

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

Rough Rider 1 Wind, LLC) Case No. PU-09-84
175 MW Wind Farm - Dickey County)
Siting Application)

**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND ORDER
MAY ____, 2009**

Appearances

Commissioners: Kevin Cramer, Tony Clark and Brian Kalk.

Brian R. Bjella, Attorney-at-Law, Crowley Fleck, PLLP, 400 East Broadway, Suite 600, Bismarck, ND 58501, on behalf of the Applicant, Rough Rider 1 Wind, LLC.

Annette Bendish, Commission Counsel, Public Service Commission, State Capitol, Bismarck, ND 58505, on behalf of the Public Service Commission.

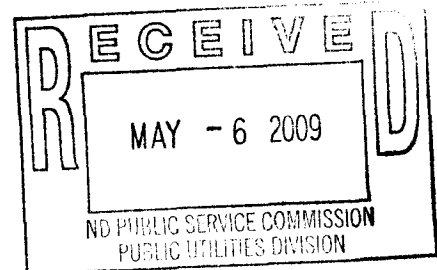
Al Wahl, Administrative Law Judge, 138 East Edmonton Drive, Bismarck, ND 58503-0384.

Preliminary Statement

On June 23, 2008, Rough Rider 1 Wind, LLC ("Rough Rider 1 Wind") filed a Letter of Intent ("LOI") to submit an application for a Certificate of Site Compatibility for a proposed 175 MW Rough Rider 1 Wind Energy Center in Dickey County, North Dakota. Rough Rider 1 Wind requested in its LOI that the Commission shorten the one-year waiting period between filing of the LOI and the filing of the Application. On July 2, 2008, the Commission shortened the one-year notice period to one day and assessed a filing fee of \$100,000.00.

30 **PU-09-84** Filed: 5/6/2009 Pages: 18
**Proposed Findings of Fact, Conclusions of Law and
Order**

Rough Rider Wind I, LLC
Brian Bjella, Crowley Fleck PLLP



On February 19, 2009, Rough Rider 1 Wind filed its application for a Certificate of Site Compatibility authorizing construction of the 175 MW Rough Rider 1 Wind Energy Center consisting of up to 116 wind turbine generators and associated facilities in Dickey County, North Dakota.

On March 11, 2009, the Commission deemed the Application complete and issued a Notice of Filing and Notice of Hearing scheduling a public hearing to begin April 28, 2009, at 10:00 a.m. CDT in the Fireside Restaurant at 414 First Avenue North, Ellendale, ND 58436. 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?

On April 28, 2009, the public 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. Rough Rider 1 Wind is a Delaware limited liability corporation headquartered in Juno Beach, Florida. Rough Rider 1 Wind is a subsidiary of NextEra Energy Resources, LLC (formerly FPL Energy), also of Juno Beach, Florida, and a

national leader in the development of wind energy. Rough Rider 1 Wind is authorized to transact business in the State of North Dakota as evidenced by a Certificate of Good Standing as issued by the State of North Dakota Secretary of State dated February 29, 2009.

2. Rough Rider 1 Wind proposes to construct the Rough Rider 1 Wind Energy Center consisting of up to 116 wind turbines and associated facilities in Dickey County, North Dakota.
3. Construction of the Rough Rider 1 Wind Energy Center is expected to take approximately six months, with an estimated cost of \$310,000,000.00.
4. The project site is located approximately seven miles north of Forbes, North Dakota. The project area encompasses approximately 16,100 acres (25 square miles). The wind turbines will be placed throughout the project site.
5. Associated facilities constructed within the project area include access roads, underground collection and feeder lines, meteorological towers, a collection substation, and an operations and maintenance building.
6. The project will have a name plate (gross) generating capacity of up to 175 MW. Assuming net capacity factors are between 42% and 48%, the projected average annual output is estimated between approximately 644,000 and 736,000 MW hours per year.
7. Rough Rider 1 Wind plans to use General Electric 1.5 MW turbines. These are utility grade turbines with a nominal plate rating of 1500 kW. Each turbine will have an 80 meter (262 feet) hub height and an 82.5 meter (271 feet) rotor diameter. The turbines begin operating at wind speeds of 3.5 meters per second

(7.8 miles per hour) and reach a rated capacity of 1.5 MW at wind speeds of 12.5 meters per second (28 miles per hour).

