

February 23, 2024

***Via Electronic Mail & U.S. 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)

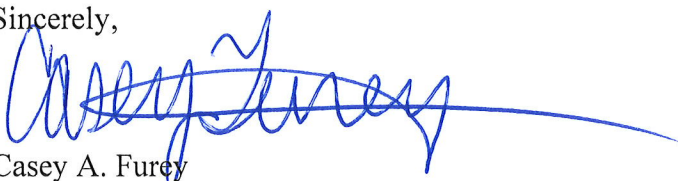
In re: Oliver Wind IV, LLC  
Oliver Wind IV Wind Energy Center - Oliver County  
Siting Application  
Case No. PU-23-317  
OAH File No. 20230356  
Our File No. 035218-000083

Dear Mr. Kahl:

Enclosed for filing in the above-referenced matter, please find eight copies of the Proposed Findings of Fact, Conclusions of Law and Order.

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)

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

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

**Oliver Wind IV, LLC**  
**200 MW Oliver Wind IV Energy Center – Oliver County**  
**Siting Application**

**Case No. PU-23-317**

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**February \_\_\_\_, 2024**

**Appearances**

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

Casey A. Furey and Erik J. Edison, Crowley Fleck PLLP, 100 West Broadway Avenue, Suite 250, Bismarck, North Dakota 58501, on behalf of Applicant Oliver Wind IV, LLC.

Tracy C. Davis, NextEra Energy Resources, LLC, 5920 W. William Cannon Dr., Building 2, Austin, Texas 78749, on behalf of Applicant Oliver Wind IV, LLC.

Brian L. Johnson, Special Assistant Attorney General, 600 E. Boulevard Ave., Dept. 408, Bismarck, North Dakota 58505-0480, North Dakota Public Service Commission.

Kevin Pranis, 81 East Little Canada Road, St. Paul, Minnesota 55117, Marketing Manager and Representative of Intervenor, Laborers District Council of Minnesota and North Dakota.

Timothy Dawson, Administrative Law Judge (“ALJ”), Office of Administrative Hearings, 2911 North 14<sup>th</sup> Street, Suite 303, Bismarck, North Dakota 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On September 28, 2023, in Case No. PU-23-317, Oliver Wind IV, LLC (“Oliver Wind IV”) filed an Application for a Certificate of Site Compatibility for an approximately 200 megawatt (“MW”) wind energy conversion facility known as the Oliver Wind IV Energy Center (the “Wind Project”), to be located in Oliver County, North Dakota (the “Application”).

On September 28, 2023, in Case No. PU-23-318, Oliver Wind IV filed an Application for a Certificate of Corridor Compatibility and Route Permit to construct the approximately 19.5-mile Oliver Wind IV 345 kilovolt (“kV”) transmission line and associated facilities (the “Transmission Project”) in Oliver and Mercer Counties, North Dakota.

On December 13, 2023, the North Dakota Public Service Commission (the “Commission”) consolidated Case Nos. PU-23-317 and PU-23-318 for public hearing and deemed the applications for the Wind Project and the Transmission Project (collectively, the “Projects”) complete.

Also on December 13, 2023, the Commission issued a Notice of Filing and Notice of Consolidated Hearing (the “Notice”) for the Projects and scheduled a public hearing for January 29, 2024, at 10:00 a.m. Central Time, at the Betty Hagel Memorial Civic Center, 312 Lincoln Avenue, Center, ND 58530.

The Notice identified the issues to be considered in Case Nos. PU-23-317 and PU-23-318 as follows:

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 January 11, 2024, the Laborers District Council of Minnesota and North Dakota (“LIUNA”) filed a Petition to Intervene in Case Nos. PU-23-317 and PU-23-318.

On January 22, 2024, ALJ Dawson issued an Order granting LIUNA’s Petition to Intervene.

On January 29, 2024, a public hearing on the applications for the Projects (the “Hearing”) was held as scheduled in Center, North Dakota.

