

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

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

Case No. PU-19-376

**Northern Divide Wind, LLC
345 kV Transmission Line - Burke & Mountrail
Siting Application**

Case No. PU-19-377

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

June 10, 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 D. Schmidt, Special Assistant Attorney General. 122 East. Broadway Ave., Bismarck, North Dakota 58502, 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 5, 2019, 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 known as the Northern Divide Wind Energy Center, to be located in Burke County, North Dakota ("Wind Project"), in Case No. PU-19-376.

On December 5, 2019, 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 to be located in Burke and Mountrail Counties, North Dakota (“Transmission Line Project”) in Case No. PU-19-377. The proposed transmission line extends from the Wind Project collection substation in Burke County to Basin Electric Power Cooperative’s (“Basin”) Tande Substation located in Mountrail County.

Northern Divide Wind’s applications acknowledged its parent company, NextEra Energy Resources, LLC (“NextEra”), changed its name from Burke Wind, LLC (“Burke Wind”) to Northern Divide Wind on August 29, 2019. The applications also acknowledged that in 2017, Burke Wind submitted applications to the North Dakota Public Service Commission (“Commission”) which proposed to construct the wind and transmission line projects considered in Case Nos. PU-18-302 and PU-18-344 (“Burke Wind Projects”). These applications were denied by the Commission for the reasons outlined in its June 12, 2019, Findings of Fact, Conclusions of Law, and Order filed in PU-18-302 and PU-18-344. Northern Divide Wind’s applications indicate the Wind Project and Transmission Line Project locations overlap - in part - with the locations proposed for the Burke Wind Projects. However, the current proposed Wind Project and Transmission Line Project differ from the Burke Wind Projects as explained below.

The Commission issued its February 19, 2020, Notice of Filings and Notice of Consolidated Hearing (“Notice”) finding Case No. PU-19-376 and PU-19-377 involved similar questions of fact and law and no prejudice to the rights of the parties or the public interest would result from consolidation. The Commission scheduled a consolidated public hearing for April 17, 2020 at 9:30 a.m., at Memorial Hall, 100 Main Street NW, Bowbells, North Dakota 58721. The Notice identified the following issues to be considered at the consolidated hearing:

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 March 13, 2020, Governor 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, Governor Burgum 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 had been declared to prevent and contain the spread of COVID-19 and that guidance had been provided by the State Health Officer and Director of Emergency Services limiting group gatherings to no more than 10 people, approved a motion to relocate the April 17 hearing to a remote location in accordance with Governor Burgum’s Executive Order 2020-25.

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 provides the following:

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 same issues to be considered at the remote hearing as identified in the February 19, 2020, Notice.

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. Having allowed all interested persons an opportunity to be heard, and having heard, reviewed, and considered all testimony, filings, and evidence presented, the Commission makes the following:

FINDINGS OF FACT

1. Applicant, Northern Divide Wind, is a Delaware limited liability company and is a wholly owned, indirect subsidiary of NextEra.

Size, Type and Preferred Location of Proposed Wind Project

2. Northern Divide Wind's proposed Wind Project will encompass approximately 10,912 acres within Burke County, North Dakota as depicted in the area defined as "Northern Divide Wind Energy Project Area" in Exhibit # 15. 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.

3. Northern Divide Wind proposes 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 strikes.

4. 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.

5. 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 adjusted for interconnection to the transmission grid.

6. 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.

7. The Wind Project will be constructed pursuant to National Electrical Safety Code requirements.

8. Northern Divide Wind has signed a 30-year power purchase agreement with Basin for the full output of energy produced by the Wind Project.

9. Northern Divide Wind testified all easement agreements and options necessary for the siting and construction of the Wind Project and associated facilities have been obtained.

10. The estimated total cost to construct the Wind Project is approximately \$300 million.

Size, Type, and Preferred Location of Proposed Transmission Line Project

11. Northern Divide Wind proposes to construct, own, and operate an approximately 41-mile long 345 kV electric transmission line and associated facilities in Burke and Mountrail Counties, North Dakota. The proposed transmission line will originate at the Wind Project collection substation and terminate at the interconnection to the existing Basin Tande Substation in Mountrail County, North Dakota. The proposed route for the transmission line route is illustrated in Appendix D of Exhibit # 2 and identified as "Northern Divide 345-kV Transmission Line Project Route" on map 1 of 18 to 18 of 18.

12. Northern Divide Wind seeks a project corridor that is generally 150 feet wide, except at some proposed pole locations where it extends up to 200 feet in width. Northern Divide Wind also refers to the project corridor as the project right of way throughout its application. The proposed project corridor is illustrated in Appendix D of Exhibit # 2 and identified as "Northern Divide 345kV Transmission Line Right-of-Way" on map 1 of 18 to 18 of 18.

13. The Transmission Project will be constructed using approximately 279 steel monopole structures. The average height of the single pole structures is 120 feet, but structures will range from 90 to 180 feet depending on the final engineering design. The structure foundation types include 265 direct-embedded and 14 drilled-shaft, with both types ranging from 15 to 50 feet deep and 6 to 15 feet in diameter. Structure spans will range from 350 to 1,350 feet with an average span of 775 feet. Guyed structures will be required at approximately 43 locations, with up to eight guy wires required per structure.

14. The Transmission Project includes a shield wire strung at the top of the structures to provide lightning protection. Bird flight diverters will be mounted to the shield wire per Avian Power Line Interaction Committee ("APLIC") guidelines.

15. The Transmission Project will be constructed pursuant to the requirements of the National Electrical Safety Code.

16. Northern Divide Wind testified it has obtained all easements, agreements, and options necessary for the siting and construction of the Transmission Project with the

exception of an easement from the North Dakota Department of Trust Lands (“NDTL”). Northern Divide Wind confirmed it will obtain the necessary easement from NDTL upon approval of the proposed site by the Commission.

17. The estimated total cost to construct the Transmission Project is approximately \$30 million.

Study of Preferred Location for the Wind Project

18. 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.

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

20. 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 State Historical Society of North Dakota’s (“SHSND”) State Historical Preservation Office (“SHPO”). Further explanation of Northern Divide Wind’s consultations with the SHSND is discussed in the “Agency Correspondence for Wind Project and Transmission Line Project” section below.

21. 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. Further explanation of Northern Divide Wind’s consultation with the SHSND is discussed in the “Agency Correspondence for Wind Project and Transmission Line Project” section below.

22. 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.

23. Northern Divide Wind evaluated the Wind Project’s potential impact upon various environmental factors and filed numerous reports in support of its application. These evaluations and reports provide the following:

- a. Northern Divide Wind evaluated avian habitat and use of the Wind Project Area and filed an Avian Use Report as Appendix B8 to Exhibit # 1.
 - i. Table 1 of Northern Divide Wind’s Avian Use Report compares the characteristics of the current proposed Wind Project to the Burke Wind Project as follows:

Type	Northern Divide		200-MW Previous	
	Acres	%	Acres	%
Cultivated Cropland	7,021	64.4	7,346	32.0
Grassland/Herbaceous	2,079	19.1	10,668	46.5
Open Water	778	7.1	2,212	9.6
Wetland	314	2.9	765	3.3
Developed	349	3.2	708	3.1
Pasture/Hay	191	1.7	786	3.4
Woodland/Forest	155	1.4	397	1.7
Barren land	10	0.1	22	0.1
Shrub/Scrub	<0.1	<0.1	25	0.1
Total	10,897	100	22,929	100

- ii. Northern Divide Wind’s Avian Use Report concluded that overall avian use, richness and abundance, patterns of spatial use, and potential for sensitive species to occur, are likely to be equal to or lower than those recorded for the Burke Wind Project. Specifically, use by some avian guilds or bird types, such as area-sensitive grassland-associated birds is expected to be lower, while use by raptors and wetland-associated birds is expected to be similar to that projected for the Burke Wind Projects.
- b. Northern Divide Wind evaluated the presence of Grouse leks and raptor nests and filed a Grouse Lek and Raptor Nest Strategy as Appendix B5 to Exhibit # 1. Additionally, Northern Divide Wind identified plans designed to mitigate the impacts on these species.

i. Raptor Nest Surveys

A. An aerial raptor nest survey was conducted in 2017 for the Buke Wind Project. For non-eagle raptor nests, the survey included the Burke Wind Project Area. However, for eagle nests, the survey also included a 10-mile buffer. The study areas are depicted in Figure 1 of Exhibit # 1 at Appendix B5.

