

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Badger Wind, LLC
Amend - Badger Wind Project - Logan & McIntosh
Siting Application**

Case No. PU-24-87

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

_____, 2024

Appearances

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

Mollie M. Smith and Bridget A. Duffus, Fredrikson & Byron, P.A., 60 South 6th Street, Suite 1500, Minneapolis, Minnesota 55402, on behalf of the Applicant, Badger Wind, LLC.

Mitchell D. Armstrong, Special Assistant Attorney General, 122 East Broadway Ave., Bismarck, North Dakota 58501, North Dakota Public Service Commission.

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

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 November 20, 2022, in Case No. PU-22-86, the North Dakota Public Service Commission (Commission) issued Findings of Fact, Conclusions of Law and Order (2022 Order), issuing Certificate of Site Compatibility No. 64 (Certificate) to Badger Wind, LLC (Badger Wind) for a wind energy conversion facility known as the Badger Wind Project, to be located in Logan and McIntosh Counties, North Dakota (Project). The 2022 Order and Certificate authorized Badger Wind to construct and operate the Project within approximately 31,467 acres in Logan and McIntosh Counties and authorized the construction of up to 79 wind turbines with a nameplate capacity of up to 251.6 megawatts (MW).

On February 23, 2024, Badger Wind filed an Application for an Amended Certificate of Site Compatibility (Amendment Application) to authorize an expanded Project boundary and design modifications.

On February 23, 2024, Badger Wind filed an Application for Protection of Information related to cultural resource location information.

On March 5, 2024, Badger Wind filed the Wind Energy Facility Siting Permit / Conditional Use Permit issued by Logan County to Badger Wind for the Project.

On April 12, 2024, the State Historical Society of North Dakota (SHSND) filed comments.

On April 17, 2024, the North Dakota Department of Agriculture filed comments.

On May 14, 2024, Badger Wind filed an update to its Amendment Application filing, with accompanying supporting documentation, including updated Figures 1 through 13, which included the final site layout plan, and associated GIS data.

On May 23, 2024, the Commission issued a Notice of Public Hearing (Notice). The Commission scheduled a public hearing for July 11, 2024, at 9:00 a.m., at Wishek Civic Center, 715 1st Avenue South, Wishek, North Dakota 58495. The Notice identified the following issues to be considered:

1. Will the location and operation of the proposed facility 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 the proposed facility 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 June 10, 2024, the North Dakota Department of Game and Fish Department (NDGF) filed comments.

On June 13, 2024, the North Dakota Department Environmental Quality filed comments.

On June 21, 2024, Badger Wind filed an Application for Protection of Information related to cultural resource location information and the following Hearing Exhibit Nos. 1 through 17-A: (1) Amendment Application (provided separately); (2) Summary of Project Adjustments with Project Update Figure; (3) Updated Figures 1-13 in support of Badger Wind, LLC's Application for an Amended Certificate of Site Compatibility; (4) Logan County Wind Energy Facility Siting Permit/Conditional Use Permit; (5) Updated Sound Analysis Report; (6) Updated Shadow Flicker Analysis Report; (7) Updated Receptor Table; (8) Addendum Class III Archaeology Survey Report (dated May 24, 2024) (Public and Confidential versions); (9) Additional Agency Correspondence; (10) Summary of Avoidance, Minimization, and Mitigation Measures; (11) Executed Memorandum of Understanding with the North Dakota Department of Agriculture; (12) Updated Sound Analysis Tech Memo (Sound Barriers); (13) Wetland and Waterbody Delineation Technical Memorandum (Spring 2024); (14) 2024 Nest Surveys Technical Memorandum; (15) Signed Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications; (16) Prefiled Testimony of Mark Crowl; (16-A) Crowl Resume; (17) Prefiled Testimony of Andrew Krieger; and (17-A) Krieger Resume.

On June 27, 2024, the Laborers District Council of Minnesota and North Dakota (LIUNA) filed a Petition to Intervene.

On July 1, 2024, the SHSND filed additional comments.