Exhibits 1 through 21 were entered into the record by Oliver Wind IV at the Hearing.

Exhibit 22 was entered into the record by Jayar Kindsvogel, President, Center Machine Inc. at the Hearing.

On February 6, 2024, Oliver Wind IV filed Late-Filed Exhibit 23.

On February 23, 2024, Oliver Wind IV filed Late-Filed Exhibits 24-26.

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

### **Findings of Fact**

1. Oliver Wind IV, LLC is a Delaware limited liability company and is a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC.

2. Oliver Wind IV is authorized to transact business in the State of North Dakota, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State and filed with the Commission in Case No. PU-23-319.

3. The Wind Project will be owned and operated by Oliver Wind IV, LLC.

### **Size, Type and Preferred Location of Facility**

1. The Wind Project is expected to result in minimal permanent disturbance and occupation of up to 55.3 acres of land within a project area of approximately 22,291 acres of land, located in Oliver County, North Dakota, as depicted in Exhibit 1, Figure 1. The Wind Project consists of up to 73 wind turbines and three alternate turbine locations and will have a nameplate capacity of up to 200 MW.

2. Oliver Wind IV anticipates utilizing General Electric (“GE”) 2.82 MW wind turbine generators. The GE 2.82 MW wind turbines will have a 292-foot hub height and measure 500 feet from the base of the tower to the tip of the upright blade. Oliver Wind IV has requested the flexibility to use up to five GE 2.52 MW wind turbines with a 295-foot hub height and will measure 486 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 strike.

3. 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”), and two permanent Aircraft Detection Lighting System (“ADLS”) radar system towers.

4. 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 substation where the voltage will be stepped up from 34.5 kV to transmission line voltages for interconnection to the transmission grid.

5. The wind turbines will have Supervisory Control and Data Acquisition (“SCADA”) communications technology to allow control and monitoring of the Wind Project 24 hours a day, 7 days a week. The SCADA communications systems permits automatic, independent operation and remote supervision allowing simultaneous control of turbines.

6. The Wind Project will interconnect to the grid at the Basin Electric Power Cooperative’s new 345kV Leland Olds Substation in Mercer County, North Dakota. To interconnect the Wind Project to the grid, Oliver Wind IV will construct the approximate 19.5-mile long Transmission Project between the Wind Project substation and the 345kV Leland Olds Substation.

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

8. Oliver Wind IV has entered a 15-year power purchase agreement with Verizon Communications, Inc. for the full output of energy produced by the Wind Project.

9. Oliver Wind IV has executed or pending easements and land agreements necessary for the siting and construction of the Wind Project and associated facilities. Remaining pending agreements will be executed prior to the start of construction for which such authorization is required.

10. Oliver Wind IV anticipates a December 2024 in-service date for commercial operations of the Wind Project.

11. The estimated total cost to construct the Wind Project is approximately \$345 million.

### **Study of Preferred Location**

12. Oliver Wind IV sent coordination letters to the federal, state, and local departments, agencies, and entities designated in N.D. Admin. Code § 69-06-01-05. North Dakota Century Code Section 49-22-16(4) provides that compliance with an agency's rules shall be presumed if the agency fails to present its position with respect to the proposed facility at least thirty days before the public hearing. The federal, state, and local departments, agencies, and entities that provided comment in response are as follows:

- a. Federal: United States Army Corps of Engineers; United States Department of Agriculture – Natural Resources Conservation Service; United States Fish and Wildlife Service; Office of the Assistant Secretary of Defense - Military Aviation and Installation Assurance Siting Clearinghouse; and the United States Minot Air Force Base.
- b. State: Aeronautics Commission; Industrial Commission; Parks and Recreation Department; North Dakota Geological Survey; Department of Environmental Quality; Department of Transportation; Game and Fish Department; Department of Agriculture; Department of Trust Lands; North Dakota State Water Commission; and, the State Historical Society of North Dakota.

13. Agency consultations and comments are noted in the Application, exhibits, and testimony presented at the public hearing. Oliver Wind IV has avoided, minimized, and/or mitigated impacts for all issues raised by local, state, and federal agencies.

