

NORTH DAKOTA PUBLIC SERVICE COMMISSION

<p>In the Matter of the Application for a Siting Permit for the Merricourt Wind Power Project in Dickey and McIntosh Counties, North Dakota</p> <p>ND PSC Docket No. PU-08-932</p> <p>OAH File No. 20170176</p>	<p>Second Response to Proposed Findings of Fact, Conclusions of Law and Order</p> <p>Laborers' District Council of Minnesota And North Dakota</p>
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The Laborers' District Council of Minnesota and North Dakota ("Laborers Union") provides the following reply to the response filed by EDF Renewable Development, Inc. ("EDF") to the Laborers Union's amendments to EDF's proposed Findings of Fact, Conclusions of Law and Order for the Merricourt Wind Power Project ("the Project").

The Laborers Union wants to begin by expressing our appreciation for EDF's continued willingness to engage in constructive dialogue over best practices in the areas of local job creation and contractor safety. We, like EDF and other interested parties, support timely approval of the company's application for a siting permit extension so North Dakota consumers, landowners and workers can reap the benefits of wind energy development.

The Laborers Union has reviewed EDF's response, and we welcome the opportunity to work directly with EDF and participate in any broader policymaking process that might arise from our proposal. We do not, however, believe that any of EDF's objections to our proposed findings and order point have merit.

Each of our proposed amendments derives from statements and commitments made by EDF and supported by testimony from representatives of EDF and other interested parties. We also want to clarify that our proposed amendments should not require EDF to make any changes to the contracting or otherwise impact project economics or execution. Further, we believe that the Public Service Commission ("Commission") has clear legal authority to adopt the

amendments proposed by the Laborers Union and a past practice of incorporating findings and order points that address specific concerns raised by the public and commitments made by applicants on a project-by-project basis.

As the Commission is aware, on October 10th, the Laborers Union submitted a response to a EDF as part of the company's application for Merricourt Wind Power Project. The Laborers Union's response largely endorsed EDF's proposed language, but called for inclusion of findings related to employment opportunities for local workers and contractor safety, as well as an order point requiring EDF to collect and report data on local construction hiring. A point-by-point review of our proposed amendment follows/

Proposed Finding 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.*

EDF indicates in its response that this finding is "not objectionable", but also "broad statement about the industry not supported by any particular analysis in this record". The Laborers Union contends, however, that the finding is clearly supported by testimony from EDF and other public witnesses; that it relates directly to the Commission's legal authority under the North Dakota Administrative Code to give preference to projects that employ North Dakota workers; and that it is relevant to the expressed public interest in ensuring that local workers benefit from wind development.

Proposed Finding 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.*

EDF contends that this finding "is not well established in the record" and "incorporate[s] a concept of local or area workers that is not well established in the record." EDF further argues that, "[E]ven 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 criteria that 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."

The Laborers Union notes, however, that a commitment to prioritize hiring of North Dakota workers was made by EDF predecessor organization enXco Development Corporation in the original siting application filed by Mr. Chris Sternhagen on October 6, 2010. The application states that:

“The proposed project is anticipated to create approximately 200 construction jobs, 8-12 long term operations and maintenance jobs, and 300 manufacturing jobs. enXco will use skilled and trained labor from this state wherever possible.” (Emphasis added)

Contrary to EDF’s assertion that the issue of local construction hiring is “not well established in the record,” it has been part of the record since the very beginning. The extended discussion of local hiring at the evidentiary hearing merely provided an opportunity for Mr. Sternhagen to reaffirm EDF’s 2010 commitment to prioritize hiring of local workers, and for the Laborers Union and other public participants to reinforce the importance of the issue to North Dakotans.

While we agree with EDF that there are different ways to define “local,” the original concept of local workers was established by company itself where the application makes an unambiguous commitment to use workers “from this state wherever possible.” Further, the application makes clear that the preference for North Dakota workers – rather than, say, workers living along Buffalo Ridge – is not an arbitrary choice by the applicant, but a recognition that priority for North Dakota workers is an explicit policy criteria set out in the North Dakota Administrative Code (see Summary of Policy Criteria, P. 17).

The Commission commonly incorporates findings that note specific concerns raised by public participants in evidentiary hearings and related commitments made by applicants that are designed to address those concerns. The Brady II Wind project is just one of many cases in which the Commission has incorporated such findings, including a finding on the applicant’s commitment to a maximum vehicular speed on project access roads – a finding that is not common across wind projects or evidently driven by a particular state or federal legal requirement.