The turbines are designed to generate electricity in sustained wind speeds between 3.5 and 20 meters per second, or between 8 and 45 miles per hour.

8. Each turbine is secured by a concrete foundation. Turbine lighting is limited to warning lights required by the Federal Aviation Administration. The control panel inside the base of each turbine tower houses communication and electronic circuitry. Each turbine is equipped with a wind speed and direction sensor that communicates with the turbine's control system to signal when sufficient wind speeds are present for operation. Electricity generated by each turbine is brought to a pad-mounted transformer where the voltage is stepped up to a power collection line voltage of 34.5 kV. This electricity is collected by sets of underground power collection lines.
9. An underground feeder system delivers electricity to a project collection substation where the voltage is stepped up for transmission to 230 kV via an existing 230 kV transmission line owned by Montana-Dakota Utilities ("MDU").
10. Wind data was collected by meteorological towers located on the project site. The wind data collected indicates this is an excellent site for a wind farm.
11. Rough Rider 1 Wind will construct the Rough Rider 1 Wind Energy Center in compliance with the National Electric Safety Code.
12. Rough Rider 1 Wind contemplates commencing construction in July 2009. Construction is expected to take approximately six months to complete. Rough

Rider 1 Wind anticipates testing and operations will begin in October 2009, and anticipates commercial operation in December 2009.

13. Rough Rider 1 Wind has obtained all easements necessary for the construction of the wind turbines, ring bus/substation, lay down area, and meteorological towers. In addition, all easements for the underground collection lines have been obtained with the exception of two: an easement with the North Dakota State Land Department for approximately one mile of collection right-of-way across Section 36, Township 131 North, Range 66 West, and a right-of-way permit with Dickey County, North Dakota, to utilize the county right-of-way along County Road 3, Section 25, Township 131 North, Range 66 West. Rough Rider 1 Wind anticipates obtaining these two additional easements in the near future.
14. Safety factors will be incorporated into the wind turbines. Each turbine will be equipped with a Supervisory Control and Data Acquisitions (“SCADA”) communication technology to control and monitor the turbine. In addition, each turbine is also equipped with a lightning protection system and is grounded and shielded to protect against lightning.
15. North Dakota Administrative Code Chapter 69-06-08, sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria set forth in North Dakota Administrative Code § 69-06-08-01, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria. With the exception of prime and unique farm land, an energy conversion facility must not be sited within an Exclusion Area. The exception for prime and unique farm land is if the

Commission finds that the prime and unique farm land that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then such exclusion shall not apply. An energy conversion facility must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there is no reasonable alternative. 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; efficient use of resources; and alternative sites. In accordance with the Commission's Selection Criteria, an energy conversion facility shall be approved if it is demonstrated that no significant adverse impacts will result from the location, construction, and operation of the facility. In accordance with the Commission's policy criteria, preference may be given to an applicant demonstrating certain benefits of the energy conversion facility.

16. The Commission finds that the unique and prime farm land to be disturbed by this energy conversion facility is of such small acreage as to be of negligible impact on agricultural production.
17. A waterfowl production area administered by the United States Fish and Wildlife Service is located within the project area, known as the Reinke Waterfowl Production Area. Rough Rider 1 Wind has proposed a buffer of 0.25 miles from the area. The Rutsche Waterfowl Production Area is located adjacent to the project area. Rough Rider 1 Wind has proposed a buffer of approximately 900

feet from the area (one alternate turbine would be located within the 0.25-mile buffer).