14. Oliver Wind IV coordinated with, and received a response from, the National Telecommunications and Information Administration (“NTIA”) stating that no federal agencies represented in the Interdepartment Radio Advisory Committee had issues with turbine placement in the area. NTIA did not identify any concerns regarding radio frequency blockage.

15. Oliver Wind IV received a response from the U.S. Dept. of Defense indicating that the Wind Project will have minimal impact on military operations conducted in the area.

16. Oliver Wind IV conducted a telecommunications study to identify all published Federal Communications Commission microwave telecommunications systems in proximity of the Wind Project area. Based on the results of this study, impacts to these systems are not anticipated from the Wind Project's turbines.
17. Oliver Wind IV obtained Determinations of No Hazard from the FAA for all Wind Project turbines, alternate turbine locations, the permanent MET, and two ADLS radar towers at the Wind Project.
18. North Dakota Century Code § 49-22-16(2) provides that no energy conversion facility site shall be designated that violates any local land use, zoning, or building rules, regulations, or ordinances. Oliver Wind IV has obtained a conditional use permit from Oliver County for the Wind Project. Exhibit No. 3.
19. Oliver Wind IV conducted a Class I Literature Search of the Wind Project area plus a one-mile study area to identify previously recorded archaeological sites identified during previous surveys.
20. Oliver Wind IV conducted Class III Cultural Resource Inventories from 2019 to 2023 for archaeological resources for areas to be temporarily and permanently impacted by the Wind Project and submitted the reports to the North Dakota State Historical Preservation Office ("SHPO"). On July 14, 2021 and January 25, 2024, SHPO issued letters for archaeological resources located within the Wind Project and determined there are no adverse direct effects on significant sites.
21. Oliver Wind IV 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. Two identified sites, a historic farmhouse and an abandoned farmstead, are located outside of the Wind Project site and were determined eligible for inclusion on the National Register of Historic Places (NRHP). SHPO agreed with the NRHP eligibility determination in a letter issued on December 7, 2023. Although both sites are located outside of the Wind Project, and any potential indirect impacts to these sites are minimal from the Wind Project, Oliver Wind IV coordinated with the SHPO to avoid potential indirect viewshed impacts to these sites through a mitigation plan. On December 21, 2023, the SHPO agreed Oliver Wind IV's mitigation proposal for the two sites, which consists of documenting both historic sites to a State Historic American Buildings Survey Level III specification, will be sufficient to offset indirect visual impacts.
22. Oliver Wind IV 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. Oliver Wind IV conducted natural resource field surveys within the Wind Project. The field surveys gathered information on soils, land use and vegetation, wetlands and waterbodies, woodlands, trees and shrubs, and wildlife, including protected species and critical habitats.

24. Oliver Wind IV filed the following reports in support of its Application which contain the results of various wildlife and habitat surveys and studies as follows. Results of the studies were used in siting to avoid or minimize impacts.

- a. Avian Use Study: Oliver Wind IV conducted avian use studies to evaluate use of the Wind Project area by avian species, such as waterfowl, grassland nesting birds, raptors, and eagles. The assessment concluded that eagle use was low within the study area and that no federally threatened or endangered species were recorded within the study area.
- b. Sharp-Tailed Grouse Lek Surveys: Oliver Wind IV conducted aerial and ground-based sharp-tailed grouse lek surveys to document number and location of grouse leks within the study area.
- c. Raptor Nest Surveys: Oliver Wind IV conducted aerial and ground-based raptor nest surveys to document nest locations.
- d. Whooping Crane Habitat Assessment: Oliver Wind IV conducted a whooping crane habitat assessment to evaluate potential whooping crane habitat use. The assessment concluded the probability of use is low in any given year and that impacts are unlikely.
- e. Dakota Skipper Habitat Assessment: Oliver Wind IV conducted a Dakota skipper habitat assessment. The assessment identified and described approximately 0.26 acres of suitable Dakota skipper habitat within the Wind Project construction easement. Impacts to this habitat will be avoided and adverse impacts to Dakota skipper are not anticipated.
- f. Northern Long-Eared Bat Surveys: Oliver Wind IV conducted a northern long-eared bat (NLEB) desktop habitat assessment and field presence/absence surveys in support of the Wind Project. NLEB were detected at two sites during 2019 surveys, at one site during the 2020 surveys, and not at all during 2022 surveys. The species was documented in low numbers during the bat surveys suggesting minimal risk to NLEB from construction and operation of the Project.
- g. Wetlands and Other Waters Delineation Report: Oliver Wind IV conducted surveys to identify and describe wetlands and other waters delineated in the Wind Project. The Wind Project has been sited to avoid and minimize impacts to wetlands and other waters.

