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Annette Bendish, Legal Counsel
North Dakota Public Service Commission
State Capitol Building
12th Floor
Bismarck ND 58505

RECEIVED

JUL 28 2009

PUBLIC SERVICE COMMISSION

July 27, 2009

Ms. Bendish:

Enclosed please find one original and seven copies of a Petition for Rehearing for Case PU-08-34, along with appropriate signatures.

As explained by your department to Mary Ann Miller, our deadline for filing this petition is August 3, 2009.

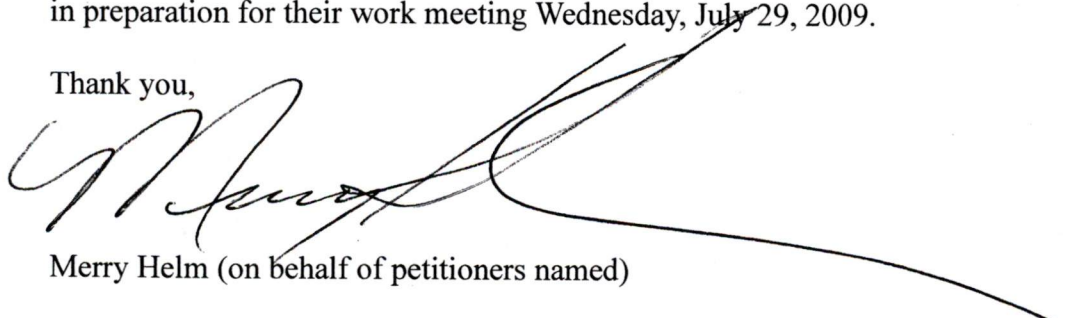
As certified within the petition text, the enclosed materials have also been sent to:

Lawrence Bender
Fredrickson & Byron, P.A.
200 North 3rd Street, Suite 150
Bismarck ND 58501
(On behalf of M-Power LLC)

Brian R. Bjella, Attorney-at-law
Crowley Fleck, PLLP
400 East Broadway, Suite 600
Bismarck ND 58501
(On behalf of the Intevenor, Ashtabula Wind II, LLC)

We ask that a copy of this petition be immediately provided to Commissioners Kalk, Cramer and Clark in preparation for their work meeting Wednesday, July 29, 2009.

Thank you,



Merry Helm (on behalf of petitioners named)

enc.

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Petition for Rehearing

Named Petitioners

Merry Helm on behalf Named Petitioners

142 **PU-08-34** Filed: 7/28/2009 Pages: 8
Petition for Rehearing

Named Petitioners

Merry Helm on behalf Named Petitioners

North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

July 27, 2009

STATE OF NORTH DAKOTA PUBLIC SERVICE COMMISSION

M-Power, LLC Case No. PU-08-34: Electric Generation/Wind-Griggs/Steele County, Siting Application
M-Power, LLC / Ashtabula Wind II, LLC Case No. PU-09-221: Transfer of Site Certificate, Siting Application

PETITION FOR REHEARING PU-08-34:

A cluster of landowners and business owners living within one mile of proposed wind turbines 166, 170, 171 and 172 (the affected parties), as well as other concerned North Dakotan citizens, seek a re-hearing concerning NextEra LLC's sites for the named four (of thirty-one) turbines in the south field of Ashtabula II Wind Farm, Broadview Township, Griggs County, ND.

The proposed turbines would significantly impact the lives and property of the Affected Parties, who have appeared and provided probative evidence that their substantial rights have been overridden. Fundamental fairness demands due weight be given to probative evidence offered by affected parties. Evidence that was not considered by Judge Wahl on June 5 should be re-introduced and considered.

The affected parties are asking the PSC to require NextEra to site the proposed turbines farther away from their homes and businesses while still retaining them on the properties of the landowners who entered into leases with NextEra (the "participating landowners"). However, barring this possibility, we ask that the proposed turbines be disallowed.

CONTEXT FOR PSC PU-08-34

The 2009 North Dakota legislature determined the Public Service Commission (PSC) shall hold hearings related to adequate setbacks of industrial wind turbines from human dwellings.

