

Hamre, John G.

From: Lein, Jerry R.
Sent: Friday, December 12, 2008 9:28 AM
To: Hamre, John G.
Cc: Marquart, Janet R.
Subject: FW: Just Wind / Logan County ND PSC Findings of Fact, Conclusions of Law and Order for Siting Certificate.DOC
Attachments: Just Wind / Logan County ND PSC Findings of Fact, Conclusions of Law and Order for Siting Certificate.DOC

Please docket in PU-07-54. Thanks.

From: Jones Norman [mailto:NJones@winthrop.com]
Sent: Friday, December 12, 2008 12:16 AM
To: Lein, Jerry R.; mhorner@just-wind.com
Cc: Jeff Metzger; mhorner@just-wind.com; Munson Edward; jkapsner@vogellaw.com
Subject: Just Wind / Logan County ND PSC Findings of Fact, Conclusions of Law and Order for Siting Certificate.DOC

<<Just Wind / Logan County ND PSC Findings of Fact, Conclusions of Law and Order for Siting Certificate.DOC>>

Jerry,

Our data has been almost all gathered for the late filed exhibits from the October 21 hearing in Napoleon. Attached is the proposed Findings of Fact document. Several of the requested exhibits will be filed shortly. Thanks for your patience.

--Norm

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Proposed Findings of Fact, Conclusions of Law and Order
Just Wind, LLC
Winthrop&Weinstine,P.A., Norman Jones

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Just Wind, LLC

Case No. PU-07-54

Logan County Wind Farm - Logan County

Siting Application

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

October 21, 2008

Appearances:

Commissioners Susan E. Wefald, Kevin Cramer and Tony Clark.

John C. Kapsner, Attorney at Law, Vogel Law Firm, U.S. Bank Building, 200 North 3rd Street, Suite 20, Bismarck, North Dakota 58502 and Norman L. Jones III, Attorney-at-Law appearing Pro Hac Vice, Winthrop & Weinstine, P.A., 225 South Sixth Street, Suite 3500, Minneapolis, Minnesota 55402; on behalf of the applicant, Just Wind, LLC.

Annette Bendish, Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On February 8, 2007, Just Wind, LLC (Just Wind) filed a Letter of Intent to File an Application for a Waiver of Procedures and Time Schedules, and a Combined Certificate of Corridor Compatibility and a Transmission Facility Siting Permit (LOI) for a proposed 192 MW wind farm project in Logan County, North Dakota and including a request that the Commission shorten the one-year waiting period required between filing of the LOI and the filing of a siting application.

On February 23, 2007, the Commission approved a Motion acknowledging the LOI, shortening the one-year waiting period between the filing of an LOI and a siting application to one day, and assessing a filing fee of \$100,000.00.

On September 14, 2007, and again on November 15, 2007, Just Wind filed a letter requesting its June 2007 Ten Year Plan Report sent to the North Dakota Public Service Commission (NDPSC) on June 23, 2007, be accepted as its application for a Certificate of Site

Compatibility, for a Certificate of Corridor Compatibility, for a Permit for a Transmission Facility and enclosing a check for the \$100,000 filing fee.

On September 8, 2008, Just Wind filed Supplemental Information for the Application for Siting Permit. On the same date Just Wind also requested an expedited hearing date.

On September 10, 2008, the Commission approved a Motion deeming the Application complete and for issuance of a Notice of Filing and Notice of Hearing in the application of Just Wind - Wind Farm Development for a certificate of site compatibility authorizing construction of a proposed 368 MW wind farm in Logan County, North Dakota.

The Commission, on September 10, 2008, issued a Notice of Filing and Notice of Hearing scheduling a public hearing to begin October 21, 2008, at 10:30 a.m. CDT in the Logan County Courthouse, 301 Broadway, Napoleon, North Dakota 58561. The Notice identified the following issues to be considered:

1. Will the location, construction and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations minimize adverse human and environmental impacts while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On October 21, 2008, a public hearing was held as scheduled. Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Just Wind, LLC ("Just Wind") is a Minnesota limited liability company with its headquarters office in Excelsior, Minnesota. Logan County Wind Farm, LLC is a North Dakota limited liability company was organized by the members of Just Wind, LLC for the purpose of completing development of and operating the Logan County Wind Farm which is the subject of this hearing. Just Wind has assigned, or will assign, all its interests in the Logan County Wind Farm to Logan County Wind.
2. Just Wind proposes to construct the Logan County Wind Farm consisting of up to 160 wind turbines and associated facilities in Logan County, North Dakota.
3. Construction of the Logan County Wind Farm is expected to take approximately seven months, at an estimated cost of approximately \$950 million.
4. The project site is located to the north, east and south of Napoleon, North Dakota and is situated within the Townships of Glendale, Bryant and Starkey in Logan County. It

encompasses approximately 42,000 acres over most of the three Townships. The wind turbines will be placed throughout the project site.

