

February 6, 2024

*Via Hand Delivery & Electronic Mail*

Mr. Steve Kahl  
North Dakota Public Service Commission  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480  
[ndpsc@nd.gov](mailto:ndpsc@nd.gov)

In re: Oliver Wind IV, LLC  
Oliver Wind IV Wind Energy Center - Oliver County  
Oliver Wind IV 345-kV Transmission Line - Oliver & Mercer Counties  
Siting Applications  
Case Nos. PU-23-317 & PU-23-318  
OAH File Nos. 20230356 & 20230357  
Our File No. 035218-000083

Dear Mr. Kahl:

Enclosed for filing in the above-referenced matters, please find eight copies of Late-Filed Exhibit 23 – Executed Memorandum of Understanding with the North Dakota Department of Agriculture.

Please feel free to contact me if you have any questions. Thank you.

Sincerely,



Casey A. Furey

CAF/lh  
Enc.

cc: ALJ Timothy Dawson (via email and USPS)  
Robert Frank (via email)  
Brian Johnson (via email)

31 PU-23-317 Filed 02/06/2024 Pages: 4  
Letter Filing Late-Filed Exhibit 23 - Executed Memorandum of Understanding with the North Dakota Department of Agriculture  
Oliver Wind IV, LLC  
Casey Furey, Crowley Fleck, PLLP  
34 PU-23-318 Filed 02/06/2024 Pages: 4  
Letter Filing Late-Filed Exhibit 23 - Executed Memorandum of Understanding with the North Dakota Department of Agriculture  
Oliver Wind IV, LLC  
Casey Furey, Crowley Fleck, PLLP

Kevin Pranis (via email)  
Tracy Davis (via email)  
Erik Edison (via email)

**Memorandum of Understanding**  
**between**  
**Oliver Wind IV, LLC**  
**and**  
**North Dakota Department of Agriculture**

1. This Memorandum of Understanding ("**MOU**"), dated December 15, 2023, is between Oliver Wind IV, LLC ("**Oliver Wind IV**"), an indirect, wholly-owned subsidiary of NextEra Energy Resources, LLC ("**NextEra**") and the North Dakota Department of Agriculture ("**NDDA**"). NDDA and Oliver Wind IV are jointly referred to as the "**Parties**".
2. As described in Oliver Wind IV's Siting Application to the North Dakota Public Service Commission ("**PSC**", Docket PU-23-317), since 2019, NextEra and Oliver Wind IV have been proactively considering and developing voluntary potential environmental mitigation offsets in coordination with the North Dakota Game and Fish ("**NDGFD**") and the U.S. Fish and Wildlife Service ("**USFWS**").
3. This planning and coordination centered on the possibility that NextEra may voluntarily offer potential mitigation offsets in direct relation to the Oliver Wind IV Energy Center ("**Project**"). The Project is a 200-megawatt wind energy conversion facility located in Oliver County, North Dakota. Oliver Wind IV will own, construct, and operate the Project.
4. Oliver Wind IV has sited the Project within Low and Medium Impact to Wildlife Areas and all turbines have been sited to be located off unbroken (i.e., native) grasslands, consistent with recommendations within the NDGFD *Wind Energy Development in North Dakota Best Management Practices*. Oliver Wind IV recognizes that proper siting is important to avoiding and minimizing adverse environmental impacts to consequently reach the minimal adverse impact threshold in compliance with PSC siting criteria.
5. By implementing proper siting practices, Oliver Wind IV represents that it has achieved the minimal adverse environmental impact threshold. However, to address the possibility of residual indirect adverse impacts e.g. to grassland breeding birds that may result from the construction or operation of the Project, Oliver Wind IV has proposed in good faith to provide voluntary mitigation offsets.
6. Oliver Wind IV has elected to make a voluntary contribution to the Environmental Impact Mitigation Fund ("**Fund**") administered by NDDA under North Dakota Century Code section 4.1-01-21.1 so that NDDA can develop and implement those mitigation offsets on behalf of Oliver Wind IV.
7. Accordingly, Oliver Wind IV will voluntarily:
  - Contribute **one million five hundred thousand dollars (\$1,500,000.00)** to the Fund pursuant to North Dakota Century Code section 49-22-09.2. This contribution shall be used by the Agriculture Commissioner for the purposes provided in North Dakota Century Code section 4.1-01-21.1 and for the purpose of the protection and/or restoration of grasslands and other similar habitats (e.g., wetlands, native woodlands). This dollar amount to be voluntarily contributed by Oliver Wind IV is substantially based upon technical input from USFWS and NDGFD to equate substantially to a mitigation offset of 665 acres of grassland habitat.

