

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Oliver Wind IV, LLC
345-kV Transmission Line – Oliver & Mercer
Siting Application

Case No. PU-23-318

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 **20th day of February 2025**, 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:

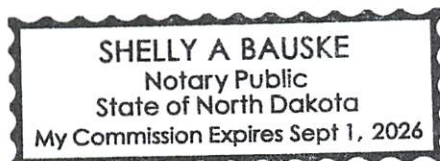
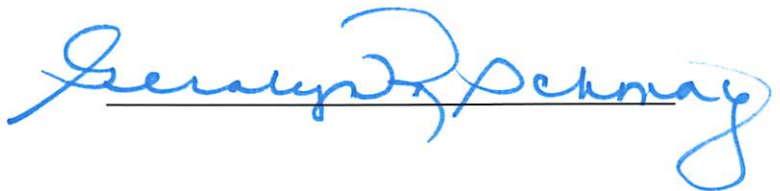
- **Order on Consent Agreement**

The envelope was addressed as follows:

Casey Furey
Crowley Fleck Attorneys
PO Box 2798
Bismarck, ND 58502-2798
Cert. No. 9589 0710 5270 0129 6624 21

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

Subscribed and sworn to before me
this **20th day of February 2025**.



SEAL



Notary Public

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Oliver Wind IV, LLC
345-kV Transmission Line - Oliver & Mercer
Siting Application**

Case No. PU-23-318

ORDER ON CONSENT AGREEMENT

February 19, 2025

Preliminary Statement

On April 29, 2024, the Commission adopted its Findings of Fact, Conclusions of Law and Order (Order) issuing Certificate of Corridor Compatibility Number 233 (Corridor) and Route Permit Number 243 to Oliver Wind IV, LLC (Oliver), designating a corridor and route for the construction, operation and maintenance of an approximately 19.5-mile long 345 kilovolt electric energy transmission facility and associated facilities in Oliver and Mercer Counties, North Dakota (Transmission Project).

In late June and early July 2024, Oliver's consultants identified three areas within the Corridor where incursions occurred at sites identified as cultural and archeological resources. The sites had previously been fenced with metal T-posts and gold colored rope.

On July 18, 2024, Oliver filed a Cultural Incursion Memorandum (Memorandum) with the Commission. The Memorandum detailed the sites that were impacted.

On July 19, 2024, the State Historical Society of North Dakota (SHSND) filed a letter indicating that it plans to visit the sites on July 22, 2024.

On August 5, 2024, Oliver filed a Cultural Site Visit Summation Memorandum (Site Visit Memo).

On August 15, 2024, SHSND filed a letter indicating its agreement with Oliver's Site Visit Memo.

On October 1, 2024, the Commission appointed Advocacy Staff in this proceeding.

On January 16, 2025, Advocacy Staff sent a notice of non-compliance to Oliver.

On January 30, 2025, a Consent Agreement was filed between Oliver and Advocacy Staff.

Discussion

Oliver began construction of the Transmission Project in May 2024.

In June 2024, Oliver's consultant, Burns & McDonnell, observed that previously installed protective fencing had been removed from the area near archeological sites 32OL895 and 32OL896.

In July 2024, Oliver observed that unplanned construction had taken place near cultural site CHFOL20.

Oliver's July 18, 2024, Memorandum noted that damage had occurred to both archeological sites and the cultural site. Approximately 40 percent of site 32OL895, 97 percent of site 32OL896 and 100 percent of site CHFOL20 were either permanently damaged or removed as a result of construction activities.

Oliver's August 5, 2024, Site Visit Memo detailed eleven recommendations from SHSND and the tribal historic preservation officers from the Standing Rock Sioux Tribe and the Spirit Lake Tribe that Oliver committed to implement.

NDCC Section 49-22-07(1) provides "A utility may not begin construction of an electric energy conversion facility or an electric transmission facility in the state without first having obtained a certificate of site compatibility or a route permit from the commission pursuant to this chapter. The facility must be constructed, operated, and maintained in conformity with the certificate or permit and any terms, conditions, or modifications of the certificate or permit. A certificate or permit may be transferred, subject to the approval of the commission, to any person who agrees to comply with its terms, conditions, and modifications."

