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May 21, 2008

**RECEIVED**

**MAY 22 2008**

**PUBLIC SERVICE COMMISSION**

Ms. Illona Jeffcoat-Sacco  
Executive Director  
NORTH DAKOTA PUBLIC  
SERVICE COMMISSION  
600 E. Boulevard, Dept. 408  
Bismarck, ND 58505-0480

Dear Ms. Jeffcoat-Sacco:

In re: Ashtabula Wind, LLC  
Electric Generation/Wind - Barnes County  
Siting Application  
Case No. PU-08-32  
Our File No. 1248-28641

Enclosed please find for filing the original and seven copies of proposed Findings of Fact, Conclusions of Law and Order in the above case.

Please call should you have any questions.

Very truly yours,

  
BRIAN R. BJELLA

bw  
Enc.

**24** **PU-08-32** Filed: 5/22/2008 Pages: 12  
**Proposed Findings of Fact, Conclusions of Law and Order**

Ashtabula Wind, LLC

Fleck Mather & Strutz, LTD, Brian Bjella

**STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION**

**Case No. PU-08-32**

**Ashtabula Wind, LLC  
Electric Generation/Wind - Barnes County  
Siting Application**

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER**

**May \_\_\_\_, 2008**

**Appearances**

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

Brian R. Bjella, Attorney-at-Law, Fleck, Mather & Strutz, Ltd., 400 East Broadway, Suite 600, Bismarck, North Dakota 58501, on behalf of the Applicant, Ashtabula Wind, LLC.

William W. Binek, Chief Counsel, Public Service Commission, State Capitol, Bismarck, North Dakota 58505, on behalf of the Public Service Commission.

Jerry Lein, Public Utility Analyst, 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 22, 2008, Ashtabula Wind, LLC (Ashtabula Wind) filed a Letter of Intent (LOI) to submit an application for a Certificate of Site Compatibility regarding construction of the 200 MW Ashtabula Wind Energy Center, consisting of up to 133 wind turbine generators and associated facilities in Barnes County, North Dakota.

Ashtabula Wind requested that the Commission shorten the prescribed one-year notice period between when the LOI is filed and when the application for a Certificate of Site Compatibility is filed.

On February 27, 2008, the Commission shortened the one-year notice period to one day and assessed a filing fee of \$100,000.00.

On March 24, 2008, Ashtabula Wind filed its application for a Certificate of Site Compatibility authorizing construction of a 200 MW Ashtabula Wind Energy Center consisting of up to 133 wind turbine generators and associated facilities in Barnes County, North Dakota.

On April 4, 2008, the Commission deemed the Application complete and issued a Notice of Filings and Notice of Hearings scheduling a public hearing to begin May 2, 2008, at 10:30 a.m. CDT in the Valley City Auditorium, 320 Central Avenue South, Valley City, North Dakota 58072. 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?
4. Is it appropriate for the Commission to waive procedures and time schedules requested, including the request for a single consolidated application for a corridor certificate and route permit?

On May 2, 2008, the 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. Ashtabula Wind proposes to construct the Ashtabula Wind Energy Center existing of up to 133 wind turbines and associated facilities in Barnes County, North Dakota. The proposed capacity is 200 MW.
2. Construction of the Ashtabula Wind Energy Center is expected to take approximately seven months, at an estimated cost of \$335,000,000.00.
3. The project site is located just north of Valley City, North Dakota. It encompasses 49,493 acres (77 square miles). The wind turbines will be placed throughout the project site.
4. Associated facilities to be constructed within the project area include access roads, underground collection and feeder lines, up to five meteorological towers, a project substation, and an operations and maintenance building.