8. NDDA recognizes Oliver Wind IV's efforts to avoid and minimize adverse environmental impacts through Project and turbine siting as well as through its voluntary mitigation offsets for residual indirect environmental impacts.

9. This MOU, and all voluntary commitments made, are contingent upon two milestones:

Milestone 1: Oliver Wind IV filing a Notice of Intent to Start Construction of the Project with the PSC, and

Milestone 2: Oliver Wind IV completing Project construction.

10. Within thirty (30) days of Milestone 1, the Parties will determine the financial mechanism for Oliver Wind IV to transfer the voluntary offset dollars into the Fund and consequently Oliver IV will transfer to the Fund a minimum of 50% of its voluntary contribution as stated in paragraph 7 (**seven hundred fifty thousand dollars - \$750,000.00**).

11. At Milestone 2, Oliver Wind IV will make the final financial voluntary contribution to the Fund, comprising the remainder of its voluntary contribution as stated in paragraph 7. Oliver Wind IV, in its discretion, may make other payments of its voluntary contribution at other times between Milestone 1 and Milestone 2.

12. Between Milestone 1 and Milestone 2, NDDA will timely engage with a mitigation provider(s) to develop offset plans as to where and what offset mitigation actions will take place on the ground. Prior to Milestone 1, NDDA may, as appropriate, proactively engage in preliminary exploratory discussions with a mitigation provider(s).

13. NDDA will notify Oliver Wind IV of the use of the funds that were contributed by Oliver Wind IV. The Agriculture Commissioner will use the contributed funds for the purposes provided in N.D.C.C. section 4.1-01-21.1. In general, the Agriculture Commissioner will use the contributed funds to:

- Establish, restore, enhance, and/or maintain grassland habitat;
- Enter into non-perpetual, e.g., 30-year, easements/agreements for appropriate acreages on working lands, that are limited in time to the operational life of the Project;
- Purchase proper seed mixes (such as diverse, native perennial grass/forb mix suited for site), and conduct proper restoration/protection measures, management, and maintenance of mitigation offset areas; and
- As practicable, conduct mitigation offsets within the general vicinity of the area (but, when indicated, not within 0.5 miles of direct impact), county, or region affected by the Project (e.g., Oliver, Mercer, McLean, Morton, counties, etc.) or within another suitable area of similar habitat within the State as approved by NDDA. No mitigation offsets may take place outside the State.

14. The Parties recognize that time is of the essence to implement the terms of this MOU. All mitigation offsets are expected to be delivered within 5 years by NDDA after Milestone 2. Mitigation offset efforts will be prioritized to take place on private land acreage with willing landowners who, as appropriate, will be compensated financially for the initial habitat establishment and for subsequent transition into appropriate use within their operations.

15. Oliver Wind IV may reasonably modify financial mitigation offset estimates if unforeseen circumstances during construction result in significant Project changes (e.g., reduction in turbine number or change in turbine locations). The Parties will coordinate together as to any substantial estimate modifications.

16. It fully is the intent of the Parties to work together in good faith to implement the terms of this MOU so that voluntary environmental mitigation offsets pertinent to this MOU can be established and maintained in a timely, efficient, and equitable manner. This MOU is effective on the date that it has been signed by both Parties.

MOU acknowledged and entered into on this 19.00 day of December 2023,

Oliver Wind IV, LLC

DocuSigned by:




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NAME Anthony Pedroni

TITLE Vice President

MOU acknowledged and entered into on this 15th day of December 2023

North Dakota Department of Agriculture



Doug Goehring  
Agriculture Commissioner

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