On July 2, 2024, ALJ Hogan issued an Order granting LIUNA's Petition to Intervene.

On July 9, 2024, the Office of Administrative Hearings designated ALJ Timothy J. Dawson as the hearing officer.

On July 11, 2024, the public hearing was held as scheduled. At the public hearing, Badger Wind submitted supplement to Hearing Exhibit No. 9 (Additional Agency Correspondence) and Hearing Exhibit No. 18 (Unbroken Grasslands Map). Also at the public hearing, Badger Wind made a motion to incorporate by reference all documents filed in the original Badger Wind docket (Case No. PU-22-86). The ALJ granted this motion.

On July 29, 2024, Badger Wind filed the following Late-Filed Hearing Exhibit Nos. 19 through 23: (19) Additional Sound Waiver, with attachment; (20) Determinations of No Hazard, with attachment; (21) Summary of Interconnection Updates and Costs; (22) Summary of Coordination with the Wishek Hospital, with attachments; and (23) Areas to be Cleared Wider Than 50Ft.

Also on July 29, 2024, Badger Wind filed proposed findings of fact, conclusions of law, and order.

On [____], 2024, ALJ Dawson issued an Order granting Badger Wind's Application for Protection of Information.

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

FINDINGS OF FACT

1. Applicant, Badger Wind, LLC is a Delaware limited liability company and is a wholly owned, indirect subsidiary of Ørsted Onshore North America, LLC (Ørsted).
2. Badger Wind is 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 January 17, 2024 (Case No. PU-22-85).
3. The Project will be owned and operated by Badger Wind.

Size, Type and Preferred Location of Proposed Wind Project

4. Badger Wind proposes to update the Project by: (1) expanding the Project boundary to include approximately 34,896.6 acres of land in Logan and McIntosh Counties (Project Area) as depicted in Figure 1 in Hearing Exhibit No. 3; (2) utilizing a different potential turbine model (2.82 MW turbine model); and (3) increasing the number of potential turbine locations to 102, of which up to 93 will be constructed. The Project's nameplate capacity will increase to up to 262.62 MW; however, Badger Wind will limit the output at the point of interconnection to 250 MW in accordance with its generator interconnection agreement.

5. Badger Wind has not yet selected a specific turbine model for the Project. For all 102 proposed turbine locations, Badger Wind sited the locations to comply with applicable setbacks

for a turbine up to 291 feet (89 meters) in hub height, with an up to 416.7-foot (127.2-meter) rotor diameter, and a total tip height of 498.9 feet (152.1 meters).

6. The number of turbines constructed is dependent upon the final turbine model or models selected by Badger Wind; however, the turbine locations will not change and a subset of up to 93 of the 102 turbine locations would be used.

7. Additional facilities associated with the Project will include access roads, improvements to existing roads as needed, underground electrical collection and communication systems with aboveground junction boxes, a collection substation, an operation and maintenance facility, up to three permanent meteorological evaluation towers (MET), light-mitigating technology components, and temporary facilities, including a temporary batch plant, a laydown yard for construction offices, a multi-purpose laydown area to support the Project's construction activities, a marshalling yard to assist with logistics during turbine component deliveries, temporary crane paths, and temporary road improvements, as needed.

8. Foundation size and design will be finalized based on the results of the geotechnical analyses conducted once the turbine model(s) and final turbine locations are selected.

9. The Project will have a Supervisory Control and Data Acquisition (SCADA) system for remote monitoring, reporting, troubleshooting, and control of turbine equipment and performance.

10. Construction of the Project is anticipated to begin as early as Third Quarter 2024 and be completed by the end of 2025. Full commercial operation is expected by the end of 2025.

11. The Project will still interconnect to the grid at the Montana-Dakota Utilities Co. Wishek Junction 230-kV substation located in McIntosh County, North Dakota, via an approximately 0.25-mile transmission line between the Project substation and the Wishek Junction 230-kV substation.

12. The Project will be constructed pursuant to National Electrical Safety Code (NESC) and National Electric Code (NEC) requirements.

