

LAW OFFICES OF
FLECK, MATHER & STRUTZ, LTD.

400 East Broadway, Suite 600, Wells Fargo Bank Building

P. O. Box 2798, Bismarck, North Dakota 58502

Telephone: 701-223-6585 Facsimile: 701-222-4853 E-Mail: fms@flecklaw.com Website: www.flecklaw.com

GARY R. WOLBERG+
PAUL W. SUMMERS
BRIAN R. BJELLA**
JOHN W. MORRISON
CURTIS L. WIKE**
CRAIG C. SMITH^

ALSO LICENSED IN:

* Minnesota

° Montana

+ Iowa

^ Wyoming

□ Nebraska

May 21, 2008

RECEIVED

SHANE A. HANSON
MICHAEL C. WALLER°
PETRA H. MANDIGO□
CHRISTOPHER D. FRIEZ
CRAIG B. BURNS
WADE C. MANN

ERNEST R. FLECK
(1921-1995)
RUSSELL R. MATHER
(RETIRED)
WILLIAM A. STRUTZ
(RETIRED)

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

MAY 22 2008

PUBLIC SERVICE COMMISSION

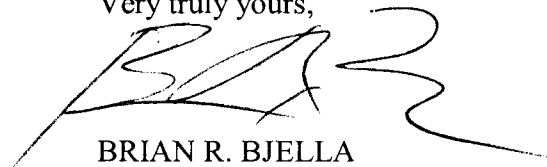
Dear Ms. Jeffcoat-Sacco:

In re: Ashtabula Wind, LLC
230 kV Electric Transmission Line - Barnes County
Siting Application
Case No. PU-08-73
Our File No. 1248-28641

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

Please call should you have any questions.

Very truly yours,



BRIAN R. BJELLA

bw
Enc.

21 **PU-08-73** Filed: 5/22/2008 Pages: 7
Proposed Findings of Fact, Conclusions of Law and Order

Ashtabula Wind, LLC

Fleck Mather & Strutz, LTD, Brian Bjella

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Case No. PU-08-73

**Ashtabula Wind, LLC
230 kV Electric Transmission Line - Barnes County
Siting Application**

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

May ____, 2008

Appearances

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

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

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

Allen C. Hoberg, Administrative Law Judge and Director, Office of Administrative Hearings, 1701 North Ninth Street, Bismarck, North Dakota 58501-1882.

Preliminary Statement

On February 20, 2008, Ashtabula Wind, LLC (Ashtabula Wind) filed a Letter of Intent (LOI) regarding construction of a 230 kV transmission line in Barnes County, North Dakota.

On February 27, 2008, the Commission shortened the one-year waiting period to one day, and assessed a filing fee of \$15,000.00.

On March 24, 2008, Ashtabula Wind filed an Application for a Waiver or Reduction of Procedures and Time Schedules and a Consolidated Application for a Certificate of Corridor Compatibility and Route Permit authorizing construction of approximately 9.5 miles of 230 kV electric transmission line and associated facilities extending from the proposed Ashtabula Wind Energy Center to an interconnection to be established near Pillsbury, North Dakota. Ashtabula Wind filed revised applications on April 2, 2008. On April 4, 2008, the Commission found the revised application to be complete and issued a Notice of Filings and Notice of Hearings scheduling a public hearing to begin May 2, 2008, at 9:00 a.m. CDT in the Valley City auditorium, 320 Central Avenue South, Valley City, North Dakota 58072. The Notice identified the following issues to be considered:

1. Will the location, construction and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?

2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?

3. Will the proposed facility location minimize adverse human and environmental impacts while ensuring continued system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

4. Is it appropriate for the Commission to waive procedures and time schedules requested, including the request for a single consolidated application for corridor certificate and route permit?

On May 2, 2008, the hearing was held as scheduled.

Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Ashtabula Wind is a Delaware limited liability company headquartered in Juno Beach, Florida. Ashtabula Wind is a subsidiary of FPL Energy, LLC, also of Juno Beach, Florida, which is a national leader in producing electricity from clean and renewable fuels.
2. The proposed 230 kV transmission line will be an alternating current transmission line originating at the substation within the Ashtabula Wind Energy Center, and terminating at the proposed Pillsbury 230 kV substation operated by Minnkota Power Cooperative, Inc.
3. From the Ashtabula Wind Energy Center substation located in Section 10 of Township 142, Range 57, the line will proceed west by a quarter mile to 123rd Avenue. The line will then proceed generally due north approximately six miles to the intersection with 14th Street SE. The line will then proceed east approximately three miles, and there tie in to the Pillsbury substation.
4. No exclusion areas have been identified within the proposed route.
5. The estimated cost of materials and construction for the transmission line is approximately \$15,000,000.00.
6. Ashtabula Wind has obtained all easements necessary for construction of the transmission line and associated substation.