Non-Eagle Raptor Nest Survey

1. Northern Divide Wind asserted the non-eagle survey conducted for the Burke Wind Project encompassed a majority of the current proposed Wind Project area with the exception of a portion along the western and northern edges. The non-eagle raptor nest survey found four red-tailed hawk and two great horned own nests scattered within one mile of the Burke Wind Project Area.
2. Northern Divide Wind explained the previously un-surveyed portion of the present proposed Project Area consists of 73% tilled

cropland and is expected to have low non-eagle raptor nest density and species composition.

3. Northern Divide Wind will conduct a non-eagle raptor nest survey in spring 2020 within the current proposed Project Area to confirm the conclusions of the 2017 study and its expectations for the previously unstudied area.

Eagle Nest Survey

4. Northern Divide Wind asserts the 2017 eagle nest survey conducted for the Burke Wind Project encompassed the entire current proposed Wind Project area. No eagle nests were located during the 2017 survey and limited potential eagle nesting habitat was found to exist within and near the current proposed Project Area.

5. Northern Divide Wind will conduct a follow-up study in the spring of 2020 for eagle nests. The 2020 eagle nest survey will include a 2-mile buffer around the current proposed Wind Project area. Northern Divide Wind will request updated eagle nest information from the North Dakota Game and Fish Department (“NDGFD”) prior to the spring 2020 surveys.

B. All tree areas requiring clearing will be surveyed immediately ahead of construction for presence of any raptor nests built after the 2020 spring survey. Further, Northern Divide Wind will use information from prior surveys, the spring 2020 surveys, and surveys immediately ahead of construction to form a strategy that avoids direct impacts to nesting raptors. This strategy will include minimizing construction activities within 0.25 miles of any active non-eagle raptor nest location during the nesting season. If the nest cannot be avoided, it will be removed before or after it is active; however, no active raptor nests will be removed during construction. If an eagle nest is discovered, it will be avoided by a minimum of one mile during construction until the nest becomes inactive.

ii. Grouse Lek Surveys

A. A ground and aerial based sharp tail grouse lek survey was conducted in 2017 in the area illustrated in Figure 2 of Exhibit # 1 at Appendix B5. This survey did not include the westernmost and northwesternmost portions of the proposed Wind Project area as shown in Figure 2. The 2017 survey found 6 leks located within or near the current proposed Wind Project area.

B. Northern Divide Wind asserts the previously un-surveyed portions of the current proposed Wind Project area consist mostly of tilled cropland and are unlikely to contain a significant number of leks.

C. Northern Divide Wind will conduct a full lek survey in 2020 which will include a 0.5-mile buffer around the current proposed Wind Project area.

D. Northern Divide Wind applied a 0.5-mile setback around all leks identified in the 2017 study. Further, Northern Divide Wind will place construction timing stipulations on leks found during the 2020 survey. At hearing, Northern Divide Wind testified that if any new leks are discovered as a result of its surveying efforts, it will “at least, during construction, stay at least a half-mile away so that there is no impact to the lek during lekking season.”¹

c. Northern Divide Wind evaluated the impact the Wind Project may have on the Whooping Crane and filed a Whooping Crane Habitat Review as Appendix B7 to Exhibit # 1.

i. The current proposed Project Area is located within the whooping crane migratory corridor as shown in Figure 1 of Appendix B7 of Exhibit # 1. However, “[n]o whooping crane sightings have been reported within the Project Area based on the United States Fish and Wildlife Service whooping crane data base. During avian use surveys conducted in 2017, one group of three whooping cranes was observed flying over the Project area, but no use was observed on the ground.”² The Whooping Crane Habitat Review further provides that its review of literature revealed that no whooping cranes have been killed or injured by wind turbines at any project. Based upon its study, Northern Divide Wind asserts that impacts to whooping cranes are unlikely from the Wind Project.

d. Northern Divide Wind evaluated the Wind Project’s anticipated impact upon the Dakota skipper and filed a Dakota Skipper Habitat Assessment as Appendix B6 to Exhibit # 1.

i. Northern Divide Wind evaluated the proposed Project Area for suitable Dakota skipper habitat. A total of approximately 4 to 5 acres of suitable habitat were located within the proposed Project Area in two locations: 1) near turbine 64; and 2) near turbine 72.³ Areas of suitable habitat within the

¹ Testimony of Dustin Jones found at Dkt. # 53, “Electronic record of 17 April 2020 Formal Hearing - part 2” at 42:00 - 42:30.

² Exhibit #1, Appendix B7 at p. 5 with internal citations omitted.

³ Exhibit # 1, at p. 5-30; Exhibit #1, Appendix B6, at p. 3.

proposed Wind Project are depicted on the maps located in Appendix A of Appendix B6 of Exhibit # 1.

- ii. No project construction activities will occur within identified suitable Dakota skipper habitat. Suitable Dakota skipper habitat will be marked during construction to restrict entry by construction equipment. Northern Divide Wind does not anticipate any impacts to the Dakota skipper.
- e. Northern Divide Wind evaluated the Wind Project's anticipated impact upon the Northern Long-Eared Bat and filed its Northern Long-Eared Bat Habitat Assessment as Appendix B9 to Exhibit #1.
 - i. Northern Divide Wind assessed the Wind Project area in October 2019 for Northern Long-Eared Bat ("NLEB") habitat. The assessment concluded that "[a]lthough there is potential summer habitat in and around the Project Area, the lack of hibernacula in the vicinity of the Project and lack of connectivity from other potential habitat (e.g., Missouri River, badlands) may preclude the presence of the NLEB from the Project Area." Northern Divide Wind concluded the "NLEB's likelihood of occurrence within the Project Area is low; therefore, likelihood of Project-related impacts is also low."⁴
- f. Northern Divide Wind evaluated the Wind Project's projected shadow flicker and filed its Shadow Flicker Assessment as Appendix B4 to Exhibit # 1.
 - i. 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 less than 30 hours per year at all participating and non-participating receptors identified in Docket No. 1, Application Appendix B.4.
- g. Northern Divide Wind evaluated the noise generation expected by the Wind Project and filed its Acoustic Assessment as Appendix B3 to Exhibit # 1.
 - i. 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. 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 Acoustic Assessment indicates the Wind Project will produce sound levels not to exceed 49 dBA at any inhabited residence or community building.

⁴ Exhibit # 1 at p. 5-30.

24. Trees and shrubs are 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.

Study of Preferred Location for Transmission Line Project

25. Northern Divide Wind evaluated the land located one-half mile in either direction of the Project Route which resulted in a one-mile-wide corridor ("Study Corridor"). The Study Corridor is in rural North Dakota in an area predominantly comprised of cultivated land, hayfields, pasturelands, and grasslands.

26. Northern Divide Wind performed a desktop evaluation of the Study Corridor for soils, land use, wetlands and waterbodies, trees and shrubs, and protected species and critical habitats.

27. Northern Divide Wind conducted a Class I inventory of the Study Corridor to identify previously recorded archaeological sites identified during previous surveys.

28. Northern Divide Wind conducted a Class III Cultural Resource Inventory survey to identify archaeological resources which may be potentially impacted by the Transmission Line Project. Further discussion of the findings of these studies and correspondence with the SHSND is discussed in the "Agency Correspondence for Wind Project and Transmission Line Project" section below.

29. 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.

30. Northern Divide Wind evaluated the Transmission Line Project's potential impact upon various environmental factors and filed numerous reports in support of its application. The evaluations and reports provide the following:

a. Northern Divide Wind evaluated Transmission Line Project's expected impact on wildlife and filed its Wildlife Technical Memorandum as Appendix B4 to Exhibit # 2.

i. This memorandum analyzed how the proposed Transmission Line Project compared to the Burke Wind Project's proposed transmission line. It concluded the potential for sensitive species to occur and use suitable habitats is likely to be equal or lower compared to those obtained during studies conducted for the Buke Wind Project's transmission line. It further concluded that use by whooping cranes and the Northern Long-Eared Bat is unlikely, while use by nesting raptors (including eagles) and sharp tailed grouse is expected to be similar to the overall landscape.

ii. Attachment 1A to the Wildlife Technical Memorandum describes the Grouse Lek and Raptor Nest Surveys conducted for the Transmission Line Project.

