

June 2, 2009

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JUN 02 2009

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

PUBLIC SERVICE COMMISSION

**RE: JOINT APPLICATION OF M-POWER,
LLC AND ASHTABULA WIND II, LLC
FOR THE TRANSFER OF
CERTIFICATE OF SITE
COMPATIBILITY FOR ENERGY
CONVERSION FACILITY TO
ASHTABULA WIND II, LLC**


Dear Mr. Nitschke:

Please find enclosed herewith for filing an original and ten copies of the JOINT APPLICATION OF M-POWER, LLC AND ASHTABULA WIND II, LLC FOR THE TRANSFER OF CERTIFICATE OF SITE COMPATIBILITY FOR ENERGY CONVERSION FACILITY TO ASHTABULA WIND II, LLC.

A disk will be forwarded containing the same later today.

Should you have any questions, please advise.

Sincerely,



LAWRENCE BENDER

LB/leo
Enclosure

cc: Mr. Wade Mann – (w/enc.) *Via Email*
Mr. Warren Enyart – (w/enc.) *Via Email*
Mr. Lloyd Anderson – (w/enc.) *Via Email*

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PU-09-221

Filed: 6/2/2009

Pages: 7

Joint Application for Transfer of Site Certificate

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

Case No. PU-08-34

IN THE MATTER OF THE APPLICATION
OF M-POWER, LLC FOR A CERTIFICATE
OF SITE COMPATIBILITY TO CONSTRUCT
A 157 MW WIND FARM IN GRIGGS AND
STEELE COUNTIES, NORTH DAKOTA,
KNOWN AS THE LUVERNE WIND FARM.

**JOINT APPLICATION OF M-POWER, LLC AND ASHTABULA WIND II, LLC FOR
THE TRANSFER OF CERTIFICATE OF SITE COMPATIBILITY FOR ENERGY
CONVERSION FACILITY TO ASHTABULA WIND II, LLC**

Pursuant to N.D.C.C. § 49-22, N.D.A.C. § 69-06, and N.D.A.C. § 69-02-02-04, M-Power, LLC, a North Dakota limited liability company (hereinafter “M-Power”), and Ashtabula Wind II, LLC, a Delaware corporation (hereinafter “Ashtabula Wind II”), respectfully submit this Joint Application (this “Application”) for the Transfer of Certificate of Site Compatibility for Energy Conversion Facility (the “Certificate”) to Ashtabula Wind II. M-Power and Ashtabula Wind II submit this Application in anticipation of a Certificate to be issued by the Public Service Commission of the State of North Dakota (the “Commission”) to M-Power in Case No. PU-08-34 regarding Phase I of a 157 MW wind farm in Griggs and Steele Counties. The Certificate for which transfer is sought covers Phase I of the wind farm project, while the relevant certificates and permits for Phase II have already been transferred, as discussed in more detail below. M-Power and Ashtabula Wind II are together referred to in this Application as the “Applicants.”

A. Statutory Authority

1. Transfer of a site compatibility certificate is authorized under N.D.C.C. §49-22-13(2) and N.D.A.C. § 69-06-01-02(3). Pursuant to these provisions, the Commission is not

required to hold a public hearing on an application for such transfer unless, following publication of a notice of opportunity for a public hearing in the official newspaper of each county in which a portion of the facility is located, there is both a request by an interested person and a showing of good cause.

B. Background

1. A hearing to consider more evidence regarding the application of M-Power for the Certificate to construct a 157 MW wind farm in Griggs and Steele Counties, North Dakota – known as the Luverne Wind Farm (the “Project”) – is scheduled for June 5, 2009. M-Power and Ashtabula Wind II have entered into a Purchase and Sale Agreement, dated May 22, 2009 (the “PSA”), whereby Ashtabula Wind II will acquire M-Power’s interest in the Project. M-Power and Ashtabula Wind II anticipate that the closing of this transaction will likely not occur until after the June 5, 2009 hearing.

Because the Certificate would be issued in the name of M-Power prior to closing of the transaction between M-Power and Ashtabula Wind II, the Applicants submit this Application for the transfer of the anticipated Certificate to Ashtabula Wind II.

C. Application for Transfer of Certificate of Site Compatibility

Applicants now respectfully submit this Application for the transfer of the anticipated Certificate to Ashtabula Wind II. In support thereof, Applicants state as follows:

1. M-Power is a limited liability company duly organized and authorized to do business in the State of North Dakota. Pursuant to N.D.A.C. § 69-02-02-04(3)(c), the articles of incorporation of M-Power have already been filed with the Commission in Case No. PU-08-107. Ashtabula Wind II is a corporation duly organized in the State of Delaware and duly authorized to conduct business in the State of North Dakota. Pursuant to N.D.A.C. § 69-02-02-04(3)(c), the

articles of incorporation of Ashtabula Wind II have already been filed with the Commission in Case No. PU-08-34.

2. The anticipated Certificate would be issued to M-Power in connection with the Project, to be located in Griggs and Steele Counties, north of the city of Luverne (Case No. PU-08-34). The Project consists of two separate phases. Phase I will include up to 80 turbines to generate up to 120 MW of power in the southern portion of the proposed project area. Phase II will include up to 33 turbines to generate up to 49.5 MW of power in the northern portion of the proposed project area (“Phase II”).

3. On October 30, 2008, the Commission issued Findings of Fact, Conclusions of Law and Order in Case No. PU-08-34, pursuant to which the Commission issued Certificate of Site Compatibility No. 9 to M-Power for Phase II of the Project. Thereafter, pursuant to an Order Reissuing Certificates and Permit, dated May 20, 2009, the Commission granted the joint application of M-Power and Otter Tail Corporation for transfer of the Certificate of Site Compatibility No. 9, Certificate of Corridor Compatibility No. 106 and Route Permit No. 116 to Otter Tail Corporation. The Commission then issued reissued versions of each certificate to Otter Tail Corporation. In short, all of M-Power’s interest in Phase II of the Project, including all relevant certificates and permits issued by the Commission, have been transferred to Otter Tail Corporation.

4. As the Commission’s October 30, 2008 Findings of Fact, Conclusions of Law and Order in Case No. PU-08-34 noted, after the Certificate is issued for Phase I of the Project, M-Power will proceed either to construct the facility or seek approval to transfer the Certificate to a regional or national developer. Having already transferred its interest in Phase II to Otter Tail

Corporation, M-Power now seeks to transfer its interest in Phase I, including the anticipated Certificate, to Ashtabula Wind II.

5. M-Power and Ashtabula Wind II executed the PSA, pursuant to which Ashtabula Wind II purchased all of M-Power's interest in Phase I of the Project. Ashtabula Wind II will construct and own Phase I. M-Power and Ashtabula Wind II anticipate that closing on the PSA will likely not occur prior to the June 5, 2009 hearing on M-Powers application for the Certificate.

6. Pursuant to this Application, Applicants seek the transfer of the anticipated Certificate to Ashtabula.

WHEREFORE, Applicants respectfully request that the Commission, following publication of a notice of opportunity for a public hearing in the official newspapers in Griggs and Steele Counties and, unless there is both a request by an interested person and a showing of good cause:

1. Grant, without a public hearing, a transfer of the anticipated Certificate to Ashtabula Wind II; and
2. Grant such other relief as the Commission shall deem appropriate.

[Signature and Acknowledgment Pages Follow]

