

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-20-082

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

May 13, 2020

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

Lawrence Bender, Attorney at Law, Fredrikson & Byron, P.A., 1133 College Drive, Suite 1000, Bismarck, North Dakota 58501, on behalf of OE2 North LLC.

Brian D. Schmidt, Special Assistant Attorneys General, 122 East Broadway Avenue, Bismarck, North Dakota 58502, on behalf of the North Dakota Public Service Commission.

Timothy J. Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

Preliminary Statement

On February 20, 2020, OE2 North LLC (OE2), filed with the North Dakota Public Service Commission (Commission) an application for a certificate of site compatibility for the Bill Sanderson Gas Processing Plant Project in Williams County, North Dakota (Plant).

On February 20, 2020, OE2 filed with the Commission an application for waiver or reduction of procedures and time schedules established under North Dakota Century Code chapter 49-22.1 and North Dakota Administrative Code section 69-06-01-02 and chapter 69-06-06, regarding separate notices and separate hearings on such applications.

On March 9 and April 9, 2020, OE2 filed supplemental documents with the Commission (together with the original application, the "Application").

On March 18, 2020, the Commission deemed the Application complete contingent on OE2 filing with the Commission, at least 15 days prior to the hearing date, responses to the Commission's February 26, 2020, and February 27, 2020, requests for information.

Also, on March 18, 2020, the Commission issued a Notice of Filing and Public Hearing scheduling a hearing for April 24, 2020, at 9:00 a.m. (CT) at the City of Williston Public Works & Engineering Department, 1121 5th Street East, Williston, ND 58801 (Original Notice).

On April 9, 2020, the Commission issued an Amended notice of Filing and Public Hearing. The Amended Notice stated that the April 24, 2020 hearing previously noticed would be held remotely due to the state of emergency, in accordance with the Governor's Executive Order 2020-25.

The Notice identified the following issues to be considered with respect to the application for waiver of procedures and time schedules:

1. Are the proposed facilities of such length, design, location, or purpose that they will produce minimal adverse effects and that adherence to applicable procedures and time schedules may be waived?
2. Is it appropriate for the Commission to waive any procedures and time schedules as requested in the application?

The Notice identified the following issues to be considered with respect to the Application:

1. Will construction, operation, and maintenance of the facility at the proposed location produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?
3. Will construction, operation, and maintenance of the facility at the proposed location 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 April 24, 2020, the hearing was held remotely as scheduled. Pursuant to the Notice, public testimony was received by telephone during the hearing and the record in this matter remained open until May 1, 2020, for written public comment in accordance with hearing procedures implemented as a result of the 2020 COVID-19 pandemic. Hearing Exhibit 1 was admitted at the hearing.

On May 1, 2020, OE2 filed Late-Filed Exhibit 2, and on May 4, 2020, OE2 filed Late-Filed Exhibits 3 through 5.

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

Findings of Fact

1. OE2 North, LLC is a Delaware limited liability company authorized to do business in the State of North Dakota, as evidenced by the corporate papers filed with the Commission on February 20, 2020, in Case No. PU-20-083.

Size, Type, and Preferred Location of Facility

2. The proposed Plant will consist of a gas processing plant located on a 39-acre parcel of land (Project Site) in Williams County, North Dakota, approximately 15 miles west of Williston, North Dakota. Preferred location of the project is on 39 acres of the 143-acre parcel of land owned by OE2 located in Township 154 North, Range 104 West, Section 27, Williams County, North Dakota.

3. The Plant will have a nameplate capacity of 250 million standard cubic feet per day and will process raw wellhead gas produced in Williams County, North Dakota, and surrounding areas. The wellhead gas will be delivered to the Plant by a gas gathering system owned and operated by OE2.

4. The Plant infrastructure will include underground piping, above ground piping, and aboveground gas processing equipment and systems.

5. The natural gas and natural gas liquids produced at the Plant will be delivered via pipeline to third-party interstate transmission lines that service the Rocky Mountain, Midwest and Gulf regions.

