



Public Service Commission

State of North Dakota

COMMISSIONERS

Kevin Cramer
Tony Clark
Brian P. Kalk

Executive Secretary
Darrell Nitschke

10 December 2009

600 E. Boulevard Ave. Dept 408
Bismarck, North Dakota 58505-0480
Web: www.nd.gov/psc
E-mail: ndpsc@nd.gov
Phone 701-328-2400
Toll Free 1-877-245-6685
Fax 701-328-2410
TDD 800-366-6888 or 711

Mr. Allen C. Hoberg
Office of Administrative Hearings
1707 North 9th Street, Lower Level
Bismarck, ND 58501

Re: Just Wind - Wind Farm Development
Wind Farm – Logan County
Siting Application
Case No. PU-07-54

Dear Mr. Hoberg:

Enclosed is a request for an Administrative Law Judge in the above captioned case. Previously, you served as Administrative Law Judge on this case. In response to a request from the company, the Commission is holding a hearing to reconsider one portion of the order.

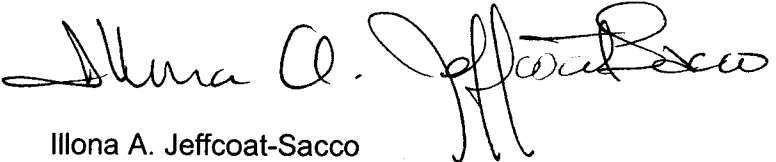
The hearing on reconsideration is scheduled on the 26th day of January, 2010, at 11:00 a.m. CDT, in the Logan County Courthouse, 301 Broadway, Napoleon, North Dakota. A copy of the Notice is attached.

Under consideration at the hearing will be Just Wind's request for reconsideration of the order concerning the six wind turbines not sited in the original order. A copy of this letter request is included.

The Administrative Law Judge will serve as a procedural law judge and the hearing will be electronically recorded.

If you have any questions, please contact me. Thank you.

Best regards,



Illona A. Jeffcoat-Sacco
General Counsel

c/w enclosures: Norman L. Jones III
Don Metzger

5 **I-09-0090** Filed: 12/10/2009 Pages: 6
Request for Administrative Law Judge

59 **PU-07-54** Filed: 12/10/2009 Pages: 6
Request for Administrative Law Judge

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Just Wind - Wind Farm Development
Wind Farm – Logan County
Siting Application**

Case No. PU-07-54

**NOTICE OF REQUEST TO AMEND CERTIFICATE AND ORDER
AND NOTICE OF HEARING
December 10, 2009**

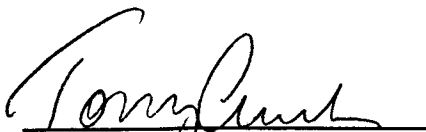
On April 29, 2009, the Commission issued Findings of Fact, Conclusions of Law and Order issuing Certificate of Site Compatibility No. 11 to Just Wind – Wind Farm Development (Just Wind). The Certificate authorized construction of all but six proposed wind turbines in a wind farm to be constructed in Logan County, North Dakota. The Commission was concerned with the close proximity of those six turbines to occupied residences and found that more information was needed before authorizing those six turbine locations. On November 10, 2009, Just Wind filed a letter requesting reconsideration of the six turbine locations.

A **Public Hearing** on reconsidering the six turbine locations is scheduled to begin **January 26, 2010 at 11:00 a.m.** CST in the Logan County Courthouse, 301 Broadway, Napoleon, ND 58561. The issues to be considered are:

1. Whether the Commission should reconsider its April 29, 2009 Findings of Fact, Conclusions of Law and Order.
2. 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?
3. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
4. Will the proposed facility locations 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?

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or Braille materials please notify Daryl Nitschke, Executive Director, at least 24 hours in advance.

