

February 14, 2008

Warren Enyart, Secretary  
M-Power, LLC  
P.O.Box 335  
Finley, ND 58230

Re: Jurisdictional Opinion Regarding Luverne Wind Farm, Case No. PU-08-34

Dear Mr. Enyart:

The Commission has asked me to respond to your January 16, 2008 request on behalf of M-Power, LLC, (M-Power) for a jurisdictional determination regarding siting wind generation facilities in North Dakota. M-Power intends to develop a nominal 150 megawatts (MW) of wind generation at its Luverne Wind Farm located along the border of Griggs and Steele Counties. M-Power is a co-developer in the project with National Wind, LLC (National Wind), a professional wind developer based in Minnesota.

You state that the Luverne Wind Farm consists of two phases. The larger phase is a 100 MW project that will be owned by M-Power, and generation from this 100MW phase will be sold to one utility under a Power Purchase Agreement. The smaller phase is a 50 MW project. At the time the 50 MW phase is ready for construction, it will be sold to a regional utility that will build, own, and operate it. The electricity will be delivered from near the mid-point of the Luverne Wind Farm to a transmission connection to be located approximately 1.5 miles southeast of Luverne, ND where it will interconnect to a transmission line that will be built, owned, and operated through a joint arrangement between two major regional electric Generation and Transmission utilities.

The information that you provided indicates that the Luverne Wind Farm is basically one contiguous project that will be developed concurrently. While the ownership of the two phases may be different, it appears that the Luverne Wind Farm is being developed as one project with shared electric power collection electric gathering facilities and shared interconnection facilities.

It is clear under N.D.C.C. §§49-22-03(5) and 49-22-07 that siting would be required for construction of a 100 megawatt or larger wind generation facility, wind farm or wind project. In addition, siting is required for any construction of a phased wind

generation project if the total project is designed to be 100 megawatts or larger. Therefore, the entire project needs to be sited.

N.D.C.C. § 49-22-07 prohibits a utility from beginning construction of an energy conversion facility without first obtaining a certificate of site compatibility from the Commission. "Energy conversion facility", as defined in N.D.C.C. § 49-22-03(5), includes any plant, addition, or combination of part and addition, designed for or capable of generation of one hundred thousand kilowatts or more of electricity. The term "utility," as defined in N.D.C.C. § 49-22-03(13) means any person engaged in or controlling the generation of electric energy.

The long-term concern is the proliferation of small generation facilities which individually might be under the 100 megawatt generation threshold, but when combined might exceed the minimum several times over. That result would appear to violate the purpose of the Siting Act as stated by the Legislature.

The Legislature specifically adopted a statement of policy in N.D.C.C. § 49-22-02 in which it found that "the construction of energy conversion facilities . . . affects the environment and the welfare of the citizens of this state." They went on to state that "it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse affects on the environment and upon the welfare of the citizens of this state by providing that no energy conversion facility . . . shall be located, constructed, and operated within this state without a certificate of site compatibility . . . acquired pursuant to this chapter." The Legislature then declared it to be the policy of the state to site energy conversion facilities "in an orderly manner compatible with environmental preservation and the efficient use of resources."

If you have any questions, please call me at 701-328-4088.

Sincerely,

William W. Binek  
Chief Counsel