A. Northern Divide Wind conducted an aerial transect lek survey during two separate site visits from April 4 to May 5, 2018. The survey included a 1.5-mile lek-assessment buffer. Northern Divide Wind also conducted a ground-based roadside lek survey between April 3 and 5, 2018.

B. A map depicting all confirmed and possible leks is located in Figure 1 of Appendix B4, Attachment 1A.

C. Northern Divide Wind conducted surveys for raptor nests, including bald and golden eagles, between April 3 and 5, 2018. The study included a 3-mile eagle assessment buffer. No Bald or Golden Eagle nests were detected during the April 2018 surveys.

D. A map detailing the findings of the 2018 raptor surveys is found at Figure 2 of Attachment 1A to Appendix B4 of Exhibit # 2.

b. Grouse Lek and Raptor Nest Strategy - Exhibit # 2 at Appendix B2.

i. Grouse Lek Survey

A. Northern Divide Wind asserts the 2018 lek survey for the Burke Wind transmission line encompassed a majority of the current proposed Transmission Line Project, with the exception of the 5-mile extension to account for the reconfiguration of the current proposed Wind Project. However, Northern Divide Wind also asserts the area in which the proposed extension is to be located was evaluated during a 2017 study for the Burke Wind Project. A map depicting the findings of the 2017 and 2018 grouse lek surveys is located at Figure 2 of Appendix B2 of Exhibit # 2.

B. Northern Divide Wind will conduct a full lek survey in 2020 with a 0.5-mile buffer around the proposed Transmission Line Project.

C. Northern Divide Wind applied a 0.5-mile setback from all leks identified in previous years and will place construction timing stipulations on leks found during the 2020 surveys. Northern Divide Wind testified that if any new leks are discovered as a result of its

surveying efforts, it will “at least, during construction, stay at least a half-mile away so that there is no impact to the lek during lekking season.”⁵

ii. Raptor Nest Survey (Exhibit # 2 at Appendix B2)

A. Northern Divide Wind asserts that aerial raptor nest surveys were conducted in 2018 which encompassed a majority of the current proposed Transmission Line Project, with the exception of the 5-mile extension running northwesterly to account for the reconfiguration of the current proposed Wind Project. However, Northern Divide Wind also asserts the area in which the proposed extension is to be located was evaluated during a 2017 study for the Burke Wind Projects. A map depicting the findings of the 2017 and 2018 raptor nest surveys is located at Figure 1 of Appendix B2 of Exhibit # 2.

B. Northern Divide Wind will conduct a raptor nest survey in spring 2020 with a 2-mile buffer for eagles around the proposed Transmission Line Project.

C. Northern Divide Wind will request updated eagle nest information from the NDGFD prior to the spring 2020 survey.

D. Any trees requiring clearance will be surveyed immediately ahead of construction for presence of any raptor nests built after the 2020 spring survey or otherwise previously undetected.

E. Information from previous surveys, surveys in spring 2020, and surveys immediately ahead of construction will be used to form a strategy to avoid direct impacts to nesting raptors. This will include minimizing construction activities within 0.25 miles of any non-eagle raptor nest location during the nesting season. If any newly found occupied or active eagle nests are discovered, they will be avoided by a minimum of one mile during construction until the nests become inactive.

c. Northern Divide Wind evaluated the Transmission Line Project’s potential impact upon the Whooping Crane and filed its Whooping Crane Habitat Review as Attachment 1F to Appendix B4 of Exhibit # 2.

i. The current proposed Transmission Line Project is located within the whooping crane migratory corridor as shown in Figure 1 of Attachment 1F to Appendix B4 of Exhibit # 2.

⁵ Testimony of Dustin Jones found at Dkt. # 53, “Electronic record of 17 April 2020 Formal Hearing - part 2” at 42:00 - 42:30.

- ii. Northern Divide Wind's application notes that on April 10, 2017, a group of three actively migrating whooping cranes were observed flying north through airspace approximately one mile west of the northern terminus of the proposed Transmission Line Project's route⁶. These cranes were recorded migrating at least 150 meters overhead⁷.
 - iii. Northern Divide Wind acknowledges that power lines represent a documented collision mortality risk for whooping cranes⁸. Bird flight diverters will be installed per APLIC guidelines to provide visibility and minimize collisions⁹.
- d. Northern Divide Wind evaluated the Transmission Line Project's potential impact to the Dakota skipper and filed its Dakota Skipper Habitat Assessment as Appendix B3 to Exhibit # 2, Appendix B3.
- i. Northern Divide Wind conducted a desktop analysis and habitat field survey to identify areas of potential Dakota skipper habitat. Field surveys were conducted during the 2017, 2018, and 2019 growing seasons. The assessment area along the proposed Transmission Line Project is identified as the "Dakota Skipper Assessment Area" on maps located on pages 3 to 10 within Appendix A to Appendix B3 of Exhibit # 2.
 - ii. Approximately 214 acres of suitable Dakota skipper habitat were identified along the transmission line route during the assessment. Suitable Dakota skipper habitat is identified as "Dakota Skipper Field-verified Suitable Habitat" on maps located on pages 3 to 10 of Appendix A to Appendix B3 of Exhibit # 2.
 - iii. Northern Divide Wind will place high visibility fencing around field-verified suitable Dakota skipper habitat in areas in close proximity to construction to restrict construction equipment from disturbing these areas¹⁰.
 - iv. No construction will occur during the Dakota skipper adult flight period (June 15 to July 18) in areas proximal to field-verified Dakota skipper habitat¹¹.

Agency Consultations for Wind Project and Transmission Line Project

⁶ Exhibit # 2 at p. 5-22.

⁷ Id.

⁸ Exhibit # 2 at p. 5-26.

⁹ Id.

¹⁰ Exhibit # 2 at p. 5-26.

¹¹ Id.

31. 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”).

32. With respect to the Burke Wind Projects, NDGFD and the United States Fish and Wildlife Service (“USFWS”) provided correspondence expressing numerous concerns about the proposed Burke Projects’ expected wildlife impacts. Northern Divide Wind’s application provides it worked with both agencies to develop the current proposed Wind Project and Transmission Line Project.

33. USFWS did not provide any correspondence or other evidence stating an objection to Northern Divide Wind’s proposed Wind Project or Transmission Line Project.

34. Written correspondence between Northern Divide Wind and the NDGFD was admitted as evidence at hearing and is summarized as follows:

- a. September 12, 2019, NDGFD letter - Exhibit # 1, Appendix C6.
 - i. NDGFD indicated it had been in discussion with NextEra Energy Inc. regarding wind energy development in Burke County since 2016. The original Burke Wind Project was sited within an area containing a high degree of undisturbed native habitats which is extremely important to wildlife. The NDGFD noted that although 31 of the original 78 turbines had been relocated, many of its initial concerns remained the same. The NDGFD’s letter noted concerns with respect to Wind Project’s fragmentation of native prairie, and the proposed project’s location within the Missouri Couteau which has an “extremely high concentration of wetlands, some of the highest in North America.” The letter further provides that “[w]ind energy development has been shown to have detrimental impacts to wildlife within both wetland and prairie habitats, and careful micro-siting within these habitats is crucial in order to minimize impacts.” The NDGFD also noted concerns with respect to the proposed project’s impact upon the whooping crane and noted “[w]hile no fatalities have been documented of Whooping Cranes from collision with wind turbines in the

United States, collisions with transmission lines are the leading known cause of death in the wild for whooping cranes.” The NDGFD further recommended NextEra contact the US Fish and Wildlife Habitat and Population Evaluation Team (“HAPET”) to request a Local Siting Decision Support Tool (“DST”) to estimate the number of duck pairs that will be displaced by the project and determine the approximate number of wetlands requiring restoration to account for displacement of breeding pairs. Additionally, the NDGFD’s letter noted the presence of Bald and Golden Eagles within the proposed project area, potential impacts to Sharp-tailed Grouse, Sprague’s Pipit, and other avian species. It also expressed concerns with transmission line infrastructure and requested to remain informed as project development progressed. Notably, the USFWS was copied on this letter.

b. October 1, 2019, Northern Divide Wind responded to NDGFD - Exhibit # 1, Appendix C6.

i. Northern Divide Wind indicated it has maintained dialogue with the NDGFD and USFWS since July 8, 2019, including a meeting on September 17, 2019, and discussions thereafter. Northern Divide Wind provided the following responses and clarifications to the NDGFD’s September 12, 2019, letter:

A. Northern Divide Wind clarified it has relocated 44 turbines from the proposed Burke Wind Project as opposed to 31 referenced by NDGFD.

