

October 17, 2008

Fredrikson
& BYRON, P.A.

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OCT 17 2008

PUBLIC SERVICE COMMISSION

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

RE: M-POWER, LLC
CASE NO. PU-08-34
Findings of Fact, Conclusions of Law and Order
CASE NO. PU-08-107
Findings of Fact, Conclusions of Law and Order

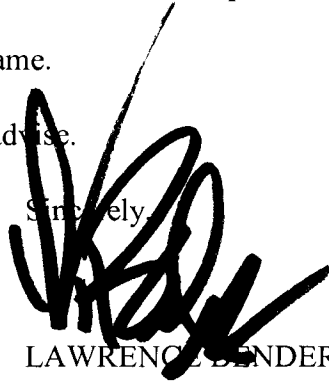
Dear Mr. Nitschke:

Please find enclosed herewith for filing an original and ten copies of M-Power's proposed Findings of Fact, Conclusions of Law and Order in each of the captioned matters.

Also enclosed is a disk containing the same.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/leo

Enclosure

cc: Mr. Warren Enyart – (w/o enc.)
Mr. Lloyd Anderson – (w/o enc.)
Ms. Jennifer Smestad – (w/o enc.)

37 PU-08-34 Filed: 10/17/2008 Pages: 27
Proposed Findings of Fact, Conclusions of Law and Order + disk

M-Power, LLC

Fredrickson&Byron PA, Lawrence Bender

25 PU-08-107 Filed: 10/17/2008 Pages: 27
Proposed Findings of Fact, Conclusions of Law and Order + disk

M-Power, LLC

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Case No. PU-08-107

**IN THE MATTER OF THE APPLICATION
OF M-POWER, LLC FOR A WAIVER OF
PROCEDURES AND TIMELINES, AND
CONSOLIDATED CERTIFICATE OF
CORRIDOR COMPATIBILITY AND ROUTE
PERMIT TO CONSTRUCT 13 MILES OF 230-
KV TRANSMISSION LINE IN BARNES AND
STEELE COUNTIES, NORTH DAKOTA,
KNOWN AS THE LUVERNE WIND FARM
GENERATION OUTLET PROJECT.**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

October __, 2008

Appearances

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

Lawrence Bender, Fredrikson & Byron, P.A., 200 North 3rd Street, Suite 150, Bismarck, North Dakota 58501 on behalf of the Applicant, M-Power, LLC

Annette M. Bendish, Counsel, North Dakota Public Service Commission, State Capitol Building, 12th Floor, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission.

Al Wahl, Administrative Law Judge, Office of Administrative Hearings, 1701 North 9 Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On March 3, 2008, M-Power, LLC (M-Power) filed a Letter of Intent (LOI) with the Commission indicating that it planned to file applications for both a certificate of corridor compatibility and a route permit for the proposed transmission facilities.

On April 4, 2008, the Commission acknowledged the filing of the LOI, shortened the one year notice period to one day, assessed a filing fee of \$22,750 due upon the filing of the application, and docketed the matter as Commission Case No. PU-08-107.

On May 21, 2008, M-Power filed a consolidated application for a waiver of procedures and times schedules, a certificate of corridor compatibility and a route permit authorizing construction of approximately 13 miles of 230,000 volt (230 kV) electric transmission line collectively referred to as the proposed Luverne Wind Farm Generation Outlet in Steele and Barnes Counties, North Dakota (Application).

On June 19, 2008, the Commission deemed the application complete and issued a Notice of Filings and Notice of Hearings, scheduling a public hearing for July 28, 2008 at 10:00 a.m. CDT at the Cooperstown Country Club, 305 Fairway Drive, Cooperstown, North Dakota. 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 impact 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 the procedures as requested including the request for a single consolidated application for corridor certificate and route permit?

A public hearing on M-Power's Application was held as scheduled on July 28, 2008 in Cooperstown, North Dakota. Following the hearing, the Commission received from M-Power certain late filed exhibits as ordered by the Hearing Officer at the hearing.

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. M-Power is a North Dakota limited liability company headquartered in Finley, North Dakota. The 230-kv transmission line as proposed by M-Power in this Application and its companion application for the Luverne Wind Farm (N.D. PSC Case No. PU-03-34), if approved, will be the first facilities M-Power is authorized by the Commission to construct in the state of North Dakota.

2. The proposed 230-kv transmission line will be located in Steele and Barnes Counties, North Dakota, and will be approximately 13 miles in length. The line will be constructed using wood H-frame structures. Each structure will be approximately 60 feet in height with an average span between each structure of 750 feet.

3. The proposed transmission line will be designed and constructed to meet or surpass all relevant state codes, as well as the National Electric Safety Code (NESC), the Rural Utilities Service (RUS), the Avian Power Line Interconnection Committee (APLIC), the Raptor-Safe Design standards and M-Power company standards.

