, 2020, the Commission will call you back to receive your testimony in an order determined by the Administrative Law Judge. If you wish to provide documents or photographs for reference during your testimony, please provide them to the above-listed email address with a note expressing the intended use.

The Amended Notice identified the issues to be considered in Case Nos. PU-19-376 and PU-19-377 as follows and as previously identified in the February 19 Notice:

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?

Also on April 9, 2020 the Commission sent a notification of the Amended Notice and the changed hearing location to individuals who had expressed interest or submitted comments in the proceedings, either through the United States Postal Service or through electronic mail. A list of the recipients of this notification is provided in Docket No. 47.

On April 13, 2020, ALJ Hogan issued an Order granting LIUNA's Petition to Intervene.

On April 17, 2020, the public hearing was held as scheduled pursuant to the Amended Notice.

Exhibits 1 through 21 were entered by Northern Divide Wind at hearing.

Exhibits I-1 through I-5 were entered by LIUNA at hearing.

On May 04, 2020, LIUNA filed Late-Filed Exhibit I-6.

The record remained open from April 17, 2020 through April 27, 2020, for public comment. The Commission received prehearing and post-hearing public comments which were entered into the record in PU-19-376 marked as Exhibits PC 1 through PC 154. Docket No. 166.

On May 11, 2020, Northern Divide Wind filed Declaration of Clay Cameron and Declaration of Sean Harrington in response to additional topics raised during the public comment period.

Also on May 11, 2020, Northern Divide Wind filed a Post Hearing Brief.

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. Northern Divide Wind, LLC is a Delaware limited liability company and is a wholly owned, indirect subsidiary of NextEra Energy Resources, LLC (“NextEra”).
2. Northern Divide Wind is authorized to transact business in the State of North Dakota, as evidenced by the Certificates of Good Standing issued by the Delaware and North Dakota Secretaries of State and filed with the Commission as Docket No. 2 in Case No. PU-19-370.
3. The Wind Project will be owned and operated by Northern Divide Wind.

Size, Type and Preferred Location of Facility

4. The Wind Project is expected to result in minimal permanent disturbance and occupation of up to 57.2 acres of land within a project area of approximately 10,912 acres of land, located in Burke County, North Dakota, as designated Docket No. 32. The Wind Project consists of up to 74 wind turbines and four alternate locations and will have a nameplate capacity of up to 200 MW.
5. Northern Divide Wind expects to use both General Electric (“GE”) 2.72 MW and 2.32 MW wind turbine generators. The GE 2.72 MW wind turbines will have a 295.3-foot hub height and measure 485.6 feet from the base of the tower to the tip of the upright blade. The GE 2.32 MW wind turbines will have a 262.5-foot hub height and will measure 452.7 feet from the base of the tower to the tip of the upright blade. Each turbine will be grounded and shielded to prevent against lightning strike.
6. Additional facilities associated with the Wind Project include access roads, underground electrical collection and communication systems, a collection substation, an operation and maintenance building, one permanent meteorological evaluation tower (“MET”), two temporary power performance MET towers, and one permanent Aircraft Detection Lighting System (“ADLS”) radar system.
7. The power from the wind turbines will be run through an underground 34.5 kV collection system. The collection system will terminate at the collector substations where the voltage will be stepped up from 34.5 kV to transmission line voltages for interconnection to the transmission grid.

8. The wind turbines will have Supervisory Control and Data Acquisition (“SCADA”) communications technology to allow control and monitoring of the wind facility. The SCADA communications systems permits automatic, independent operation and remote supervision allowing simultaneous control of turbines.
9. The Wind Project will be constructed pursuant to National Electrical Safety Code requirements.
10. Northern Divide Wind has signed a 30-year power purchase agreement with Basin for the full output of energy produced by the Wind Project.
11. All easement agreements and options necessary for the siting and construction of the Wind Project and associated facilities have been obtained.
12. Northern Divide Wind anticipates a December 2020 in-service date for commercial operations of the Wind Project.
13. The estimated total cost to construct the Wind Project is approximately \$300 million.