B. Approximately 7% of the Wind Project area consists of native prairie. Northern Divide Wind will not site any above-ground wind facility infrastructure in unbroken grassland.

C. Northern Divide Wind agreed that the larger geographic extent of the Missouri Couteau consists of areas with considerable wetland and grassland habitats; however, the Wind Project area is located in an area dominated by cropland and 20 of the proposed 78 turbines are located outside the Northern Missouri Couteau’s boundary.

D. Per radio telemetry data of Whooping Crane locations, the proposed project will be located in a low-use intensity area. Northern Divide Wind’s Whooping Crane Habitat Suitability Analysis indicates the project site is no more attractive than the surrounding area and suggests no reason to believe the site would be an attractant. Further, Northern Divide Wind’s letter provides that “no Whooping Crane or Sandhill Crane (a non-federally listed species) has ever been injured or killed by collision with wind turbines in the migratory corridor and Derby *et al.* 2018 shows no mortality of either species during monitoring over multiple years at multiple projects in North and South Dakota.” Further, Northern Divide

Wind committed to avoiding all impacts to potentially suitable Whooping Crane stopover roosting habitat and marking the entire transmission line with bird flight diverters in accordance with the Avian Power Line Interaction Committee Suggested Practices.

E. Northern Divide Wind indicated it has considered the HAPET and DST as recommended in the NDGFD's September 12, 2019, letter.

F. Northern Divide Wind indicated that moving the Wind Project area and associated turbines into a crop-dominated landscape will reduce the impact to upland birds. Further, the transmission line will be located in mostly tilled cropland and co-located with existing roads where possible, or in grasslands with high tree and shrub densities which are an unsuitable habitat for the Sprague's pipit.

G. With respect to the construction of the Transmission Line Project, Northern Divide Wind indicated it will use existing access infrastructure to the maximum extent possible. However, where existing access is unavailable, temporary access which is only as wide as needed will be utilized, but no permanent roads will be constructed.

H. Northern Divide Wind verified the proposed transmission line is a private generation tie line and no other use will be permitted.

I. Northern Divide Wind explained how it incorporated recommendations from wildlife agencies in the design of the Wind Project as follows:

The Wildlife Agencies suggested locating turbines outside of high (>20 pairs per square mile) pintail duck density areas as this species is a key indicator for general waterfowl use in the region. The Wildlife Agencies advised Northern Divide Wind that the 11 eastern-most turbines from the previous 200-MW design previously submitted to the Public Service Commission (PSC) were most critical to relocate, followed by any other turbines located in high pintail duck density areas. Of the 81 original turbine locations, Northern Divide Wind dropped two and relocated 44 (including the 11 eastern-most turbines, as recommended by the Wildlife Agencies). Thirty-five (35) of the original locations remain the same. The Project now has a total of 79 turbine locations. Additionally, the Project area has been reduced by approximately 52% and now lies in mostly fragmented agricultural landscape. The result of these avoidance and minimization activities is that all permanent, above-ground wind facility infrastructure are in areas of pintail duck density less than 20 pairs per square mile and all are in tilled cropland, which has resulted in additional avoidance of grassland impacts....

J. Northern Divide Wind committed to avoiding further development in the Northern Missouri Coteau if obtains approval.

ii. Northern Divide Wind included the following three attachments to its October 1, 2019, letter to the NDGFD:

A. Northern Divide Wind provided a table highlighting the decrease in environmental effects from avoidance and minimization measures for the Northern Divide Wind Energy Center as Attachment 1. Notably, Dustin Jones incorporated a table on page 8 of his pre-filed testimony, which was admitted into evidence as Exhibit # 7, that provides nearly identical information to Attachment 1. The table incorporated into Jones's pre-filed testimony provides the following:

Metric	Burke Wind Project	Wind Project	Decrease (%)
Project Area (ac)	22,933	10,912	52
Wetland features in Project Area (ac)	3,016	1,067	65
Wetland Features in Project Area (count)	2,470	950	62
Wetland features percent of Project Area (%)	13	10	23
Wetland impacts: permanent or temporary (ac)	0	0	0
Wetland features within 0.5 mile of turbines (ac)	3,664	1,261	66
Breeding waterfowl pair estimated displacement (count)	981	486	51
Breeding waterfowl pair estimated habitat offset (ac)	398	196	51
Unbroken grassland in Project Area (ac)	4,785	742	84
Unbroken grassland percent of Project Area (%)	21	7	67
Unbroken grassland impacts: permanent (ac)	6	0	100
Unbroken grassland impacts: temporary (ac)	112	8	93
Unbroken grassland within 300 m of turbines (ac)	751	188	75
Grassland bird pair estimated displacement (count)	159-478	39-116	75

B. Northern Divide Wind attached a map showing no turbines are located in an area where greater than 20 pintail duck pairs per square mile are located as Attachment 2.

C. Northern Divide Wind identified 32 mitigation measures it will take with respect to the project to mitigate the impact to the general environment, wetlands, native prairie/unbroken grassland, woodlands, general wildlife, avian species, and threatened and endangered species in Attachment 3.

c. On October 23, 2019, Northern Divide Wind sent correspondence to the NDGFD indicating it reviewed the HAPET updated DST effective October 4, 2019 - Exhibit # 1, Appendix C6.

d. The NDGFD responded to Northern Divide Wind by letter dated November 19, 2019, (Exhibit # 1, Appendix C6) which provided the following in relevant part:

...[Y]our company, initiated heightened coordination and collaboration with the Department on July 8, 2019. To develop a more responsibly sited project, Northern Divide Wind Energy Center (NDWEC) was created...Northern Divide Wind has taken several positive steps to reduce and defray the impact of the NDWEC project, such as shifting the project boundary; thereby, decreasing the project area by approximately 50%. As recommended, Northern Divide Wind has relocated 44 and removed 3 of the original 81 turbines. All turbines have been moved away from key Northern Pintail breeding habitat, and most importantly, all have been located off and away from unbroken grassland sites. Through these efforts, the potential impacts to important wildlife resources, resulting from the new NDWEC lay-out, are considerably reduced as compared to the original BCWEC.

...

We appreciate Northern Divide Wind's efforts to listen and address the Department's concerns. These efforts demonstrate your commitment to pursue more responsibly sited development, on this project and in the future.

35. Northern Divide Wind consulted with the SHSND with respect to the presence of - and impact to - archaeological, architectural, and other cultural resources that may result from construction of the proposed Wind Project and Transmission Line Project. This correspondence was admitted as evidence at hearing and is explained below:

a. Cultural and historic resource assessments were conducted for the Burke Wind Projects in 2017 and 2018 and the portions of the current proposed Wind

Project and Transmission Line Project that overlap with the Burke Wind Projects were encompassed in those studies¹². On February 22, 2019, the SHSND concurred with a “No Significant Sites Affected” determination with respect to the results of the studies conducted for the Burke Wind Projects.

b. The SHSND sent Northern Divide Wind correspondence dated August 29, 2019, recommending Class I, II, and III surveys be conducted for cultural resources. Exhibit # 1 at Appendix C11.

c. Northern Divide Wind hired AECOM to perform inventories of the previously unassessed areas of the proposed Wind Project and Transmission Line Project in 2019¹³.

d. On January 24, 2020, the SHSND sent correspondence indicating a Class II architectural resource study was not required for the Transmission Line Project provided it takes place in the identified location. Exhibit # 3.

e. On February 3, 2020, Northern Divide Wind received an Architectural History Survey Report Summary of the Class II Architectural Resources Inventory Summary performed by AECOM. Exhibit # 3. This summary provides that South St. Olaf’s Church is eligible for the National Register of Historic Places. South St. Olaf’s Church is located approximately 1.6 miles from the closest turbine. Further, the summary provides the Neils Nielson Fourteen-Sided Barn is listed in the National Register of Historic Places. The Nielson Fourteen-Sided Barn is located approximately 1.3 miles from the closet turbine.

f. Also, on February 3, 2020, Northern Divide Wind received a Class III: Intensive Archaeological Resources Inventory. Exhibit # 3. As a result of this study, AECOM recommended a 50-foot avoidance buffer be implemented for Native American Site 32BK288. Further, AECOM’s report identified four Sites of Religious and Cultural Significance to Tribes (“SRCSTT”). These SRCSTT are identified as CHFBK128, CHFBK129, CHFBK130, and CHFBK131 and were documented and recorded on the North Dakota State Historic Preservation Office Cultural Heritage Forms by AECOM on behalf of the participating tribes. AECOM recommended avoidance of the SRCSTT sites.

g. On February 24, 2020, the SHSND sent correspondence to Northern Divide Wind indicating it reviewed the Class III reports for the Transmission Line Project and the Wind Project. The SHSHS concurred with a determination of “No Historic Properties Affected’ for this project provided it takes place in the location and in the manner described in the documentation.” Exhibit # 10.