- h. Unbroken Grassland Assessment: Oliver Wind IV conducted an unbroken grassland assessment to assess grassland types within the Wind Project and summarizes the desktop assessment and field surveys. Unbroken grasslands are located within the Wind Project. All 73 wind turbines and three alternative turbine locations are located in cropland or broken grassland.

25. Oliver Wind IV used the U.S. Fish and Wildlife Service (“USFWS”) Information for Planning and Conservation tool and onsite surveys to identify the potential for occurrence of threatened or endangered species or their designated critical habitat within the Wind Project. This tool identified five threatened or endangered species that could potentially occur within the Wind Project: piping plover (threatened), rufa red knot (threatened), whooping crane (endangered), Dakota skipper butterfly (threatened), and northern long-eared bat (“NLEB”) (endangered). Oliver Wind IV’s studies and surveys concluded the Wind Project lacks suitable habitat for the piping plover and rufa red knot. Impacts are not anticipated to the whooping crane, Dakota skipper butterfly, and NLEB based on Oliver Wind IV’s siting and mitigation measures. Adverse impacts to these species are not anticipated. No designated critical habitat for threatened or endangered species is located within the Wind Project.

26. Trees and shrubs are sparsely located within the Wind Project, and Oliver Wind IV 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. Oliver Wind IV requested clearance of up to 600 feet in width for nine turbine locations to accommodate construction and final turbine placement to remove obstructions from adjacent tree rows. These locations are depicted in Exhibit 1, Figure 13.

### **Siting Criteria**

27. The Commission has established criteria pursuant to North Dakota Century Code § 49-22-05.1 to guide the Commission in evaluating the suitability of granting a Certificate of Site Compatibility. The criteria, as set forth in North Dakota Administrative Code § 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

28. Oliver Wind IV evaluated the Wind Project with respect to the Exclusion, Avoidance, Selection, and Policy Criteria of the Commission.

29. An energy conversion facility shall not be sited within an Exclusion Area.

30. With respect to Exclusion Areas, designated and registered archaeological sites are located within the Wind Project; however, Oliver Wind IV has sited the Wind Project to avoid impacts to these sites.

31. All Wind Project turbines have been sited to comply with wind energy conversion facility setbacks designated as Exclusion Areas in North Dakota Administrative Code § 69-06-08-01(2)(a)(2023).



32. No additional known Exclusion Areas are located within the Wind Project.

33. An energy conversion facility must not be sited within an Avoidance Area 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.

34. With respect to Avoidance Areas, historic farmsteads and cemeteries are present within the Wind Project; however, Oliver Wind IV has sited the Wind Project to avoid impacts to historical resources. Oliver Wind IV and SHPO have agreed on mitigation to address visual impacts to the two historic sites eligible for listing on the National Register of Historic Places. SHPO has agreed that mitigation efforts proposed will be sufficient to offset the minimal visual impacts from the Wind Project.

35. Wetlands are designated as an Avoidance Area. Wetland delineations were completed for the Wind Project. The Wind Project has been sited to avoid permanent impacts to wetlands to the greatest extent possible. Two wetlands are planned to be permanently impacted. Permanent impacts to wetlands remain negligible and total approximately 0.02 acres or 870 sq. feet. Oliver Wind IV testified there is no reasonable alternative to impacting the two wetland locations.