Study of Preferred Location

14. Northern Divide Wind sent consultation letters to the federal, state, and local departments, agencies, and entities designated in N. D. Admin. Code § 69-06-01-05. The federal, state, and local departments, agencies, and entities that were consulted and provided comment are as follows:
 - a. Federal: Federal Aviation Administration (“FAA”); United States Department of Defense (“USDOD”); United States Army Corps of Engineers; and, the National Telecommunications and Information Administration.
 - b. State: North Dakota Aeronautics Commission; North Dakota Geological Survey; North Dakota Department of Environmental Quality; North Dakota Department of Transportation; North Dakota Game and Fish Department (“NDGFD”); North Dakota Department of Trust Lands; North Dakota State Water Commission; and, the State Historical Society of North Dakota (SHSND).
15. Agency consultations and comments are noted in the Application, exhibits, and testimony presented at the public hearing. Northern Divide Wind has avoided, minimized, and mitigated impacts for all issues raised by state or federal agencies.
16. Northern Divide Wind received a response from the National Telecommunications and Information Administration (“NTIA”) stating that no federal agencies represented in the Interdepartment Radio Advisory Committee had issues with turbine placement in the area. NTIA did not identify any concerns regarding radio frequency blockage.

17. Northern Divide Wind conducted a telecommunications study to identify all published Federal Communications Commission microwave telecommunications systems in proximity of the Wind Project area. Northern Divide Wind testified that based on the results of this study no impacts to these systems are anticipated from the Wind Project's turbines.

18. Northern Divide Wind obtained Determinations of No Hazard from the FAA for all Wind Project turbines, alternate turbine locations, the permanent MET and the two temporary power performance METs, and for the installation of ADLS at the facility.

19. Northern Divide Wind received a response from the USDOD's Office of the Assistant Secretary of Defense that the Wind Project will have minimal impact on military operations conducted in the area.

20. North Dakota Century Code § 49-22-16(2) provides that no energy conversion facility site shall be designated that violates any local land use, zoning or building rules, regulations or ordinances. Northern Divide Wind has obtained a conditional use permit from Burke County for the Wind Project. Docket No. 8, Appendix A.

21. Northern Divide Wind performed a desktop evaluation on the Wind Project for soils, land use, wetlands and waterbodies, woodlands, and protected species and critical habitats.

22. Northern Divide Wind conducted a Class I Literature Search of the Wind Project area plus a one-mile study area to identify previously recorded archaeological sites identified during previous surveys.

23. Northern Divide Wind conducted a Class III Cultural Resource Inventory field inspection for archaeological resources for areas to be temporarily and permanently impacted by the Wind Project and submitted the report to the SHSND's State Historical Preservation Office ("SHPO"). On December 4, 2018 (Docket No. 29), and February 22, 2019 (Docket No. 8, Appendix I), the SHPO issued letters for archaeological resources located within the Wind Project and concurred with a "No Significant Sites Affected Determination."

24. Northern Divide Wind assessed the potential for historic architectural resources in the Wind Project by conducting an architectural inventory through a Class II Architectural Reconnaissance Inventory within the Wind Project and within two miles of wind turbine locations, and submitted the report to the SHPO. One of the documented sites, South St. Olaf's Church, is eligible for the National Register of Historic Places ("NRHP"). An additional site, the Neils Nielson Fourteen-Sided Barn, is listed in the NRHP. Both sites are located outside of the Wind Project, but within the two-mile architectural assessment area around turbines. Although both sites are located outside of the Wind Project, Northern Divide Wind coordinated with the SHPO to avoid potential indirect viewshed impacts to these sites through a mitigation plan. On April 3, 2020, the SHPO concurred with Northern Divide Wind's mitigation proposal for the barn and church, a copy of which has been filed with the Commission as Docket No. 50.

