

North Dakota Public Service Commission
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PUBLIC SERVICE COMMISSION

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" and other North Dakotans seek a re-hearing concerning NextEra LLC's sites for four of thirty-one turbines in 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?

Findings of Fact, Conclusions of Law, and Order, Case Nos. PU-08-34 and PU-09-221, Page 2

Issues 1 and 3 have not been adequately addressed by the PSC. The affected parties asked the PSC that proposed turbines 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

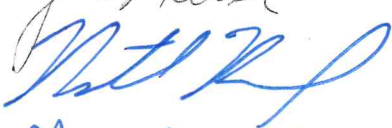


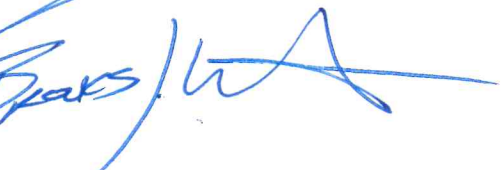
Brian R. Bjella, Attorney-at-Law, Crowley Fleck, PLLP, 400 East Broadway, Suite
600, Bismarck, North Dakota 58501, on behalf of the Intevenor, Ashtabula Wind II, LLC.

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.

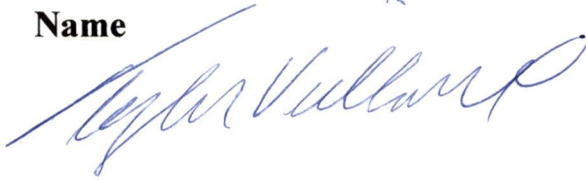



Summary of petition for reconsideration: Residents of Broadview Township, Griggs County, and other North Dakota citizens are asking the Public Service Commission to have a rehearing on the Ashtabula II wind farm project case no. PU-08-34, and to re-evaluate the siting of a group of turbines identified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

Name	Address
Jan & Veile Sandra G. Weile	12545 2d St SE Hope ND 58046 12545 2nd St SE Hope, ND 58046
B.G. Gatz	11561 Gr 22 Cooperstown, ND 58425
Jeffrey Duncan Murray Stokka	3130 E Divide ave Bismarck ND 58501 11641 County Rd 22 Cooperstown ND 58425
Janet Metz Emily Duncan	11561 County Rd Cooperstown ND 58425 3130 E Divide ave Bismarck, ND 58501
Connie Stokka	11551 2nd St SE, Cooperstown, ND 58425
Cathryn Stillings	2225 123rd Ave SE. Valley City ND 58072
Joe House	2731 155 AVE SE. Amenia, N.D 58004
Cary Muscha	407 West Reef St Amenia, ND 58004

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Name Jim Miller	Address 720 119TH AVE SE LUVERNE ND 58056
	1602 Dakota Drive Apt 105 Fargo, ND 58102
Mary Ann Miller	720 119th Ave SE Luvorne, ND
 ADAM MILLER	(USMC) ND CITIZEN 1860 Monagan Loop #B Yuma, AZ 85365
Betsy Ness	707 OAK AVE. Hatton ND 58240
Clark Parker	Hope ND, 58046 P.O. Box 61
Tina Hilt	2571 Villa drive Apt #101 Fargo, ND 58103
	Hope, ND 402 Steele Ave
	Hope, ND / 13498 12th Ave SE
Coy Parkman	W Fargo ND 580108 1414 4th to E
Benjamin Parkman	Fargo ND 58103 4466 4th St S Apt. 309
Aaron Stevens	Page ND 58084 13222 18th St SE

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Name	Address
	1628 5th Ave. South Fargo, ND
Becky Nelles	1714 Gold Dr. #205 Fargo, ND 58103
	1714 Gold Dr #205 Fargo, ND 58103
	1101 3rd Ave W W.F. 58018
Amanda Dockett	P.O. Box 313 Gwinner ND 58040
	P.O. Box 389 Gwinner ND 58040
Damantha Hun	P.O. Box 389 Gwinner ND 58040
Richard Sore	P.O. Box 283 Gwinner ND

over

Chris Handan

Josh Olson

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Name

Address

Mardene Halverson 11498 Co 22 Cooperstown, ND

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Karn Brugger

141 Lake Ave.

Sibley ND 58429

Myron Sprague

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Sibley ND 58429

Jennis Stelling

2225-128th Ave SE

Valley City, ND 58072

Mardene Thompson
P.O. Box 412, 703 8th St NW
Cooperstown, ND. 58425

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Name	Address
Johnell Wald	11943 Cty Rd 26 Lumera, ND 58056
Carolyn Lunde	90 117th ave SE Cooperstown, ND 58425
Travis Lunde	90 117th ave SE Cooperstown, ND 58425
Rebecca Loge	11799 1st St SE Cooperstown ND 58425
Gene Loge	52nd 11799 1st SE Cooperstown, ND 58425
Virginia Coles	401 4th St. S.W. Cooperstown ND 58425
Deb Abeille	107 Tyler Court Finley, ND 58230
Lori Stokka	11641 County Rd 22 Coperstown, ND 58425
Rebecca Edland	824 Bunde Ave W. Cooperstown, ND 58425

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Name

Address

Arnold Stokke

*11551 2nd Street SE
Cooperstown, ND 58425*

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Name	Address	Phone:
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Raymond R. Lang	1001 Rollin Ave. Cooperstown, ND	701-797-3155
Helen & Bob	1104 Hobart Cooperstown ND	797-2342
Bertine Kottke	103 Park Ave Cooperstown ND	797-2804
Bew Clifton	707 Chuckle Ct. Cooperstown, ND	797-2459
Marilyn Hagen	1206 Burrill Ave Cooperstown ND	797-2514
Paul J Hagen	1206 Burrill Ave Cooperstown ND	58425 797-2514
Jan Culkins	706 - 9 th S.W. Cooperstown ND	58425 797-2755
Patsy Klubben	1006 Rollin Ave NE Cooperstown, ND	58425 797-2263
Carol Driller	1002 Lenham Ave SE Cooperstown N.D.	797-2314
Joyce Erickson	204 Roberts Ave NW Cooperstown, ND	58425 797-2187
Batrice Erickson	1105 Howard Ave. N.E. Cooperstown, ND	58425 797-2343
Allan Clifton	601 11 th St Post 23 Cooperstown ND	58425 7891484
Don Aman	12025 4 th St SE Cooperstown, ND	58425 797-2525

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Name	Address
Julie Mindt	749 12 th St NW Valley City ND 58072
Larry Wetland	1001 5 th Ave N.W Valley City ND 58072
Brim Mindt	749 12 th St NW VALLEY CITY ND 58072

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Name	Address
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Jayne Sperry	P.O. Box 208 Cassette, ND. 58012
Laurie Bartz	P.O. Box 208 Cassette ND 58012
Jan Buswell	2671 22nd Ave NE Martin, ND 58758
John Hill	321 Adams Avenue Harvey, ND 58341
Wayne Muscha	206 2nd Ave NW Selz, ND 58341
Og Hill	3236 26th ST NE Harvey, ND, 58341
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