36. The first permanent wetland impact is less than 0.01 acres and is associated with an access road to Turbine 46. Oliver Wind IV testified there is no reasonable alternative to impacting the wetland in this location. The wetland is located along an existing quarter-section two-track. Oliver Wind IV worked with the landowner to minimize impacts and sited the access road to Turbine 46 along the existing two-track, which also runs along the edge of the landowner's agricultural field, and intersects the wetland in this location. Other options explored for this access road would have required Oliver Wind IV to build the access road across cropland or unbroken grassland. However, these options were rejected to preserve unbroken grassland, avoid disruption to the landowner's ongoing agricultural activities, and minimize additional impacts by utilizing the existing two-track.

37. The second permanent wetland impact is less than 0.01 acres and is associated with the access road to Turbine 35. Oliver Wind IV testified there is no reasonable alternative to impacting the wetland in this location. The access road in this location is designed to take the straightest and shortest path to the turbine, and avoids impacts to unbroken grasslands, as well as neighboring landowners. Other options explored for this access road would have resulted in significantly greater land disturbance, approximately four times as long, approximately half of which would impact unbroken grasslands.

38. Areas that are geologically unstable are an Avoidance Area. Areas deemed as landslide deposits mapped by the North Dakota Geological Survey are within the Wind Project. No wind turbines have been sited within mapped landslide deposits. Oliver Wind IV identified three areas in Exhibit 1, Figure 16 where collection lines appear to intersect areas of potential NDGS-mapped

landslide deposits.<sup>1</sup> Oliver Wind IV testified it will avoid siting infrastructure in areas that are geologically unstable. Oliver Wind IV will confirm the mapping for these three locations through field verification prior to construction. Oliver Wind IV will provide the results of the field verifications to the Commission. If the feature is confirmed to be geologically unstable through field verification, Oliver Wind IV will either bore to an appropriate depth to avoid the feature or reroute the collection line. If Oliver Wind IV elects to bore these locations, Oliver Wind IV will file geotechnical reports with the Commission prior to conducting such bores. If Oliver Wind IV elects to reroute collection in the identified areas, it will submit certifications to the Commission for these changes.

39. No additional known Avoidance Areas are located within the Wind Project.

40. In accordance with the Commission's Selection Criteria, a site may be approved in an area 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 criteria designated in § 69-06-08-01(5) will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.

41. In accordance with the Commission's Policy Criteria, the Commission may give preference to an applicant that will maximize benefits that result from the adoption of identified policies and practices in § 69-06-08-01(6). The Commission may also give preference to an applicant that will maximize interstate benefits.

42. Oliver Wind IV submitted evidence that the Wind Project will not have a significant adverse impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-01(5). Additionally, Oliver Wind IV committed to maximizing the benefits of the Wind Project to the extent practicable to meet the Policy Criteria set forth in North Dakota Administrative Code § 69-06-08-01(6).

43. The Wind Project and associated facilities are expected to result in minimal permanent disturbance and occupation of up to 55.3 acres of land. No landowners will be displaced. Oliver Wind IV will continue to work with landowners to minimize land use disruptions from the Wind Project. No impacts to irrigation or quality of agricultural land are anticipated.

44. Oliver Wind IV will utilize best management practices to minimize impacts on ground and surface water, and to prevent soil erosion. Erosion control measures required under the National Pollution Discharge Elimination System permit and the associated Stormwater Pollution Prevention Plan will be implemented. Construction of the Wind Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils. Temporarily disturbed areas will be restored and reseeded.

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<sup>1</sup> Area 1 located between Turbines 3 & 4 (Exhibit 1, Figure 16, pg. Oliver IV Wind 000109); Area 2 located between Turbines 58 & 63 (Exhibit 1, Figure 16, pg. Oliver IV Wind 000116); and Area 3 located between Turbines 60 & 65 (Exhibit 1, Figure 16, pg. Oliver IV Wind 000117).

