

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**M-Power, LLC**  
**230 kV Electric Transmission Line-Steele County**  
**Siting Application**

**Case No. PU-08-107**

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

**October 30, 2008**

**Appearances**

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

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

Annette Bendish, Counsel, North Dakota Public Service Commission, State Capitol Building, 12<sup>th</sup> 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 Ninth 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 and assessed a filing fee of \$22,750 due upon the filing of the application.

On May 21, 2008, M-Power filed a consolidated application for a waiver of procedures and times schedules, a certificate of corridor compatibility application, and a route permit application 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 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 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?

The Commission held the public hearing on M-Power's Application as scheduled on July 28, 2008 in Cooperstown, North Dakota. Following the hearing, the Commission received from M-Power certain late filed exhibits as requested 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 proposed by M-Power in this Application would interconnect with M-Power's proposed Luverne Wind Farm (Case No. PU-08-34.)
2. The proposed 230 kV, 3-phase, alternating current electric transmission line will be located in Steele and Barnes Counties, North Dakota, and will be approximately 13 miles in length extending from M-Power's Luverne Wind Farm collector substation to an interconnection with a new Pillsbury-Fargo transmission line and Pillsbury substation under construction by Minnkota Power Cooperative, Inc. (Case No. PU-08-48)
3. Otter Tail Corporation has filed an application for a certificate of public convenience and necessity to construct and own the proposed 230 kV transmission line along with a portion of the proposed Luverne Wind Farm. That application is pending before the Commission. (Case No. PU-08-766)

4. The proposed transmission 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.

5. 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, the Rural Utilities Service, the Avian Power Line Interconnection Committee, the Raptor-Safe Design standards, and M-Power company standards.

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

7. 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.

8. M-Power's application and supplemental filings contain a listing of permits and approvals that must be obtained for M-Power's proposed transmission facility and the status of each of these permits or approvals.

9. The federal, state and local departments, agencies, and entities that were consulted by M-Power and provided comment during the application process are:

- 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 Enesco, Inc.

10. Chapter 69-06-08 of the North Dakota Administrative 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 Administrative 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 Selection Criteria, a transmission route shall be approved only 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.

11. The corridor and route proposed by M-Power for its transmission facility does not include any geographical areas listed as Exclusion Areas.

12. The corridor and route proposed by M-Power for its transmission facility does not include any geographical areas listed as Avoidance Areas except that there are several inhabited residences within the proposed corridor, none of which are within 500 feet of the proposed route.

13. M-Power has completed both a Class I record search, and a Class III pedestrian survey for archeological and cultural resources for a width of 150 feet along the proposed route. Neither the Class I nor Class III searches revealed any sites thought to be eligible for the National Register of Historic Places. The State Historic Preservation Officer (SHPO) concurred with a "No Significant Sites Affected" determination.

14. The proposed route will result in the loss of a minimal amount of woodlands. Those woodlands primarily consist of field or farmstead windbreaks. Structure placement was requested 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.

15. M-Power conducted a wetland delineation of the proposed route. There are numerous wetlands 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 US Army Corps of Engineers before commencement of construction of its proposed transmission facility.

16. 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 Administrative Code.

17. M-Power submitted substantial evidence to demonstrate its commitment to maximize the benefits of the proposed transmission facility as much as is possible to

meet the Policy Criteria set forth in Section 69-06-08-01(4) of the North Dakota Administrative Code.

18. 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.

19. 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.

20. 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.

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

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

23. Land use is not expected to change because 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.

24. No impact to geologic and groundwater resources are anticipated because of the proposed transmission line.

25. 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.

26. No rare or unique resources have been identified along the route. It is not anticipated that the proposed transmission facility will impact rare and unique resources. Raptors, waterfowl, and other bird species may be affected by the construction and placement of the proposed 230 kV transmission line. The proposed route is located outside of the 180 mile-wide whooping crane migration corridor where 95% of Whooping Crane sightings in North Dakota have occurred. 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.

27. 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. 106 is issued to M-Power, designating a Corridor for its proposed transmission facility route.

3. Route Permit for Construction of a Transmission Facility No. 107 is issued to M-Power granting authority to construct the transmission facility as described in the application and presented at the hearing.
4. M-Power shall conduct a preconstruction conference prior to commencement of any construction, and must include an 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. 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 to the Commission prior to the construction of each such phase.
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 resource, paleontological site, archeological site, historical site, or gravesite is discovered during construction of the facility, earth disturbing activities in the immediate vicinity of the discovery must be halted. The resources must be marked, preserved, and protected from 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 must be filed with 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 or USFWS recommendations for CRP, native prairie and other non-cropped lands unless otherwise specified by the landowner and approved by the Commission. M-Power's obligation for reclamation and maintenance of the right-of-way shall continue throughout the life of the transmission line.

14. M-Power shall comply with the Commission's Tree and Shrub Mitigation Specifications attached to this Order, except that the width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 125 feet rather than 50 feet.

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


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


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

18. 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 within three months of the completion of construction.

