



33 South Sixth Street, Suite 4200  
Minneapolis, MN 55402  
T. 612.373.8800  
F. 612.373.8881  
www.stoel.com

SARA E. BERGAN  
D. 612.373.8819

sara.bergan@stoel.com

October 19, 2017

VIA EMAIL TO NDPSC@ND.GOV

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



**Re: Merricourt Application for a Second Amendment to its Certificate of Site Compatibility (Case No. PU-08-932)**

Dear Mr. Nitschke:

Please find attached for filing in the above-captioned docket:

1. Response of EDF Renewable Development, Inc. to Laborers' District Council of Minnesota and North Dakota Response to Findings of Fact dated October 19, 2017; and
2. Certificate of Service.

Sincerely,

Sara E. Bergan

SEB:cal  
Enclosure

cc (via email): Judge Timothy Dawson  
Mitch Armstrong  
Jerry Lein  
Kevin Pranis  
Chris Sternhagen

94459215.1 0041428-00156

**235 PU-08-932 Filed: 10/19/2017 Pages: 9**  
**Response to response to proposed Findings of Fact, Conclusions of Law and Order**

EDF Renewable Development, Inc.

Sara Bergan, Stoel Rives LLP

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

EDF Renewable Development, Inc.  
Merricourt Wind Energy Project  
Application for Second Amendment to  
Site Certificate No. 23

Case No. PU-08-932  
OAH File No. 20170176

---

**Response of EDF Renewable Development, Inc. to  
Laborers' District Council of Minnesota and North Dakota Response to Findings of Fact**

---

**I. SUMMARY**

On October 10, 2017, the undersigned counsel on behalf of EDF Renewable Development Inc. ("EDF") received from Mr. Kevin Pranis on behalf of the Laborers' District Council of Minnesota and North Dakota (the "Union") a response suggesting additional findings of fact and a new ordering point be added to the North Dakota Public Service Commission's ("Commission") Findings of Fact, Conclusions of Law and Order in Docket No. PU-08-932 (the "Merricourt Docket"). While the subject matter of the Union response addresses core issues of importance to EDF, EDF does not believe the record supports the additional proposed findings or provides the basis for the ordering point proposed by the Union.

**II. BACKGROUND**

On September 13, 2017 the hearing on EDF's application for a second amendment to its Site Certificate Number 23 in Docket Number PU-08-932 ("Application") was held in Ashley, North Dakota (the "Hearing"). At the Hearing several witnesses for EDF testified about the reports, studies and analysis done with respect to the Merricourt Wind Project ("Project"). Commission counsel and staff, intervening Parties, and the Commissioners asked questions in

order to establish a record on which to make a decision about whether the Project meets the state's siting criteria and make determinations with respect to the following questions:

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 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?

On September 1, 2017 the Union petitioned to intervene in the Merricourt Docket and Judge Timothy Dawson later granted that request just prior to the hearing. The Union had the opportunity to examine EDF's witnesses, present witnesses, and introduce exhibits in support of its case. The Union elected not to introduce any exhibits, but did cross-examine EDF's witnesses and present its own witnesses. These discussions were a productive opportunity to provide general information about the employment opportunities presented by wind energy development, EDF's hiring practices and priorities, and opinions on the availability of qualified area labor and the Union training programs.

On September 27, 2017 EDF filed its Proposed Findings of Fact, Conclusions of Law and Order ("EDF Proposed Findings of Fact") in which it aimed to supplement and amend existing findings with information newly established in the record specific to the current Project details and layout. The EDF Proposed Findings of Fact attempt to address the Commission's Siting Criteria set forth in North Dakota Century Code 49-22-05.1 and North Dakota Administrative Code 69-06-08 and with particular attention to the Commission's stated exclusion areas (general and those specific to wind) and avoidance areas.