13. Badger Wind testified all easement agreements and options necessary for the siting and construction of the Project and associated facilities have been obtained.

14. The estimated total cost to construct the Project is approximately \$472 million.

Study of Preferred Location for the Wind Project

15. Badger Wind performed an environmental analysis for the Project as part of the 2022 application, which was the foundation for analysis of the current Project Area. For several resources, the updates to the Project Area and design did not materially affect the prior analysis. For other resources, Badger Wind conducted additional studies and analyses, including additional cultural resource, wetland, and wildlife surveys.

16. Woodlands comprise less than one percent of the total Project Area. If trees or shrubs are impacted by the Project, Badger Wind will coordinate with landowners regarding tree removal and replacement and comply with the Commission's tree and shrub mitigation specifications.

17. Wetland surveys were completed for the updated Project. In the event the Project layout changes from what is depicted in Hearing Exhibit No. 3, Badger Wind will complete a wetland delineation of any previously unsurveyed areas, as necessary.
18. Badger Wind has designed the Project to minimize temporary wetland impacts. Where collection lines would intersect a wetland, impacts will be avoided by boring beneath the wetlands. Wetland impacts are anticipated to be less than the threshold for a U.S. Army Corps of Engineers (USACE) Clean Water Act Nationwide Permit.
19. Badger Wind has designed the Project to avoid permanent impacts to delineated wetlands.
20. U.S. Fish and Wildlife Service (USFWS) wetland easements are present in the Project Area. Impacts are anticipated to occur within USFWS wetland easements. Badger Wind testified the Project obtained leases for two of these parcels prior to the USFWS obtaining the easements. Nevertheless, Badger Wind has been coordinating with the USFWS Kulm office to determine best approaches for construction to avoid permanent and minimize temporary impacts to the USFWS wetland basins.
21. Crane paths are sited on USFWS grassland easements in two areas. Badger Wind has been coordinating with the USFWS Kulm office to determine best approaches for construction to minimize temporary impacts to the USFWS grassland easements. Underground collection lines are sited on USFWS grassland easements in two areas. Badger Wind has consulted with the USFWS Kulm office and will bore collection lines under the USFWS grassland easements to avoid impacts.
22. Since the 2022 Order and Certificate were issued, Badger Wind conducted additional environmental studies/surveys for the updated Project, and impacts to wildlife are anticipated to be minimal. Among the additional surveys/studies conducted were:
 - A. Eagle/Large Bird Use Surveys. Badger Wind is conducting an additional 12 months of eagle and large bird use surveys in areas added to the Project since 2022.
 - B. Eagle/Raptor Nest Surveys. Badger Wind conducted a ground-based nest verification survey on January 5, 2024 to confirm the presence or absence of the two previously identified bald eagle nests, and conducted additional eagle and raptor nest surveys in the spring of 2024 for areas added to the Project Area since 2022 (Appendix H to Hearing Exhibit No. 1 and Hearing Exhibit No. 14). No new eagle nests were identified within the expanded Project Area. One of the previously identified eagle nests was observed and classified as occupied and in good condition. Project turbines are sited at least two miles from this nest. The second previously identified eagle nest was in poor condition and no eagle activity was noted in the area.
 - C. Grassland Assessment. Badger Wind conducted additional desktop and field verification surveys for grassland habitat in August of 2023 to cover updates to the Project. Badger Wind prepared an updated Grassland Habitat Assessment included as Appendix O to the Amendment Application (Hearing Exhibit No. 1), which presents the combined results of grassland assessments conducted for the Project during 2021 and 2023. No

turbines are sited within unbroken grasslands. Additionally, Badger Wind sited turbines in already fragmented areas to minimize potential impacts to grassland species.

23. Badger Wind updated its Bird and Bat Conservation Strategy (BBCS) to reflect the current Project Area, additional coordination with USFWS and NDGF, and additional environmental studies/surveys conducted for the updated Project (Appendix H to Hearing Exhibit No. 1).