18. Several potentially eligible National Register of Historic Property Sites are contained within the project area. Rough Rider 1 Wind will avoid any construction at all such sites.
19. A golden and bald eagle were detected during a fall avian survey within the project area. These species are protected under the Bald and Golden Eagle Protection Act. It is not anticipated that construction or operation of the wind energy center will impact the eagles or their habitat.
20. Native prairie and U.S. Fish and Wildlife Service easements are located within the project area. Rough Rider 1 Wind has met with United States Fish and Wildlife Service to discuss these areas. There will be no impact to the U.S. Fish and Wildlife Service grassland easements.
21. The only Avoidance Areas identified within the project area are historical resources which are not designated as exclusion areas, woodlands and wetlands. The historical resources will be avoided. Woodland impacts are not anticipated. Rough Rider 1 Wind recommends a buffer of 900 feet to 0.25 miles around waterfowl production areas. All other wetland resources will be avoided to the extent practicable. Rough Rider 1 Wind will obtain appropriate permits from the U.S. Army Corps of Engineers as necessary for any jurisdictional wetlands impacted.
22. With respect to historical resources which are not designated as Exclusion Areas, Rough Rider 1 Wind has been in consultation with the North Dakota State

Historic Preservation Office (“SHPO”). Class I and III surveys, including review of SHPO’s site and managed files, was conducted by Beaver Creek Archeology, Inc. of Linton, North Dakota, for the project area. During the course of the inventory, one previously recorded site, three previously recorded site leads, and one previously recorded architectural site were identified within one mile of the project area. None of these sites or site leads will be impacted by the project. Twelve new cultural resource sites were identified within the project, being one stone circle site with a rock carin, six rock carin sites, two historic archeological sites, one standing structure site, one historic cemetery and one historic grave. These sites will be avoided by project construction. A “No Historic Properties Affected” letter has been submitted to SHPO, and SHPO has concurred in the recommendation.

Beaver Creek Archeology will be conducting an additional survey this spring due to the revised location of a few of the project facilities. A recommendation will be forwarded to SHPO for review, and seeking concurrence from SHPO.

23. Rough Rider 1 Wind will implement its Wildlife Response Reporting System when turbine construction is completed. The reporting system includes protocols from field technicians during routine maintenance and operations to report and document any avian impacts.
24. Rough Rider 1 Wind will maintain ground water protection and soil conservation practices to protect topsoil and adjacent resources, and to minimize soil erosion during construction and operation of the project. Test management practices for

erosion and sediment control will be installed to minimize erosion during and after construction.

25. Rough Rider 1 Wind submitted substantial evidence to demonstrate that the proposed energy conversion facility would not have any significant impact on the Selection Criteria set forth in North Dakota Administrative Code § 69-06-08-01.(3).
26. Rough Rider 1 Wind submitted substantial evidence to demonstrate that its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible so as to meet the Policy Criteria set forth in North Dakota Administrative Code § 69-06-08-01(4).
27. The proposed project is not expected to have any significant adverse economic or social consequences. No significant adverse impact is foreseen on the ability of the affected area to provide community services such as housing, health care, schools, police and fire protection, water and sewer, solid waste management, transportation or public safety. The proposed project area is expected to be of economic benefit to the affected area.
28. No turbines will be placed within 1,400 feet of an occupied residence. As a result, average noise levels at such residences should not exceed the generally accepted 50 dB standard.
29. Approximately 12.8 acres of agriculture production will be impacted due to turbine placement, with an initial 216.6 acres due to access roads, and 3.5 acres due to the operations and maintenance facility and project substation. Wind turbine configuration will not result in significant impacts to agricultural

production. No impacts to the agricultural quality of the cropland are anticipated. If compaction of soils occurs during construction, Rough Rider 1 Wind will work with landowners to alleviate compaction.