5. The project will have a name plate (gross) capacity of up to 199.5 MW. Assuming net capacity factors are between 38% and 45%, the projected average annual output is estimated between 664,096 to 786,429 MW hours.
6. Ashtabula Wind plans to use General Electric 1.5 MW turbines. These are utility grade wind turbines with a nominal name plate rating of 1500 kW. Each turbine will have an 80 meter (262) hub height and a 77 meter (253 feet) rotor diameter. The turbines begin operations at wind speeds of 3.5 meters per second (7.8 miles per hour) and reach a rated capacity of 1.5 MW at a wind speed of 14.5 meters per second (32.5 miles per hour).
7. Each turbine is designed to operate at wind speeds of up to 25 meters per second (56 miles per hour) and can withstand wind speeds of over 45 meters per second (100 miles per hour).
8. 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.
9. An underground feeder system delivers electricity to the project collection substation. At the project collection substation, the power will be transformed to 230 kV for transmission to the regional electric transmission grid.
10. Electricity to be produced from the Ashtabula Wind Energy Center will be purchased by Minnkota Power Cooperative, Inc. The generated electricity will be delivered to the regional grid at Minnkota's Pillsbury substation.
11. Wind data was collected by two meteorological towers, one on the project site and one adjacent to the project site. The wind data collected indicated this was an excellent site for a wind farm.
12. Ashtabula Wind will construct the Ashtabula Wind Energy Center in compliance with the National Electric Safety Code.
13. Ashtabula Wind contemplates commencing construction in May 2008. Construction is expected to take approximately seven months to complete. Ashtabula Wind anticipates testing and operations to begin in September 2008, and anticipates commercial operation by December 31, 2008.
14. Ashtabula Wind has obtained all easements and other property rights necessary to construct the Ashtabula Wind Energy Center. 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 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 located within the project area. Ashtabula Wind has proposed a buffer of 0.25 miles from each waterfowl production area with one exception which was accepted by the USFWS. The access road and collector line running to Turbine 128 will be located within the buffer but will not affect the waterfowl production area. The U.S. Fish and Wildlife Service has concurred in this buffer recommendation.
19. The only Avoidance Areas identified within the project are woodlands and wetlands. Woodland impacts are not anticipated. As previously noted, Ashtabula Wind recommends a buffer of 0.25 miles around waterfowl production areas except as noted above. All other wetland resources will be avoided to the extent practicable, and Ashtabula Wind will obtain appropriate permits from the U.S. Army Corps of Engineers, if necessary. In addition, Lake Ashtabula is located one mile west of the nearest wind farm infrastructure. Thus, there will be minor visual impacts to recreation.
20. With respect to historical resources which are not designated as Exclusion Areas, Ashtabula Wind has been in consultation with the North Dakota State Historic

Preservation Office (SHPO). Class I and III surveys, including a search of SHPO's site and managed files, was conducted by Beaver Creek Archeology, Inc., Linton, North Dakota, for the project area. Based upon the results of the file search, one architectural site and one architectural site lead were found within the records. The Class III cultural resource inventory indicated a total of five areas containing cultural materials which were discovered. Three sites are not eligible for the National Register of Historic Places and therefore do not need to be avoided. Two sites are potentially eligible and will be flagged and avoided during construction. In addition to the newly discovered cultural resources, two site leads which fall within the project boundary were investigated. One site lead is a historic cemetery, but it will not be impacted by project facilities. The second site lead is a prehistoric effigy mound which was destroyed by farming and thus, deemed illegible.

A "No Historic Properties Affected" will be recommended for the Area of Potential Effect (APE), and consequently, no further investigation will be recommended. Ashtabula Wind will seek concurrence from SHPO on its recommendations.

21. Ashtabula Wind will implement its Wildlife Response Reporting System when turbine construction is completed. The reporting system includes protocols from field technicians during routine maintenance and operations to report and document any avian impacts.
22. Ashtabula 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.
23. Ashtabula Wind submitted substantial 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).
24. Ashtabula 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).
25. 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.
26. No turbines will be placed within 1400 feet of an occupied residence. As a result, average noise levels at such residences will not exceed the general accepted 50 dB standard.

27. Approximately 15 acres of agricultural production 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. If compaction of soils occurs during construction, Ashtabula Wind will work with landowners to alleviate compaction.
28. No impacts are expected to animal health or safety, other than the potential for small numbers of avian species and bat species' collisions with turbines. Based upon studies prepared by Ashtabula Wind's environmental consultant, the impact is expected to be minimal. Ashtabula Wind will implement measures to avoid and minimize effects to wildlife at the proposed site by siting facilities away from wetlands and woodlands when possible.
29. Ashtabula Wind has proposed setbacks of 420 feet from existing transmission lines, roads and railroads.
30. 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. Ashtabula Wind has obtained a Conditional Use Permit and Variance from the Barnes County Commission, granting zoning approval for the Ashtabula Wind Energy Center.
31. Ashtabula Wind has consulted with numerous other local, state and federal agencies which are listed on pages 60 and 61 of its Application. Two agencies providing significant input are the North Dakota Game and Fish Department and the U.S. Fish and Wildlife Service. The North Dakota Game and Fish Department indicated that its primary concern is with the disturbance of native prairie and avian monitoring. The disturbance of native prairie will be minimal. Ashtabula Wind conducted an avian survey in the fall of 2007. Results were submitted to the Commission. Concerns of the U.S. Fish and Wildlife Service focused on migratory birds, wetlands, native grasslands, woodland resources, and threatened and endangered species. No significant impacts to any of these resources are anticipated. Neither agency has objected to construction of the project.
32. Ashtabula Wind reports a contractual obligation to landowners to remove the wind facilities, including foundations to a depth of three feet, when the wind easement expires. Ashtabula Wind reserves the right to explore alternatives regarding project decommissioning at the end of the project term. Retrofitting the turbines and power systems with upgrades based on new technology may allow the wind farm to produce efficiently and successfully for many more years.