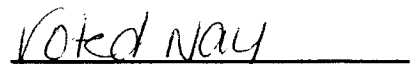
PUBLIC SERVICE COMMISSION



**Tony Clark
Commissioner**



**Kevin Cramer
Chairman**



**Brian P. Kalk
Commissioner**



RECEIVED

November 10, 2009

NOV 10 2009

Norman L. Jones III
Direct Dial: (612) 604-6605
Direct Fax: (612) 604-6905
njones@winthrop.com

PUBLIC SERVICE COMMISSION

Mr. Darrell Nitschke
Executive Director
North Dakota Public Service Commission
600 East Boulevard Avenue, Dept. 408
Bismarck, ND 58505-0480

ELECTRONIC FILING
ORIGINAL AND COPIES VIA U.S. MAIL

RE: Just Wind, LLC / Logan County Project
Docket # PU-07-054

Dear Mr. Nitschke:

We are submitting this letter on behalf of our client, Just Wind, LLC. Just Wind, LLC would like the PSC to reconsider the locations of six turbines previously requested to be located in some proximity to residential structures in the Logan County Wind Farm. The turbines in question are # 16, 91, 95, 153, 155, and 156. We understand that at working sessions at the Capital on April 27, 2009, Just Wind was asked for some more detailed information on noise levels and ice throws, and was asked to have the residents in closest proximity to these locations sign a consent form. Just Wind has submitted the information above and the consent forms, and would now request a favorable decision from the Commission.

Just Wind has submitted a total park noise calculation. The closest resident at 884 feet has been modeled at a more conservative 750 feet (229m) and still found to be in the 44-46db sound range. This fits meets the Commission's 49db target noise level for a greater distance at 1400 feet. Just Wind followed the zoning ordinance from Logan County, which states a 750 foot setback from livable residences. At the PSC hearing in Napoleon on October 21, 2008, Commissioner Wefald commented she would like to see a rule of a 1000 foot setback. At the working session on April 27, 2009, the Commissioners told Just Wind representatives they would like to see a 1400 foot setback, because of all the problems that have arisen from projects where the PSC did not have involvement due to the fact the projects had been built under the "Mega Watt's" requirement.

We see a 1400 feet setback as a blunt instrument. That is, a generic standard with such a large built-in noise margin that it could be used as a proxy where the particular noise circumstances are unknown. However, where (i) the exact noise circumstances have been modeled and found to meet the target thresholds, (ii) the Commission has had the opportunity to inquire into and control the site specific details, and (iii) the affected residents know and consent to the details, it

56 **PU-07-54** Filed: 11/10/2009 Pages: 3
Letter Requesting Reconsideration of Six Turbine Locations

Mr. Darrell Nitschke
November 10, 2009
Page 2


should be possible to apply more refined and precise standards. Accordingly, we think a specific site noise standard of 49db is appropriate to apply in this case. This targeted noise standard is met at the proposed set backs. If these noise thresholds are being met at the proposed setbacks, it will be completely unclear to us what additional non-noise benefits the Commission would be trying to pursue by applying a greater setback.

To summarize, Just Wind has run two models with different wind speeds, (8.2 m/s and 9.6 m/s) and a total park calculation for both using the Logan County zoning distance of 750 feet (229m). The noise calculations have been run by EAPC Architects Engineers out of Grand Forks, ND. The Commission should have the copies of the reports filed in May 2009, along with all the reports requested in the April 27 e-mail from you. Please see Exhibit A attached.

We look forward to hearing from you. Thank you.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



Norman L. Jones III

cc: Jerry Lein (w/attachment) (via email)

4828250v1

EXHIBIT A

6 turbines located between 750ft. and 1400ft. of a livable residence.