7. Ashtabula Wind has completed both Class I record search, and also a Class III pedestrian survey for the entire proposed route for a width of 200 feet, the operations and maintenance building, and of the collection substation, for archeological and cultural resources. Neither the Class I nor Class III searches revealed any eligible sites within the proposed route.
8. There are four occupied residences located within 500 feet of the proposed line. Ashtabula Wind has obtained written waivers from owners of the residences.
9. Construction and operation of the transmission line will conform to requirements of the National Electric Safety Code.
10. Single pole, steel or wood structures will be used for construction of the transmission line.
11. The only avoidance areas potentially impacted by the transmission line route are 5.35 acres of CRP land, 2.09 acres of surface water, and 1.24 acres of U.S. Fish and Wildlife Service Wetlands. Although located within the route, these USFWS jurisdictional wetlands will not be impacted. The Commission finds no reasonable alternative that would avoid these avoidance areas.
12. With respect to the selection criteria of the Commission, 5.94 acres of woodlands/wooded areas, and 7.17 acres of wetlands are located within the route. Based on the limited impacts to US Army Corps of Engineers jurisdictional wetlands, the project activities will likely qualify for authorization by a Nationwide General Permit #12. No alternations will be made to existing wetland drainage patterns. With respect to woodlands/wooded areas, limited impacts are expected by construction of the transmission line.
13. Ashtabula Wind is in the process of completing an avian survey. Avian impacts are believed to be minimal. Ashtabula Wind will implement measures to avoid and minimize effects to wildlife by siting facilities away from wetlands and woodlands when possible. Bird safe designs pursuant to the Avian Power Line Interaction Committee recommendations will be utilized when necessary.

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The transmission line proposed by Ashtabula Wind and associated collection substation are transmission facilities as defined in North Dakota Century Code § 49-22-03(11).
3. The proposed project is of such design, location and purpose that it will produce minimal adverse effects, as defined in North Dakota Century Code § 49-22-05.2.

4. The application submitted by Ashtabula Wind, as amended, meets the corridor and route evaluation criteria required by North Dakota Century Code Chapter 49-22.
5. The location, construction, and operation of the proposed transmission line and collection substation will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
6. The proposed transmission line and collection substation are compatible with environmental preservation and the efficient use of resources.
7. The proposed transmission 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 corridor and route will allow for the transmission of environmentally sustainable wind power.
9. The proposed transmission corridor and route is of such length, design, location and purpose that they will produce minimal adverse affects.
10. The requested waivers of procedures and time schedules are justified based upon: the relatively short length of the transmission line; minimal impacts on the environment and the welfare of the citizens of North Dakota; the lack of objection to the proposed corridor, route and collection substation by federal, state and local governmental bodies and agencies and by area landowners; and the objective to have the project in operation by December 31, 2008.

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

Order

The Commission orders:

1. Ashtabula Wind's Revised Application for Waiver of Procedures and Time Schedules is granted.
2. Certificate of Corridor Compatibility for Transmission Facility Corridor No. ____ is issued to Ashtabula Wind.
3. Route Permit for construction of a Transmission Facility No. _____ is issued to Ashtabula Wind granting authority to construct the proposed transmission line and associated collection substation.
4. Ashtabula Wind shall construct a pre-construction conference prior to the commencement of any construction, which must include a company representative, construction

supervisor, and a representative of the Commission staff to ensure that Ashtabula Wind fully understands the conditions set forth in this Order.

5. Ashtabula Wind shall comply with all the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project. Prior to commencing construction of any phase of the proposed project, Ashtabula Wind shall obtain all other necessary approvals and permits for construction of such phase, and provide copies to the Commission prior to the construction of each such phase.
6. Ashtabula Wind shall inform the Commission of its intent to start construction on the transmission line and associated collection substation prior to the commencement of construction, and, once construction has started, Ashtabula Wind shall keep the Commission updated of construction activities on a weekly basis.
7. Ashtabula Wind shall construct and operate the transmission line and associated collection substation in the manner described in the revised application and at the hearing in late filed exhibits, and in accordance with all applicable safety requirements.
8. Ashtabula Wind shall report to the Commission the presence in the permit area of any critical habitat of threatened or endangered species, or a bald or golden eagle that Ashtabula Wind becomes aware of and were not previously reported to the Commission.
9. If any cultural resource, paleontological resource, archeological site, historical resource, or grave site is discovered during construction of the facilities, earth disturbing activities in the immediate vicinity of the discovery must be halted. The resource must be marked, preserved, and protected from further disturbance until a professional examination can be made and consultation with the North Dakota State Historic Preservation Office (SHPO). A report of such examination must be filed with the Commission, and clearance to proceed must be given by 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 will be completed by Ashtabula Wind according to the Natural Resource Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.

14. Ashtabula Wind's obligations for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission system.
15. Trees and other woody vegetation must be replaced at a rate of two for every one removed along the route. Landowners shall be given the option of having replacement trees/shrubs planted off the right-of-way on the landowners' property or waiving that requirement in writing, and allowing replacement plantings of trees/shrubs elsewhere. Ashtabula Wind shall inspect tree replacements once a year for three years and send a report on or shortly before October 1 of 2009, 2010, and 2011 to the Commission documenting work completion and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75% of the required ratio of two for one.
16. Ashtabula Wind shall provide the Commission with copies of design specifications for construction of the transmission line and associated collection substation showing the location as built within three months of the completion of construction.
17. Ashtabula Wind shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the transmission system.
18. Ashtabula Wind shall obtain approval from the Commission or from Commission staff prior to any changes in structure locations.
19. The authorizations granted by the corridor certificate and route permit 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