

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Flickertail Solar Project, LLC
Flickertail Solar Project – Richland County
Siting Application

Case No. PU-24-351

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

_____, 2025

Appearances

Commissioners Randy Christmann, Sheri Haugen-Hoffart, and Jill Kringstad.

Mollie M. Smith and Bridget A. Duffus, Fredrikson & Byron, P.A., 60 South Sixth Street, Suite 1500, Minneapolis, MN 55402, on behalf of the Applicant, Flickertail Solar Project, LLC.

Brian Johnson, Special Assistant Attorney General, North Dakota Public Service Commission.

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

Preliminary Statement

On October 8, 2024, Flickertail Solar Project, LLC (Flickertail) filed an Application for a Certificate of Site Compatibility (Application) for a proposed solar energy conversion facility and associated facilities (Project) to be located in Richland County, North Dakota.

On October 8, 2024, Flickertail filed an Application for Protection of Information related to cultural resource location information.

On January 17, 2025, the Office of Administrative Hearings designated Administrative Law Judge (ALJ) Hope Hogan as the hearing officer.

On February 6, 2025, the North Dakota Public Service Commission (Commission) issued a Notice of Filing and Notice of Public Hearing (Notice), scheduling a public hearing for March 24, 2025, at 10:00 a.m. Central Time at the Wahpeton Law Enforcement Center in the Community Room, 413 3rd Ave N, Wahpeton, North Dakota 58075. The Notice identified the following issues to be considered:

1. Will the location and operation of the proposed Project produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?

2. Is the proposed Project compatible with the environmental preservation and the efficient use of resources?

3. Will the proposed Project 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 February 21, 2025, the North Dakota Game and Fish Department (NDGF) filed comments.

On March 10, 2025, Flickertail filed the following Hearing Exhibits Nos. 1 through 10: (1) Application (provided separately); (2) Project Update Figure; (3) Updated Application Figures 1-10; (4) Class III Inventory of Architectural Resources Summary Memorandum; (5) Additional Agency Correspondence; (6) Summary of Avoidance, Minimization, and Mitigation Measures; (7) Signed Certification Relating to Order Provisions – Solar Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications; (8) Prefiled Testimony of Nicholas Schuler; (8-A) Schuler Resume; (9) Prefiled Testimony of Christina Martens; (9-A) Martens Resume; and (10) Updated Class III Cultural Resources Inventory Report (public and confidential versions).

On March 10, 2025, Flickertail filed an Application for Protection of Information related to cultural resource location information.

On March 17, 2025, the State Historical Society of North Dakota (SHSND) filed comments.

On March 24, 2025, the public hearing was held as scheduled. At the public hearing, Flickertail submitted a supplement to Hearing Exhibit No. 5 (Additional Agency Correspondence).

On June 5, 2025, Flickertail filed Late-Filed Hearing Exhibit Nos. 11, 12, and 13: (11) Class II Architectural Resources Inventory Report and associated SHSND acceptance letter and updated Class III Cultural Resources Inventory Report (public and confidential versions) and associated SHSND acceptance letter; (12) Additional Sound Information; and (13) Update to Project Area Boundary (with accompanying figures). On June 5, 2025, Flickertail filed a Motion to Consider Post-Hearing Filing for proposed Late-Filed Hearing Exhibit No. 13.

On June 5, 2025, Flickertail filed an Application for Protection of Information related to cultural resource location information.

On June 5, 2025, Flickertail filed proposed findings of fact, conclusions of law and order.

On _____, ALJ Hogan issued an Order granting Flickertail's Application for Protection of Information.

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

FINDINGS OF FACT

1. Flickertail is a Delaware limited liability company and is an indirect, wholly-owned subsidiary of Savion, LLC (Savion).
2. Flickertail is authorized to do business in the State of North Dakota, as evidenced by the Certificate of Authority issued by the North Dakota Secretary of State on May 10, 2018 and the Certificate of Good Standing issued by the North Dakota Secretary of State on August 20, 2024 (Case No. PU-24-348).
3. Flickertail has entered into an agreement with Otter Tail Power Company (Otter Tail) pursuant to which Otter Tail will purchase the Project's development assets. Following close on the purchase and sale agreement, the Project will be constructed, owned, and operated by Otter Tail.