24. The updated Project continues to adhere to the Plains Sharp-Tailed Grouse Conservation Strategy developed by Western EcoSystems Technology, Inc. (WEST) in coordination with the NDGF (Hearing Exhibit No. 10 in Case No. PU-22-86) to minimize potential impacts to sharp-tailed grouse. No turbines are sited on unbroken grasslands. The majority of turbines are sited in areas that are not suitable for sharp-tailed grouse, and all turbines located in identified suitable habitat are sited in previously fragmented areas, which helps minimize impacts to the local sharp-tailed grouse population.

25. The Project continues to avoid the seven unevaluated archaeological sites and two archaeological site leads identified in 2022.

26. Badger Wind conducted additional Class III archaeological surveys for areas of the current Project design not previously surveyed that might be impacted by construction of the Project. The Class III archaeological surveys identified one new archaeological site and one new prehistoric isolated find. The archaeological site has not been fully evaluated for listing in the National Register of Historic Places (NRHP). The prehistoric isolated find is recommended not eligible for listing in the NRHP. The SHSND noted that the one new archaeological site identified should be avoided or fully evaluated, and the Project has been designed to avoid that site. The SHSND has reviewed and accepted the additional Class III reports.

27. In the event any element of the Project layout changes from the layout provided in Figure 2 in Hearing Exhibit No. 3, Badger Wind will do the following: complete Class III cultural resource survey work for any previously unsurveyed areas, per SHSND's guidance; submit the findings to SHSND for review; and obtain and file with the Commission a copy of SHSND's acceptance of the report(s) prior to beginning construction in those areas.

28. Badger Wind conducted an additional Class I Literature Review and Class II Architectural Reconnaissance Inventory for the updated Project design. The additional Class I Literature Review identified one previously documented aboveground historic resource that was either not fully evaluated or previously determined not eligible for listing on the NRHP. The additional Class II survey determined that the previously documented resource identified in the Class I was no longer present, and no additional NRHP-eligible architectural resources were identified. The SHSND has reviewed and accepted the additional Class I and Class II report.

29. Project facilities continue to avoid all NRHP eligible, potentially eligible, or unevaluated cultural resource sites and architectural resources; thus, cultural and architectural resources are not expected to be impacted by the Project.

30. North Dakota Century Code (NDCC) Section 49-22-16(4) provides that a site shall not be designated that violates the rules of any state agency, and 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

the public hearing. The federal, state and local departments, agencies and entities that were consulted and provided comment on the Amendment Application are as follows:

A. Federal — U.S. Department of Defense (DOD); U.S. Army Corps of Engineers (USACE), North Dakota Regulatory Office; Federal Aviation Administration (FAA); United States Department of Commerce — National Telecommunications and Information Administration (NTIA); and USFWS.

B. State — North Dakota Department of Environmental Quality; NDGF; North Dakota Department of Agriculture; North Dakota Department of Water Resources; North Dakota Parks & Recreation; North Dakota Geological Survey; and SHSND.

C. Local — Wishek Municipal Airport; Logan County; McIntosh County; Red Lake Township; and Wishek Hospital and Sanford Health AirMed.

31. Agency consultations and comments since the issuance of 2022 Order and Certificate are noted in Appendix D of the Amendment Application (Hearing Exhibit No. 1) and in the exhibits and the testimony presented at the public hearing.

32. NDCC Section 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. Badger Wind obtained a wind energy facility siting permit/conditional use permit for the Project from Logan County on February 23, 2024. McIntosh County does not have zoning regulations. Badger Wind will comply with applicable county zoning ordinance requirements.

