

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Basin Electric Power Cooperative
Pioneer Generating Station Phase IV - Williams County
Siting Application**

Case No. PU-22-380

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

February 8, 2023

Appearances

Commissioners Randy Christmann, Sheri Haugen-Hoffart, and Julie Fedorchak

Anine A. Merkens, Attorney at Law, Basin Electric Power Cooperative, 1717 East Interstate Ave., Bismarck, North Dakota 58503, on behalf of Basin Electric Power Cooperative.

John Schuh, Special Assistant Attorney General, 600 E. Boulevard Ave, Dept. 408, Bismarck, ND 58505, 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 October 7, 2022, Basin Electric Power Cooperative (Basin Electric), filed with the North Dakota Public Service Commission (Commission) an application for a certificate of site compatibility for the Pioneer Generating Station (PGS) Phase IV (Project).

On November 18, 2022, Basin Electric filed supplemental a document with the Commission (together with the original application, the "Application").

On November 30, 2022, the Commission deemed the Application complete. The Commission also issued a Notice of Filing and Public Hearing (Notice) scheduling a hearing for January 5, 2023, at 9:00 a.m. central time at the Williston City Hall in the John Kautzman Chamber Room, 22 East Broadway, Williston, ND 58802. The Notice identified the following issues to be considered with respect to the application for a certificate of site compatibility:

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 December 27, 2022, Pre-filed Testimony and Pre-filed Exhibits 1 through 6 were filed with the Commission.

On January 3, 2023, a revised Pre-filed Exhibit 2 was filed with the Commission.

On January 5, 2023, the hearing was held as scheduled. At the public hearing, Basin Electric submitted Hearing Exhibit Nos. 1 through 7.

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. Basin Electric is a North Dakota rural electric generation and transmission cooperative corporation authorized to do business in the State of North Dakota, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State on June 11, 2021 (Case No. PU-08-113).

Size, Type, and Preferred Location of Facility

2. The proposed Project is located on the existing Pioneer Generating Station site, a 120-acre parcel, and on an adjacent 160-acre parcel in Williams County, North Dakota. The Project is located 15 miles northwest of Williston at Section 20, Township 155 North, Range 103 West. The combustion turbine that was designated Unit 1 began commercial operation in September of 2013. Phase II consisted of two additional 45 megawatt (MW) simple cycle combustion turbines and the associated balance of plant equipment, designated as Unit 2 and Unit 3. It was constructed pursuant to certificate number 33 in Case No. PU-12-509. PGS Unit 2 began commercial operation in February 2014, and Unit 3 in March 2014. In 2017, twelve gas reciprocating engines and auxiliary equipment with a total nominal electrical output of 111 MW were put into commercial operation in PGS Phase III. The units were constructed pursuant to certificate number 44 in Case No. PU-14-829. The proposed RICE units would be located on the existing 120-acre parcel.

The proposed F-Class Combustion Turbines would be constructed to the north on the 160-acre parcel adjacent to the existing facility that was purchased by Basin Electric on September 29, 2022.

3. The Project consists of six nominal 18.8 MW natural gas reciprocating internal combustion engines (RICE) and two F-Class natural gas-fired simple-cycle combustion turbines (F-Class Combustion Turbines) with the capacity to produce up to 250 MW each. Natural gas for the Project will be sourced from either the ONEOK Stateline I Gas Processing Plant or the Northern Border Pipeline through a new one-half mile pipeline that will connect to the existing WBI Energy Transmission system. This line would follow the same route as the pipeline that currently serves PGS. Water is supplied to PGS by the Northwest Rural Water District that has a dedicated 10-inch pipeline to the facility. Basin Electric expects that the current water supply will meet the needs of the Project.

4. The Project will utilize the existing PGS infrastructure. The auxiliary equipment for the Project includes three natural-gas fired dew point heaters, an evaporative cooler and associated process water holding pond, two small diesel tanks and two emergency diesel generators, an electrical switchyard, stormwater retention ponds, temporary laydown areas, and temporary parking for use during construction. The electricity produced by the Project will serve Basin Electric's member cooperatives in their need for increased electric generation.