¹² Exhibit # 8 at pp. 17-18.

¹³ Exhibit # 8 at pp. 17-18.

h. On March 23, 2020, the SHSND sent correspondence which provides the following:

We are currently working with representatives from AECOM and NextEra Energy Resources, LLC in regard to the Northern Divide Wind Energy Center in Burke County PU-19-376. Historic architectural resources have been identified and a plan between the interested parties to mitigate effects is currently being worked out.

Exhibit # 11.

i. On March 30, 2020, the SHSND sent correspondence indicating it reviewed the Class II/III Architectural Survey for the Wind Project area and found the report to be acceptable. However, the SHSND clarified that acceptance of the report does not constitute concurrence with the determinations therein. Exhibit # 11.

j. On April 3, 2020, the SHSND sent email correspondence permitting Northern Divide Wind to move forward in light of the proposed mitigation plans with respect to the Nielson 14-sided barn and South St. Olaf's Church. Exhibit # 21.

36. The remaining agency correspondence was admitted as evidence and no objections or substantial concerns were raised by other entities.

Proposed Wind Project and Transmission Line Project Labor Force

37. LIUNA intervened into this proceeding and submitted Exhibits I-1 through I-5 and presented testimony from Luco Franco and Steve Cortina which related to the economic benefits of hiring a local labor force for energy conversion and transmission projects.

38. Northern Divide Wind's application indicated it utilized several local firms in developing the Project and will continue to use local labor to the extent practicable. Further, approximately 200 to 300 temporary construction workers are expected to be required during the six-month construction period. Northern Divide Wind's application provides it is likely that general skilled labor is available either in the county or the state to serve the basic infrastructure and site development needs; however, specialized labor will be required for certain components of wind farm development and it is likely the specialized labor will be imported from other areas of the state or from other states. Exhibits # 1 and 2 at p. 5-2.

Siting Criteria - Wind Project

39. Pursuant to Section 49-22-05.1 of the North Dakota Century Code, the Commission developed criteria to be used in identifying exclusion and avoidance areas

and to guide the site, corridor, and route suitability evaluation and designation process. These criteria include an identification of impacts and policies or practices which may be considered in the evaluation and designation process. The Commission's criteria for siting an energy conversion facility is found in Section 69-06-08-01 of the North Dakota Administrative Code.

40. Section 69-06-08-01(1) of the North Dakota Administrative Code identifies various exclusion areas. Under the Commission's criteria, geographical areas identified as exclusion areas must be excluded in the consideration of a site for an energy conversion facility.

41. Designated or registered state: parks; memorial parks; historic sites and landmarks; natural landmarks; historic districts; monuments; wilderness areas; wildlife areas; wild, scenic, or recreational rivers; wildlife refuges; and grasslands are identified as an exclusion area by N.D. Admin. Code § 69-06-08-01(1)(d). Northern Divide Wind's application provides that archaeological sites identified through its Class I and Class III Cultural Resource Inventories are present within the proposed project area; however, no Wind Project infrastructure will be sited in locations where archeological sites are found. Further, the SHSND concurred with a determination of "No Historic Properties Affected" for the proposed Wind Project provided it is constructed in the location and manner described. Archeological sites which are identified as exclusion areas are excluded from consideration for the siting of Wind Project infrastructure in accordance with N.D. Admin. Code § 69-06-08-01(1).

42. Areas critical to the life stages of threatened or endangered animal or plant species are identified as an exclusion area by N.D. Admin. Code § 69-06-08-01(1)(d). While the record discloses that threatened or endangered animal species may use the Wind Project area as a habitat, the preponderance of the evidence does not establish these areas are critical to the life stages of a threatened or endangered animal species.

43. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged are identified as exclusion areas by N.D. Admin. Code § 69-06-08-01(1)(e). The preponderance of the evidence does not establish that areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

44. No other exclusion areas as defined by N.D. Admin. Code § 69-06-08-01(1) are identified with respect to the Wind Project.

45. With respect to wind energy conversion facilities, geographic areas identified in N.D. Admin. Code § 69-06-08-01(2) are also exclusion areas. The Commission finds the proposed Wind Project would not be located in any of the geographic areas identified in this section.

46. Section 69-06-08-01(3) of the North Dakota Administrative Code identifies various avoidance areas. Under the Commission's criteria, geographical areas identified as avoidance areas may not be approved as a site for an energy conversion 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 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. Economic considerations alone will not justify approval of these areas. A buffer zone of reasonable width to protect the integrity of the area must be included.

47. Historical resources which are not designated as exclusion areas are designated avoidance areas under N.D. Admin. Code § 69-06-08-01(3)(a). The evidence indicates there are historical resources located within the project area. However, Northern Divide Wind has committed to avoiding these resources. Further, the SHSND concurred with a finding of "No Historic Sites Affected." Therefore, a preponderance of the evidence shows that historical resources will not be affected by the Wind Project and Northern Divide Wind has incorporated a buffer zone of reasonable width to protect to the integrity of these areas.

48. Woodlands and wetlands are designated as avoidance areas under N.D. Admin. Code § 69-06-08-01(3)(e). Northern Divide Wind's application provides the Wind Project area lacks woodlands and it has committed to the Commission's Tree and Shrub Mitigation Specifications. However, wetlands are present within the Wind Project area.

49. Northern Divide Wind adduced evidence that the Wind Project area encompasses 950 wetland features as compared to the Burke Wind Project encompassed 2,470 wetland features. As noted above, the NDGFD indicated in its September 12, 2019, letter that wind energy development has been shown to have detrimental impacts to wildlife within wetland habitats and careful micro-siting within these habitats is crucial in order to minimize impacts. Northern Divide Wind's proposed Wind Project will avoid all direct impacts to wetlands, regardless of their U.S. Army Corps of Engineers jurisdictional status. Further, Northern Divide Wind committed to the following measures to manage adverse impacts to wetlands:

- i. Avoid all direct impacts to wetlands, including temporary impacts from underground collection by boring;
- ii. Avoid all direct impacts to USFWS wetland easements;
- iii. Wetlands will be delineated and flagged prior to construction when in close proximity to Project features;
- iv. Maintain appropriate water and soil conservation practices during construction through the implementation of Best Management Practices outlined in the Storm Water Pollution Prevention Plan which include installation of silt fencing, temporary reseeding, permanent seeding, mulching, filter strips, erosion blankets, grassed waterways and sod stabilization;

- v. Coverage under the North Dakota Department of Environmental Quality National Pollutant Discharge Elimination System general construction permit will be obtained prior to the start of construction; and
- vi. Provide contractors with static constraint maps and ensure compliance through onsite environmental construction monitoring.

Additionally, the Wind Project's above-ground wind facility infrastructure are located in areas of pintail duck density less than 20 pairs per square mile and are all in tilled cropland. The NDGFD's November 19, 2019, letter acknowledged Northern Divide Wind's efforts in siting the current project layout considerably reduced the potential impacts to important wildlife resources as compared to the original Burke Wind Project. NDGFD opined the Wind Project was more responsibly sited than the Burke Wind Project. Based on the mitigative efforts through careful micro-siting of turbines and feedback from the NDGFD the Commission finds a preponderance of the evidence shows Northern Divide Wind has incorporated a reasonable buffer zone to protect the integrity of wetlands.

50. No other avoidance areas identified in N.D. Admin. Code § 69-06-08-01(3) are identified with respect to the Wind Project.

