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May 12, 2020

Via Electronic Mail Only

Mr. Steve Kahl
Executive Director
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480
ndpsc@nd.gov

RE: Baldwin Wind, LLC
Case No. PU-09-668
Project Setback Notification
Our File No.: 035218-00058

Dear Mr. Kahl:

On July 14, 2010, in Case No. PU-09-668, the Commission adopted Findings of Fact, Conclusions of Law and Order (the "Order") issuing Baldwin Wind, LLC ("Baldwin") Certificate of Site Compatibility No. 16 for the Baldwin Wind Energy Center (the "Project") located in Burleigh County, North Dakota. Upon further review of the Project, Baldwin identified a discrepancy in the Order pertaining to the setback distance from turbines to property boundaries and the locations of several as built turbines. Baldwin subsequently met with Commission staff and counsel to discuss the issue and various items related to proposed Project improvements. Commission staff requested that Baldwin submit a filing explaining the setback discrepancy and indicated that the Order may need to be amended. This notification is submitted in accordance with staff's request and to provide the Commission with additional information and context regarding the setback discrepancy.

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Letter re Property Line Setback and request to amend 14 July 2010 Order
Baldwin Wind, LLC
Casey Furey, Crowley Fleck, PLLP

In 2010, when the Order was issued, the Commission's rules and regulations did not contain setbacks applicable to wind energy conversion facilities. However, Baldwin voluntarily proposed various setbacks applicable to the Project. Baldwin proposed voluntary setbacks of 110 percent of turbine tip height or 1.1 x turbine tip height from transmission lines, roads, and railroads. *See*, Docket No. 10, Application, Pg. 4-2. A "property line" setback of 440 feet (or 1.1 x turbine height) was also listed in Table 8 of the Application (Pg. 4-2), but no additional detail or context regarding this setback was included.

The setbacks Baldwin voluntarily proposed for the Project as set forth in the Application were subsequently incorporated into the Order. Specifically, Order Finding of Fact No. 40 states "Baldwin Wind has proposed setbacks of 440 feet (1.1 x turbine height) from existing transmission lines, railroads and property boundaries." All Project turbines conform with these setbacks except for 24 turbines that are located closer than 1.1 x turbine height from a participating landowner's property line. Upon further review and investigation, Baldwin believes language was inadvertently omitted from Application Table 8 clarifying that the 1.1 x turbine height setback from property lines was applicable to <u>nonparticipating landowners'</u> property lines, and that the omission was therefore carried over into the Order.

All Project turbines are located at least 1.1 x turbine height from nonparticipating landowners' property lines. However, as originally constructed 24 turbines[1] are located within 1.1 x turbine height from property lines of participating landowners. Of note, the applicable participating landowners do not object to these turbines and authorized their specific locations during original construction.

In December 2012, the Commission's third-party construction inspector Wenck Associates, Inc. ("Wenck") noted the discrepancy with the 1.1 x turbine height setback from property lines in the Project's Construction Inspection Report (Docket No. 126). Wenck identified several instances where turbines were built within 1.1 x turbine height from property boundaries noting,

> In these instances, the turbines did not pose a threat to public safety; the boundaries proximate to the turbines were within publicly inaccessible areas. NextEra is technically abiding by current regulations. Wenck does not consider this to be a concern, but the Finding of Fact #40 for the Project may need to be clarified.

Docket No. 126, Wenck Construction Inspection Report, Pg. 3-2. After Wenck's report was filed, Commission staff and Baldwin engaged in a number of discussions regarding other compliance-related items. However, based on a review of the record, it does not appear the property line setback discrepancy was addressed or questioned.

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[1] Turbine Nos. ALT 1, 10, 12, 18, 26, 29, 31, 32, 34, 35, 36, 40, 41, 42, 43, 46, 48, 50, 51, 53, 54, 55, 61, 62.

If the Commission believes it is necessary to amend the Order to clarify the scope of property line setback, Baldwin does not object and respectfully requests that the Commission amend Finding of Fact No. 40 as follows "Baldwin Wind has proposed setbacks of 440 feet (1.1 x turbine height) from existing transmission lines, railroads, and nonparticipating landowners' property boundaries." This revision accurately reflects the scope of the voluntary setback that Baldwin originally applied to the Project and is consistent with the Commission's existing setback from property lines, which is specific to nonparticipating landowners and set forth in N.D. Admin. Code § 69-06-08-01(2)(a)(5).

Sincerely,

Casey Furey

CAF/drh

cc:	Tracy Davis	(via email)
	John Schuh	(via email)
	Brian Johnson	(via email)
	Patrick Fahn	(via email)
	Jerry Lein	(via email)
	Adam Renfandt	(via email)