45. During construction, the Wind Project may result in a temporary increase in traffic on county and township roads. The increase in traffic during construction is not expected to be at a volume that will disrupt residents or travel in the Wind Project area. During operation, no adverse effects to transportation facilities or networks are anticipated.
46. The Wind Project will not have significant adverse impacts on the area's availability to provide law enforcement, government, health, education, community, and utility facilities or services.
47. Oliver Wind IV has extensively coordinated and consulted with the North Dakota Game and Fish Department ("NDGFD"), USFWS, and the North Dakota Department of Agriculture ("NDDA") regarding avoidance, minimization, and mitigation related to habitat and wildlife as evidenced by Oliver Wind IV's Wildlife Coordination and Mitigation Measures Memorandum, Exhibit 9.
48. Oliver Wind IV conducted an acoustic analysis to assess whether sound levels from the Wind Project will exceed 45 A-weighted decibels (dBA) within 100 feet of an existing inhabited residence or community building (collectively, a "receptor") pursuant to N.D. Admin. Code § 69-06-08-01(4). The Wind Project meets the Commission's sound level requirements at all existing receptors identified in Exhibit 1, Appendix B2 and Exhibit 15.
49. 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 below the Commission's accepted 30 hours per year standard at all existing receptors identified in Exhibit 1, Appendix B3 and Exhibit 15.
50. The Wind Project will not have significant adverse impacts on temporary and permanent labor. Oliver Wind IV testified that it would work with its engineering, procurement, and construction contractors ("EPCs") such that its EPCs will endeavor to utilize available local labor.
51. During the hearing, LIUNA witnesses provided testimony about the benefits of using local labor during project construction. Oliver Wind IV expressed a willingness to work with LIUNA and to make efforts to utilize local labor to the extent practicable.
52. The Wind Project is expected to be of economic benefit to the affected area through the creation of construction, operation and maintenance jobs, easement payments to landowners, state and local tax revenue, and local expenditures.
53. An ADLS will be installed in compliance with FAA requirements and North Dakota Century Code § 49-22-16.4.
54. Oliver Wind IV has an executed generator interconnection agreement with the Southwest Power Pool, Inc. and Basin Electric Power Cooperative (GEN-2016-130).

55. Oliver Wind IV will file a decommissioning plan and decommissioning financial assurance in compliance with North Dakota Administrative Code Chapter 69-09-09.

56. Oliver Wind IV will participate in North Dakota One-Call Excavation Notice System.

### **Additional Measures to Minimize Impacts**

57. Oliver Wind IV voluntarily engaged with personnel at the National Park Service (“NPS”) regarding the Wind Project. In July 2023, the NPS identified possible indirect visual impacts the Wind Project may have on views from the Knife River Indian Villages National Historic Site and the Fort Clark State Historic Site. Both sites are located outside of the Wind Project. The Knife River Indian Villages is located approximately 9.5 miles northwest of the closest wind turbine and the Fort Clark State Historic Site is located approximately 6.8 miles east-northeast of the closest wind turbine. In response, Oliver Wind IV completed a viewshed analyses for the Wind Project utilizing procedures outlined in the U.S. Bureau of Land Management visual resources management handbook, as suggested by the NPS. Oliver Wind IV provided the analyses to the NPS and SHPO. The analyses concluded the Wind Project will not visually detract from the viewsheds of Knife River Indian Villages or Fort Clark State Historic Site because of the distance of the project’s features and the similarity of these features with other existing infrastructure on the landscape. On January 31, 2024, the SHPO issued correspondence stating it had reviewed the visual study provided by Oliver Wind IV, and “[does] not believe Fort Clark State Historic Site or the Knife River Indian Villages National Historic Site will be adversely impacted” by the Wind Project (Case No. PU-23-317, Docket No. 28).

58. Oliver Wind IV has agreed to take certain steps to mitigate the impact of the Wind Project as indicated in the Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications, filed with the Commission as Exhibit 13.