51. Section 69-06-08-01(4) provides a wind energy conversion facility site must not include a geographic area where, due to the operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed fifty dBA. As explained above, Northern Divide Wind's Acoustic Assessment indicated the Wind Project will produce sound levels that comply with this criterion.

52. Section 69-06-08-01(5) of the North Dakota Administrative Code provides that a site may be approved in an area only 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 listed criteria will be at an acceptable minimum, or that those effects will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

53. Subsection 7 of N.D. Admin. Code § 69-06-08-01(5)(c) requires the Commission to consider the adverse effects on animal health and safety. As explained above, the Wind Project has been reconfigured from the layout proposed in the Burke Wind Project. While both the USFWS and NDGFD provided evidence of substantial concerns with respect to the impact of the Burke Wind Project on animal health and safety, the same concerns have not been expressed by these agencies on the present project. Specifically, the substantial reduction in project area, micro-siting of turbines away from areas of high pintail duck density, micro-siting of turbines off of unbroken grasslands were cited by the NDGFD as key elements to mitigate the proposed Wind Project's impact on wildlife. Additionally, Northern Divide Wind has committed to avoid siting turbines near known grouse leks and avoid construction near newly discovered grouse leks during the lekking season. Further, Northern Divide Wind has committed to avoiding impacts to any suitable Dakota skipper habitats and implemented measures to

minimize the potential for adverse impacts to raptor nests. Therefore, a preponderance of the evidence shows the impact upon animal health and safety will be managed and maintained at an acceptable minimum.

54. Subsection 10 of N.D. Admin. Code § 69-06-08-01(5)(c) requires the Commission to consider the impact upon temporary and permanent skilled and unskilled labor. As explained above, Northern Divide Wind intends to utilize local labor to the extent practicable. LIUNA provided evidence about how the economic impacts of this project will depend on the utilization of a local labor force. The Commission finds this project will not have a significant adverse impact upon temporary and permanent skilled and unskilled labor and the amount of positive economic impact will depend on the utilization of the local construction workforce.

55. The Commission finds the Wind Project's impact upon the remaining criteria listed in N.D. Admin. Code § 69-06-08-01(5) will be at an acceptable minimum.

56. The Commission's Policy Criteria are set forth in N.D. Admin. Code § 69-06-08-01(6). The Commission may give preference to an applicant that will maximize benefits that result from the adoption of various policies and practices. The Commission finds that Northern Divide Wind has implemented policies and practices that will optimize wind resources, engage a local workforce to the extent practicable, utilize North Dakota wind resources, monitor impacts of the project, and install an FAA-approved Aircraft Detection Lighting System.

Siting Criteria - Transmission Line Project

57. Pursuant to Section 49-22-05.1 of the North Dakota Century Code, the Commission developed criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. These criteria include an identification of impacts and policies or practices which may be considered in the evaluation and designation process. The Commission's criteria for siting an energy conversion facility is found in Section 69-06-08-02 of the North Dakota Administrative Code.

58. Exclusion and avoidance areas may be located within a corridor, but at no given point may such an area or areas encompass more than fifty percent of the corridor width unless there is no reasonable alternative.

59. Section 69-06-08-01(1) of the North Dakota Administrative Code identifies various exclusion areas. Under the Commission's criteria, geographic areas identified as exclusion areas must be excluded in the consideration of a route for a transmission facility. A buffer zone of a reasonable width to protect the integrity of the area must be included.

60. Designated or registered state: parks; historic sites; historic sites; monuments; historical markers; archaeological sites; and nature preserves are identified as exclusion areas by N.D. Admin. Code § 69-06-08-02(1)(b). Northern Divide Wind's application provides that archaeological sites identified through its Class I and Class III Cultural Resources Inventory are present within the Transmission Line Project Corridor; however, the Transmission Line Project's Route will avoid these sites. Further, the SHSND concurred with a determination of "No Historic Properties Affected" for the proposed Transmission Line Project provided it is constructed in the location and manner described. A preponderance of the evidence shows a buffer zone of reasonable width to protect the integrity of the identified archaeological sites has been included in the proposed siting of the proposed Transmission Line Project. Further, the proposed Transmission Line Project Route will avoid all identified archaeological sites.

61. Areas critical to the life stages of threatened or endangered animal or plant species are identified as an exclusion area by N.D. Admin. Code § 69-06-08-02(1)(d). While the record discloses that threatened or endangered animal species may use the Transmission Line route as a potential habitat, the preponderance of the evidence does not establish these areas are critical to the life stages of a threatened or endangered animal species.

62. Areas where animal or plant species that are unique or rare to this state would be irreversibly damaged are identified as exclusion areas by N.D. Admin. Code § 69-06-08-02(1)(e). The preponderance of the evidence does not establish that areas where animal or plant species that are unique or rare to this state would be irreversibly damaged.

63. No other exclusion areas as defined by N.D. Admin. Code § 69-06-08-02(1) are identified with respect to the Transmission Line Project.

64. Section 69-06-08-02(2) of the North Dakota Administrative Code identifies various avoidance areas. Under the Commission's criteria, geographical areas identified as avoidance areas 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 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. Economic considerations alone will not justify approval of these areas. A buffer zone of reasonable width to protect the integrity of the area will be included unless a distance is specified in the criteria.

65. Historical resources which are not specifically designated as exclusion or avoidance areas are designated avoidance areas under N.D. Admin. Code § 69-06-08-02(2)(c). Northern Divide Wind's application indicates historic farmsteads and cemeteries are present within the Transmission Line Project Corridor. However, Northern Divide Wind has committed to avoiding these resources. Further, the SHSND concurred with a

finding of “No Historic Sites Affected” with respect to the Transmission Line Project. Therefore, a preponderance of the evidence shows that historical resources will not be affected by the Transmission Line Project and Northern Divide Wind has incorporated a buffer zone of reasonable width to protect the integrity of these areas.

66. Geographic areas within five hundred feet of a residence, school, or place of business are identified as an avoidance area under N.D. Admin. Code § 69-06-08-02(2)(e). The five-hundred-foot avoidance area criteria for an inhabited rural residence may be waived by the owner of the inhabited rural residence in writing pursuant to N.D.C.C. § 49-22-05.1(3). There is one inhabited rural residence within five hundred feet of the proposed Transmission Line Route; however, Northern Divide Wind obtained a waiver from the owner of this residence.

67. No other avoidance areas are identified in N.D. Admin. Code § 69-06-08-02(2) are identified with respect to the Transmission Line Project.

68. Section 69-06-08-02(3) of the North Dakota Administrative Code provides that a corridor or route shall be designated only when it is demonstrated to the Commission by the applicant that any significant adverse effects which will result from the location, construction, and maintenance of the facility as they relate to the listed criteria will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

69. Subsection 4 of N.D. Admin Code § 69-06-08-02(3)(b)(4) requires the Commission to consider the impact upon wetlands, woodlands, and wooded areas. Northern Divide Wind has committed to avoid all direct impacts to wetlands. Further, trees and shrubs will be replaced in accordance with the Commission’s Tree and Shrub Mitigation Specifications. Therefore, the Commission finds the proposed Transmission Line Project’s impact upon wetlands, woodlands, and wooded areas will be managed and maintained at an acceptable minimum.

70. Subsection 7 of N.D. Admin Code § 69-06-08-02(3)(b)(7) requires the Commission to consider the impact upon animal health and safety. The NDGFD expressed concerns in its September 12, 2019, letter about the proposed Transmission Line Project’s potential impact on the Whooping Crane. Specifically, NDGFD asserted that collisions with transmission lines are the leading known cause of death in the wild for whooping cranes. Further NDGFD expressed concerns with the proposed Transmission Line Project’s potential impact on the Sprague’s pipit as it overlaps with one of the few places in the state where a high concentration of pipits still exists. Additionally, the NDGFD expressed concerns about the impact the Transmission Line Project’s construction and maintenance may have on native prairie and future development. Northern Divide Wind addressed these concerns and committed to marking the transmission line with bird flight diverters, assured the transmission line will be located in areas that are unsuitable habitat for the Sprague’s pipit, and indicated no new permanent roads will be constructed. The NDGFD acknowledged its concerns were addressed in correspondence dated November 19, 2019. Further, Northern Divide Wind testified it is

not locating any Transmission Line Project infrastructure within native prairie. Additionally, Northern Divide Wind has committed to the various mitigation efforts to protect suitable Dakota skipper habitat, grouse leks, and raptors along the Transmission Line Project explained above. Therefore, the Commission finds the adverse impacts resulting from the location, construction, and maintenance of the Transmission Line Project upon animal health and safety will be managed and maintained at an acceptable minimum.