5. The estimated in-service date for the RICE units is May 2025. The estimated in-service date for the first F-Class Combustion Turbine is June 2025 and the second F-Class Combustion Turbine is planned to be in-service in May 2026.

6. The estimated cost of the Project is \$670 million, excluding labor costs, financing fees and the transmission that will be required to bring the new generation to the grid once the Project is finished. The total cost of the Project including the additional transmission that will be permitted separately is approximately \$788 million.

Study of Preferred Location

7. Basin Electric conducted a Class I cultural resource literature search on a one-mile wide area around the Project. Basin Electric conducted a desktop analysis for wetlands, waterbodies, wildlife and other sensitive environmental resources including a 0.5-mile wide area around the Project (Study Area).

8. Basin Electric conducted field surveys to inventory wetlands, waterbodies, protected and endangered species, critical habitats, general wildlife, noxious weeds, trees, saplings, and shrubs across the expanded 160-acre parcel (Survey Area).

9. Basin Electric 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). Basin Electric's Class III cultural resource survey did not

identify any new or previously recorded cultural or historic resources within the Survey Area. The SHPO concurred with Basin Electric'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 and provided all borrow comes from an approved source".

10. Basin Electric conducted a sound study to determine compliance with the requirements of Williams County Zoning regulations. Residentially zoned properties have the most restrictive noise levels with a limit of 60 dBA during daytime hours and 55 dBA between the hours of 10:00 PM and 7:00 AM. Although the neighboring properties are not zoned residential, commercial, or industrial, Basin Electric has agreed to meet the residential nighttime sound level limit of 55 dBA at the neighboring residents.

11. Basin Electric initiated correspondence seeking comments regarding the Project from the 35 federal, state and local agencies enumerated in North Dakota Administrative Code Section 69-06-01-05 (designated agencies and officers) as well as the Williams County Auditor and Williams County Director of Development Services.

Siting Criteria

12. The Commission has established criteria pursuant to North Dakota Century Code Section 49-22-05.1 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. Basin Electric 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 electric energy conversion facility.

15. Basin Electric's surveys did not record any Exclusion Areas.

16. An Avoidance Area is a geographic area that may not be approved as a site for an electric 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. Basin Electric's field surveys confirmed one wetland, an Avoidance Area, within the Survey Area. The wetland is located in a ditch along the eastern boundary of the 160-acre parcel and would not be impacted by the construction or operation of the facility.

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. Basin Electric analyzed the effects that may result from the location, construction, and operation of the Project.

19. Construction of the Project will not impact irrigated lands. Furthermore, Basin Electric evaluated and incorporated surface drainages into a grading and drainage layout in order to avoid negative impacts on drainage patterns.

20. The existing PGS site is zoned for industrial use. The 160 acres of land purchased by Basin Electric for the Project were converted from agricultural to industrial use.

21. 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 electric energy conversion facility. Basin Electric has committed to maximizing the benefits that result from implementing the policies and practices applicable to the proposed electric energy conversion facility.

22. The Project will utilize natural gas, a primary energy source, from sources located in the vicinity of the Project.

23. No residences will be displaced or require relocation due to the Project.

24. By proposing to construct the Project on the existing PGS site and adjacent owned land, Basin Electric will reduce the cost of infrastructure and transmission interconnections.

Additional Measures to Minimize Impact

25. Basin Electric has agreed to a number of steps to mitigate the impact of the Project, as indicated by the executed Certification Relating to Order Provisions – Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, which is incorporated by reference and attached to this Order.

26. Basin Electric will comply with any requirements or recommendations made by any local, state, or federal agency.

27. Basin Electric and/or its contractors have developed several project control documents that will be utilized in connection with the construction and operation of the Project including a Storm Water Pollution Protection Plan, Emergency Action Plan, Spill Contingency Plan, Unanticipated Discovery Plan, and a Site Specific Safety and Health Plan.

28. Basin Electric requires that all on-site contractors develop and submit an Emergency Response Plan. They are required to coordinate with local first responder agencies per contract requirements. All contractors are required to become a member of the Energy Coalition for Contractor Safety, which is administered by the North Dakota Safety Council.