25. Northern Divide 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.

26. Northern Divide Wind conducted natural resource field surveys within the Wind Project. The field surveys gathered information on soils, land use and vegetation, wetlands and waterbodies, woodlands, trees and shrubs, and wildlife, including protected species and critical habitats.

27. Northern Divide Wind filed the following reports in support of its Application which contain the results of various wildlife and habitat surveys and studies as follows:

- a. Avian Use Report: Evaluates and summarizes studies regarding use of the Wind Project area by avian species, such as waterfowl, grassland nesting birds, raptors, and eagles. Concludes that no adverse impacts are anticipated.
- b. Grouse Lek and Raptor Nest Strategy: Evaluates and summarizes studies regarding raptor nests and grouse leks, and avoidance and minimization efforts. Concludes no eagle nests, low raptor nest and grouse lek density, and that infrastructure avoids known nests and leks. Provides strategy to collect preconstruction data in spring 2020.
- c. Whooping Crane Habitat Review: Evaluates potential whooping crane use. Concludes probability of use is low in any given year and that impacts are unlikely.
- d. Dakota Skipper Habitat Assessment: Identifies and describes approximately five acres of field-verified suitable Dakota skipper habitat within the Wind Project. No impacts to the habitat will occur.
- e. Northern Long-Eared Bat Habitat Assessment: Identifies and describes potential summer and foraging habitat. Concludes that the lack of hibernacula and lack of connectivity to other potential habitat (*e.g.*, Missouri River, badlands) may preclude the presence of northern long-eared bat and that no adverse impacts are anticipated.
- f. Wetlands and Other Waters Delineation Report: Identifies and describes wetlands and other waters delineated in the Wind Project. No impacts to wetlands or other waters will occur.

28. Northern Divide Wind used the U.S. Fish and Wildlife Service (“USFWS”) Information for Planning and Conservation tool and onsite surveys to identify threatened or endangered species or designated critical habitat within the Wind Project. No federally designated critical habitat for threatened or endangered species is located within the Wind Project and no threatened or endangered

species was identified within the Wind Project during surveys except for whooping cranes that were observed incidentally flying overhead, but not roosting or foraging on the ground.

29. Trees and shrubs are sparsely located within the Wind Project, and Northern Divide Wind has sited the Wind Project to avoid impacts to trees and shrubs 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.

Siting Criteria

30. 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 Site Compatibility. The criteria, as set forth in North Dakota Administrative Code § 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

31. Northern Divide Wind evaluated the Wind Project with respect to the Exclusion, Avoidance, Selection, and Policy Criteria of the Commission.

32. An energy conversion facility shall not be sited within an Exclusion Area.

33. With respect to Exclusion Areas, designated and registered archaeological sites are located within the Wind Project; however, Northern Divide Wind has sited the Wind Project to avoid impacts to these sites.

34. All Wind Project turbines have been sited to comply with wind energy conversion facility setbacks designated as Exclusion Areas in North Dakota Administrative Code § 69-06-08-01(2)(a)(2020).

35. No additional known Exclusion Areas are located within the Wind Project.

36. 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 alternative sites.

37. With respect to Avoidance Areas, historical farmsteads and cemeteries are present within the Wind Project; however, Northern Divide Wind has sited the Wind Project to avoid impacts to historical resources.

38. Wetlands are designated as an Avoidance Area. Wetland delineations were completed for areas to be temporarily and permanently impacted by the Wind Project. Northern Divide Wind has sited infrastructure to avoid all temporary and permanent impacts to wetlands.