59. Oliver Wind IV has sited the Wind Project to comply with the Commission’s setback regulations. Currently, the nearest existing non-participating inhabited residence to a Wind Project turbine is 2,213 feet.

60. Oliver Wind IV has developed a voluntary Wildlife Conservation Strategy to help fully evaluate risk to wildlife, document efforts taken to reduce potential impacts through avoidance and minimization efforts, establish post-construction efforts, and outline agreed upon offsetting measures or mitigation.

61. During construction, road speed within the Wind Project will be limited to 25 miles per hour to minimize wildlife collisions and to reduce dust emissions.

62. Oliver Wind IV will avoid temporary and permanent impacts to field-verified suitable Dakota skipper habitat. High visibility fencing (e.g., snow fence) will be placed around field-verified suitable Dakota skipper habitat areas near construction to restrict construction equipment from disturbing these areas.

63. Oliver Wind IV has sited all turbines within the range of the NLEB to be greater than 1,000 feet from potential NLEB habitat to minimize potential impacts to the NLEB and its roosting habitat. Turbines will be curtailed, following USFWS recommendations. Additionally, during construction, restrictions on tree removal will be in effect within a three-mile conservation buffer around the one NLEB positive location that intersects the Wind Project from April 1 to October 31. No adverse impacts are anticipated.
64. Oliver Wind IV has adopted siting buffers around known eagle nests and grouse leks to minimize disturbance. Oliver Wind IV has sited turbines at least two miles from known active eagle nests, and one-half mile from confirmed sharp-tailed grouse leks. Oliver Wind IV will conduct pre-construction surveys for raptor and eagle nests. Any newly found occupied or active eagle nests will be avoided by a minimum of 660 feet for bald eagle nests and 0.5 miles for golden eagle nests during construction until the nests become inactive (*i.e.*, when eggs or chicks are absent from the nests).
65. Oliver Wind IV will follow Avian Power Line Interaction Committee suggested practices to avoid and minimize the potential for avian collisions and will bury electric collection lines and use un-guyed permanent meteorological evaluation towers or install bird diverters.
66. During construction, Oliver Wind IV will provide contractors with constraint maps that identify sensitive areas within the Wind Project for avoidance. Oliver Wind IV will ensure compliance through onsite environmental construction monitoring.
67. Throughout operations of the Wind Project, Oliver Wind IV will implement a voluntary Whooping Crane Identification Training and Curtailment Procedure to shut down turbines if whooping cranes are observed within one mile of a turbine.
68. Oliver Wind IV will complete one-year of post-construction monitoring for birds and bats.
69. Oliver Wind IV testified that through its design and siting of the Wind Project and the avoidance, minimization, and restoration measures outlined in the Application, supporting materials, and in its testimony, Oliver Wind IV has achieved the minimal adverse impact threshold for impacts to wildlife. To further mitigate potential indirect impacts to grassland birds in response to concerns identified by the USFWS and NDGF, Oliver Wind IV voluntarily committed to mitigate for remaining potential residual impacts to grassland nesting birds by contributing to the NDDA's Environmental Mitigation Fund. Oliver Wind IV's commitment is memorialized in a Memorandum of Understanding executed between Oliver Wind IV and the NDDA submitted as Late-Filed Exhibit 23.
70. In correspondence dated December 29, 2023, the NDDA acknowledges that "[b]y adopting North Dakota's recommended siting practices, Oliver Wind will substantially avoid adverse environmental impact. However, to address any potential residual indirect adverse impacts, Oliver Wind has proposed in good faith to provide voluntary mitigation offsets." (Exhibit 8). The NDDA goes on to state the "cooperative mitigation efforts . . . will collectively achieve a net zero of

beneficial environmental impact in relation to the proposed construction and operation of the Project.”

