

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

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

**Case No. PU-24-87**

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

**STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH**

**Geralyn R. Schmaltz** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **18th day of September 2024**, she deposited in the United States Mail, at Bismarck, North Dakota, one envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Findings of Fact, Conclusions of Law and Order**

And Original Of:

- **First Amended Certificate of Site Compatibility Number 64**

The envelope was addressed as follows:

**Mollie Smith  
Fredrikson & Byron, P.A.  
60 South Sixth Street, Suite 1500  
Minneapolis, MN 55402-4400  
Cert. No. 9589 0710 5270 1582 7557 05**

**Geralyn R. Schmaltz** further deposes and says that on the **18th day of September 2024** she deposited in the United States Mail, at Bismarck, North Dakota, one envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of the same.

The envelope was addressed as follows:

**Kevin Pranis  
Marketing Manager  
LIUNA Minnesota & North Dakota  
81 E Little Canada Road  
St. Paul, MN 55117  
Cert. No. 9589 0710 5270 0129 6581 96**

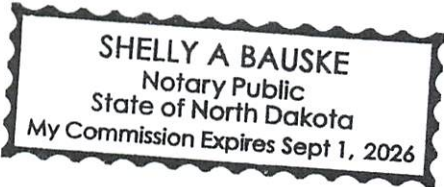
Each address shown is the respective addressee's last reasonably ascertainable post office address.



Subscribed and sworn to before me  
this 18th day of September 2024.



Notary Public



SEAL

**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**

**September 11, 2024**

**Appearances**

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

Mollie M. Smith and Bridget A. Duffus, Fredrikson & Byron, P.A., 60 South 6th Street, Suite 1500, Minneapolis, MN 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 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 27, 2024, the Laborers District Council of Minnesota and North Dakota (LIUNA) filed a Petition to Intervene.

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

On July 11, 2024, the public hearing was held as scheduled.

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 will 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 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. Wetlands 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.
18. Badger Wind has designed the Project to minimize temporary wetland impacts. Where collection lines 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. United States 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 indicated 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 Literature Review 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 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 did not express any 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. 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. 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, 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 complies with the 30 hours per year or less of shadow flicker requirement 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 and only 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. 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 and approved by the FAA.

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 up to 93 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 ensure shadow flicker 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 and only 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

"Nay"

**Randy Christmann**  
Chair



**Julie Fedorchak**  
Commissioner

# **PUBLIC SERVICE COMMISSION**

## **STATE OF NORTH DAKOTA**

### **First Amended Certificate of Site Compatibility Number 64**

*This is to certify that the Commission has designated an energy conversion facility site for Badger Wind, LLC, for the construction and operation of a wind energy conversion facility and associated facilities in Logan & McIntosh Counties, 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-24-87 dated September 11, 2024, and is subject to the conditions and limitations noted in the order.*

*Bismarck, North Dakota, September 11, 2024.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Secretary**

  
**Commissioner**

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-24-87**

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

I am Melissa Peterson, Vice President of Badger Wind, LLC ("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.

7. Company is aware that under North Dakota Century Code section 49-02-27 the Commission has rules for decommissioning of wind energy conversion facilities. Company agrees to comply with all decommissioning rules adopted by the Commission.

**Construction:**

8. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
14. Company understands and agrees that it shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
15. 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, tower

locations, 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.

16. 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.
17. 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.
18. 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.
19. 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.
20. Company understands and agrees that the Commission's third party construction inspector will be allowed ~~has authority~~ to stop Project construction activities to prevent an imminent hazard from occurring before the Commission could take formal action with respect to said activities. For purposes of this provision, "imminent hazard" means a condition that presents a substantial likelihood of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment. Other Project construction activities would be allowed to continue 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:**

21. 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.

22. 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.
23. Company understands and agrees that reclamation, fertilization, and reseeded is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
24. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
25. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
26. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
27. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
28. 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.
29. 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.
30. 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:**

31. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.
32. 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, a tower collapse, or a catastrophic turbine failure.

33. 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.
34. 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.
35. 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.
36. 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.
37. 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:**

38. 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.
39. 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 21<sup>st</sup> day of June, 2024.

Badger Wind, LLC

By Melissa Peterson

Its Vice President

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

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

**Case No. PU-24-87**

**Tree and Shrub Mitigation Specifications**

**Inventory**

Prior to cutting or clearing trees or shrubs for construction:

- All trees one-inch or greater in diameter at breast height must be inventoried to record the location, number, and species.
- All shrubs and all coniferous trees of any diameter must be inventoried to record the location, number, and species.

**Clearing**

The maximum width of tree and shrub removal is 50 feet, unless otherwise approved by the Commission.

**Replacement**

1. Landowners must be given the option to have trees and shrubs that are removed from their property replaced on their property. The landowner may waive this option in writing. If the landowner waives this option, the company shall plant replacement trees and shrubs in an alternate location in the same region, if practical.
2. Trees and shrubs must be replaced on a minimum two-to-one basis. The company shall develop a Tree and Shrub Mitigation Plan (Plan) in consultation with landowners who are seeking replacement trees and shrubs and in accordance with USDA-NRCS-North Dakota Field Office Technical Guide: Windbreak and Woodland Tree Care and Management. The guidelines outlined in the Technical Guide shall be followed until filing of the Plan summary outlined in number 5 below.
3. The purpose of the company's Tree and Shrub Mitigation Plan is to create sustainable plantings, appropriate for the local soil and growing conditions that will provide long-term benefit to landowners, farmers and ranchers, the community, wildlife and the environment.
4. The Plan, including the proposed number, variety, type, location, and approximate date for plantings, shall be filed with and approved by the Commission.
5. Two years after completion of the plan, the company must file a summary documenting how the plan achieved the purpose outlined in number 3 above. The summary must also report the number of surviving replacement trees and shrubs.
6. The Commission will consider, on a limited basis as conditions warrant, mitigation plans that provide long-term wildlife habitat and conservation benefits but do not involve the replanting of trees and shrubs.