39. Woodlands are designated as an Avoidance Area. Woodlands are located within the Wind Project; however, they are sparsely located and the Wind Project lacks large, contiguous woodlands. Northern Divide Wind has sited the Wind Project to avoid impacts to woodlands.
40. No additional known Avoidance Areas are located within the Wind Project.
41. In accordance with the Commission's Selection Criteria, a site may be approved in an area when it is demonstrated to the Commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to the criteria designated in § 69-06-08-01(5) will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.
42. In accordance with the Commission's Policy Criteria, the Commission may give preference to an applicant that will maximize benefits that result from the adoption of identified policies and practices in § 69-06-08-01(6). The Commission may also give preference to an applicant that will maximize interstate benefits.
43. Northern Divide Wind submitted evidence that the Wind Project will not have a significant adverse impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-01(5). Additionally, Northern Divide Wind committed to maximizing the benefits of the Wind Project to the extent practicable to meet the Policy Criteria set forth in North Dakota Administrative Code § 69-06-08-01(6).
44. The Wind Project and associated facilities are expected to result in minimal permanent disturbance and occupation of up to 57.2 acres of land. No landowners will be displaced. Northern Divide Wind will continue to work with landowners to minimize land use disruptions from the Wind Project. No impacts to irrigation or quality of agricultural land are anticipated.
45. Northern Divide 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 Wind 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. During construction, the Wind 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 Wind Project area. During operation, no adverse effects to transportation facilities or networks are anticipated.
47. The Wind Project will not have significant adverse impacts on the area's availability to provide law enforcement, government, health, education, community, and utility facilities or services.

48. Northern Divide Wind has extensively coordinated and consulted with the NDGFD and USFWS regarding avoidance, minimization, and mitigation related to habitat and wildlife as evidenced by Northern Divide Wind's Wildlife Agency Correspondence Summary, Attachment 1 to Docket No. 26. In correspondence dated March 17, 2020, the NDGFD, acknowledged Northern Divide Wind has taken the NDGFD's recommendations seriously, resulting in significant impact avoidance and minimization (Docket No. 20).

49. North Divide Wind submitted evidence demonstrating the Wind Project will have minimal adverse effect on grassland nesting birds and waterfowl. Northern Divide Wind has sited the Wind Project in a predominantly agricultural landscape (64 percent) consisting of minimal unbroken grassland, approximating seven percent of the 10,912-acre Wind Project area. Northern Divide Wind has sited the Wind Project to avoid all temporary and permanent impacts to wetlands. All turbines, roads, meteorological towers, and the substation are located in tilled cropland. Northern Divide Wind has sited the Wind Project to avoid permanent impacts to unbroken grasslands, including native prairie. The Wind Project will have negligible temporary impacts on unbroken, non-native grasslands (approximately one percent of unbroken grasslands within the Project area). Northern Divide Wind has sited 20 turbines outside of the Northern Missouri Coteau ecoregion¹, and sited all turbines in low waterfowl nesting density areas including northern pintail duck high density areas, as recommended by the NDGFD.

50. Northern Divide Wind conducted an acoustic analysis to assess whether sound levels from the Wind Project will exceed 50 A-weighted decibels (dBA) within 100 feet of an existing inhabited residence or community building (collectively, a "receptor") pursuant to N.D. Admin. Code § 69-06-08-01(4). The Wind Project is also governed by the Burke County Zoning Regulations Section 11, Article 11, Part J with respect to sound. The Burke County sound regulation equates to 49 dBA within 50 feet of a receptor. The Wind Project meets the Commission and Burke County's sound level requirements at all existing receptors identified in Docket No. 1, Application Appendix B.3.

51. A shadow flicker analysis was conducted for the Wind Project on existing receptors, using realistic modeling assumptions. Based on the shadow flicker analysis, potential shadow flicker levels are expected to be below the Commission's accepted 30 hours per year standard at all participating and non-participating receptors identified in Docket No. 1, Application Appendix B.4.

52. During the course of the proceeding, LIUNA stated it does not take a position for or against the Application. Docket No. 35. LIUNA testified it does not advocate for the establishment of a local hiring requirement. Docket No. 102, pg. 9. LIUNA requested the Commission impose a construction employment reporting requirement.

¹ As mapped in: Bryce, S. A., J. M. Omernik, D. A. Pater, M. Ulmer, J. Schaar, J. Freeouf, R. Johnson, P. Kuck, and S. H. Azevedo. 1996. Ecoregions of North Dakota and South Dakota. (Color poster with map, descriptive text, summary tables, and photographs.) US Geological Survey (USGS) map (map scale 1:1,500,000). USGS, Reston, Virginia. US Environmental Protection Agency (USEPA). Available online: <https://www.epa.gov/eco-research/ecoregion-download-files-state-region-8#pane-39>.