6. The estimated in-service date is December 2020.

7. The estimated cost of the Plant is \$150 million.

Study of Preferred Location

8. OE2 conducted a Class I cultural resource literature search and a desktop analysis for wetlands, waterbodies, wildlife, and other sensitive environmental resources across a 0.5-mile wide area around the perimeter of the Project Site (Study Area).

9. OE2 conducted field surveys to inventory wetlands, waterbodies, protected and endangered species, critical habitats, passerine and raptor nests, noxious weeds, and

trees/saplings/shrubs. The field survey boundary is depicted in Figure B-4 of Appendix B of the Application (Survey Area).

10. OE2 conducted a Class III cultural resource field inventory across the Survey Area. The Class III reports were submitted to the North Dakota State Historic Preservation Office (SHPO). OE2's Class III cultural resource survey did not identify any new or previously recorded cultural resources within the Project Site. The SHPO concurred with OE2's Class III survey recommendation of "No Historic Properties Affected" provided the project takes place in the location and in the manner described in the documentation.

11. OE2 initiated correspondence seeking comments from the following federal, state and local agencies regarding the Plant:

- a. Federal: (1) Federal Aviation Administration; (2) U.S. Army Corps of Engineers; and (3) U.S. Fish and Wildlife Service;
- b. State: (1) North Dakota Attorney General; (2) North Dakota Department of Agriculture; (3) North Dakota Department of Career and Technical Education; (4) North Dakota Department of Commerce; (5) North Dakota Department of Health; (6) North Dakota Department of Human Services; (7) North Dakota Department of Transportation; (8) North Dakota Department of Trust Lands; (9) North Dakota Energy Development Impact Office; (10) North Dakota Game and Fish Department; (11) North Dakota Indian Affairs Commission; (12) North Dakota Industrial Commission; (13) North Dakota Labor Department; (14) Job Service of North Dakota; (15) North Dakota Parks and Recreation Department; (16) North Dakota Pipeline Authority; (17) North Dakota State Water Commission; (18) North Dakota Geological Survey; (19) SHPO; and (20) Office of the Governor;
- c. Local: (1) Williams County Planning and Zoning Commission; and (2) Williams County Board of Commissioners.

Siting Criteria

12. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22.1-03 to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-01, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

13. OE2 evaluated the Study Area regarding the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

14. An Exclusion Area is a geographic area that must be excluded in the consideration of a site for an energy conversion facility.

15. OE2's surveys did not record any Exclusion Areas within the Study Area.

16. An Avoidance Area is a geographic area that may not be approved as a site for an energy conversion facility unless the applicant demonstrates 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.

17. OE2's field surveys did not record any Avoidance Areas within the Project Site.

18. The Commission's Selection Criteria are set forth in North Dakota Administrative Code Section 69-06-08-01(5). A site shall be approved only if it is determined that any significant adverse effects resulting from the location, construction, and operation of the facility as they relate to the Selection Criteria will be at an acceptable minimum, or will be managed and maintained at an acceptable minimum. OE2 analyzed the effects that may result from the location, construction, and operation of the Plant.

19. OE2 testified that it will take all reasonable measures to mitigate noise impacts to adjacent landowners. Noise levels will be managed and maintained at or below applicable local requirements for the zone district.

20. Construction will not impact irrigated lands. Furthermore, OE2 evaluated and incorporated surface drainages into a grading and drainage layout designed to avoid negative impacts on drainage patterns and has sized its storm water pond to accommodate a 24-hour, 100-year rainfall.

21. The Project Site, which is 39-acres on land owned by OE2, will be converted from agricultural/rangeland to industrial use.

22. The Commission's Policy Criteria are set forth in North Dakota Administrative Code Section 69-06-08-01(6). The Commission may give preference to an application demonstrating certain benefits of the energy conversion facility. OE2 has committed to maximizing benefits that result from implementing the policies and practices applicable to the proposed energy conversion facility.