Size, Type, and Preferred Location of Facility

4. The Project is a solar energy conversion facility that will be optimized to deliver up to 295.1 megawatts (MW) alternating current (AC) to the grid.
5. Project facilities will include: photovoltaic (PV) solar panels; tracking racking systems; direct current (DC) electrical system; inverter skids (inverters, step-up transformers, and Supervisory Control and Data Acquisition (SCADA) system); an underground and aboveground AC electrical collection system; security fencing, gates, and equipment; access roads; an operations and maintenance (O&M) facility; a collector substation; main power transformers; control house for protective relay panels and site controllers; meteorological (MET) equipment including but not limited to anemometer MET monitoring weather stations; stormwater basins and/or other stormwater/drainage measures (as needed); and additional temporary facilities, including laydown yard(s) and improvements to public roads and driveways.
6. Flickertail proposes to construct the Project within approximately 3,144 acres of land in Abercrombie Township in Richland County, North Dakota (Project Area). The Project Area is depicted on the Updated Figure 2 in Late-Filed Hearing Exhibit No. 13.
7. The Project will interconnect to the grid via an approximately 530-foot long 230-kilovolt (kV) generation tie line extending from the Project's collector substation to a new switching station that will connect to Minnkota Power Cooperative Inc.'s (Minnkota)

existing Frontier-Wahpeton 230 kV transmission line via a new switching station that will be permitted, constructed, and owned by Minnkota.

8. The Project includes a SCADA system for performance monitoring, energy reporting, and troubleshooting.

9. Construction of the Project is anticipated to begin as early as the First Quarter of 2026 and be completed in the Fourth Quarter of 2028. Full commercial operation is anticipated to occur by the end of 2028.

10. The estimated cost of the Project is approximately \$375 million.

Study of Preferred Location

11. Flickertail reviewed an area consisting of a one-mile buffer around the original Project Area comprising 12,725 acres (Study Area) for its environmental analysis to provide a description of the natural and human environment in which the Project will be constructed, including soils, land use, wetlands and waterbodies, woodlands, and wildlife.

12. Flickertail surveyed the Project Area for natural and cultural resources.

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

14. Wetland surveys were completed for the Project. In the event the Project layout changes from what is depicted in Updated Figure 2 in Late-Filed Hearing Exhibit No. 13, Flickertail will complete a wetland delineation of any previously unsurveyed areas, as necessary.

15. Flickertail has designed the Project to avoid temporary wetland impacts. Where collection lines intersect a wetland, impacts will be avoided by boring beneath the wetland.

16. Flickertail has designed the Project to avoid permanent impacts to delineated wetlands.

17. Flickertail conducted environmental studies of the Project Area, and impacts to wildlife are anticipated to be minimal. Among the studies conducted were:

- a. Unbroken Grassland Assessment. Flickertail conducted desktop and field verifications of potentially unbroken grasslands within the Project Area. There are no unbroken grasslands present in the Project Area.

- b. Ground-Based Eagle Nest Survey. Flickertail conducted a desktop review to identify potential eagle nesting habitat within the Project Area plus a 660-foot buffer, and a ground-based field survey of the potential eagle nesting habitat. No eagle nests were identified within the Project Area or 660-foot buffer. As of September 12, 2024, the closest known eagle nest was more than 3 miles from the Project Area.
- c. Sharp-tailed Grouse and Greater Prairie Chicken Lek Surveys. Based on consultation with NDGF, listening surveys were conducted in non-cultivated areas within the Project Area plus a one-mile buffer area. No active leks were observed during any observation period.

18. Flickertail conducted a Class I literature search of the Project Area plus a one-mile buffer and a Class III cultural resources inventory of all areas that will host facilities or be impacted by construction activities. The location of the one previously identified site lead was visited during pedestrian surveys, but the resource appears to no longer be present. Field surveys also identified two new sites within the Project Area. Both the site lead and the two new sites are unevaluated for listing on the National Register of Historic Places (NRHP). Flickertail has sited the Project facilities to avoid the site lead and the two new sites. The SHSND has reviewed and accepted the revised Class III cultural resources report.

19. In the event any element of the Project layout changes from the layout provided in Updated Figure 2 in Late-Filed Hearing Exhibit No. 13, Flickertail 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 concurrence prior to beginning construction in those areas.

20. Flickertail conducted a Class III inventory of architectural resources within 0.5 mile the Project's solar arrays. During field surveys, the location of one previously identified site was visited, but the resource appears to no longer be present. An additional 13 resources were inventoried. Tetra Tech prepared a Class II Cultural Resources Inventory for Architectural Resources and recommended a finding of No Adverse Effect. The SHSND has reviewed and accepted the Class III architectural resources report.

21. Project facilities 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.

22. Flickertail conducted a glare analysis to evaluate potential impacts to road traffic and receptors (consisting of 31 residences and one church) in the Project Area and Study Area. No glare is anticipated at any residences, community buildings, or roads.