### **III. UNION RESPONSE**

On October 10, 2017, the Union responded to the EDF Proposed Findings of Fact and proposed three additional findings of fact related to labor issues as follows:

28. Construction of large-scale wind energy generation facilities such as EDF's proposed Merricourt Wind Power Project can lead to the creation of high-quality employment and career opportunities for North Dakotans.
29. EDF has reaffirmed the company's commitment to utilize skilled and trained labor from North Dakota on the construction and maintenance of the Merricourt Wind Power Project wherever possible, and indicated that many area workers have relevant construction experience.
30. EDF intends to mitigate potential safety hazards associated with construction of large-scale wind energy generation facilities by selecting contractors that hire properly skilled and trained workers, and have a proven record of safe work practices including avoidance of fatalities on wind projects.

The Union contends that these findings are supported by the hearing record and are relevant to any determination by the Commission on EDF's application. Further the Union recommends the inclusion of the following ordering point:

10. EDF shall submit reports to the Commission during the construction process on the total number of construction workers employed for 30 days or more on the Merricourt Wind Power Project, and the number of said workers that were qualified as North Dakota residents under North Dakota Century Code §16.1-01-04(1)(c) for at least 30 days prior to the commencement of construction.

### **IV. EDF COMMENT ON UNION RECOMMENDATIONS**

EDF appreciated the discussion of these important topics during the Hearing. As explained by Patrick Weaver in his testimony, safety is a core value of the company. Similarly EDF confirmed that it is committed to trying to use qualified local labor to the extent practicable. The extent to which use of local labor is possible for any given project, however, depends on many factors, including the availability of skilled and trained workers, proximity to population centers, contractor qualifications and safety records, efficiencies and requirements of

the project's general contractor, the requirements of turbine manufacturers, and pricing. EDF prioritizes safety first and seeks to balance the other important considerations.

While EDF places high value on the subject matter raised by the Union, it does not believe the record supports their proposed findings or ordering point. The proposed finding Number 28, while not objectionable, is a broad statement about the industry not supported by any particular analysis in this record rather than a particular finding related to the Project.

The other proposed findings and ordering point put forth by the Union incorporate a concept of local or area workers that is not well established in the record. In fact at the Hearing, Patrick Weaver and Mr. Pranis discussed how large an area was being referred to when talking about area workers or local labor and notably did not reach a clear answer. The Project is located close to the South Dakota border and in reasonable proximity to the Minnesota border—conceivably positioning the Project to easily draw from workers from these neighboring states in addition to North Dakota residents. Ultimately the local availability of skilled laborers qualified for various Merricourt construction jobs was discussed in generalities at the hearing but when pressed to put a number or goal on what percentage of Project construction jobs could be local, EDF witnesses repeatedly declined to speculate as it is a highly variable matter from project to project. While EDF was happy to discuss these matters at the hearing and is willing to continue these discussions with the Union outside of this proceeding, EDF does not believe the record was sufficiently developed to support the proposed findings.

Even if the record included supporting evidence for the Union's proposed findings, it would be disproportionate and a departure from precedent to include several findings on one of the many Policy criteria the commission *may* consider when many of the core criteria the

Commission *must* consider are routinely and effectively addressed with a single simple (but supported) statement.

Further and with respect to the recommended ordering point, the Union newly presumes the appropriate standard or metric for local labor to be North Dakota Century Code 16.1-01-04(1)(c). That statute sets the standard for qualification of electors and requires a person be a resident of the state and particular precinct for at least thirty days immediately preceding any election. Additionally the other requirements under North Dakota Century Code 16.1-01-04(1) are that the person be at least 18 years old and a United States citizen. The implications of tying any reporting to this particular section of the Century Code were not addressed in any way during the hearing and are only minimally explained in the Union's response. EDF is concerned that such a requirement from the Commission could yield uncertainty as to compliance, set a confounding precedent and potentially yield adverse unintended consequences for residents of North Dakota and surrounding states alike.