71. The Commission finds the Transmission Line Project's impact upon the remaining criteria listed in N.D. Admin. Code § 69-06-08-02(3) will be at an acceptable minimum.

72. The Commission's Policy Criteria are set forth in N.D. Admin. Code § 69-06-08-02(4). The Commission may give preference to an applicant that will maximize benefits that result from the adoption of various policies and practices. The Commission finds that Northern Divide Wind has implemented policies and practices that will engage a local workforce to the extent practicable, monitor impacts, and coordinate with the existing Tande Substation.

Evaluation of Considerations set out in N.D.C.C. § 49-22-09

73. The Commission shall be guided by, but is not limited to, the considerations set forth in N.D.C.C. § 49-22-09(1)(a)-(k), where applicable to aid the evaluation and designation of sites, corridors, and routes. The Commission finds the following considerations set forth in N.D.C.C. § 49-22-09(1)(a)-(k) to be applicable in aiding the evaluation and designation of the proposed Wind Project and Transmission Line Project.

a. Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.

i. The Commission has received and reviewed substantial research and investigations relating to the effects of the location, construction, and operation of the Wind Project and the Transmission Line Project on natural resources and the environment. Both the Wind Project and the Transmission Line Project were investigated by NDGFD, Northern Divide Wind, and also by local citizen Karen Smith. Ms. Smith testified at hearing and submitted a report on behalf of the Coteau Preservation Alliance to the Commission which was admitted into evidence as Exhibit # PC82. Her report raised various concerns with the impact the proposed Projects will have upon wildlife and cited various publications in support of her arguments. In addition to various other points of contention, her report questioned whether Northern Divide Wind had conducted adequate avian surveys. Specifically, her report contended the sharp tail grouse lekking surveys were inadequate. Northern Divide Wind has committed to conducting a full lek survey in 2020 within the Wind Project area plus a 0.5-

mile buffer around both the Wind Project and Transmission Line Project. It has committed to various mitigation measures described above. Additionally, Northern Divide Wind has committed to conducting another raptor nest survey in 2020 and has committed to various mitigation measures described above. Further, the NDGFD opined the Wind Project and Transmission Line Project's layout has considerably reduced the impacts to important wildlife resources.

b. Adverse direct and indirect environmental effects that cannot be avoided should the proposed site or route be designated.

i. The Commission has given careful consideration to the direct and indirect environmental effects that cannot be avoided should the proposed Projects be designated. Based on all of the evidence in the record, the Commission is aware there will be some anticipated displacement of various avian species and some anticipated impacts on certain habitats. Unlike the Burke Wind Projects, the proposed Wind Project and Transmission Line Project have been designed in a manner to avoid substantial resistance from wildlife agencies. As explained above, NDGFD expressed some initial concerns with the proposed projects; however, the evidence shows Northern Divide Wind worked with NDGFD to address those concerns in a satisfactory manner. Based on the evidence in the record, the Commission finds the unavoidable direct and indirect environmental effects of this project will be at an acceptable minimum.

c. Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effect.

i. This is the third alternative layout for this project proposed by NextEra by and through its subsidiaries. The original Burke Wind Project was a 300-MW wind project which was reduced in size and capacity to 200-MW. After this Commission denied the 200-MW Burke Wind application, NextEra created Northern Divide Wind. Northern Divide Wind developed the current Wind Project design which is located further from the Lostwood National Wildlife Refuge, encompasses 52% fewer acres, 65% fewer wetland features, will impact 0 acres of unbroken grassland, and is estimated to displace 51% fewer breeding waterfowl pairs and 75% fewer grassland bird pairs as shown on page 8 of Exhibit # 7. The evidence in the record indicates the current proposed site will have a substantially reduced environmental impact than NextEra's alternative projects presented to the Commission.

d. The direct and indirect economic impacts of the proposed facility.

i. There was substantial evidence presented at hearing with respect to the economic impact the proposed Wind Project and Transmission Line Project

will have on the local economy. Northern Divide Wind's application provides the Wind Project will provide over \$30 million in tax revenue to Burke County over 30 years and over \$30 million in payments to participating landowners over 30 years. LIUNA intervened and provided evidence related to the economic impact of employing a local labor force for this project. The economic impact of the Wind Project and Transmission Line Project will depend on the utilization of the local construction workforce.

e. The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.

i. The Commission acknowledges the various testimony and statements from members of the public who expressed their opinions of the effect the Projects would have on the scenery, but acknowledges individuals have various opinions with respect to these impacts. The record does not reflect any designated scenic areas within the Projects. However, there are two historic structures located near the Wind Project area. As explained above, the Nielson Fourteen-Sided Barn is listed in the National Register of Historic Places and is located approximately 1.3 miles from the closet turbine. Further, the record reflects that South St. Olaf's Church eligible for the National Register of Historic Places and is located approximately 1.6 miles from the closet turbine. Notably, the record reflects that Northern Divide Wind worked with the SHSND and was permitted to move forward with the Wind Project. Further, the Commission accepts the recommendations of the SHSND that no historic sites will be affected by the Wind Project or Transmission Line Project.

f. The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.

i. The Commission acknowledges the Missouri Coteau and prairie pothole region are areas of biological wealth and may serve as habitats for rare and endangered species. The Commission also recognizes the current Wind Project proposal has a substantially reduced footprint than that proposed in the Burke Wind Project. Specifically, the USFWS did not provide any evidence of objections to the current proposed Projects and the NDGFD indicated many of its initial concerns with the proposed Projects were adequately addressed by Northern Divide Wind. Additionally, the Commission acknowledges that Northern Divide Wind has committed to various mitigation measures to minimize the adverse impacts to wetlands, native prairie, and wildlife. While these proposed Projects will likely have some effect on the local environment, the preponderance of the evidence shows these effects will be limited to an acceptable minimum.

g. Problems raised by federal agencies, other state agencies, and local entities.

i. As explained above, Northern Divide Wind demonstrated that it has engaged numerous federal state and local entities with respect to the proposed Projects. Both the NDGFD and SHSND initially expressed some concerns with the project layout; however, Northern Divide Wind produced evidence that it worked with these agencies and worked to resolve the identified problems.

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 applications submitted in PU-19-376 and PU-19-377.
2. Northern Divide Wind is a utility as defined in N.D.C.C. § 44-22-03(13).
3. The wind energy conversion facility proposed by Northern Divide Wind is an electric energy conversion facility as defined in N.D.C.C. § 49-22-03(5).
4. The transmission line facility proposed by Northern Divide Wind is an electric transmission facility as defined in N.D.C.C. § 49-22-03(6).
5. The applications submitted by Northern Divide Wind for the Wind Project and the Transmission Line Project meet the site evaluation criteria as required by N.D.C.C. Ch. 49-22.
6. The location, construction, and operation of the Wind Project and Transmission Line Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
7. The Wind Project and Transmission Line 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 and Transmission Line 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 issues the following:

ORDER

The Commission orders:

WIND PROJECT - PU-19-376

1. Certificate of Site Compatibility for an Energy Conversion Facility No. 63 is issued to Northern Divide Wind, LLC for the construction, operation, and maintenance of a wind energy conversation facility known as the Northern Divide Wind Energy Center corresponding to the "Northern Divide Wind Energy Center Project Area" identified in Exhibit # 15. Archaeological sites which are identified as exclusion areas are not included in the Certificate of Site Compatibility, and no construction, operation, and maintenance is permitted to occur in any identified exclusion area.

2. Within the permitted area, Northern Divide Wind is authorized to site and construct up to 200 MW consisting of up to 74 wind turbines only in the proposed and alternative locations identified in Exhibit # 15. Due to the importance of micro-siting turbines to avoid environmental impacts at the proposed location, no modifications to the turbine locations are permitted unless expressly approved in writing by the Commission. Additionally, Northern Divide Wind is authorized to construct 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 admitted into evidence as Exhibit # 4, is incorporated by reference and attached to this Order.

4. To the extent there are any conflicts or inconsistencies between the Wind Project application and the Certification, the Certification provisions control.