53. The Wind Project will not have significant adverse impacts on temporary and permanent labor. Northern Divide Wind testified that it would work with its engineering, procurement, and construction contractors (“EPCs”) such that its EPCs will endeavor to utilize available local labor, first from the vicinity of the Wind Project area, and then more broadly within the state and region. During operations, the Wind Project will create permanent local operations and maintenance jobs.

54. The Wind Project is expected to be of economic benefit to the affected area through the creation of construction, operation and maintenance jobs, easements payments to landowners, state and local tax revenue, and local expenditures.

55. Northern Divide Wind testified it is working directly with its EPCs to implement safety procedures and practices during construction to address worker and community health and safety during the COVID-19 pandemic.

56. An ADLS will be installed in compliance with FAA requirements and North Dakota Century Code § 49-22-16.4.

Additional Measures to Minimize Impacts

57. Northern Divide Wind has agreed to take certain steps to mitigate the impact of the Wind Project as indicated in the Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications, filed with the Commission as Docket No. 25.

58. Northern Divide Wind has sited the Wind Project to comply with both Commission and Burke County setback regulations. Currently, the nearest non-participating inhabited residence to a Wind Project turbine is 2,806 feet.

59. Northern Divide Wind has developed a voluntary Wildlife Conservation Strategy to help fully evaluate risk to wildlife, document efforts taken to reduce potential impacts through avoidance and minimization efforts, establish post-construction efforts, and outline agreed upon offsetting measures or mitigation.

60. Northern Divide Wind has voluntarily committed to recreate and restore habitat for remaining potential residual impacts to grassland nesting birds and waterfowl using the NDGFD’s recommended avian impact offset model including the restoration of 100 grassland-acres for the displacement of grassland bird pairs and 196 wetland-acres for the displacement of breeding waterfowl pairs.

61. The closest wind turbine has been sited approximately 14.1 miles from Lostwood National Wildlife Refuge.

62. During construction, road speed within the Wind Project will be limited to 25 miles per hour to minimize wildlife collisions and to reduce dust emissions.

63. Northern Divide Wind will avoid temporary and permanent impacts to field-verified suitable Dakota skipper habitat. High visibility fencing (e.g., snow fence) will be placed around field-verified suitable Dakota skipper habitat areas in close proximity to construction that are to be avoided to restrict construction equipment from disturbing these areas. No construction will occur during the Dakota skipper adult flight period (between June 15 and July 18) in areas adjacent to field-verified Dakota skipper habitat.
64. Northern Divide Wind has adopted siting buffers around known raptor nests and grouse leks to minimize disturbance. Northern Divide Wind has sited turbines at least one-quarter mile from active raptor nests, one-half mile from leks, and one mile from eagle nests. Northern Divide Wind is currently conducting additional pre-construction surveys for previously unidentified raptor nests and grouse leks. Any new nests or leks found will have a timing stipulation placed on them under which construction activities will be minimized to the extent practicable within one-half mile (leks and eagle nests) and one-quarter mile (raptor nests) during the lekking and nesting season. Additionally, Northern Divide Wind will monitor the leks and nest during construction to confirm lack of disturbance.
65. Northern Divide Wind will follow Avian Power Line Interaction Committee suggested practices to avoid and minimize the potential for avian collisions and will bury electric collection lines and use un-guyed permanent meteorological evaluation towers or install bird diverters.
66. During construction, Northern Divide Wind will provide contractors with constraint maps that identify sensitive areas within the Wind Project for avoidance. Northern Divide Wind will ensure compliance through onsite environmental construction monitoring.
67. Northern Divide Wind will coordinate with local Natural Resource Conservation Services staff to revegetate noncropland and pasture areas temporarily disturbed during construction or operation of the wind facility with locally sourced certified weed free native seed mixes appropriate to the region.
68. Northern Divide Wind will reseed temporarily disturbed areas or restore to crop, based on the conditions of the area prior to construction and based on landowner preference, and will develop and implement a noxious weed prevention plan to minimize the spread of noxious weeds during construction.
69. Throughout operations of the Wind Project, Northern Divide Wind will implement a voluntary Whooping Crane Identification Training and Curtailment Procedure to shut down turbines if whooping cranes are observed within one mile of a turbine.
70. Northern Divide Wind will complete one-year of post-construction mortality monitoring for birds and bats and will share reporting with both NDGFD and the USFWS.
71. Northern Divide Wind will file a decommissioning plan and decommissioning financial assurance in compliance with North Dakota Administrative Code Chapter 69-09-09.