Siting Criteria

33. North Dakota Administrative Code (NDAC) Section 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria, as set forth in NDAC Section 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

34. Five Exclusion Areas specific to wind energy conversion facilities are present within the Project Area: (a) areas less than 1.1 times the height of the turbine from the nearest edge of an interstate or state roadway right-of-way; (b) areas less than 1.1 times the height of the turbine plus 75 feet from the centerline of any county or maintained township roadway; (c) areas less than 1.1 times the height of the turbine from the nearest edge of any railroad right-of-way; (d) areas less than 1.1 times the turbine height from the nearest edge of a 115 kV or higher transmission line right-of-way; and (e) areas less than 1.1 times the turbine height from the property line of a non-participating landowner and three times the height of the turbine from an inhabited rural residence of a nonparticipating landowner, unless a variance has been granted. No turbines will be located within these Exclusion Areas.

35. All setbacks are measured from the closest edge of the turbine tower base to the closest edge of the applicable feature.

36. No other Exclusion Areas as defined by NDAC Section 69-06-08-01(1) are identified with respect to the Project.

37. NDAC Section 69-06-08-01(3) identifies various Avoidance Areas. 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.
38. Cultural resources are present in the Project Area, but the Project has been sited to avoid cultural resource sites. An Unanticipated Discovery Plan has been developed and was reviewed by SHSND.
39. Wetlands are present in the Project Area, but the Project has been sited to avoid all permanent impacts to wetlands. The Project has been designed to avoid and/or minimize temporary impacts to delineated wetlands. Where collection lines would intersect a wetland, temporary impacts will be avoided by boring beneath the wetland.
40. Minimal trees and shrubs are located within the Project Area. The Project has been designed to minimize tree removal to the extent possible. Any tree and shrub removal and replacement will be conducted in accordance with the Commission's tree and shrub mitigation specifications. Badger Wind may need to clear up to 100 feet in up to 10 areas in order to collocate collection lines, access roads, and/or crane walks adjacent to one another. Badger Wind requested Commission approval to remove trees and/or shrubs from an area wider than 50 feet in up to 10 locations.
41. No other Avoidance Areas identified in NDAC Section 69-06-08-01(3) are identified with respect to the Project.
42. In accordance with the Commission's Selection Criteria, a site may be approved if it is demonstrated that any significant adverse effects resulting from the location, construction, and operation of the energy conversion facility will be at an acceptable minimum or that the effects will be managed and maintained at an acceptable minimum. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the proposed energy conversion facility in accordance with NDAC Section 69-06-08-01(6).
43. With all 102 proposed turbine locations and associated facilities, the Project would occupy up to approximately 127.8 acres of land, or approximately 0.37 percent of the total Project Area, during the life of the Project. With construction of up to 93 turbine locations and associated facilities, the actual acres occupied by the Project will be less. Badger Wind will continue to work with landowners to minimize land use disruptions from the siting of the facilities. No impacts to the quality of the agricultural land are anticipated.
44. Badger Wind submitted evidence demonstrating any significant adverse effects resulting from the location, construction, and operation of the Project as they relate to the Selection Criteria set forth in NDAC Section 69-06-08-01(5) will be at an acceptable minimum or managed and maintained at an acceptable minimum.
45. During construction, the Project will likely 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 significantly disrupt residents or travel in the Project Area. Haul road permits will be obtained from applicable townships, McIntosh and Logan Counties, and NDDOT, if needed. Badger Wind has entered into road use and maintenance agreements with Logan County and McIntosh County. County and township roads will be restored in accordance with the Signed Certification Relating to Order Provisions Wind Energy Conversion Facility Siting (dated June 21, 2024) (Hearing Exhibit No. 15). During operation, no adverse effects to transportation facilities or networks are anticipated.

46. The Project will not have significant adverse impacts on the ability of the affected area to provide community services, such as housing, health care, educational services, police and fire protection, water and sewer, or solid waste management.

47. Badger Wind consulted with the Wishek Hospital and Sanford Health AirMed. Wishek Hospital and Sanford Health AirMed have no concerns regarding the Project (Late-Filed Exhibit No. 22).