4. The total estimated cost of construction of the M-Power proposed transmission facility is approximately \$4.55 million.

5. Section 49-22-16(3) of the North Dakota Century Code provides that an applicant for a route permit from the Commission shall obtain all permits that may be required to construct and operate the transmission facility.

6. After a Certificate of Compatibility for the Transmission Corridor and a Route Permit for construction of the facility are issued, M-Power will seek approval to have the same transferred to a regional utility.

7. The federal, state and local departments, agencies and entities which were consulted and provided comment are as follows:

- a. Federal Agencies – Bureau of Indian Affairs; Federal Aviation Administration; National Park Service; United States Air Force, Grand Forks Air Force Base; United States Army Corps of Engineers, North Dakota Regulatory Office; United States Army Corps of Engineers, St. Paul District Office; United States Fish and Wildlife Service
- b. State Agencies – Job Service North Dakota, North Dakota Department of Commerce, North Dakota Department of Health, North Dakota Department of Transportation, North Dakota Game and Fish Department, North Dakota Office of the Attorney General, North Dakota Parks and Recreation Department, North Dakota State Water Commission, Senator Kent Conrad, State Historical Society of North Dakota
- c. Local Entities – Dakota Rural Water District, Steele County, Barnes County, Sisseton Wahpeton Oyate Tribal Historic Preservation Officer, Universal Enasco, Inc.

M-Power's application contains a complete listing of all the permits and approvals that must be obtained for M-Power's proposed transmission facility and the status of each of these permits or approvals.

8. Chapter 69-06-08 of the North Dakota Century Code sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of corridor compatibility and route permit. The criteria as set forth in Section 69-06-08-02 of the North Dakota Century Code are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. A transmission facility route shall not be sited within an Exclusion Area. A transmission facility route shall not be sited within an Avoidance Area unless the applicant shows under the circumstances there are no reasonable alternatives. 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; the efficient use of resources; and alternative routes. In accordance with the Commission's Section Criteria, a transmission route shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction and maintenance of the transmission facility. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the transmission facility.

9. The location and route designated by M-Power for its proposed transmission facility, as shown in M-Power's Application, does not include any geographical areas listed as an Exclusion Area.

10. The location and route designated by M-Power for its proposed transmission facility does not include any geographical areas listed as an Avoidance Area, except as follows:

- a. There are several occupied residences in the corridor. The route is over 500 feet from all occupied residences. No homes will be impacted by the route.
- b. The proposed route will result in the loss of a minimal amount of woodlands. Those woodlands primarily consist of field or farmstead windbreaks and structure placement to the extent possible, and accommodate requests by landowners to minimize impacts to row crop farming. Consistent with the rules and regulations of the Commission, M-Power has agreed that it will replace any destroyed trees or woody vegetation on a two-for-one basis with saplings that are two or more years old. The Commission finds no reasonable alternative that would further avoid impacts to these woodlands.
- c. M-Power conducted a wetland delineation of the proposed route. There are numerous wetlands (Avoidance Areas) within the proposed corridor. M-Power's proposed structure placement along the proposed route is such that no wetland will be impacted by the proposed route. The U.S. Fish & Wildlife Service (USFWS) has preliminarily reviewed the wetland delineation and transmission structure placement and does not anticipate impacts to wetlands on USFWS easements. M-Power intends to acquire all the necessary approvals from the USFWS and USACE before commencement of construction of its proposed transmission facility. The Commission finds no reasonable alternative that would further avoid the wetland impact.

11. The proposed corridor between the point of origin (proposed Luverne Wind Farm) and the point of termination (proposed substation Northwest of Pillsbury) was evaluated for the exclusion, avoidance, and selection criteria. Based on the analysis of the corridor, and alternatives thereto, it was determined that the best location for the new transmission line would be as set forth in the Application.

12. M-Power submitted substantial evidence to demonstrate that the proposed transmission facility would not have any significant impact on the Selection Criteria set forth in Section 69-06-08-01(3) of the North Dakota Century Code.

13. M-Power submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility as far as is possible to meet the Policy Criteria set forth in Section 69-06-08-01(4) of the North Dakota Century Code.

14. The route for the proposed 13 mile 230-kv transmission line is located within a highly rural area. There is no information to indicate that any new residential construction is contemplated within the corridor or route.

15. The route for the proposed 13 mile 230-kv transmission line crosses areas that are primarily agricultural land. There are several areas within the proposed route where tree and shrub growth may require right-of-way clearing. Significant amounts of grading are not contemplated for preparation of the proposed transmission line right of way.

16. The proposed 13 mile 230-kv transmission line is not anticipated to result in any negative impacts to public services such as local services, electric service, roads, traffic, water supply or telephone and other communication services.

17. Electromagnetic fields are present around any electrical device. The electromagnetic fields which will be generated by the proposed 13 mile 230-kv transmission line are not anticipated to result in any human health effects because of their low level and distance from any residences.

