

April 16, 2020

HAND DELIVERED

Mr. Steve Kahl
Interim Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Case No. PU-20-082
OAH File No. 20200088
OE2 North LLC
B. Sanderson Gas Processing Plant**

Dear Mr. Kahl:

Please find enclosed for filing in the above-referenced matter an original and ten (10) copies of the following documents:

1. Certification Relating to Order Provisions Energy Conversion Facility Siting;
2. Tree and Shrub Mitigation Specifications; and
3. Certificate of Service;

submitted on behalf of the Applicant, OE2 North LLC. A compact disc containing PDF format copies of the documents listed above is also provided.

If you should have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/kl
Enclosures

69828705.1

Attorneys & Advisors / Fredrikson & Byron, P.A.
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Certification Relating to Order Provisions and Tree and Shrub Mitigation Specifications
OE2 North LLC

Lawrence Bender, Fredrikson&Byron, P.A.

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

**OE2 North LLC
B. Sanderson Gas Processing Plant – Williams County**

**Case No. PU-20-082
OAH File No. 20200088**

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that a true and correct copy of the Letter to Mr. Steve Kahl, at the North Dakota Public Service Commission forwarding the following documents:

1. Certification Relating to Order Provisions Energy Conversion Facility Siting; and
2. Tree and Shrub Mitigation Specifications;

for filing in the above-referenced case were, on April 16th, 2020, served by placing the same in the United States mail, postage prepaid, properly addressed to the following:

Timothy J. Dawson
ND Office of Administrative Hearings
2911 N 14th Street
Bismarck, ND 58503

Mitchell D. Armstrong
Brian Schmidt
P.O. Box 460
Bismarck, ND 58502-0460

DATED this 16th day of April, 2020.

FREDRIKSON & BYRON P.A.

By: 

Lawrence Bender, ND Bar #03908
1133 College Drive, Suite 1000
Bismarck, ND 58501-1215
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Counsel for OE2 North LLC

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

OE2 North LLC
B. Sanderson Gas Processing Plant - Williams Cnty.
Siting Application

Case No. PU-20-082

CERTIFICATION RELATING TO ORDER PROVISIONS
ENERGY CONVERSION FACILITY SITING

I am Russ Kimmitt, SVP and Chief Operating Officer of OE2 North LLC ("OE2") with authority to bind OE2 to requirements to be set forth by the Commission in its Order and I certify the following:

1. OE2 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 OE2 shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. OE2 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. OE2 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. OE2 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. OE2 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. OE2 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.

Construction:

7. OE2 agrees to hold a preconstruction conference prior to commencement of any construction, which must include a OE2 representative, its construction supervisor, and a representative of Commission Staff, to ensure that OE2 fully understands the conditions set forth in the Commission's order.
8. OE2 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.
9. OE2 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. OE2 shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
10. OE2 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, OE2 shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a monthly basis.
11. OE2 agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
12. OE2 understands and agrees that it shall bury all underground lines to a depth of at least 48 inches to the top of the lines.
13. OE2 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, 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.

14. OE2 understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits OE2 to open cut the road.
15. OE2 understands and agrees that staging areas or equipment shall not be located on land owned by a person other than OE2 unless otherwise negotiated with landowners.
16. OE2 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.
17. OE2 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 OE2.
18. OE2 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:

19. OE2 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.
20. OE2 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.
21. OE2 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.
22. OE2 will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.

23. OE2 will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
24. OE2 will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
25. OE2 agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
26. OE2 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.
27. OE2 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.
28. OE2 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:

29. OE2 agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
30. OE2 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.
31. OE2 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 OE2 becomes aware of and which were not previously reported to the Commission.
32. OE2 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. OE2 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.

33. OE2 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, OE2 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.
34. OE2 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.
35. OE2 understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by OE2.

Modification of Energy Conversion Facility or Energy Conversion Site Plan:

36. Before conducting any construction activities for any modification within the designated site, the OE2 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 OE2 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 OE2 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 OE2 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 OE2 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 OE2 will comply with the Commission's order, law and rules designating the site.
37. OE2 acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity.

Dated this 16 day of April, 2020.

OE2 North LLC

By:  _____

Russ Kimmitt

Its: SVP and Chief Operating Officer

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**OE2 North LLC
B. Sanderson Gas Processing Plant - Williams Cnty.
Siting Application**

Case No. PU-20-082

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.

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.