On April 22, 2009, the Commission issued a Notice of Hearing, scheduling a public hearing for June 5, 2009, at 10:30 a.m. CDT in the Cooperstown City Hall, Meeting Room, 611 Ninth Street NE, Cooperstown, ND, 58425. The Notice identified the following issues, in relevant part, 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?

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?

Issues 1 and 3 have not been adequately addressed by the PSC. The affected parties asked the PSC that proposed turbines 166, 170, 171 and 172 be placed farther away from their home and businesses.

The probative evidence demonstrates hazards currently impacting people living within one mile of industrial turbines. Evidence within Exhibit J addresses five such hazards:

1. Turbine failure. Modern turbines are as tall as the Statue of Liberty and have blades the length of three Greyhound buses. Brake failure can cause turbines to spin out of control, throw blades and/or explode. Such failures are documented to shoot high-velocity metal fragments over a half-mile area. Considering the mechanical stresses from our severe weather – high-velocity straight-line winds, ice storms, and record-level temperature extremes – NextEra provides inadequate information documenting the level of this hazard or steps to minimize danger to people and livestock.

2. Turbine flicker. A strobe-light effect from blades passing between viewer and the sun can trigger epileptic seizures, migraines, vertigo and loss of balance, especially for those with inner ear sensitivities and/or who are prone to motion sickness. NextEra states affected parties will experience 23 hours of flicker per year and deem this inconsequential; it has not, however, presented adequate documentation regarding long-term exposure to humans from flicker.

3. Long-term effects of exposure to low frequency, pulsed sound and vibration. Independent studies link modern industrial turbines to vibroacoustic disease. The blades' unique pulsing resonates within chest cavities and can cause heart palpitations, anxiety, and more in susceptible humans (Exhibit J). NextEra denies the significance of this disease, but at least one lawsuit has been won by a plaintiff suffering from vibroacoustic disease related to working near turbines.

4. Ice throw. A Rutgers University study in the public record demonstrates turbines can “throw” ice – the size of car doors – one-half mile at approximately 200 miles per hour. This ice will fly farther and faster in high winds or during brake failure. This problem has been observed in climates far less extreme than ours and has not been satisfactorily addressed by NextEra, which will try to control North Dakota turbines from far-distant Florida.

5. Wind Turbine Syndrome (WTS). WTS manifests as headaches, earaches, sleep deprivation (and side effects of inadequate sleep), elevated blood pressure, depression and much more. NextEra maintains WTS is an unsubstantiated theory, but the public record includes substantiation of WTS, and a peer-reviewed publication is about to be released. Research and experience are still in early stages, but it is incumbent on the PSC and developers to set standards that recognize the possibility of this hazard BEFORE turbines are sited – not after.

Modern industrial turbines operating within one mile of dwellings are high-risk because of these and other hazards – including the potential affects of stray voltage to humans, livestock and other animals.

The affected parties also testified that NextEra surveyors trespassed on their properties to site turbines near their homes. It was this trespass that alerted affected parties to the placement

of the proposed turbines. The affected parties were neither notified nor consulted regarding NextEra's plan to place these 400-foot industrial machines over their homes and businesses. The MPower-NextEra transfer had not yet been approved by the PSC. Because of this conduct on the part of NextEra, the affected parties question whether NextEra has adequately disclosed information regarding potential hazards to the PSC or to participating landowners during lease negotiations.

ARGUMENT FOR RECONSIDERATION OF TURBINES 166, 170, 172 AND 172:

1. **Deferential treatment of NextEra v ND citizens:** Exhibit J indicates worldwide scientific research studies call for setbacks of at least one mile. The PSC is charged by the North Dakota legislature to determine adequate setbacks in ND, and is still in the process of completing this task. Therefore, it is unacceptable for the PSC to allow NextEra to construct turbines within a mile of homeowners until the commissioners fulfill their duties, submit their recommendations, and the legislature accepts them. **We call for the immediate cessation of all construction on turbines 166, 170, 171 and 172 until the setback issue has been fully, legally and completely addressed by the North Dakota legislature.**

2. **Noise:** The PSC disallowed turbine 165 on July 8, because it was too close to Volden Farm Bed & Breakfast, and guests expect a quiet and serene setting. The PSC's action is commendable but insufficient. Turbine 172 is sited similarly as close as 165 to Volden Farm, and for that reason alone, should either be disallowed or moved back. Also, the affected parties invested hundreds of thousands of dollars in their homes and businesses specifically to be in this same quiet environment. They must be afforded the same protection as bed and breakfast guests.