18. The location and route of M-Power's proposed transmission facility is located approximately 900 feet to the nearest occupied residence. At that location, noise from the proposed transmission facility is expected to be below rural background levels.

19. No impact to the recreational resources in the area of the proposed corridor and route are anticipated by the proposed transmission facility.

20. Land use is not expected to change as a result of construction of the proposed transmission facility. The majority of the area under or adjacent to the transmission line will still be used for agricultural practices following construction of the line.

21. No impact to geologic and groundwater resources are anticipated as a result of the proposed transmission line.

22. Temporary impacts to vegetation will occur in the right of way area and around each structure location during construction of the transmission line. Permanent impact to vegetation will occur at each structure location.

23. Raptors, waterfowl and other bird species may be affected by the construction and placement of the proposed 230-kV transmission line. To help avoid potential impacts to avian

species along the proposed route during construction and operation of the transmission line, M-Power will utilize suspension insulation with a clearance of approximately 84 inches in order to eliminate the potential for electrocution of raptors. In addition, M-Power will utilize ball markers along the line in areas of concentrated wetlands and at stream crossings to reduce the possibility of collisions.

24. No rare or unique resources have been identified in the route. It is not anticipated that the proposed transmission facility will impact rare and unique resources.

25. On July 10, 2008, the Barnes County Board of County Commissioners granted M-Power a conditional use permit for the proposed transmission line.

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under Chapter 49-22 of the North Dakota Century Code.

2. The 230-kv transmission line proposed by M-Power is a transmission facility as defined in Section 49-22-03(12) of the North Dakota Century Code.

3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined under Section 49-22-05.2 of the North Dakota Century Code.

4. The Application submitted by M-Power meets the corridor and route evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.

5. The location, construction, and operation of the proposed transmission facility will produce only minimal adverse effects of the environment and upon the welfare of the citizens of North Dakota.

6. The proposed transmission facility is compatible with the environmental preservation and the efficient use of resources.

7. The proposed transmission facility corridor and route 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 proposed transmission facility is of such length, design, location and purpose that it will produce minimal adverse effects.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order

The Commission orders:

1. M-Power's application for a waiver of procedures and time schedules is granted.
2. Certificate of Compatibility for a Transmission Facility Corridor No. ___ is issued to M-Power, designating a Corridor for its proposed transmission facility route.
3. Route Permit for Construction of a Transmission Facility No. ___ is issued to M-Power granting authority to construct the transmission facility substantially as presented at the hearing.
4. M-Power shall conduct a preconstruction conference prior to commencement of any construction, and must include a M-Power representative, its construction supervisor, and a representative of Commission staff to ensure that M-Power fully understands the conditions set forth in this order.
5. M-Power shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed transmission facility, and shall obtain all other necessary approvals and permits, and shall provide copies of all approvals and permits to the Commission prior to the construction of the transmission line.
6. M-Power shall inform the Commission of its intent to start construction on the transmission facility prior to the commencement of construction, and, once construction has started, M-Power shall keep the Commission updated of construction activities on a weekly basis.
7. M-Power shall construct and operate the transmission facility in the manner described in its Application and at the hearing, and in accordance with all applicable safety requirements.
8. M-Power shall promptly report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or of bald or golden eagles that M-Power becomes aware of and that were not previously reported to the Commission.
9. If any cultural resources or gravesites are discovered during construction of the facility, earth disturbing activities in the immediate vicinity of the discovery would be halted. The resources will be marked, preserved and protected from any further disturbance until a professional examination can be made in consultation with the North Dakota State Historic Preservation Officer (SHPO) and clearance to proceed is given by SHPO. A report of such examination will be filed with the SHPO and the Commission.
10. All pre-existing 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.

11. 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.

12. Reclamation along the right-of-way shall be continuous and coordinated with construction.

13. Reclamation, fertilization and reseeding is to be done by M-Power according to the Natural Resource Conservation Service and USFWS recommendations for CRP, native prairie and other non-cropped lands unless otherwise specified by the landowner and approved by the Commission.

14. M-Power's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission line.

15. Trees or 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 off the right-of-way on the landowner's property or waiving that requirement in writing and allowing M-Power to plant the replacement trees/shrubs elsewhere. M-Power shall inspect tree replacements once a year for three years and send a report on or shortly before December 31st 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%.

16. M-Power shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the path of the transmission line.

17. M-Power shall repair or replace all fences and gates removed or damaged during all phases construction and operation of the proposed transmission facility.

18. M-Power shall obtain approval from the Commission or from Commission staff prior to any changes in structure locations.

19. M-Power shall provide the Commission with a copy of the design specifications for construction of the transmission line showing the location of the transmission line as built.