71. In correspondence dated December 29, 2023, the NDGF acknowledged Oliver Wind IV has taken several steps to avoid and minimize impacts, and commended Oliver Wind IV’s efforts in this regard (Exhibit 7). The NDGF further noted that in general, with the mitigation set forth in Oliver Wind IV’s Memorandum of Understanding, the Wind Project has “sufficiently offset impacts to wildlife.” In the December 29 correspondence, NDGF recommends Oliver Wind IV monitor known leks for five years after Wind Project construction. Oliver Wind IV testified it will commit to implement the NDGF’s recommendation and will monitor the six identified leks after project construction.

72. Oliver Wind IV will coordinate with local Natural Resource Conservation Services staff to revegetate noncropland and pasture areas temporarily disturbed during construction or operation of the wind facility with locally sourced certified weed free native seed mixes appropriate to the region.

73. Oliver Wind IV will reseed temporarily disturbed areas or restore to crop, based on the conditions of the area prior to construction and based on landowner preference, and will develop and implement a noxious weed prevention plan to minimize the spread of noxious weeds during construction.

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

### **Conclusions of Law**

1. The Commission has jurisdiction over Oliver Wind IV and the subject matter of the Application under North Dakota Century Code Chapter 49-22.
2. Oliver Wind IV is a utility as defined in North Dakota Century Code § 49-22-03(14).
3. The wind energy conversion facility proposed by Oliver Wind IV is an electric energy conversion facility as defined in North Dakota Century Code § 49-22-03(5).
4. The Application submitted by Oliver Wind IV meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.
5. There is no reasonable alternative to the two permanent wetland impacts identified by Oliver Wind IV.
6. The location, construction, and operation of the Wind Project will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

7. The Wind 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 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 now makes the following:

### **Order**

The Commission orders:

1. Certificate of Site Compatibility for an Energy Conversion Facility No. \_\_ is issued to Oliver Wind IV, LLC for the construction, operation, and maintenance of a wind energy conversion facility known as the Oliver Wind IV Energy Center corresponding to the Wind Project area depicted in Exhibit 1, Figure 16.
2. Within the permitted site, Oliver Wind IV is authorized to site and construct up to 73 wind turbines in proposed and alternative locations, as identified in Exhibit 1, Figure 16, along with 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. Oliver Wind IV's Certification Relating to Order Provisions with accompanying Tree and Shrub Mitigation Specifications filed with the Commission as Exhibit 13, is incorporated by reference and attached to this Order. The Tree and Shrub Mitigation Specifications may be modified upon the mutual agreement of the Commission and Oliver Wind IV. The Commission authorizes tree and shrub clearance in excess of 50 feet in width in the nine locations depicted in Exhibit 1, Figure 13.
4. To the extent there are any conflicts or inconsistencies between Oliver Wind IV's Application and the Certification, the Certification provisions control.
5. If modifications are made to the Wind Project layout, Oliver Wind IV shall complete 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 findings to SHPO for review, and file a copy of SHPO's response with the Commission prior to beginning construction in said areas.

6. If modifications are made to the Wind Project layout, Oliver Wind IV shall 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.

7. If modifications are made to the Wind Project layout that are not covered by the current acoustic analysis, Oliver Wind IV shall 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 currently existing receptors, unless otherwise agreed to by the landowner.

8. If modifications are made to the Wind Project layout that are not covered by the current shadow flicker analysis, Oliver Wind IV shall 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 currently existing receptors, unless otherwise agreed to by the landowner.

9. For the three areas Oliver Wind IV identified as potentially geologically unstable, Oliver Wind IV shall file the results of field verification of these locations prior to commencing construction in these areas. If Oliver Wind IV elects to bore these locations, Oliver Wind IV will file geotechnical reports with the Commission prior to conducting such bores. If Oliver Wind IV elects to reroute collection in the identified areas, Oliver Wind IV will submit certifications to the Commission for these changes prior to rerouting in these areas.

## **PUBLIC SERVICE COMMISSION**

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**Julie Fedorchak**  
**Commissioner**

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**Randy Christmann**  
**Chairman**

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**Sheri Haugen-Hoffart**  
**Commissioner**