30. No impacts are expected to animal health or safety, other than the potential for avian species and bat species collisions with turbines. Based upon studies commissioned by Rough Rider 1 Wind, that impact is expected to be minimal. Rough Rider 1 Wind will implement measures to avoid and minimize effects to wildlife at the proposed site by siting facilities away from wetlands and woodlands when possible.
31. Rough Rider 1 Wind has proposed setbacks of 437 feet from existing transmission lines, roads and railroads.
32. North Dakota Century Code § 49-22-16(3) provides that no energy conversion facility site shall be designated if it violates any county or city land use, zoning, building rules, regulations or ordinances. Dickey County does not grant zoning permits for construction.
33. Rough Rider 1 Wind has consulted with numerous other local, state and federal agencies which are identified in Appendix D to the Application. Two agencies providing significant input are the North Dakota Game and Fish Department and the U.S. Fish and Wildlife Service. The North Dakota Game and Fish Department indicated its primary concern is with disturbance of native prairie and wetlands. The disturbance of native prairie will be minimal. Rough Rider 1 Wind conducted an avian survey in the fall of 2008, and the results were submitted to the Commission. Concerns of the U.S. Fish and Wildlife Service

focused on migratory birds, wetlands, native grasslands, woodland resources, and threatened and endangered species. No significant impacts to any of these resources are anticipated. Neither agency has objected to construction of the project.

34. Rough Rider 1 Wind reports a contractual obligation to landowners to remove the wind facilities, including foundations to a depth of four feet, when the wind easement expires. Rough Rider 1 Wind reserves the right to explore alternatives regarding project decommissioning at the end of the project term. Retrofitting the turbines and power systems with upgrades based on new technology may allow the wind farm to produce efficiently and successfully for many more years.

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

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The energy conversion facility proposed by Rough Rider 1 Wind is an energy conversion facility 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 Rough Rider 1 Wind meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.
5. The location, construction, and operation of the proposed energy conversion facility will produce only minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

6. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.
7. The proposed energy conversion facility 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 Commission has jurisdiction to ensure compliance with National Electric Safety Code Standards in the construction and operation of the proposed energy conversion facility.

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

Order

The Commission orders:

1. Certificate of Site Compatibility No. ____ for an energy conversion facility is issued to Rough Rider 1 Wind for the construction, operation and maintenance of a wind energy facility known as the Rough Rider 1 Wind Energy Center.
2. The site as designated in the application is located approximately seven miles north of the City of Forbes, North Dakota, and is designated as the site for construction of the Energy Conversion Facility.
3. Within the permitted area, Rough Rider 1 Wind is authorized to site and construct up to 175 MW of wind turbines in proposed and alternative locations, along with electric collection and communication lines, a project substation, a project

operations and maintenance building, meteorological towers, access roads, and other associated facilities as identified in the application.

4. Rough Rider 1 Wind shall comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed project, including all city, township and county zoning regulations. Prior to commencing construction of any phase of the proposed project, Rough Rider 1 Wind shall obtain all other necessary approvals and permits for construction of such phase, and provide copies to the Commission prior to construction of each such phase.
5. Rough Rider 1 Wind shall conduct a pre-construction conference prior to the commencement of any construction, and must include a Rough Rider 1 Wind representative, its construction supervisor, and a representative of the Commission staff to ensure that Rough Rider 1 Wind fully understands the conditions set forth in this Order.
6. Rough Rider 1 Wind shall inform the Commission of its intent to start construction on the energy conversion facility prior to the commencement of construction, and while construction is underway, Rough Rider 1 Wind shall keep the Commission updated of construction activities on a weekly basis.
7. Rough Rider 1 Wind shall construct and operate the energy conversion facility in the manner described in this application, at the hearing, in late filed exhibits, and in accordance with all applicable safety requirements.
8. Rough Rider 1 Wind shall construct the energy conversion facility in compliance with the National Electric Safety Code.