20. The Certificate of Compatibility for a Transmission Corridor No. _____ and Route Permit for Construction of a Transmission Facility No. _____ shall be effective for the life of the project but is subject to modification by order of the Commission if deemed necessary to further protect the public or the environment.

21. The Certificate of Compatibility for a Transmission Corridor No. _____ and Route Permit for Construction of a Transmission Facility No. _____ shall not be transferred without the approval of the Commission, but approval shall not be unreasonably withheld.

PUBLIC SERVICE COMMISSION

**Tony Clark
Commissioner**

**Susan E. Wefald
President**

**Kevin Cramer
Commissioner**

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PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

**Certificate of Corridor Compatibility
Number _____**

This is to certify that the Commission has designated a transmission facility corridor for M-Power, LLC to construct and operate approximately 13.0 miles of 230 kV transmission line and associated facilities in Steele and Barnes Counties, North Dakota,

This certificate is issued in accordance with the Findings of Fact, Conclusions of Law and Order of this Commission dated October __, 2008 in Case No. PU-08-107 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, October __, 2008.

ATTEST:

PUBLIC SERVICE COMMISSION

Executive Director

Commissioner

PUBLIC SERVICE COMMISSION

STATE OF NORTH DAKOTA

Route Permit Number 114

This is to certify that the Commission has designated a transmission facility route for M-Power, LLC to construct and operate approximately 13.0 miles of 230 kV transmission line and associated facilities in Steele and Barnes Counties, North Dakota.

This certificate is issued in accordance with the Findings of Fact, Conclusions of Law and Order of this Commission dated October __, 2008 in Case No. PU-08-107 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, October __, 2008.

ATTEST:

PUBLIC SERVICE COMMISSION

Executive Director

Commissioner

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Case No. PU-08-34

**IN THE MATTER OF THE APPLICATION
OF M-POWER, LLC FOR A CERTIFICATE
OF SITE COMPATIBILITY TO CONSTRUCT
A 157 MW WIND FARM IN GRIGGS AND
STEELE COUNTIES, NORTH DAKOTA,
KNOWN AS THE LUVERNE WIND FARM.**

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

October __, 2008

Appearances

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

Lawrence Bender, Fredrikson & Byron, P.A., 200 North 3rd Street, Suite 150, Bismarck, North Dakota 58501 on behalf of the Applicant, M-Power, LLC

Annette M. Bendish, Counsel, North Dakota Public Service Commission, State Capitol Building, 12th Floor, Bismarck, North Dakota 58505, on behalf of the North Dakota Public Service Commission.

Al Wahl, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 N. 9 Street, Bismarck, ND 58501-1882, as Procedural Hearing Officer.

Preliminary Statement

On January 16, 2008, M-Power, LLC (M-Power) filed a Letter of Intent (LOI) to submit an application for a Certificate of Site Compatibility to develop a wind energy facility, referred to by M-Power as the Luverne Wind Farm, in Griggs and Steele Counties, North Dakota.

On January 18, 2008, M-Power filed a supplement to its LOI supplying the Commission with additional information and requesting a shortening of 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 acknowledged the LOI, shortened the one year notice period to one day, assessed a filing fee of \$100,000 due upon the filing of the application, and docketed the matter as Case No. PU-08-34.

On May 16, 2008, M-Power filed its Application for Certificate of Site Compatibility to Construct a 157.5 MW Wind Farm in Griggs and Steele Counties, North Dakota, known as the Luverne Wind Farm (Application) docketed as Case No. PU-80-34.

On June 19, 2008, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for July 28, 2008 at 10:00 A.M. CDT at the Cooperstown Country Club, 305 Fairway Drive, Cooperstown, North Dakota. 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 the procedures and time schedules as requested?

A public hearing on M-Power's Application was held as scheduled on July 28, 2008 in Cooperstown, North Dakota. At the hearing, M-Power requested a continuance. The request for a continuance was granted by the Commission and the matter was rescheduled for hearing on August 25, 2008 at 10:00 A.M. CDT at the Cooperstown Country Club, 305 Fairway Drive, Cooperstown, North Dakota. After the hearing, the Commission received certain late filed exhibits as ordered at the hearing.

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. M-Power is a North Dakota limited liability company headquartered in Finley, North Dakota. M-Power proposes to construct and operate a wind energy facility (the Luverne Wind Farm) to be located in Griggs and Steele Counties, North Dakota north of the city of Luverne. The proposed capacity of the wind energy facility would be 157.5 megawatts (MW) comprised of up to 105 turbines, each with a capacity of 1.5 MW. The Luverne Wind Farm as proposed by M-Power in this Application and its companion application for a 230-kV transmission line (N.D. PSC Case No. 08-107), if approved, will be the first facilities M-Power is authorized by the Commission to construct in the State of North Dakota.