The Commission's April 29, 2024, Order Transmission Project Certification Relating to Order Provisions (Certification) paragraph 42 provides "Company (Oliver) acknowledges and agrees that written authorization from the Commission for impacting the avoidance area is necessary prior to commencement of construction activity."

Advocacy Staff investigated the matter and concluded that Oliver violated NDCC Section 49-22-07(1) by not constructing the electric transmission facility in conformity with the conditions of the corridor certificate and route permit. Specifically, Oliver failed to obtain written authorization from the Commission for impacting the avoidance areas prior to the commencement of construction activity as required by Provision 42 to the Certification.

Oliver and Advocacy Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Oliver and Advocacy Staff compromised to a penalty of \$50,000.

Having considered this matter, the Commission finds the Consent Agreement filed on January 30, 2025, is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement between Oliver Wind IV, LLC and Advocacy Staff filed with the Commission on January 30, 2025, is approved. A copy of the Consent Agreement is attached to and made part of this Order on Consent Agreement (Order).
2. Oliver Wind IV, LLC is assessed a civil penalty of \$50,000 for violating NDCC Section 49-22-07(1).
3. Oliver Wind IV, LLC shall remit the \$50,000 civil penalty, payable to the North Dakota Public Service Commission within ten business days of service of this Order.
4. For identification of Internal Revenue Code, 26 U.S.C. Section 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Oliver Wind IV, LLC shall provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for the purpose of the identification requirement of 26 U.S.C. Section 162(f)(2)(A)(ii) within ten business days of service of this Order.

PUBLIC SERVICE COMMISSION

		
Sheri Haugen-Hoffart	Randy Christmann	Jill Kringstad
Commissioner	Chair	Commissioner

**BEFORE THE NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Oliver Wind IV, LLC
345-kV Transmission Line - Oliver & Mercer Counties
Siting Application**

Case No. PU-23-318

CONSENT AGREEMENT

Preliminary Statement

This Consent Agreement is entered into by and between Oliver Wind IV, LLC ("Oliver IV"), and the Public Service Commission Advocacy Staff ("Staff") (together, the "Parties") for resolution of the Notice of Noncompliance filed by Staff as Docket No. 101 in Case No. PU-23-318 regarding cultural incursions during construction of the Oliver Wind IV 345 kV transmission line project ("Transmission Line").

Discussion

Background

1. On April 29, 2024, the North Dakota Public Service Commission ("Commission") approved Findings of Fact, Conclusions of Law and Order ("Order"), and issued a Certificate of Corridor Compatibility and Route Permit in Case Number PU-23-318 to Oliver Wind IV for the Transmission Line located in Oliver and Mercer Counties (Case No. PU-23-318). Construction of the Transmission Line began in May 2024.
2. Finding of Fact paragraph 32 of the Commission's April 29 Order stated that Oliver Wind IV had conducted Class III Cultural Resource Inventories for areas to be temporarily and permanently impacted by the Transmission Line and within the Transmission Line Corridor, which reports were submitted to North Dakota State Historical Preservation Officer ("NDSHPO"). NDSHPO determined that there were no adverse direct effects of the Transmission Line on significant sites.
3. Finding of Fact paragraph 44 of the Commission's Order also explained that Oliver Wind IV undertook voluntary outreach and consultation with Native American tribes to address potential cultural concerns and avoid potential impacts of the Transmission Line to resources of tribal or cultural significance.
4. Finding of Fact paragraph 73 of the Commission's Order also explained that Oliver Wind IV had identified archaeological sites within the Transmission Line Corridor through a Class I Literature Search and Class III Cultural Resources Inventory and that, while designated and

registered archaeological sites are located within the Transmission Line Corridor, Oliver Wind IV has sited the Transmission Line to avoid these sites.

5. Prior to the start of planned construction activities on the Transmission Line, Oliver Wind IV's consultants delineated areas containing cultural and archaeological resources that required avoidance. Construction crews underwent site orientation prior to the start of construction, at which time they were instructed not to enter these fenced-off areas.