5. Associated facilities to be constructed within the project area include access roads, underground collection and feeder lines, a meteorological tower, a collection substation, and an operations and maintenance building.
6. The project will have a name plate (gross) generating capacity of up to approximately 368.0 MW. Assuming net capacity factors are between 43% and 48%, the projected average annual output is estimated to be 1,507,457 MW hours.
7. Logan County plans to use Siemens 2.3-93 turbines. These are utility grade wind turbines with a nominal name plate rating of 2300 kW. Each turbine will have an 80 meter hub height and a 93 meter rotor diameter. The turbines begin operating at wind speeds of 4 meters per second and reach a rated capacity of 2.3 MW at a wind speed of 13 to 14 meters per second.
8. Each turbine is designed to operate at wind speeds of up to 25 meters per second and can withstand wind speeds of up to 55 meters per second.
9. Each turbine is secured by a concrete foundation. Turbine lighting is limited to warning lights required by the Federal Aviation Administration. The control panel inside the base of each turbine tower houses communication and electronic circuitry. Each turbine is equipped with a wind speed and direction sensor that communicates with the turbine's control system to signal when sufficient winds are present for operation. Electricity generated by each turbine is brought to a pad-mounted transformer where the voltage is stepped up to a power collection line voltage of 34.5 kV. This electricity is collected by sets of underground power collection lines.
10. An underground feeder system delivers the electricity to a project collection substation where the voltage is stepped up to an interconnection with the Leland Olds-Groton 345 kV transmission line.
11. Wind data was collected by a meteorological tower on the project site. The wind data collected indicate this is an excellent site for a wind farm.
12. Just Wind will construct the Logan County Wind Farm in compliance with the National Electric Safety Code.
13. Just Wind contemplates commencing construction in November 2008. Construction is expected to take approximately seven months to complete. Just Wind anticipates testing and operations to begin in September 2009, and anticipates commercial operation by December 31, 2009.
14. Just Wind has obtained all easements and other property rights necessary to construct the Logan County Wind Farm. Land rights acquired include wind easements, buffer easements, access roads, and underground collection and feeder line easements.

15. Safety factors will be incorporated into the wind turbines. Each turbine will be equipped with Supervisory Control and Data Acquisitions (SCADA) communication technology to control and monitor the turbine. In addition, each turbine is also equipped with a lightning protection system and is grounded and shielded to protect against lightning.
16. North Dakota Administrative Code 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 set forth in North Dakota Administrative Code § 69-06-08-01, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. With the exception of prime and unique farm land, an energy conversion facility must not be sited within an Exclusion Area. The exception for prime and unique farm land is if the Commission finds that the prime and unique farm land that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then such exclusion shall not apply. 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; efficient use of resources; and alternative sites. In accordance with the Commission's Selection Criteria, an energy conversion facility shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction, and operation of the facility. In accordance with the Commission's policy criteria, preference may be given to an applicant demonstrating certain benefits of the energy conversion facility.
17. The Commission finds that the unique and prime farm land to be disturbed by this energy conversion facility is of such small acreage as to be of negligible impact on agricultural production.
18. Waterfowl production areas administered by the United States Fish and Wildlife Service are not located within the project area.
19. There will be minimal Conservation Reserve Program and no Grassland Easement areas impacted by the project.
20. There are no other federal, state or municipal owned or controlled areas in the project area which are considered Exclusion Areas or Avoidance Areas.
21. Turbines and access roads will avoid wetland basins and Just Wind will obtain appropriate permits as necessary to affect wetlands or construct within wetland easements.
22. There will be no anticipated impacts to recreation.
23. There will be no anticipated impacts to mineral resources or groundwater.
24. All historical resources will be designated as Exclusion Areas and will be avoided. A Class III survey, including a search of the North Dakota State Historic Preservation Office (SHPO) site and managed files, was conducted by Trefoil Cultural and Environmental Heritage, Sauk Rapids, Minnesota, for the project area. The Class III cultural resource inventory indicated a

total of twenty-eight areas containing prehistoric and historic components. Thirteen sites are not eligible for the National Register of Historic Places and therefore do not need to be avoided. Eleven sites are potentially eligible and will be avoided. In addition four isolated finds indicated area that needed additional investigation to determine National Register Eligibility and will be avoided. SHPO has received and accepted the final historic resources report.