5. Prior to commencing construction of any portion of the proposed Wind Project, Northern Divide Wind shall obtain all necessary licenses and permits for construction of such portion, and provide copies to the Commission prior to the construction of that portion of the Wind Project.

6. If Northern Divide Wind seeks approval for modifications to the to the Wind Project layout as shown in Exhibit # 15, Northern Divide Wind shall complete and file the following:

a 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;

b. 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;

c. 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 applicable receptors, unless otherwise agreed to by the effected landowners.

d. 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 applicable receptors, unless otherwise agreed to by the effected landowner.

e. Consult with the NDGFD. A copy of correspondence with the NDGFD and the NDGFD's response, if any, must be filed with the Commission.

TRANSMISSION LINE PROJECT - PU-19-377

1. Certificate of Corridor Compatibility No. 217 is issued to Northern Divide Wind designating a corridor area 150 to 200 feet wide centered on the Transmission Line Project route for the construction, operation, and maintenance of the Northern Divide Wind 345 kV transmission line and associated facilities in Burke and Mountrail Counties, North Dakota. The approved corridor is identified as the "Northern Divide 345-kV Transmission Line Right-of-Way" on Map 1 of 18 to 18 of 18 in Appendix D of Exhibit # 2.

2. Route Permit No. 227 is issued to Northern Divide Wind designating a route in Burke and Mountrail Counties, North Dakota, for the construction and operation of an approximately 41-mile 345 kV transmission line. The designated route for this purpose is identified as the "Northern Divide 345-kV Transmission Line Project Route" on Map 1 of 18 to 18 of 18 in Appendix D of Exhibit # 2.

3. The Transmission Project Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications admitted as Exhibit # 5 is incorporated by reference and attached to this Order.

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

5. If modifications are made to the Transmission Line Project, Northern Divide Wind shall complete a Class III Cultural Resource Survey for any previously un-surveyed

portions of the designated site affected by 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. Additionally, Northern Divide Wind shall consult with NDGFD. A copy of correspondence with NDGFD and the NDGFD's response, if any, must be filed with the Commission.

PUBLIC SERVICE COMMISSION

		
Julie Fedorchak Commissioner	Brian Kroshus Chairman	Randy Christmann Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility Number 63

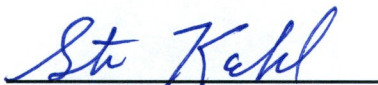
This is to certify that the Commission has designated an energy conversion facility site for Northern Divide Wind, LLC, for the construction and operation of a wind energy conversion facility and associated facilities in Burke County, North Dakota

The facility may be sited in this designated location in compliance with the energy conversion facility siting criteria. This certificate is issued in accordance with the Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-19-376 dated June 10, 2020 and is subject to the conditions and limitations noted in the order.

Bismarck, North Dakota, June 10, 2020.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

**PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA**

Certificate of Corridor Compatibility Number 217

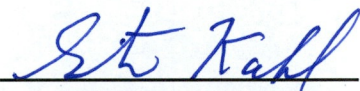
This is to certify that the Commission has designated a transmission facility corridor for Northern Divide Wind, LLC for the construction of approximately 41-miles of 345 kV electric transmission line and associated facilities extending from the Northern Divide Wind Energy Center collection substation in Burke County to Basin Electric Power Cooperative's Tande Substation in Mountrail County.

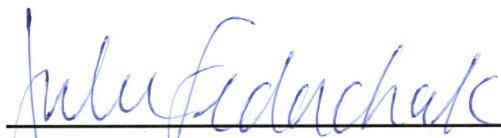
This certificate is issued in accordance with the Order of the Commission dated June 10, 2020 in Case No. PU-19-377 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, June 10, 2020.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

Route Permit Number 227

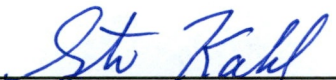
This is to certify that the Commission has designated a route for Emmons-Logan Wind, LLC for the construction of approximately 41-miles of 345 kV electric transmission line and associated facilities extending from the Northern Divide Wind Energy Center collection substation in Burke County to Basin Electric Power Cooperative's Tande Substation in Mountrail County.

This permit is issued in accordance with the Order of this Commission dated June 10, 2020 in Case No. PU-19-377 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, June 10, 2020.

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Northern Divide Wind, LLC
345 kV Transmission Line -Burke and Mountrail
Siting Application**

Case No. PU-19-377

Tree and Shrub Mitigation Specifications

Inventory

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

Clearing

The maximum width of tree and shrub removal is 150 feet, unless otherwise approved by the Commission or Commission staff.

Replacement

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern Divide Wind, LLC
200 MW Northern Divide Wind Energy Center - Burke
Siting Application

Case No. PU-19-376

CERTIFICATION RELATING TO ORDER PROVISIONS
WIND ENERGY CONVERSION FACILITY SITING

I am JOHN Di DONATO, a representative of Northern Divide Wind, LLC ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

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

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

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

Construction:

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

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

Restoration and Maintenance:

21. Company agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion facility, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.

22. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
23. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
24. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
25. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
26. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
27. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
28. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
29. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
30. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

Communication with Landowners and PSC:

31. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
32. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the

- energy conversion facility, including injuries to any person, a tower collapse, or a catastrophic turbine failure.
33. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or endangered species that Company becomes aware of and which were not previously reported to the Commission.
 34. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
 35. 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.
 36. Company agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.
 37. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

Modification of Energy Conversion Facility or Energy Conversion Site Plan:

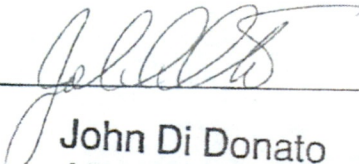
38. Before conducting any construction activities for any modification within the designated site, the Company will file the name and contact information for a key

contact person for the purposes of notice and communication during the site modification application and will use the following procedures:

- A. Before conducting any construction activities for any modification within the designated site, and such **construction activities will not affect any known exclusion or avoidance areas** within the designated site, the Company will file certification and supporting documentation:
 1. Affirming that construction activities will not affect any known exclusion or avoidance areas within the designated site;
 2. Including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated site and site modification(s); and
 3. Affirming that Company will comply with the Commission's order, law and rules designating the site.
 - B. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known exclusion but **may affect an avoidance area** within the designated site, the Company will file:
 1. 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:
 - a. the designated site and the site modification;
 - b. all exclusion and avoidance areas within the portion of the designated site containing the site modification.
 2. Certification and supporting documentation affirming that construction activities will not affect any known exclusion area.
 3. All field studies performed on the portion of the designated site containing the site modification;
 4. Specific information about any mitigation measures Company will take within the modification area;
 5. Certification that each owner of real property on which the modification is to be located and any applicable governmental entity with an interest in the same modification area do not oppose the modification;
 6. 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;
 7. Certification that Company will comply with the Commission's order, law and rules designating the site.
39. 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 12 day of March, 2020.

NORTHERN DIVIDE WIND, LLC

By 

Its John Di Donato
Vice President

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Northern Divide Wind, LLC
200 MW Northern Divide Wind Energy Center - Burke
Siting Application

Case No. PU-19-376

Tree and Shrub Mitigation Specifications

Inventory

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

Clearing

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission or Commission staff.

Replacement

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Northern Divide Wind, LLC
345 kV Transmission Line - Burke and Mountrail
Siting Application

Case No. PU-19-377

CERTIFICATION RELATING TO ORDER PROVISIONS
TRANSMISSION FACILITY SITING

I am JOHN Di DONATO, a representative of Northern Divide Wind, LLC ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that 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 reseedling 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;
- b. Specific information about any mitigation measures Company will take within the adjustment area;
- 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;
- d. 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;
- e. Certification that Company will comply with the Commission's order, law and rules designating the corridor and route.

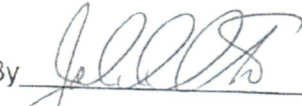
39. **ROUTE ADJUSTMENT OUTSIDE DESIGNATED CORRIDOR, NO AVOIDANCE AREA AFFECTED:** Before adjusting the route of an electric transmission line outside the designated corridor and not affecting any exclusion and avoidance area, before conducting any construction activities for any adjustment to the designated 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 2 day of March, 2020.

NORTHERN DIVIDE WIND, LLC

By 
Its 