2. The Luverne Wind Farm will consist of two separate phases. Phase I will include construction to generate 108 MW of power in the southern portion of the proposed area to be

permitted with up to 72 turbines. Phase II will include construction to generate 49.5 MW of power in the northern portion of the proposed area to be permitted with up to 33 turbines.

3. Construction of Phase I of the proposed Luverne Wind Farm is expected to take 6 to 9 months. Most construction workers would be employees of construction and equipment manufacturing subcontractors. Construction workers and subcontractors would be a combination of local companies and workers as well as subcontractors based outside the state. M-Power estimates that between 9 to 11 full time jobs will be created for operation and maintenance of Phase I of the proposed Luverne Wind Farm after construction is completed and the facility is fully operational.

4. Construction of Phase II of the proposed Luverne Wind Farm is expected to take 6 to 9 months. Most construction workers would be employees of construction and equipment manufacturing subcontractors. Construction workers and subcontractors would be a combination of local companies and workers as well as subcontractors based outside the state. M-Power estimates that between 4 to 5 full time jobs will be created for operation and maintenance of Phase II of the proposed Luverne Wind Farm after construction is completed and the facility is fully operational.

5. The total estimated cost for construction of the M-Power proposed Luverne Wind Farm for both Phase I and Phase II is estimated to be approximately \$300 million.

6. After a Certificate is issued by the Commission for Phase I of the proposed Luverne Wind Farm, M-Power will either proceed to construct the facility or seek approval to transfer the Certificate to a regional or national developer.

7. After a Certificate Of Site Compatibility (“Certificate”) is issued by the Commission for Phase II of the proposed Luverne Wind Farm, M-Power will seek approval to have the Certificate transferred to a regional utility.

8. Section 49-22-16(3) of the North Dakota Century Code provides that an applicant for a certificate of site compatibility from the Commission shall obtain all permits that may be required to construct and operate the energy conversion facility.

9. The federal, state and local departments, agencies and entities which were consulted and provided comment are as follows:

- a. Federal Agencies – Bureau of Indian Affairs; Federal Aviation Administration; National Park Service; United States Air Force, Grand Forks Air Force Base; United States Army Corps of Engineers, North Dakota Regulatory Office; United States Army Corps of Engineers, St. Paul District Office; United States Fish and Wildlife Service
- b. State Agencies – Job Service North Dakota, North Dakota Department of Commerce, North Dakota Department of Health, North Dakota Department of Transportation, North Dakota Game and Fish Department,

North Dakota Office of the Attorney General, North Dakota Parks and Recreation Department, North Dakota State Water Commission, Senator Kent Conrad, State Historical Society of North Dakota

- c. Local Entities – Dakota Rural Water District, Griggs County, Steele County, Sisseton Wahpeton Oyate Tribal Historic Preservation Officer, Universal Ensco, Inc.

10. Section 49-22-16(2) of the North Dakota Century Code provides that no energy conversion facility site shall be designated that violates any county or city land use, zoning or building rules, regulations, or ordinances. All necessary rezoning and conditional use permits for the proposed Luverne Wind Farm and its associated facilities have been obtained from either the Griggs County Board of County Commissioners or the Township Boards of both Riverside and Willow Lake Townships in Steele County.

11. Chapter 69-06-08 of the North Dakota Century Code sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria as set forth in Section 69-06-08-01 of the North Dakota Century Code are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. An energy conversion facility shall not be sited within an Exclusion Area. An energy conversion facility shall not be sited within an Avoidance Area unless the applicant shows under the circumstances there are no reasonable alternatives. 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; the effective use of resources; and alternative sites. In accordance with the Commission's Section Criteria, a site shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction and operation of the energy conversion facility. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the proposed energy conversion facility.

12. The area designated by M-Power for its proposed facility does not include any geographical area listed as an Exclusion Area; with one exception, portions of the project will be located on Prime Farmland. However, prime farmland has been avoided to the maximum extent practicable and impacts to prime farmland are expected to affect less than 0.1% of the yearly production for the top five commodities in Griggs and Steele Counties. In addition, the wind project will be located within the general vicinities of Waterfowl Production Areas (WPAs) managed by the U.S. Fish and Wildlife Service (USFWS), but no project facilities will be located closer than 0.25 miles from such areas. There is one parcel of irrigated land within the project area, but no project facilities will be located in that parcel.