From the foregoing Findings of Fact, the Commission now 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 Ashtabula 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 Ashtabula 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 Ashtabula Wind for the construction, operation and maintenance of a wind energy facility known as the Ashtabula Wind Energy Center.
2. The site as described in the application is located north of the City of Valley City, North Dakota, and is designated as the site for construction of the Energy Conversion Facility.
3. Within the permitted area, Ashtabula Wind is authorized to site and construct up to 200 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, meteorological towers, access roads, and other associated facilities as identified in the application.

4. Ashtabula 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. Prior to commencing construction of any phase of the proposed project, Ashtabula 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.
5. Ashtabula Wind shall conduct a pre-construction conference prior to the commencement of any construction, and must include an Ashtabula Wind representative, its construction supervisor, and a representative of the Commission staff to ensure that Ashtabula Wind fully understands the conditions set forth in this Order.
6. Ashtabula Wind shall inform the Commission of its intent to start construction on the energy conversion facility prior to the commencement of construction, and while construction is underway, Ashtabula Wind shall keep the Commission updated of construction activities on a weekly basis.
7. Ashtabula 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.
8. Ashtabula Wind shall construct the energy conversion facility in compliance with the National Electric Safety Code.
9. Ashtabula 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 Ashtabula Wind becomes aware of and were not previously reported to the Commission.
10. 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.
11. All pre-existing township and county roads and lanes used during construction must be restored to a condition that will accommodate their previous use, and areas used as temporary roads during construction must be restored to their original condition.
12. 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.

13. Reclamation, fertilization and reseeding will be completed by Ashtabula Wind according to the Natural Resource Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
14. Ashtabula Wind's obligations for reclamation and maintenance of the site shall continue throughout the life of the energy conversion facility.
15. 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.
16. Trees and other woody vegetation must be replaced with saplings that are two or more years old at a rate of two for every one removed. Landowners shall be given the option of having replacement trees/shrubs planted on the landowners' property or waiving that requirement in writing, and allowing Ashtabula Wind to plant replacement trees/shrubs elsewhere. Ashtabula Wind shall inspect tree replacements once a year for three years and send a report on or before October 1 of each year to the Commission documenting work completion and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75%.
17. Ashtabula 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.
18. Ashtabula Wind shall repair or replace all drainage tile, broken or damaged, during all phases of construction and operation of the proposed energy conversion facility.
19. Staging areas or equipment shall not be located on cultivated land unless otherwise negotiated with landowners.
20. Ashtabula 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.
21. Ashtabula 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.
22. Ashtabula 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.
23. Ashtabula Wind shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
24. Ashtabula 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.

25. Ashtabula Wind shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Ashtabula Wind.
26. All Underground electric line crossing of graded roads shall be bored unless the responsible governing agency permits Ashtabula Wind to open cut the road.
27. Where available, at least 12 inches of topsoil over and along open cut 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.
28. Ashtabula Wind shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
29. Ashtabula 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.
30. Ashtabula 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 locations.
31. Ashtabula Wind shall provide the Commission with as-built drawings within three months after construction of the energy conversion facility is complete.
32. 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.
33. Ashtabula 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.
34. North Dakota Century Code § 49-02-07 provides that the Commission has the power to establish rules for decommissioning of wind energy conversion facilities. Ashtabula Wind is required to comply with all applicable rules adopted by the Commission pursuant to such statute.
35. 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

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Tony Clark  
Commissioner

Susan E. Wefald  
President

Kevin Cramer  
Commissioner