48. Badger Wind coordinated with USFWS and NDGF with respect to the Project. From early 2020 through to the present, Badger Wind has engaged in coordination with USFWS and NDGF on surveys and protocols, Project site selection, turbine placement, avoidance and minimization measures, and voluntary offsets. Both agencies recommended continued avoidance of unbroken grassland to minimize potential impacts to grassland species, and both agencies acknowledged the continued efforts Badger Wind has made to minimize potential Project impacts to unbroken grasslands. Badger Wind conducted additional desktop and field verification surveys for grasslands to cover changes/updates to the Project and prepared an updated Grassland Habitat Assessment (Appendix O to Hearing Exhibit No. 1), which presents the combined results of grassland assessments conducted for the Project. Based on a figure provided by Badger Wind (Hearing Exhibit No. 18), no Project turbines are located on unbroken grasslands. Badger Wind has also designed the Project to continue to adhere to the Plains Sharp-Tailed Grouse Conservation Strategy to minimize potential impacts to sharp-tailed grouse during Project construction and operations. While some turbines have associated infrastructure in unbroken grasslands, those turbines and the associated infrastructure were in the layout approved in the 2022 Order and Certificate, and the associated infrastructure has been sited to minimize impacts to unbroken grasslands.

49. Based on the totality of the evidence presented, the Commission finds Badger Wind has sited the Project to minimize potential impacts to wildlife.

50. Badger Wind conducted updated sound analyses for the Project. Nine inhabited residences were modeled above 45 dBA within 100 feet of the receptor. However, Badger Wind has secured wind energy lease agreements and easements, which include waivers of the sound requirement, from the owners of six of these residences. Badger Wind has also secured good neighbor agreements, which include a waiver of the sound requirement, from the owners of the remaining three inhabited residences. All other receptors, both participating and non-participating, are modeled below 45 dBA within 100 feet of the receptor. Accordingly, sound levels within 100 feet of an inhabited residence or community building will not exceed 45 dBA, unless waived in writing by the owner of such residence or building.

51. Badger Wind conducted updated shadow flicker analyses for the Project. Based on the shadow flicker analysis, all inhabited residences (both participating and non-participating) are modeled below 30 hours per year of shadow flicker. Accordingly, the Project will comply with Badger Wind's voluntary commitment of 30 hours per year or less of shadow flicker at all residences, absent a waiver.

Measures to Minimize Impacts

52. Badger Wind has agreed to the measures to mitigate Project impacts, as indicated by the attached Certification Relating to Order Provisions Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications (dated June 21, 2024) (Hearing Exhibit No. 15). Unless additional Commission approval is obtained, Badger Wind is authorized to clear trees and shrubs in the Project Area up to 100 feet in up to 10 areas where it is necessary to collocate collection lines, access roads, and/or crane walks.

53. Based on the current Project layout, as depicted in Figure 2 in Hearing Exhibit No. 3, all Project turbines are located at least 1,496.7 feet (three times the turbine tip height) from currently occupied residences of nonparticipating landowners.

54. Subject to FAA approval, Badger Wind will install and operate an Aircraft Detection Lighting System (ADLS) or other technology suitable to the Commission on the Project in accordance with NDCC Section 49-22-16.4.

55. Badger Wind will use best management practices (BMPs) to minimize impacts on ground and surface water, and to prevent soil erosion. Badger Wind will implement appropriate erosion control measures. Badger Wind will obtain coverage under the North Dakota Pollutant Discharge Elimination System (NDPDES) General Construction Permit and develop a Storm Water Pollution Prevention Plan. Construction of the Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils.

56. Badger Wind will participate in the North Dakota One-Call Excavation Notice System.

57. Badger Wind will coordinate with local authorities and emergency service providers to determine appropriate safety precautions and standards. Badger Wind has developed an initial Emergency Response Plan, provided as Appendix P to the Amendment Application (Hearing Exhibit No. 1), which will be finalized in coordination with emergency service providers to implement these precautions and standards.

58. Lightning and grounding protection for all wind farm equipment is designed and constructed to be compliant with all applicable NESC and NEC requirements.

59. Badger Wind will comply with the Commission's decommissioning rules, including filing a decommissioning plan with the Commission prior to the commencement of operation of the Project, and performing decommissioning in accordance with all applicable rules and regulations.