25. Just Wind will maintain groundwater protection and soil conservation practices to protect topsoil and adjacent resources, and to minimize soil erosion during construction and operation of the project. Best management practices for erosion and sediment control will be installed to minimize erosion during and after construction.
26. Just Wind submitted evidence to demonstrate that the proposed energy conversion facility would not have any significant impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-01(3).
27. Just Wind submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible so as to meet the Policy Criteria set forth in North Dakota Administrative Code § 69-06- 08-01(4).
28. The proposed project is not expected to have any significant adverse economic or social consequences. No significant adverse impact is foreseen on the ability of the affected area to provide community services, such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation, or public safety. The proposed project is expected to be of economic benefit to the affected area.
29. No turbines will be placed within 750 feet of a residence. The closest sited turbine is currently 825 feet away from the a residence.
30. The expected noise level 750 feet away from the base of a turbine is 50.7 db, and the expected noise level 825 feet away from the base of a turbine is 49.9 db, which is below a 50 dB standard.
31. A minimal amount of agricultural land will be impacted due to turbine placement and access roads. In addition, approximately ten acres will be permanently impacted due to the operations and maintenance building and project substation. Wind turbine configuration will not result in significant impacts to agricultural production. No impacts to the agricultural quality of the crop land are anticipated.
32. No impacts are expected to animal health or safety, other than the known potential for bird and bat species' collisions with turbines. Based upon studies reviewed by Just Wind's environmental consultant, that impact is expected to be minimal. Impact on threatened and endangered bird species is not anticipated based on currently available studies and data. Just Wind will implement measures to avoid and minimize effects to wildlife at the proposed site by siting facilities away from wetlands when possible. Just Wind will be preparing a Habitat Conservation Plan with regard to Whooping Cranes, which is expected to take into account findings from Just Wind's currently ongoing Sandhill Crane study.

33. Just Wind will maintain setbacks of at least 200 feet from existing transmission lines and road and railroad rights of way.
34. North Dakota Century Code § 49-22-16(3) provides that no energy conversion facility site shall be designated that violates any county or city land use, zoning, building rules, regulations or ordinances. Just Wind has obtained or will obtain all required permits and will comply with all applicable county and city zoning, building rules, regulations and ordinances.
35. Just Wind has consulted with numerous other local, state and federal agencies which are listed in Section B, Studies of its Application. One agency which responded in writing was the North Dakota Game and Fish Department. The North Dakota Game and Fish Department indicated that its primary concern is with the disturbance of native prairie and wetland protection. The disturbance of native prairie and wetlands will be minimal. No significant impacts to any of these resources are anticipated. The agency has not objected to construction of the project. Another agency which responded was the U.S. Fish and Wildlife Service ("FWS"), which among other things gave guidance about avoiding or minimizing construction on wetland easements, grassland easements and high value habitats, gave guidance about minimizing impacts on migratory birds and asked for Just Wind to apply for an incidental taking permit, which would include preparation of a Habitat Conservation Plan. Just Wind has presented information that the project will avoid grassland easements, will avoid permanent impacts on wetland basins, will cooperate with the FWS in gaining permission to operate on wetland easements and will prepare a Habitat Conservation Plan.
36. Just Wind reports a contractual obligation to landowners to decommission the wind facilities, as required by Commission requirements, when the wind easement expires.
37. Just Wind has made certain other representations and agreements as contained in the Certification Relating to Order Provisions - Wind Energy Conversion Facility Siting executed by Just Wind and filed with the Commission on October ____, 2008, which is hereby incorporated in these Findings of Fact as if fully set forth herein.

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The energy conversion facility proposed by Just Wind is an energy conversion facility as defined in North Dakota Century Code, § 49-22-03(11).
3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined in North Dakota Century Code § 49-22-05.2.
4. The application submitted by Just Wind meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.

5. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
6. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.
7. The proposed energy conversion facility will minimize adverse human and environmental impact, while ensuring continuing system reliability and integrity, and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
8. The Commission has jurisdiction to ensure compliance with National Electric Safety Code Standards in the construction and operation of the proposed energy conversion facility.

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 Just Wind for the construction, operation and maintenance of a wind energy facility known as the Logan County Wind Farm.
2. The site as described in the application is located north, east and south of the City of Napoleon, North Dakota, and is designated as the site for construction of the Energy Conversion Facility.
3. Within the permitted area, Just Wind is authorized to site and construct up to 368 MW of wind turbines in proposed and alternative locations, along with electric collection and communication lines, a project substation, a project operations and maintenance building, a meteorological tower, access roads, and other associated facilities as identified in the application.
4. Just Wind shall conduct a pre-construction conference prior to the commencement of any construction, and must include a Just Wind representative, its construction supervisor, and a representative of the Commission staff to ensure that Just Wind fully understands the conditions set forth in this Order.
5. Just Wind shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project, including all city, township and county zoning regulations.
6. Prior to commencing construction of any phase of the proposed project, Just Wind shall obtain all other necessary approvals and permits for construction of such phase, and provide copies to the Commission prior to construction of each such phase.