It is unclear why the EDF evidently believes it would be appropriate for the Commission to incorporate findings related to applicants’ commitments on issues ranging from environmental impacts to maximum vehicular speeds, but not appropriate to incorporate findings related to the jobs created on the project, since the findings are based on EDF’s own stated commitments, and and creation of jobs for North Dakota workers is an explicit policy criterion established under the North Dakota Administrative Code for the siting of energy conversion facilities.

Lastly, we would note that incorporation of the proposed local hire finding into the Findings of Fact for the Project would not impose any additional burdens or requirements on the

Proposed Finding 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.

EDF's response not only makes no specific objection to the proposed finding on contractor safety, but also reiterates the claim made by the company's Senior Construction Director under oath that safety is a "core value of the company." The Laborers Union believes that the evidentiary hearing record provides ample support for the finding, and it appears based on the company's response that such a finding should not be controversial.

Proposed Order 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.

EDF provides several objections to the proposed local hiring requirement. First, the company argues that singling out Merricourt for such a requirement could put EDF at a competitive disadvantage with respect to other developers and owners of wind projects.

The Laborers Union has no desire to single out EDF and would welcome a decision by the Commission to imposed similar requirements imposed on upcoming wind energy projects. But, in our view, it would not be unfair or unusual for the Commission to impose a condition first on a single project based on the public input received at the hearing, and founded in the Commission's existing authority to consider local hiring in permitting.

By necessity, any new requirement must be imposed for the first time on a particular project, and the Commission has done so with other requirements that became a standard feature of Orders. Most important, however, it should be noted that a local hire reporting requirement is not a local hiring requirement, and therefore imposes no obligation beyond collection of easily obtained data. If adopted, in fact, it would be among the least burdensome reporting requirements imposed on energy projects. It would be ironic, in our view, if the Commission were only allowed to require reporting on birds and bats, but not on the humans affected by a project.

Second, EDF argues that use of a state-based reporting requirement may have unintended consequences in areas where the wind resource and workforce cross state lines. We would begin by pointing out that a preference for North Dakota workers is grounded in the North Dakota Administrative Code, which authorizes the Commission is specifically authorized to

weigh the benefits a project will provide to North Dakotans when considering energy conversion facility siting applications.

The Code specifically cites “[t]raining and utilization of available labor in this state for the general and specialized skills required” among the policy criteria for approval of siting applications (NDAC 69-06-08-01(6)(c), emphasis added). The preference under the Code for state-specific benefits is not limited to labor. The Commission is also authorized to give preference to applications that use “a primary energy source or raw material located within the state” and to those that commit at least “a portion of the energy produced for use in this state” (NDAC 69-06-08-01(6)(d) and (j), emphasis added). In short, the Commission is specifically charged to prioritize state-specific benefits and the proposed order point is consistent with this charge.

At the same time, the Laborers Union recognizes the importance of regional labor markets and the potential value of encouraging employment across state lines, especially in areas such as Southeast North Dakota which shares a workforce with Southwest Minnesota and Northeast South Dakota. The Laborers Union would propose to address EDF’s concerns by amending the order to require reporting on North Dakota resident workers as well as reporting on workers who reside within a given radius – say 150 miles – of the project, which would provide the Commission data on the impact both to the state and to workers in the local area.

Third, the company argues that use of the state residency definition established under North Dakota state law for purposes of voting is arbitrary and possibly impractical. The Laborers Union is open to use of an alternative residency as long as it does not subvert the intent of the requirement by defining workers who relocate temporarily for the purpose of working on the project as state residents. But we also believe that the proposed standard is workable and avoids the need to reinvent the wheel.

The members of the Laborers Union greatly appreciate the Commission’s attention to these important matters of local employment and worker safety, and hope that Commissioners will give considerations to our proposals.

Dated: November 2, 2017

Respectfully Submitted,

Laborers District Council of Minnesota & North Dakota



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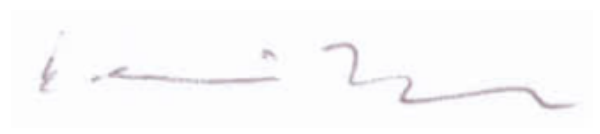
OAH File No. 20170176

CERTIFICATE OF SERVICE

I, Kevin Pranis, hereby certify that I have this day served a copy of the foregoing response to Response to proposed Findings of Fact, Conclusions of Law and Order in the application for a Site Permit for the Merricourt Wind Power Project

On the attached list of persons via electronic mail; and via hand delivery to the addresses listed below.

Dated this 2nd day of November, 2017



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