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

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding under NDCC Chapter 49-22.
2. The electric wind energy conversion facility proposed by Badger Wind is an electric energy conversion facility as defined in NDCC Section 49-22-03(5).
3. The Amendment Application submitted by Badger Wind meets the site evaluation criteria as required by NDCC Chapter 49-22.
4. The location, construction, and operation of the proposed electric energy conversion facility will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
5. The proposed electric energy conversion facility is compatible with environmental preservation and the efficient use of resources.
6. The proposed electric energy conversion facility location 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.
7. The Commission has jurisdiction to ensure compliance with NESC standards in the construction and operation of the Project.

From the foregoing Findings of Fact and Conclusions of Law, the Commission issues the following:

ORDER

The Commission orders:

1. The Commission's 2022 Order and Certificate of Site Compatibility No. 64 (Case No. PU-22-86) are amended to authorize the construction, operation, and maintenance of a wind energy conversion facility known as the Badger Wind Project corresponding to the Project Area depicted in Figure 1 in Hearing Exhibit No. 3.
2. First Amended Certificate of Site Compatibility No. 64 is issued to Badger Wind, LLC for the Project.
3. Within the designated site, as depicted in Figure 1 in Hearing Exhibit No. 3, Badger Wind is authorized to site, construct, operate, and maintain wind turbines and associated equipment, access roads and improvements to existing roads, an O&M facility, a substation, up to three permanent meteorological towers, light-mitigating technology components, and an underground electrical collection and communication system with aboveground junction boxes and/or underground splices, as well as any other associated facilities identified in the Amendment Application, at the hearing, and in any supplemental filings. No turbines are to be sited in unbroken grasslands. If field conditions reflect all or part of a turbine will be located in unbroken grasslands, Badger Wind must adjust the location of the turbine to avoid unbroken grasslands.

4. If modifications are made to the Project layout, Badger Wind will complete a Class III cultural resource survey for any previously unsurveyed portions of the designated site affected by Project-related construction activities; will submit cultural resource findings to SHSND for review; and will obtain and file a copy of SHSND's response with the Commission prior to beginning construction in those areas.
5. If modifications are made to the Project layout, Badger Wind will complete a wetland delineation of any previously unsurveyed areas affected by Project-related activities, as necessary.
6. Badger Wind shall comply with the Commission's Avoidance Area sound requirement. In the event Project modifications occur that are not covered by its current sound analysis, Badger Wind will conduct a sound analysis to ensure that the Project complies with the Commission's Avoidance Area sound requirement.
7. Badger Wind shall site Project turbines so as to meet a shadow flicker goal of 30 hours per year or less at each currently inhabited residence, considering site-specific conditions, unless otherwise agreed to by the landowner. When final turbine selections are completed, or in the event Project modifications occur that are not covered by its current shadow flicker analysis, Badger Wind shall conduct a shadow flicker analysis to ensure this requirement is met.
8. The June 21, 2024, Certification Relating to Order Provisions Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications (Hearing Exhibit No. 15) is incorporated by reference and attached to this Order. To the extent there are any conflicts or inconsistencies between the Project application and the Certification, the Certification provisions control. The Tree and Shrub Mitigation Specifications may be modified upon the mutual agreement of the Commission and Badger Wind. Unless additional Commission approval is obtained, Badger Wind is authorized to clear trees and shrubs in the Project Area up to 100 feet in up to 10 areas where it is necessary to collocate collection lines, access roads, and/or crane walks.
9. Prior to commencing construction of any portion of the Project, Badger Wind shall obtain all other necessary licenses and permits for the construction of such portion and provide copies to the Commission.
10. All applicable provisions and requirements in the Commission's 2022 Order and Certificate of Site Compatibility No. 64 (Case No. PU-22-86) continue to apply except where amended by this Order.

PUBLIC SERVICE COMMISSION

Sheri Haugen-Hoffart
Commissioner

Randy Christmann
Chair

Julie Fedorchak
Commissioner