9. Rough Rider 1 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 Rough Rider 1 Wind becomes aware of and were not previously reported to the Commission.
10. If any cultural resources, paleontological resources, archeological site, historical resource, or grave site is discovered during construction of the facility, earth disturbing activities in the immediate vicinity of this discovery must be halted. The resource must be marked, preserved, and protected from any further disturbance until a professional examination can be made in consultation with the North Dakota SHPO. A report of such examination must be filed with the Commission, and clearance to proceed is given by the Commission.
11. All pre-existing township and county 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.
12. 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.
13. Reclamation, fertilization and reseeding will be completed by Rough Rider 1 Wind according to the Natural Resource Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
14. Rough Rider 1 Wind's obligations for reclamation and maintenance of the site shall continue throughout the life of the energy conversion facility.

15. When the energy conversion facility is retired, structures and other facilities must be removed to a depth of at least four feet, or in accordance with applicable rules, and the areas restored to as near as original condition as is practicable.
16. Trees and other woody vegetation must be replaced with saplings that are two or more years old at a rate of two for every one removed. Landowners shall be given the option of having replacement trees/shrubs planted on the landowners' property or waiving that requirement in writing, and allowing Rough Rider 1 Wind to plant replacement trees/shrubs elsewhere. Rough Rider 1 Wind shall inspect tree replacements once a year for three years and send a report on or before October 1 of each year to the Commission documenting work completion and condition of woodlands planting. The Commission may order additional plantings if survival rates are less than 75%.
17. Rough Rider 1 Wind shall repair or replace all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
18. Rough Rider 1 Wind shall repair or replace all drainage tile, broken or damaged, during all phases of construction and operation of the proposed energy conversion facility.
19. Staging areas or equipment shall not be located on cultivated land unless otherwise negotiated with landowners.
20. Rough Rider 1 Wind shall remove all waste that is a product of construction and operation, restoration and maintenance of the site, and properly dispose of it on a regular basis.

21. Rough Rider 1 Wind shall, as soon as practicable, upon the completion of the construction of each wind turbine, restore the area affected by the activities to as near as is practicable to the condition as it existed prior to the beginning of construction.
22. Rough Rider 1 Wind shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility, and any restriction of possible danger concerning the proposed energy conversion facility.
23. Rough Rider 1 Wind shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.
24. Rough Rider 1 Wind shall advise the Commission of any extraordinary events which take place at the site of the energy conversion facility, such as tower collapse, extensive turbine failure, injured worker or private individual, mortality events of any threatened or endangered species or the discovery of a large number of dead birds or bats on the site within five business days of such event.
25. Rough Rider 1 Wind shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Rough Rider 1 Wind.
26. All underground electric line crossing of graded roads shall be bored unless the responsible governing agency permits Rough Rider 1 Wind to open cut the road.
27. Where available, at least 12 inches of topsoil over and along open cut areas, roadways, tower locations, and locations of associated facilities must be stripped and segregated from the subsoil and be replaced only after the subsoil is replaced.

28. Rough Rider 1 Wind shall bury all underground collection and feeder lines to a depth of at least 48 inches to the top of the lines.
29. Rough Rider 1 Wind shall work with landowners and residents in the area to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
30. Rough Rider 1 Wind shall provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction, and shall obtain approval from the Commission or from Commission staff prior to any changes in those surveyed locations.
31. Rough Rider 1 Wind shall provide the Commission with as-built drawings within three months after construction of the energy conversion facility is complete.
32. The Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the Certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
33. Rough Rider 1 Wind shall maintain records which will demonstrate that it has complied with the requirements of this order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
34. North Dakota Century Code § 49-02-07 provides that the Commission has the power to establish rules for decommissioning of wind energy conversion

facilities. Rough Rider 1 Wind is required to comply with all applicable rules adopted by the Commission pursuant to such statute.

35. The authorizations granted by the Certificate of Site Compatibility for this energy conversion facility 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

Kevin Cramer
Commissioner

Brian Kalk
Commissioner