7. The acoustic assessment illustrated the worst case scenario (downwind, full rotational speed, high air density, low background and sound levels). The analysis indicates that with respect to occupied residences within or adjacent to the wind farm that the average sound levels will meet EPA guidelines.

(Findings of Fact, Conclusions of Law, and Order; Case Nos. PU-08-34 and PU-09-221; Page 5)

NextEra refers to "average sound levels" as shown in Finding #7. This statement misrepresents the analysis, because *averaging* does not represent worst-case scenarios. In addition, the finding indicates NextEra has failed to address increased acoustic problems that occur after sunset.

NextEra LLC has also failed to make the important distinction between *sound* and *noise* in its discussion of acoustic effects, thereby misrepresenting the effects of noise pollution on humans. Sound can be discussed in terms of physics (i.e. decibels), whereas noise is a *human perception* of sound. Two sounds can be of equal decibels but be tolerated very differently – for example, the noise of a cement mixer is generally perceived differently than the noise of a rushing creek.

Mark Askerooth, an enthusiastic leaseholder in Ashtabula I, clearly admitted, during his June 5th testimony, that the turbines surrounding his home are loud – but because he is a leaseholder, the noise is, to him, the sound of money and freedom. Not so for his neighbors.

Dennis Stillings, who is living among turbines in Ashtabula I, explains: "The *whup-whup-whup* of the turbines can continue unabated, 24/7, for days on end. It is said that the noise level is at

about the level of ordinary human conversation. But how would you like to have a stranger sitting in the corner going ‘whup-whup-whup,’ at about one-second intervals, while you’re trying to hold a conversation with another human. What NextEra says, without blushing or batting an eye, condemns them out of their own mouths.”

Cathryn Stillings, who also lives in Ashtabula I, testified the only place she finds relief from turbine noise is inside an insulated chicken coop on their farm. She must use earplugs to sleep.

Recall developer’s attorney saying sleep deprivation in Ashtabula I is irrelevant. NextEra has used this same dismissive attitude to often concerning non-participating landowners.

NextEra conflates the concepts of sound and noise and therefore has inadequately addressed the issue of noise pollution in quiet rural settings.

3. Inadequate re-siting response from NextEra: On June 5, Commissioner Kalk asked NextEra LLC to study the possibility of moving turbines 165, 166, 170, 171 and 172 farther away from the affected parties. On June 17, attorneys for NextEra responded that none of the turbines could – or would – be moved. NextEra’s late-evidence response shows no proof that the developer seriously considered Commissioner Kalk’s request. NextEra’s attorney simply argued the turbine configuration is too tight to make changes.

It must be noted that, upon becoming involved in Ashtabula II, the configuration became too tight because NextEra ADDED seven additional turbines that MPower did not have in their original plan. *NextEra has made statements about turbine micro-siting without providing actual evidence.*

4. Inadequate investigation of health and safety concerns: The PSC has offered no assurance it considered probative evidence (Exhibit J) submitted by the affected parties on June 5. Indeed, the comments of each commissioner regarding the “loudness” of wind, during their July 8 meeting, indicates they have not studied the issue of how noise conditions dramatically change after dark. As the probative evidence clearly explains, surface winds stall out at sunset, but resultant conditions at 400 feet in the air become ideal for maximum turbine rotation.