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

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

**M-Power, LLC**  
**Electric Generation/Wind – Griggs/Steele**  
**County**  
**Siting Application**

**Case No. PU-08-34**

**M-Power, LLC**  
**230 kV Transmission Line Barnes/Steele County**  
**Siting Application**

**Case No. PU-08-107**

**Tree and Shrub Mitigation Specifications**

**Inventory**

1. Trees and shrubs anticipated to be cleared, including those that are considered invasive species or noxious weeds (*e.g.*, *Caragana arborescens*, *Elaeagnus angustifolia*, *Rhamnus cathartica*, *Tamarix chinensis*, *T. parviflora*, *T. ramosissima*, *Ulmus pumila*), shall be inventoried before cutting. The inventory shall record the location, number, and species of trees and shrubs.
2. In windbreaks, shelterbelts, and other planted areas, trees or shrubs anticipated to be cleared, regardless of size, shall be inventoried for replacement.
3. In native growth areas, trees anticipated to be cleared that are 1-inch diameter at breast height (dbh) or greater shall be inventoried for replacement.
4. In native growth areas, shrubs anticipated to be cleared in the permanent right-of-way shall be inventoried for replacement.
5. In native growth areas outside the permanent right-of-way, shrubs shall be cut flush with the surface of the ground, taking care to leave the naturally occurring seed bank and root stock intact. If soil disturbance is necessary, the native topsoil shall be preserved and replaced after construction. Shrubs shall be allowed to regenerate naturally where native topsoil is preserved and replaced. Where native topsoil is not preserved and replaced, shrubs anticipated to be cleared shall be inventoried for replacement.
6. In native growth areas, trees and shrubs may be inventoried by actual count or by sampling method that will properly represent the woody vegetation population. A sampling plan developed by the company, filed with the North Dakota Public Service Commission (Commission), and approved prior to the start of construction shall define the sampling method to be used for trees, for tall shrubs and for low shrubs. The data from the sample plots shall be extrapolated to the total acreage of the wooded area to be cleared to determine the species and quantity of trees and shrubs to be replaced.

### **Clearing for Construction**

7. Trees and shrubs shall be selectively cleared, leaving mature trees and shrubs intact where practical.

8. The width of clear cuts through windbreaks, shelterbelts and all other wooded areas shall be limited to 50 feet or less unless otherwise approved by the Commission.

9. If the area of trees or shrubs actually cleared differs from the area inventoried, the difference in number of trees and shrubs to be replaced shall be noted on the inventory.

### **Replacement**

10. Prior to replacement, documentation identifying the number and variety of trees removed as well as the mitigation plan for the proposed number, variety, type, location and date of replacement plantings shall be filed with the Commission for approval.

11. Tree replacement shall be on a 2 to 1 basis with 2-year-old saplings. Shrub replacement shall be on a 2 to 1 basis with stem cuttings.

12. Trees and shrubs shall be replaced by the same species or similar species suitable for North Dakota growing conditions as recommended by the North Dakota Forest Service.

13. 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 those replacement trees or shrubs to be planted at alternative locations.

14. At the conclusion of the project, documentation identifying the actual number, variety, type, location, and date of the replacement plantings shall be filed with the Commission.

15. Tree and shrub replacements shall be inspected once a year for three years, on about the anniversary of the plantings, and, on or shortly before October 1 of each year, a report shall be submitted to the Commission documenting the condition of replacement planting and any woodlands work completed. If after three years from the anniversary of the plantings the survival rate is less than 75%, the Commission may order additional planting(s).

# **PUBLIC SERVICE COMMISSION**

## **STATE OF NORTH DAKOTA**

### **Route Permit No. 116**

*This is to certify that the Commission has designated a transmission facility route for M-Power, LLC's approximately 13 miles of 230 kV, 3-phase, alternating current transmission line and associated facilities in Barnes and Steele Counties of North Dakota.*


*This certificate is issued in accordance with the Order of this Commission dated October 30, 2008 in Case No. PU-08-107 and is subject to the conditions and limitations noted in the Order.*

*Bismarck, North Dakota, October 30, 2008.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
**Executive Director**

  
**Commissioner**

**PUBLIC SERVICE COMMISSION**  
**STATE OF NORTH DAKOTA**

**Certificate of Site Compatibility for a Transmission Facility Corridor**

**Certificate Number 106**

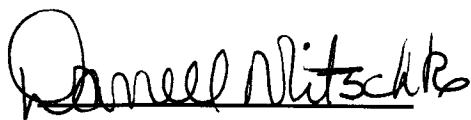
*This is to certify that the Commission has designated a transmission facility corridor for M-Power, LLC's approximately 13 miles of 230 kV 3-phase alternating current transmission line in Barnes and Steele Counties of North Dakota.*

*This certificate is issued in accordance with the Order of this Commission dated October 30, 2008 in Case No. PU-08-107 and is subject to the conditions and limitations noted in the Order.*

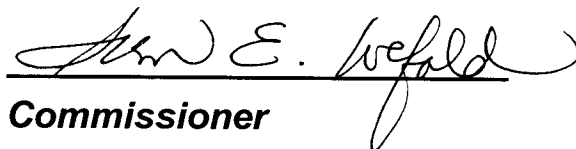
*Bismarck, North Dakota, October 30, 2008.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**



**Executive Director**



**Commissioner**