Leaving the particulars of the Century Code cited aside, EDF is generally concerned about the Union's advocacy focused on narrowly defining "local" as in-state residents. Notably the geomorphology that makes for good wind resources like the buffalo ridge or the prairie coteau does not adhere to political boundaries and has created many opportunities on state borders – with some projects even spanning state borders. For its part the Merricourt project is just over an hour from Aberdeen, South Dakota. Meanwhile the Union, along with several others, recently intervened with respect to EDF's Stoneray Wind Project in Minnesota Public Utilities Commission Docket Nos. IP-6646/SW-13-216 making similar arguments but, in that case, specific to Minnesota. If preferences for in-state workers becomes a regional trend, there is a question whether workers in any particular state would benefit. The creation of similar in-state

preferences in South Dakota or Minnesota could limit opportunities for North Dakota workers in the region. EDF is supportive of a broader conversation on appropriate ways to track employment and economic development opportunities created from wind development but would urge that careful consideration be paid to the appropriate definition of "local" and that parties resist rushing to a definition that could have adverse consequences for North Dakotans as well as others.

Lastly and as a practical matter, EDF is concerned about the implications of singling out Merricourt or any other wind project to collect employment data as each project site is so varied. Merricourt for example is located in a remote area of North Dakota whereas other wind projects are located in closer proximity to population centers. In addition to the pitfalls of collecting and potentially using data from isolated or single samples, a trend of such treatment could force an uneven playing field and lead to competitive disadvantages for those projects that are singled out. EDF understands there are important issues to consider with respect to employment from wind development, but strongly encourages that they be taken up more deliberately and uniformly at the broader state level and with careful consideration as to the goals and purpose of any inquiry or data collection, if any.

For all of these reasons, EDF believes that continued discussion of these topics will be most productive outside this formal proceeding and in a less adversarial context. In general, the timing of a site certificate hearing is such that developers have often already negotiated or are in the late stages of negotiating a power purchase agreement or sale of the project such that changes to critical pricing terms or labor requirements are not possible. EDF, however, hopes to continue learning about the training and capabilities of the Union members and has encouraged the Union to bid on the Merricourt Project.

## V. CONCLUSION

EDF takes great pride in its commitment to safety and in creating opportunities for the local workforce in its contracting process and its ability to optimize safety, skills and local employment given the particulars of any project, site, and location. EDF has explained on the record its commitment to trying to use qualified local labor to the extent practical. EDF, however, does not believe it appropriate to make the findings and requirements the Union recommends without the record to support them. For these reasons, EDF respectfully requests that the Commission take no further action based on the Union's Response filing.

Dated: October 19, 2017

Respectfully submitted,

**STOEL RIVES LLP**

By: /s/ Sara E. Bergan

Sara E. Bergan

33 South Sixth Street, Suite 4200

Minneapolis, Minnesota 55402

T: 612-373-8800

F: 612-373-8881

E: sara.bergan@stoel.com

*Counsel for EDF Renewable Development, Inc.*

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

EDF Renewable Development, Inc.  
Merricourt Wind Energy Project  
Application for Second Amendment to  
Site Certificate No. 23

Case No. PU-08-932  
OAH File No. 20170176

---

**CERTIFICATE OF SERVICE**

---

I, Sara E. Bergan, hereby certify that I have on the 19th of October, 2017, served a copy of the following:

**Response of EDF Renewable Development, Inc. to Laborers' District Council  
of Minnesota and North Dakota Response to Findings of Fact**

on the attached list of persons via electronic mail; and by depositing a true and correct copy in a proper envelope with postage paid, addressed to the person, in the United States Mail at St. Paul, Minnesota.

Mr. Darrell Nitschke, Executive Secretary North Dakota Public Service Commission 600 East Boulevard Avenue, Dept. 408 Bismarck, ND 58505-4080	Timothy J. Dawson, Administrative Law Judge Office of Administrative Hearings 2911 North 4th Street, Suite 303 Bismarck, ND 58503
Kevin Pranis, Marketing Manager Laborers District Council of Minnesota & North Dakota 81 East Little Canada Road St. Paul, MN 55117	Mitchell D. Armstrong Special Assistant Attorney General 122 East Broadway Avenue, P.O. Box 460 Bismarck, ND 58502-0460

Dated: October 19, 2017

/s/ Sara E. Bergan

Sara E. Bergan

*Counsel for EDF Renewable Development, Inc.*