7. 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.
8. Just Wind shall maintain records which will demonstrate that it has complied with the requirements of this order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
9. Just Wind shall inform the Commission of its intent to start construction on the energy conversion facility prior to commencement of construction. Once construction has started, Just Wind shall keep the Commission updated of construction activities on a weekly basis.
10. Just Wind shall construct and operate the energy conversion facility in the manner described in this application, at the hearing, in late filed exhibits, and in accordance with all applicable safety requirements.
11. Just Wind shall report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or a bald or golden eagle, that Just Wind becomes aware of and were not previously reported to the Commission.
12. If any cultural resources, paleontological resources, archeological site, historical resource, or grave site is discovered during construction of the facility, earth disturbing activities in the immediate vicinity of this discovery must be halted. The resource must be marked, preserved, and protected from any further disturbance until a professional examination can be made in consultation with the North Dakota SHPO. A report of such examination must be filed with the Commission, and clearance to proceed is given by the Commission.
13. All underground electric line crossing of graded roads must be bored unless the responsible governing agency permits Just Wind to open cut the road.
14. All pre-existing township and county roads and lanes used during construction must be 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 areas used as temporary roads during construction must be restored to their original condition.
15. Just Wind shall construct the energy conversion facility in compliance with the National Electrical Safety Code.
16. Construction must be suspended when weather conditions are such that construction activities will cause irreparable damage, unless adequate protection measures approved by the Commission are taken.
17. Where available, at least 12 inches of topsoil over and along trench areas, roadways, tower locations, and locations of associated facilities must be stripped and segregated from the subsoil and be replaced only after the subsoil is replaced.

18. Just Wind shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
19. Reclamation, fertilization and reseeded will be completed by Just Wind according to the Natural Resource Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
20. Just Wind's obligations for reclamation and maintenance of turbine locations, associated facilities, roadways and rights of way shall continue throughout the life of the energy conversion facility.
21. When the energy conversion facility is retired, structures and other facilities must be removed to a depth of at least four feet, or in accordance with applicable rules, and the areas restored to as near as original condition as is practicable.
22. Just Wind will comply with the Tree and Shrub Mitigation Specifications previously provided by the Commission to Just Wind.
23. Just Wind shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
24. Just Wind shall repair or replace all drainage tile, broken or damaged, during all phases of construction and operation of the proposed energy conversion facility.
25. Staging areas or equipment must not be located on cultivated land unless otherwise negotiated with landowners.
26. Just Wind 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.
27. Just Wind shall, as soon as practicable, upon the completion of the construction of each wind turbine, 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.
28. Just Wind shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility, and any restriction of possible danger concerning the proposed energy conversion facility.
29. Just Wind shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
30. Just Wind shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, such as tower collapse, extensive turbine failure, injured worker or private individual, mortality events of any threatened or endangered species or the discovery of a large number of dead birds or bats on the site within five business days of such event.

31. Just Wind shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Just Wind.
32. Just Wind shall work with landowners and residents in the area to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
33. Pursuant to North Dakota Century Code § 49-02-07 the Commission has the power and has effective October 1, 2008 established rules for decommissioning of wind energy conversion facilities. Just Wind will comply with applicable decommissioning rules adopted by the Commission.
34. Just Wind shall provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction, and shall obtain approval from the Commission or from Commission staff prior to any changes in those surveyed turbine, substation, or roadway locations.
35. Just Wind shall provide the Commission with as-built drawings within three months after construction of the energy conversion facility is complete.
36. The authorizations granted by the Certificate of Site Compatibility for this energy conversion facility are subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

PUBLIC SERVICE COMMISSION

Tony Clark
Commissioner

Susan E. Wefald
President

Kevin Cramer
Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Certificate of Site Compatibility for Energy Conversion Facility Number __

This is to certify that the Commission has designated an energy conversion facility site for Just Wind, LLC's 368 MW wind energy facility in Logan County, 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 Finding of Fact, Conclusion of Law and Order of the Commission in Case No. PU-07-54 dated October 21, 2008 and is subject to the conditions and limitations noted in the order. Bismarck, North Dakota, _____, 2008.

PUBLIC SERVICE COMMISSION