29. Basin Electric will utilize the ND One Call system during construction.

30. Basin Electric will work with adjacent landowners by communicating construction plans and mitigating, where possible, negative impacts of the Project operation in the long term.

31. Basin Electric will transport all loads grossing 400,000 pounds or more on North Dakota Department of Transportation highways only when the ground is frozen.

32. Basin Electric will follow the North Dakota Department of Environmental Quality's recommendations detailed in its July 19, 2022, letter.

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

Conclusions of Law

1. The Commission has jurisdiction over the applicant, Basin Electric Power Cooperative, and over the subject matter of the Application under North Dakota Century Code Chapter 49-22.

2. Basin Electric is a utility as defined in North Dakota Century Code Section 49-22-03(14).

3. The Project is an electric energy conversion facility as defined in North Dakota Century Code Section 49-22-03(5).

4. The construction, operation, and maintenance of the Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The Project is compatible with the environmental preservation and the efficient use of resources.

6. The construction, operation, and maintenance of the Project will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

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

Order

The Commission orders:

1. Certificate of Site Compatibility No. 66 is issued to Basin Electric Power Cooperative designating a site for the construction, operation, and maintenance of an electric energy conversion facility in Case No. PU-22-380. For purposes of this Certificate, the designated site includes the original PGS 120-acre parcel and the adjacent 160-acre expansion area parcel, all located in Section 20, Township 155 North, Range 103 West in Williams County as identified in Figure 1-2 of the Application.
2. Certificates of Site Compatibility Nos. 33 and 44 are consolidated into Certificate of Site Compatibility No. 66 and are consequently revoked. The construction, operation, and maintenance permitted under Certificate Nos. 33 and 44 remain subject to the conditions and limitations ordered in Case Nos. PU-12-509 and PU-14-829. To the extent that there are conflicts between the conditions and limitations provided in Case Nos. PU-12-509 and PU-14-829 and Certificate of Site Compatibility No. 66, Certificate of Site Compatibility No. 66 prevails.
3. The Certification Relating to Order Provisions – Energy Conversion Facility Siting (Certification) with attached Tree and Shrub Mitigation Specifications executed January 19, 2023, 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, Basin Electric 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. Basin Electric 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


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair


Julie Fedorchak
Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility Number 66

This is to certify that the Commission has designated an energy conversion facility site for Basin Electric Power Cooperative, for the construction and operation of an energy conversion facility and associated facilities 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-22-380 dated February 8, 2023, and is subject to the conditions and limitations noted in the order.

Bismarck, North Dakota, February 8, 2023.

ATTEST:

PUBLIC SERVICE COMMISSION


Executive Secretary


Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Basin Electric Power Cooperative
Pioneer Generation Station Phase IV - Williams County
Siting Application**

Case No. PU-22-380

**CERTIFICATION RELATING TO ORDER PROVISIONS
ENERGY CONVERSION FACILITY SITING**

I am Gavin McCollam, a representative of Basin Electric Power Cooperative (“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.

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 approved by the North Dakota State Historic Preservation Office 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 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.
11. (For electric energy facility) 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.
12. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
13. Company understands and agrees that it shall bury all underground lines to a depth of at least 48 inches to the top of the lines.
14. 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, 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.

15. 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.
16. 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.
17. 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.
18. 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.
19. 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:

20. 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.
21. 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.

22. 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.
23. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
24. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
25. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
26. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
27. 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.
28. 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.
29. 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:

30. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
31. 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.
32. 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.

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

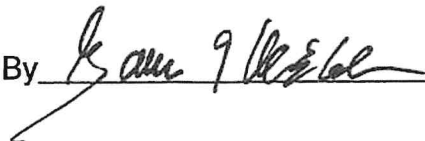
Modification of Energy Conversion Facility or Energy Conversion Site Plan:

37. 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.
38. 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 19th day of January, 2023

Basin Electric Power Cooperative

By 

Its Senior Vice President and Chief Operating Officer