72. Northern Divide Wind will participate in North Dakota One-Call Excavation Notice System.

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

Conclusions of Law

1. The Commission has jurisdiction over Northern Divide Wind and the subject matter of the Application under North Dakota Century Code Chapter 49-22.
2. Northern Divide Wind is a utility as defined in North Dakota Century Code § 49-22-03(14).
3. The wind energy conversion facility proposed by Northern Divide Wind is an electric energy conversion facility as defined in North Dakota Century Code § 49-22-03(5).
4. The Commission considered LIUNA's reporting request and finds the request is not necessary for the Commission's decision under North Dakota Century Code Chapter 49-22.
5. The Application submitted by Northern Divide Wind meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.
6. The location, construction, and operation of the Wind Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
7. The Wind 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.
8. The location, construction, and operation of the Wind Project are compatible with environmental preservation and the efficient use of resources.
9. The Commission has jurisdiction to ensure compliance with the National Electrical Safety Code standards in the construction and operation of the Wind Project.

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

Order

The Commission orders:

1. Certificate of Site Compatibility for an Energy Conversion Facility No. __ is issued to Northern Divide Wind, LLC for the construction, operation, and maintenance of a wind energy Case No. PU-19-376

Proposed Findings of Fact, Conclusions of Law and Order

conversion facility known as the Northern Divide Wind Energy Center corresponding to the Wind Project area depicted in Docket No. 1, Appendix D.

2. Within the permitted site, Northern Divide Wind is authorized to site and construct up to 74 wind turbines in proposed and alternative locations, as identified in Docket No. 32, along with electric collection and communication lines, a substation, access roads, an operations and maintenance building, and other associated facilities as identified in the Application and supporting filings, and at the public hearing.

3. The Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications filed with the Commission as Docket No. 25, is incorporated by reference and attached to this Order. The Tree and Shrub Mitigation Specifications may be modified upon the mutual agreement of the Commission and Northern Divide Wind.

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

5. If modifications are made to the Wind Project layout, Northern Divide Wind shall complete a Class III Cultural Resource Survey for any previously un-surveyed portions of the designated site affected by Wind Project-related construction activities, in accordance with SHPO guidance, and shall submit cultural resource finds to SHPO for review, and file a copy of SHPO's response with the Commission prior to beginning construction in said areas.

6. If modifications are made to the Wind Project layout, Northern Divide Wind shall complete a wetland determination of any previously un-surveyed areas affected by Wind Project-related activities, as necessary, and file the report with the Commission.

7. If modifications are made to the Wind Project layout that are not covered by the current acoustic analysis, Northern Divide Wind shall conduct an acoustic analysis and file a report with the Commission that shows the predictive model results comply with the Commission's Avoidance Area sound requirement at all currently existing receptors, unless otherwise agreed to by the landowner.

8. If modifications are made to the Wind Project layout that are not covered by the current shadow flicker analysis, Northern Divide Wind shall conduct a shadow flicker analysis, and file a report with the Commission that shows the predictive model results meet the Commission recognized shadow flicker 30 hours per year industry standard or less at all currently existing receptors, unless otherwise agreed to by the landowner.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Brian Kroshus
Chairman

Julie Fedorchak
Commissioner