6. During construction activities in late June and early July 2024, during on-site monitoring of construction, Oliver Wind IV's consultants identified three areas along the Transmission Line construction route where incursions occurred into areas with cultural and archaeological resources that had been identified for avoidance during construction. Each of these three areas was identified for avoidance as a result of Oliver Wind IV's Class III Cultural Resource Inventories conducted in 2020 in coordination with Tribal Traditional Cultural Surveyors ("TCS").

7. The three impacted sites included: (1) Archaeological site 32OL895, which was an unassociated rock pile that Oliver Wind IV's Class III Cultural Resource Inventories indicated did not represent precontact cairns or Tribal archaeological resources that had not been evaluated for National Register of Historic Places ("NRHP") eligibility and was likely a historic field clearing pile with no associated cultural materials but was requested by the Tribes as an area to be avoided during construction; (2) archaeological site 32OL896, which was similarly an unassociated rock pile that the Class III Cultural Resource Inventories indicated was likely a historic field clearing piled and had not been evaluated for NRHP eligibility but was requested by the Tribes as an area to be avoided during construction; and (3) cultural site CHFOL20, which was identified by Tribal TCS as a cairn consisting of three small granite boulders set in dense grass and recommended for NRHP eligibility.

8. During Oliver Wind IV's on-site construction monitoring, Oliver Wind IV's consultants identified that protective fencing had been removed from the buffered area for sites 32OL895 and 32OL896 and these areas had been entered by subcontractors of Oliver Wind IV's construction contractor. Oliver Wind IV's consultants also identified that unplanned construction was underway in the vicinity of site CHFOL20.

9. Once the incursions were identified, Oliver Wind IV immediately and voluntarily stopped construction work in these areas and the sites were evaluated by Oliver Wind IV's North Dakota-permitted Principal Investigator ("PI") in archaeology.

10. Oliver Wind IV's PI determined that the following impacts had occurred at each of the three sites: (1) approximately 40 percent of archaeological site 32OL895 had been disturbed as a result of blading from a bulldozer or belly scraper; (2) approximately 97 percent of archaeological site 32OL896 had been disturbed as a result of blading from a bulldozer or belly scraper; and (3)

impacts to the area comprising cultural site CHFOL20 were observed, consisting of ground disturbance resulting from blading from a bulldozer or belly scraper, resulting in the removal of the entire cairn.

11. Oliver Wind IV notified NDSHPO and the participating Tribes of the incursions on July 16, 2024.

12. Oliver Wind IV implemented a number of corrective measures to address the incursions and to prevent additional incursions including:

- a. Voluntarily ceased construction work in the vicinity of the impacted site locations until the NDSHPO and participating Tribes had an opportunity to visit the site locations.
- b. Waited for authorization from NDSHPO before resuming work in the vicinity of the site locations.
- c. Oliver Wind IV's cultural resources professional:
 - i. Updated North Dakota Cultural Resource Survey forms for each impacted site;
 - ii. Reviewed and confirmed that all areas with cultural resources that require avoidance were clearly marked and visible on construction plans used by contractors in the field;
 - iii. Confirmed additional protective roping was installed at existing protective fencing locations;
 - iv. Participated in all plan-of-the day meetings and calls with construction team;
 - v. Received and reviewed daily construction updates and next day plans;
 - vi. Conducted weekly inspections of fenced areas to confirm condition and placement of avoidance fencing; and,
 - vii. Met with designated project representatives to conduct a weekly review of upcoming locations of all construction activities for the following three weeks.
- d. Retrained and increased training of construction contractors regarding requirements to remaining within designated areas the requirement to avoid fenced areas, and removed specific contractor employees responsible for the incursions.
- e. Project Construction Manager coordination with project's cultural resources professional to confirm that all avoidance fencing remained intact prior to beginning work in any new location.
- f. Full-time archaeological monitoring by a permitted archaeological monitor who will communicate with NDSHPO weekly to provide an update on the status of construction work and monitoring activities.