23. 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 are as follows:

- a. Federal - United States Department of Defense; Federal Aviation Administration; United States Fish and Wildlife Service; United States Army Corps of Engineers; United States Department of Agriculture – Natural Resources Conservation Service (USDA-NRCS);
- b. State - North Dakota Department of Agriculture; North Dakota Department of Environmental Quality; North Dakota Department of Transportation; North Dakota Department of Trust Lands; North Dakota Department of Water Resources; NDGF; North Dakota Geological Survey; North Dakota Parks and Recreation Department; North Dakota Soil Conservation Committee; SHSND; and
- c. Local - Richland County Noxious Weed Board; Richland County Soil Conservation District; Richland County Floodplain Administrator; Abercrombie Township; and Southern Valley Snowmobile Trail.

24. Agency consultations and comments are noted in Appendix D of the Application, pre-filed testimony, Hearing Exhibit No. 5 (Additional Agency Correspondence), and the testimony presented at the public hearing.

25. 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. Flickertail obtained a conditional use permit for the Project from Abercrombie Township on November 20, 2023, and will comply with applicable township zoning ordinance requirements.

Siting Criteria

26. North Dakota Administrative Code (NDAC) Chapter 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.

27. There are no Exclusion Areas within the Project Area.

28. NDAC Section 69-06-08-01(3) identifies various Avoidance Areas. An electric 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.

29. 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.

30. Floodplains associated with Pitcairn Creek are present in the west-central and east-central parts of the Project Area. Project facilities have been sited to avoid and/or minimize impacts to the 100-year floodplain to the extent practical. Two access roads are proposed to be placed within the 100-year floodplain, resulting in permanent impacts to the floodplain of 0.23 acre. The southern of the two access roads has no alternative but to cross the 100-year floodplain because the floodplain extends between the adjacent public roads and the array on the participating parcel. The northern of the two access roads aligns with an existing agricultural driveway to avoid impacts to a stream, which necessitates crossing the 100-year floodplain. The siting of these segments of access roads in the 100-year floodplain also avoid impacts to wetlands, treed areas, and streams. Since the access roads will have a gravel base and be constructed at grade, no increase to the base flood elevation in these areas is anticipated.

31. Trees and shrubs are located within the Project Area. The Project has been designed to minimize tree removal to the extent practical. Any tree and shrub removal and replacement will be conducted in accordance with the Commission's tree and shrub mitigation specifications. Flickertail may need to clear areas up to 100 feet wide as depicted in Figure 9 of Hearing Exhibit No. 3 to allow for continuous development in the parcels. Flickertail requested Commission approval to remove trees and/or shrubs from certain areas wider than 50 feet in the locations shown on Figure 9 of Hearing Exhibit No. 3.

32. Wetlands are present within the Project Area, but the Project has been sited to avoid permanent and temporary impacts to wetlands. Where electrical collection cables would intersect a wetland, temporary impacts will be avoided by boring or horizontal directional drilling beneath the wetland.

33. No other Avoidance Areas identified in NDAC Section 69-06-08-01(3) are identified with respect to the Project.

34. In accordance with the Commission's Selection Criteria, outlined in NDAC Section 69-06-08-01(5), 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 who would maximize the benefits resulting from adopting policies and practices outlined in NDAC Section 69-06-08-01(6).

35. During construction, the Project will likely result in a temporary increase in traffic on public roads in the vicinity of the Project. The increase in traffic during construction is not expected to be at a volume that will significantly disrupt residents or travel near the Project Area. Flickertail will coordinate with applicable road authorities to obtain haul road and other required road-related permits, as needed. Flickertail will negotiate a road use and maintenance agreement with Abercrombie Township and, if needed, other relevant road authorities. County and township roads will be restored in accordance with the Certification Relating to Order Provisions – Energy Conversion Facility Siting (Hearing Exhibit No. 7). During operation, no adverse effects to transportation facilities or networks are anticipated.

36. The Project is not anticipated to 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.

37. The Project is anticipated to benefit the local economy through the creation of construction and operation and maintenance jobs; easement payments to landowners; state and local tax revenue; and local expenditures for equipment, fuel, operating supplies, products and services.

38. One parcel enrolled in the Private Land Open to Sportsmen (PLOTS) program administered by the NDGF is present within the Project Area. Flickertail is in the process of finalizing an arrangement with NDGF to remove the parcel from PLOTS and replace it with parcels in the northeast portion of the original Project Area. To accommodate this arrangement, Flickertail has updated the Project Area to remove the proposed PLOTS parcels from the Project boundary (see Late-Filed Hearing Exhibit No. 13 and accompanying figures).