T-95.....884 ft. at a wind speed of 8.2 m/s, at 750ft. (229m) from the WTG's (43.6db)
At a wind speed of 9.6 m/s at 750ft. (229m) from WTG's (46.1db) (occupied residence)

T-156.....903 ft. at a wind speed of 8.2 m/s at 750ft. (229m) from the WTG's (42.7db)
At a wind speed of 9.6 m/s at 750ft. (229m) from the WTG's (45.2db) (occupied residence)

T-153.....945 ft. at a wind speed of 8.2 m/s at 750ft. (229m) from the WTG's (42.4db)
At a wind speed of 9.6 m/s at 750ft. (229m) from the WTG's (44.8db) (occupied residence)

T-91.....1007 ft. at a wind speed of 8.2 m/s at 750ft. (229m) from the WTG's (41.7db)
At a wind speed of 9.6 m/s at 750ft. (229m) from the WTG's (44.3db) (occupied residence)

T-155.....1076 ft. at a wind speed of 8.2 m/s at 750ft. (229m) from the WTG's (42.0db)
At a wind speed of 9.6 m/s at 750ft. (229m) from the WTG's (44.5db) (abandoned farmstead)

T-16.....1186 ft. at a wind speed of 8.2 m/s at 750ft. (229m) from the WTG's (41.4db)
At a wind speed of 9.6 m/s at 750ft. (229m) from the WTG's (43.9db) (occupied residence)

All consent forms have been signed and a copy was presented to the commission in May 2009.



REQUEST FOR ADMINISTRATIVE LAW JUDGE--APPEAL, APPLICATION, OR PETITION
 NORTH DAKOTA OFFICE OF ADMINISTRATIVE HEARINGS
 SFN 17819 (Rev. 03-2001)

Name of Agency, Board, or Commission
 North Dakota Public Service Commission

The above named agency, board, or commission requests designation of an administrative law judge from the Office of Administrative Hearings for the Just Wind - Wind Farm Development, Wind Farm - Logan County, Siting Application, Case No. PU-07-54

(e.g., application of [name], appeal of [name], petition of [name]). Authority for the administrative action is found in North Dakota Century Code Chapters 49-22 & 49-05 (North Dakota Century Code and/or North Dakota Administrative Code).

Please attach related documents and correspondence.

The administrative action is more fully described as follows:
 Under consideration at the hearing will be Just Wind's request for reconsideration of the Order concerning the six wind turbines not sited in the original Order

It requests designation of an administrative law judge (please check one):

- To conduct the hearing and issue recommended findings of fact, conclusions of law, and order.
- To serve as a procedural administrative law judge only (no recommended decision). The agency head will be present at the hearing as required by NDCC 54-57-04(6).
- To conduct the hearing, issue findings of fact, conclusions of law, and a final order.

PLEASE MAKE A REQUEST FOR AN ADMINISTRATIVE LAW JUDGE AT LEAST ONE MONTH BEFORE THE HEARING.

Please list parties, including the agency if it is a Party, and Representation [attorney (or other)] if known, or Agency Contact: (Attach separate list if necessary.)

AGENCY North Dakota Public Service Commission	Address 600 E. Blvd. Ave. Dept. 408, Bismarck, ND 58505	Telephone Number 701-328-2400
Representation Annette Bendish, Legal Counsel	Address Same as above	Telephone Number 701-328-2421
PARTY Don Metzger, Director of Development., Just Wind	Address P.O. Box 299, Napoleon, ND 58561	Telephone Number 701-754-3000
Representation	Address	Telephone Number
PARTY	Address	Telephone Number
Representation	Address	Telephone Number

Additional Comments
 The hearing is scheduled on the 26th day of January, 2010, at 11:00 a.m. CDT, in the Logan County Courthouse, 301 Broadway, Napoleon, North Dakota.

(For agencies required to use OAH, notice of hearing will be issued by the administrative law judge, unless a procedural administrative law judge is requested. Other requesting agencies and agencies requesting a procedural administrative law judge should first contact OAH about scheduling a hearing. If notice has already been issued, attach a copy of the notice.)

Typed or Printed Name and Title of Requesting Person Illona A. Jeffcoat-Sacco - General Counsel	Date 7 December 2009
Signature of Requesting Person x	Telephone Number 701-328-2407