13. The area designated by M-Power for its proposed facility, as shown on the attached map, does not include any geographical area listed as an Avoidance Area, except as follows:

- a. M-Power has conducted a Class I Cultural Resources Inventory (CRI) for historic, cultural and archaeological resources in both the Phase I and

Phase II area of the proposed Luverne Wind Farm. Twenty-five (25) resource areas were identified in the Class I CRI and, in consultation with the North Dakota State Historic Preservation Office (SHPO), as areas to avoid. A Class III CRI was conducted for the Phase II area of the proposed Luverne Wind Farm. The report generated by the Class III CRI was provided to both SHPO and the Commission. Once final locations of turbines, roads, electrical collection system, and associated facilities are determined, and before construction commences for Phase I of the proposed Luverne Wind Farm, a Class III CRI will be conducted to further ensure against disturbance of any areas of historic, cultural, or archaeological interest. M-Power will submit the report to the SHPO for review and comment prior to construction. M-Power will also provide a copy of the report to the Commission. If cultural resources or grave sites are discovered in the course of construction of the facility for either Phase I or Phase II, earth disturbing activities in the immediate vicinity of the discovery would be halted. The resources will be marked, preserved and protected from further disturbance until a professional examination can be made in consultation with the ND SHPO and clearance to proceed is given by SHPO. A report of such examination will be filed with the SHPO and Commission.

- b. Woodlands and wetlands are present in the general vicinity of the wind project. Woodland impacts are not expected, but if final micro-siting requires impacts to woodlands, individual trees or woody vegetation will be replaced at a 2 to 1 ratio. M-Power will maintain a 500-foot buffer between all project facilities and the large (lacustrine) wetland complexes (greater than 50 acres); it will also avoid all other wetland areas to the extent practicable. USFWS permits are required for impacts to wetlands on conservation easements that cannot be avoided.

14. M-Power submitted substantial evidence to demonstrate that the proposed energy conversion facility would not have any significant impact on the Selection Criteria set forth in Section 69-06-08-01(3) of the North Dakota Century Code.

15. M-Power submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible to meet the Policy Criteria set forth in Section 69-06-08-01(4) of the North Dakota Century Code.

16. M-Power proposes to locate the Luverne Wind Farm on an area of land comprised of approximately 20,480 acres of privately owned and state land in Griggs and Steele Counties, North Dakota. M-Power has acquired wind energy leases from landowners in the area which allows M-Power to construct and operate the wind generator facilities in exchange for financial compensation to the landowners and an ownership interest in M-Power. Landowners can continue their farming operations in and around the wind turbines and other wind generator facilities.

17. The proposed Luverne Wind Farm and its related supporting facilities would occupy and disturb approximately 410 acres of land during the life of the plant. The proposed Luverne Wind Farm is located in an area that is zoned exclusively for agricultural use, most of which is planted with small grains, beans, corn and grasses under the United States Department of Agriculture Conservation Reserve Program (CRP), or pasture with native grasses. The facility would have little impact on farm operations. During construction, the project might cause temporary off-site impacts to farming due to an increase in construction-related traffic. Once operational, however, the facility would generate little traffic. The location of facility structures might require changes to farming patterns in the immediate vicinity of the turbine towers and other above ground facilities, but the facility operation would not cause off-site impact on adjacent lands that would significantly interfere with or increase the cost of farm practices in the area of the proposed project.

18. Wind turbines consist of two main components: the turbine tower and the nacelle. The nacelle is the portion of the wind turbine mounted at the top of the tower that houses the wind turbine itself, the rotor and blades, hub and gear box. Turbine towers would be approximately 262 feet tall at the turbine hub. The towers would be smooth, hollow steel structures.

19. M-Power expects construction of its proposed Luverne Wind Farm for both Phase I and Phase II will be compatible with farm use and should not affect resource use of the remainder of the parcel or adjacent lands.

20. Landowners would be able to conduct grazing and farming operations up to the turbines and between the turbines strings. Landowners may need to modify planting and harvesting patterns in the immediate vicinity of the turbine pads and roads; however, the spacing of the towers, height of the turbine blades and the depth of the underground cables are such that the facility would otherwise be compatible with farm uses. In addition, M-Power's cash payments to farmers participating in the project will provide a steady source of income to supplement the unpredictable revenues from farming, which are subject to the fluctuations of weather and farm prices. Thus, the wind project will help assure the continued viability of farming in the project area. Operation of the facility would not have any effect on resource use of the remainder of the affected parcels or on adjacent lands. When the facility is retired, structures would be removed and the area restored in accordance with Commission regulations.

21. Lighting would be limited to warning lights required by the Federal Aviation Administration (FAA) and security lights at the project substation and the operation and maintenance building.

22. The local economy would benefit through the employment opportunities offered by the project, primarily during construction, and the property taxes paid to Griggs and Steele Counties. As noted above, compensation paid to landowners who receive payments for roads, turbines and other facilities would provide revenue to supplement income earned from agricultural operations.

23. The proposed facility would not have significant adverse economic and social consequences. It would not cause any significant adverse impact on the ability of the affected area to provide community service, such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation and traffic safety.

24. Stormwater drainage impacts could occur during construction of new roads, staging areas and turbine foundations. M-Power would prevent adverse impacts by use of erosion control measures required under National Pollution Discharge Elimination System (NPDES) permit and associated Storm Water Pollution Prevention Plan. Construction of the facility would not have a significant adverse impact on the water quality of any receiving water.