- g. Continued archaeological monitoring on the transmission line, regardless of construction activity, until:**
 - i. Oliver Wind IV's cultural resources professional deems construction activities have been adequately completed so there are no further ground disturbance risks that could impact cultural sites;**
 - ii. Oliver Wind IV's cultural resources professional and NDSHPO meet to discuss basis for proceeding without an archaeological monitor present; and,**
 - iii. NDSHPO makes the final determination that archaeological monitoring is no longer needed.**

13. On July 17, 2024, NDSHPO provided correspondence indicating that the corrective measures were appropriate, which was submitted to the Commission as Docket No. 86 in Case No. PU-23-318.

14. On July 18, 2024, Oliver Wind IV submitted a memorandum describing the cultural incursions to the Commission, filed as Docket No. 85 in Case No. PU-23-318.

15. On July 22, 2024, representatives of Oliver Wind IV conducted a site visit with representatives from NDSHPO and the participating Tribes. During this site visit, NDSHPO and the participating Tribal Historical Preservation Officers ("THPO") recommended additional measures for Oliver Wind IV to mitigate for the cultural incursions and to prevent further incursions. Oliver Wind IV filed a memorandum summarizing this site visit and these additional recommended mitigation measures with the Commission on August 5, 2024 as Docket No. 90 in Case No. PU-23-318

16. Among the corrective and mitigation measures that Oliver Wind IV implemented, Oliver Wind IV arranged for full-time Tribal Cultural Surveyor monitoring on the Transmission Line, including during reclamation of the Transmission Line construction site. Oliver Wind IV also agreed to confirm that all areas with cultural resources that require avoidance are clearly marked and visible on construction plans used by contractors in the field prior to any construction and reclamation activities.

17. On August 9, 2024, NDSHPO filed correspondence with the Commission as Docket No. 91 in Case No. PU-23-318, noting that NDSHPO agreed with Oliver Wind IV's August 5 Memorandum summarizing the site visit and noting NDSHPO's agreement that, if the additional recommendations recorded in the Memorandum were followed, construction near the locations of the incursions could resume.

18. Construction of the Transmission Line continued with no further incursions on cultural or archaeological sites identified for avoidance.

19. On October 1, 2024, the Commission appointed Staff to review the matter.
20. On December 4, 2024, Staff notified Oliver Wind IV that it had reviewed the matter. On January 16, 2025, Staff issued a Notice of Noncompliance to Oliver Wind IV alleging noncompliance with the provisions of N.D.C.C. § 49-22-07(1), filed as Docket No. 101 in Case No. PU-23-318 (the "Notice").

Terms

21. Oliver Wind IV and Staff engaged in good faith settlement discussions resulting in this Consent Agreement. Having agreed that settlement of the Notice will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving the Notice, Staff and Oliver Wind IV agree to resolve the Notice on the following terms:


- a. Nothing in this Consent Agreement shall be considered as an admission of any wrongdoing, violation, omission, or fault on the part of any of the Parties with respect to the Notice.
- b. Oliver Wind IV agrees to make payable to the North Dakota Public Service Commission, a total collective assessment of \$50,000, within 10 business days of service of an Order approving the Consent Agreement ("Order"). Staff agrees no other proceeding will be initiated against Oliver Wind IV based on the violations alleged in the Notice and no other remedy will be sought based on the violations alleged in the Notice.
- c. If the Consent Agreement is approved by the Commission, Oliver Wind IV expressly waives any further procedural requirements with respect to the adoption of the Order approving the Consent Agreement. Provided the Commission approves this Consent Agreement and adopts an Order consistent with it, Oliver Wind IV waives its right to contest the validity of this Consent Agreement and the Order and waives all rights to administrative or judicial hearings or appeals of the Case.
- d. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement of Order.
- e. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

- f. The undersigned on behalf of Oliver Wind IV, is authorized to act on behalf of, and bind Oliver Wind IV for the purposes of this Consent Agreement and knows and fully understands the content and effect and this Consent Agreement.

[Reminder of this page intentionally left blank]


Dated this 28 day of January, 2025.

Public Service Commission
Advocacy Staff

By: 

Name
Title

Dated this 28.00 day of January, 2025.

DocuSigned by:

By: _____
f5c9688d9c2148b...
Name

Oliver Wind IV, LLC
Title