23. The plant will burn some utility fuel gas, as processed by the plant, for the purposes of compression of the gas up to transmission pressures.

24. No residences will be displaced or require relocation due to the project.

25. The project will reduce flaring in the state.

Additional Measures to Minimize Impact

26. OE2 has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Transmission

Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order

27. OE2 will comply with any requirements or recommendations made by any local, state, or federal agency.
28. OE2 has developed several project control documents that will be utilized in connection with the construction and operation of the Plant including a Storm Water Pollution Protection Plan, Weed Management Plan, Dust Control Plan, Emergency Action Plan, Spill Contingency Plan, and Unanticipated Discovery Plan.
29. The plant will be attended 24 hours per day, 365 days per year, by a rotation of 12 full time operators trained to OSHA Process Safety Management standards regarding safety training and operational procedures.
30. OE2 utilizes a site-specific programmable logic controller to monitor and control key process and safety variables within the Plant, which can be accessed and controlled by both on-site operators and remote support staff. The Plant will also incorporate automatic alarms and shutoffs.
31. OE2 will utilize the ND One Call system during construction.
32. OE2 will work with adjacent landowners by communicating construction plans and mitigating, where possible, negative impacts of the Plant operating long term¹.
33. OE2 will follow the ND Department of Environmental Quality's recommendations detailed in its February 26, 2020 letter.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, OE2 North LLC, and over the subject matter of the Application under North Dakota Century Code Chapter 49-22.1.
2. OE2 is a utility as defined in North Dakota Century Code Section 49-22.1-01(12).

¹ Denise Marcellais provided public testimony indicating she believes she may have an ownership interest in the Project Site. OE2 also provided testimony that it owns the Project Site. The Commission renders no opinion as to whom owns clean title to the Project Site. This appears to be a private landowner rights issue that is beyond the scope of this hearing and also beyond the Commission's jurisdiction in this proceeding.

The Plant is an energy conversion facility as defined in North Dakota Century Code Section 49-22.1-01(5).

3. The construction, operation, and maintenance of the Plant will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
4. The Plant is compatible with the environmental preservation and the efficient use of resources.
5. The construction, operation, and maintenance of the Plant will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

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

Order

The Commission orders:

1. OE2's application for a waiver of procedures and time schedules is granted.
2. Certificate of Site Compatibility No. 62 is issued to OE2 North LLC designating a site for the construction, operation, and maintenance of a gas processing plant. For purposes of this Certificate, the designated site is identified on Figure 1 of the Application, Hearing Exhibit 1, page "OE2 010".
3. The Certification Relating to Order Provisions – Energy Conversion Facility Siting (Certification) with attached Tree and Shrub Mitigation Specifications executed April 16, 2020, is incorporated by reference and attached to this Order.
4. To the extent there are any conflicts or inconsistencies between the Application and the Certification, the Certification provisions control.
5. Prior to commencing construction of any portion of the proposed project, OE2 shall obtain all necessary licenses and permits for construction of such portion, and provide copies to the Commission prior to construction of the portion of the project.

6. OE2 is required to comply with all applicable laws, rules, and/or regulations in the event it desires to construct another or different energy conversion facility than was specified in the Application within the site designated in this proceeding.

PUBLIC SERVICE COMMISSION



Julie Fedorchak
Commissioner



Brian Kroshus
Chairman



Randy Christmann
Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

**Certificate of Site Compatibility
Number 62**

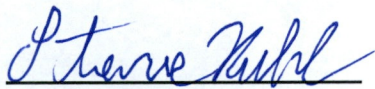
This is to certify that the Commission has designated an energy conversion facility site for OE2 North LLC for the construction, operation and maintenance of a gas processing facility in Williams County, North Dakota.

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 Findings of Fact, Conclusions of Law and Order of the Commission in Case No. PU-20-082 dated May 13, 2020, and is subject to the conditions and limitations noted in that order.

Bismarck, North Dakota, May 13, 2020

ATTEST:

PUBLIC SERVICE COMMISSION



Executive Secretary



Commissioner

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.