25. The proposed facility would be located entirely on private property. Turbines would not be located closer than 1,400 feet from an inhabited dwelling or closer than 400 feet or the fall zone of the wind turbine, whichever is greater, to any developed road. The turbine towers would have locked access doors and turbine design would preclude climbing. Pad-mounted transformers located at each turbine would be located inside locked metal cabinets.

26. Electromagnetic fields are present around any electrical device. The electromagnetic fields which will be generated by the proposed facility are not anticipated to result in any human health effects, because of their low level and because of the minimum distance of 1,400 feet from any inhabited dwelling and 400 feet or the fall zone of the wind turbine, whichever is greater, from any developed road.

27. Wind turbines produce noise from the rotation of the turbine blades. Generally, turbine noise increases with wind speed. The noise standard adopted by the Griggs and Steele Counties Board of County Commissioners provides for levels not greater than 50 dBA at the nearest occupied residence. Based on modeling, M-Power has calculated that the 50 dBA standard is exceeded at distances of less than 190 meters (623 feet) for 1.5 MW turbines. M-Power has proposed a setback of 1,400 feet from residences. At that distance, the 50 dBA noise standard adopted by the Griggs and Steele Counties Board of County Commissioners will not be exceeded.

28. Within the site area land is for the most part privately owned and there are no county or state recreational facilities other than a walking path. Federal recreational areas adjacent to the site area include one USFWS WPA. The WPAs will be avoided and no facilities will be placed within 0.25 miles of the WPAs. Recreational opportunities in Griggs and Steele Counties include camping, hiking, biking, swimming, golfing, hunting, fishing and nature observation. While the wind turbines within the site area will be visible, they are not likely to cause any significant adverse impact to any recreational opportunities.

29. Numerous wetlands are identified within the site area. Wetlands range in size from isolated basins less than a few hundred square feet in size to large wetland complexes covering 50 acres or more. Wind turbines will be constructed on upland areas and thereby avoid wetlands on the lower areas of the landscape. Access roads and supporting facilities will be designed to minimize impacts on wetlands. M-Power has proposed a 500-foot setback around large (lacustrine) wetland complexes (greater than 50 acres).

30. Wildlife within the site area consists of birds, mammals, fish, reptiles, amphibians and insects associated with agricultural fields, pasture grasslands, and wetland areas. M-Power has conducted for Phase II, and will conduct for Phase I, environmental studies of the project site to aid in detailed placement of turbines, roads, and associated facilities to avoid or minimize potential impacts to wildlife and habitat. Construction and operation of the proposed facility is expected to produce minimal impact to the wildlife within the site area.

31. M-Power contacted the USFWS and the North Dakota Parks and Recreation Department to review the site area for threatened or endangered species and unique habitats. In response to this contact, USFWS identified one federally listed threatened or endangered species potentially present in Griggs County and no federally listed threatened or endangered species in Steele County. No impacts are anticipated to the species identified.

32. M-Power is still evaluating the project area in Phase I comprised of 13,653 acres to determine the best locations for up to 72 wind turbines. As criteria for the specific location of each wind turbine in Phase I, M-Power recommended the following:

- a. No wind turbine would be placed within 0.25 miles of any USFWS WPAs.
- b. No wind turbine would be placed within 500 feet of any large (lacustrine) wetland complex (greater than 50 acres).
- c. No wind turbine would be placed within 1,400 feet of any occupied residence.
- d. No wind turbine would be placed within 400 feet (or the height of the wind turbine, whichever is greater) from any developed road, transmission line or adjacent property not under lease by M-Power.

33. Wind farms are typically developed on prominent features such as hills and ridgelines. M-Power demonstrated that arbitrarily requiring wind farms to maintain a particular setback along the perimeter of the project area may result in eliminating some tracts of land from development. M-Power, therefore, recommends no minimum setback other than those set forth in paragraph 32 above, and approved by Griggs County Board of County Commissioners and the Township Boards of Riverside and Willow Lake Townships in Steele County.

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under Chapter 49-22 of the North Dakota Century Code.
2. The wind energy facility proposed by M-Power is an energy conversion facility as defined in Section 49-22-03(11) of the North Dakota Century Code.
3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined under Section 49-22-05.2 of the North Dakota Century Code.
4. The Application submitted by M-Power meets the site evaluation criteria required by Chapter 49-22 of the North Dakota Century Code.
5. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects of the environment and upon the welfare of the citizens of North Dakota.
6. The proposed energy conversion facility is compatible with the 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 proposed energy conversion facility is of such design, location and purpose that it will produce minimal adverse effects.

