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July 29, 2009

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PUBLIC SERVICE COMMISSION

via email and mail

Mr. Darrell Nitschke
Executive Director
NORTH DAKOTA PUBLIC
SERVICE COMMISSION
12th Floor, State Capitol
600 E. Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480

Dear Mr. Nitschke:

In re:

M-Power, LLC
Electric Generation/Wind-Griggs/Steele County
Siting Application
Case No. PU-08-34

M-Power, LLC/Ashtabula Wind II, LLC
Transfer of Site Certificate
Siting Application
Case No. PU-09-221

Enclosed for filing please find Ashtabula Wind II, LLC's Objection to Petition for Rehearing of Merry Helm, et al.

Very truly yours,



WADE C. MANN

bw

Enc.

cc: Jerry Lien

22 **PU-09-221** Filed: 7/29/2009 Pages: 6
Objection to Petition for Rehearing of Merry Helm, et al.

Ashtabula Wind II, LLC

Wade Mann, Atty Crowley Fleck PLLP

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144 **PU-08-34** Filed: 7/29/2009 Pages: 6
Objection to Petition for Rehearing of Merry Helm, et al.

Ashtabula Wind II, LLC

Wade Mann, Atty Crowley Fleck PLLP

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/Ashtabula Wind II, LLC
Transfer of Site Certificate
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**ASHTABULA WIND II, LLC'S OBJECTION
TO PETITION FOR REHEARING OF MERRY HELM, ET. AL.**

Pursuant to North Dakota Century Code § 49-22-19, § 28-32-40 and North Dakota Administrative Code § 69-02-06-02, Ashtabula Wind II, LLC (“Ashtabula Wind II”) respectfully submits this Objection to the Petition for Rehearing in Case No. PU-08-34, dated July 27, 2009 (“Helm Petition”). The petition was signed by Merry Helm and thirteen other individuals, all from Fargo, North Dakota, and served on Ashtabula Wind II on July 27, 2009.

In objecting to this Petition, Ashtabula Wind II incorporates and makes part of this objection, its argument and legal analysis from its Objection to the Petition for Re-evaluation of Setbacks from Dwellings in Wind Farm, dated July 15, 2009, in Case No. PU-08-34, signed by Senator Tim Mathern of Fargo, North Dakota (“Mathern Petition”) and Petition for Hearing and Reevaluation of High Risk Wind Turbines signed by Gerald and Connie Stokka of Cooperstown, North Dakota (“Stokka Petition”). Ashtabula Wind II’s objection to these petitions was filed with the Public Service Commission (“Commission”) on July 27, 2009 and a copy of the objection is herewith served upon each of the signatories to Helm Petition.

Only an “aggrieved party” may seek rehearing of the issuance of a site compatibility permit. Ashtabula Wind II was issued a certificate of site compatibility for the Luverne Wind Farm project located in Griggs and Steele Counties, near the town of Luverne, North Dakota. Each and every signatory to the Helm Petition provides a Fargo, North Dakota address and none of these individuals was a party to Case No. PU-08-34 or PU-09-221.

None of the petitioners provide any indication of how they are an aggrieved party. None of the petitioners has established that they own property within or anywhere near the Luverne Wind Farm project. None of the petitioners has demonstrated that they have been harmed or will be harmed by the project. None of the petitioners intervened in either Case No. PU-08-34 or PU-09-221.

The North Dakota Supreme Court has explained that “the PSC is limited to the statutory authority given it by the legislature.” Application of Nebraska Public Power District, 330 N.W.2d 143, 147 (N.D. 1983). Pursuant to N.D.C.C. §§ 49-22-19 and 28-32-40, the Commission may only entertain a motion for reconsideration from an aggrieved party. Because none of the Helm Petitioners are a “party” to Case No. PU-08-34, let alone an “aggrieved party,” the Commission lacks the statutory authority to grant the Petition for Reconsideration. Therefore, the Petition must be denied.

NOW THEREFORE, Ashtabula Wind II respectfully requests that for the foregoing reasons, the Petition for Rehearing of Merry Helm, et. al. be denied.

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