39. Based on sound output specifications provided by the technology manufacturers for the inverter, tracker, and main power transformer equipment currently being considered for the Project, sound levels will be less than 45 dBA between 450-524 feet from an inverter, at distances greater than 5 feet from a tracker, and at distances greater than 700 feet from a main power transformer. The nearest residence to an inverter is more than 1,100 feet away. The nearest residence to a tracker is approximately 588 feet away. The nearest residence to a main power transformer is more than 3,500 feet away.

40. Flickertail submitted evidence to demonstrate that 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.

41. Flickertail submitted evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible to meet the Policy Criteria set forth in NDAC Section 69-06-08-01(6).

Additional Measures to Minimize Impacts

42. Flickertail has agreed to a number of measures to mitigate potential Project impacts, as indicated by the attached Certification Relating to Order Provisions - Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications. Unless additional Commission approval is obtained, Flickertail is authorized to clear trees and shrubs in the Project Area up to 100 feet wide in the areas depicted in Figure 9 of Hearing Exhibit No. 3.

43. Flickertail will use best management practices to minimize impacts on ground and surface water, and to prevent soil erosion. Flickertail will implement appropriate erosion control measures, including obtaining coverage under the North Dakota Pollutant Discharge Elimination System General Stormwater Permit, which requires preparation of a Stormwater Pollution Prevention Plan. Construction of the Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils.

44. Flickertail developed a Vegetation Management Plan for the Project. The Vegetation Management Plan identifies how the Project will establish stable ground cover, promote pollinator habitat, reduce the potential for erosion and runoff, and improve infiltration. Flickertail consulted with the USDA-NRCS and the Richland County Soil Conservation District on the proposed seed mixes, and the agencies provided positive feedback regarding the proposed seed mixes.

45. Flickertail will participate in the North Dakota One-Call Excavation Notice System.

46. Flickertail will coordinate with local authorities and service providers to determine appropriate safety precautions and standards. Flickertail will develop an emergency response plan.

47. Lightning and grounding protection for all Project facilities is designed and constructed to be compliant with all applicable National Electrical Code and National Electrical Safety Code requirements.

48. Flickertail 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 now makes its:

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this proceeding under NDCC Chapter 49-22.
2. The Project proposed by Flickertail is an electric energy conversion facility as defined in NDCC Section 49-22-03(5).
3. The Application submitted by Flickertail 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 impacts 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 National Electrical Safety Code standards in the construction and operation of the Project.

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

ORDER

The Commission orders:

1. Certificate of Site Compatibility No. ____ for an Energy Conversion Facility is issued to Flickertail Solar Project, LLC for the construction, operation, and maintenance of a solar energy conversion facility corresponding to the Project Area depicted in Updated Figure 2 in Late-Filed Hearing Exhibit No. 13.
2. Within the designated site, as depicted in Updated Figure 2 in Late-Filed Hearing Exhibit No. 13, Flickertail is authorized to site, construct, operate, and maintain PV solar panels, tracking racking systems, DC electrical system, inverter skids (inverters, step-up transformers, and SCADA system), an underground and aboveground AC electrical collection system, security fencing, gates, and equipment, access roads, O&M facility, collector substation, main power transformers, control house for protective relay panels and site controllers, MET equipment including but not limited to anemometer MET monitoring weather stations, stormwater basins and/or other stormwater/drainage

measures (as needed), and temporary facilities including laydown yards and improvements to public roads and driveways, as well as any other associated facilities identified in the Application, at the hearing, and in any supplemental filings.

3. If modifications are made to the Project layout, Flickertail will complete a Class III cultural resource survey for any previously unsurveyed portions of the designated site affected by Project-related construction activities, as necessary; 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.

4. If modifications are made to the Project layout, Flickertail will complete a wetland delineation of any previously unsurveyed areas affected by Project-related activities, as necessary.

5. The Certification Relating to Order Provisions - Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications (Hearing Exhibit No. 7) 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. Unless additional Commission approval is obtained, Flickertail is authorized to clear trees and shrubs up to 100 feet wide in the areas in the Project Area depicted in Figure 9 of Hearing Exhibit No. 3.

6. Prior to commencing construction of any portion of the Project, Flickertail shall obtain all other necessary licenses and permits for the construction of such portion and provide copies to the Commission.

PUBLIC SERVICE COMMISSION

Sheri Haugen-Hoffart
Commissioner

Randy Christmann
Chair

Jill Kringstad
Commissioner