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 M-Power for the construction, operation and maintenance of a wind energy facility known as the Luverne Wind Farm, Phase I.
2. Certificate of Site Compatibility No. _____ for an Energy Conversion Facility is issued to M-Power for the construction, operation and maintenance of a wind energy facility known as the Luverne Wind Farm, Phase II.
3. That the site described in the Application is located north of Luverne, North Dakota, is designated as the site for construction of the energy conversion facility.

4. The site designated for the Luverne Wind Farm is as follows:

Township 144 North, Range 57 West
Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20 and 30

Township 144 North, Range 58 West
Sections 1, 12, 13, 24 and 25

Township 145 North, Range 57 West
Sections 14, 15, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36

5. Phase I includes the following described lands:

Township 144 North, Range 57 West
Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20 and 30

Township 144 North, Range 58 West
Sections 1, 12, 13, 24 and 25

6. Phase II includes the following described lands:

Township 145 North, Range 57 West
Sections 14, 15, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36

7. Within Phase I of the permitted area, M-Power is authorized to site and construct up to 108.0 MW of wind turbines, electrical collection and communication lines, access roads, and associated facilities identified in the Application for the Luverne Wind Farm.

8. Within Phase II of the permitted area, M-Power is authorized to site and construct up to 49.5 MW of wind turbines, electrical collection and communication lines, access roads, an operation and maintenance building, meteorological towers, and associated facilities identified in the Application for the Luverne Wind Farm.

9. M-Power 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, M-Power shall obtain all other necessary approvals and permits for construction of such phase, and provide copies of the Commission prior to construction of each such phase.

10. M-Power shall conduct a pre-construction conference prior to the commencement of any construction, and must include an M-Power representative, its construction supervisor, and a representative of the Commission staff to ensure that M-Power fully understands the conditions set forth in this Order.

11. M-Power 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, M-Power shall keep the Commission updated of construction activities on a weekly basis.

12. M-Power 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.

13. M-Power shall construct the energy conversion facility in compliance with the National Electric Safety Code.

14. M-Power 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 M-Power becomes aware of and were not previously reported to the Commission.

15. 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.

16. 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.

17. 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.

18. Reclamation, fertilization and reseeding will be completed by M-Power according to the Natural Resource Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

19. M-Power's obligations for reclamation and maintenance of the site shall continue throughout the life of the energy conversion facility.

20. When the energy conversion facility is retired, structures and other facilities must be removed in accordance with applicable rules of the Commission.

21. 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 M-Power to plant replacement trees/shrubs elsewhere. M-Power shall inspect tree replacements once a year for three years and send a report on or shortly before December 31st 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%.

22. M-Power shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.

23. M-Power shall repair or replace all drainage tile, broken or damaged, during all phases of construction and operation of the proposed energy conversion facility.

24. Staging areas or equipment must not be located on cultivated land unless otherwise negotiated with landowners.

25. M-Power 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.

26. M-Power 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.

27. M-Power 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.

28. M-Power shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

29. M-Power 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.

30. M-Power shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by M-Power.

31. All underground electric line crossing of graded roads must be bored unless the responsible governing agency permits M-Power to open cut the road.

32. 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.

33. M-Power shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.

34. M-Power 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.

35. M-Power 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.

36. M-Power shall provide the Commission with as-built drawings within three months after construction of the energy conversation facility is complete.

37. Each 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 each Certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.

38. M-Power shall maintain records which will demonstrate that it has complied with the requirements of this order and each Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.

39. Section 49-02-07 of the North Dakota Century Code provides that the Commission has the power to establish rules for decommissioning of wind energy conversion facilities. M-Power is required to comply with all applicable rules adopted by the Commission pursuant to such statute.

40. The authorizations granted by each 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

(Phase I)
Certificate of Site Compatibility for Energy Conversion Facility
Number __

This is to certify that the Commission has designated an energy conversion facility site for the Luverne Wind Farm, Phase I in Griggs and Steele Counties, North Dakota.

This facility may be sited in the designated location in compliance with the energy conversion facility siting criteria.

This certificate is issued in accordance with the Findings of Fact, Conclusions of Law and Order of the Commission in Case No. PU-08-34 dated October __, 2008 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, October __, 2008.

ATTEST:

PUBLIC SERVICE COMMISSION

Executive Director

Commissioner

PUBLIC SERVICE COMMISSION
STATE OF NORTH DAKOTA

(Phase II)
Certificate of Site Compatibility for Energy Conversion Facility
Number __

This is to certify that the Commission has designated an energy conversion facility site for the Luverne Wind Farm, Phase II in Steele County, North Dakota.

This facility may be sited in the designated location in compliance with the energy conversion facility siting criteria.

This certificate is issued in accordance with the Findings of Fact, Conclusions of Law and Order of the Commission in Case No. PU-08-34 dated October __, 2008 and is subject to the conditions and limitations noted in the Order.

Bismarck, North Dakota, October __, 2008.

ATTEST:

PUBLIC SERVICE COMMISSION

Executive Director

Commissioner