Dennis Stillings testified on June 5: “Depending on a variety of variables including wind speed, wind direction, terrain, and time of day, the turbines generate noises that sound variously like a huge cement mixer or dishwasher, a jetliner that is overhead, but doesn’t move on, or a peculiar whap, whap, whapping. It can be heard throughout the house, particularly at night. The first time I heard it at its loudest, I came close to calling [NextEra’s] service people to report a failing bearing.” *Neither Next Era or the PSC has adequately studied or addressed health and safety concerns to humans and livestock living within one mile of modern industrial wind turbines.*

5. Inappropriate choice of turbines: Safer, quieter and more efficient generators (i.e. helix models) are already outmoding turbines proposed for Ashtabula II. If turbines are ultimately allowed within one mile of dwellings, NextEra LLC – and all other wind developers – must be required to use safer and quieter turbines near human dwellings throughout ND. *NextEra has not indicated it has considered alternative turbine designs, producing less noise, near dwellings.*

6. **Inadequate protection of citizens from loss of property value:** Evidence indicates homes lose up to 50% of market value if in close proximity to industrial wind turbines. Many citizens who succumb to the effects of turbines are forced to move. But, when they try to sell, their property is now, in effect, toxic. They are left with one option: abandoning their homes and losing all.

Scott Scovill, head of the Ashtabula II project, states there's no danger of affected parties' property losing value, yet he is unwilling to back up that assertion by providing property value protection plans to homeowners. Leaseholders can fall back on lease-money if forced to relocate. Yet, their non-compensated neighbors are ridiculed for trying to protect their health, homes and business investments, as seen on June 5. The PSC could easily mitigate this problem by keeping industrial turbines far away from dwellings. *As vividly demonstrated during our recent floods, North Dakotans help their neighbors SAVE their homes, not lose them.*

7. **Helicopter ambulances cannot fly within one mile of wind turbines:** This serious problem has yet to be addressed. Our rural population is older-than-average, and most live far from hospitals; many life-threatening situations will require emergency airlifts of our residents.

Ray Slavik, retired EMS helicopter pilot, describes the conditions necessary for an air ambulance to fly near the turbulence created by wind turbines. "One nautical mile would be too narrow. It would not allow for safe flight path even down the middle because of the influence of turbulence created by the Wind Turbines on either side. Even without the influence that air turbulence would have on the aircraft. You must provide room for safe travel, as well as to allow for a safe normal speed turn to be made. I would say that a clear flight path corridor should be a minimum of 1½ nautical miles, with 2 miles being the preferred distance." (<http://www.windaction.org/documents/14201>) *NextEra has failed to address this crucial and highly probable scenario.*

8. **Risk to North Dakota's wind industry:** NextEra does not indicate they provide full disclosure to potential leaseholders regarding potential hazards to themselves, their families, their livestock and/or their neighbors. If leaseholders are not provided full disclosure, inadequate setbacks will continue, potentially pitting landowner against landowner as problems arise. Communities will continue to be ripped apart, and the social fabric that is unique to the Dakotas – neighbor helping neighbor – will be irreparably harmed. General opposition to wind farms will escalate as ill effects of inadequate setbacks emerge. Thus, the future of wind energy in North Dakota is directly jeopardized. Implementing safer setbacks for citizens throughout the state could mitigate this. *NextEra has failed dramatically in addressing the social impact of its development programs on North Dakota communities and the potential negative impact on the future of wind industry within the state.*

CONCLUSION

The affected parties respectfully request the PSC to consider the hazards to life and property and require NextEra to site the proposed turbines farther away from affected parties' homes and business while still retaining them on the participating landowners' properties. If this is not possible, the affected parties request that the proposed turbines be disallowed.

We certify that a copy of this petition has been mailed to:

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

Brian R. Bjella, Attorney-at-Law, Crowley Fleck, PLLP, 400 East Broadway, Suite
600, Bismarck, North Dakota 58501, on behalf of the Intevenor, Ashtabula Wind II, LLC.

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

Summary of petition for reconsideration: Residents of Broadview Township, Griggs County, and other North Dakota citizens are asking the Public Service Commission to have a rehearing on the Ahtabula II wind farm project case no. PU-08-34, and to re-evaluate the siting of a group of turbines identified as nos. 166, 170, 171 and 172.

Name

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