



05 October 2009

North Dakota Public Service Commission  
600 East Boulevard Avenue, 12<sup>th</sup> Floor  
Bismarck, North Dakota 58505-0480  
sent via e-mail & U.S. mail with 10 copies

Attention: Mr. Darrell Nitschsky, Executive Secretary (ndpsc@nd.gov)

Subject: Request for Jurisdictional Determination  
99 MW Radiance Wind Farm

Dear Mr. Nitschsky,

As background, North Dakota Winds LLC (“**North Dakota Winds**”) and its affiliates own and operate four wind power projects, consisting of over 900 wind turbines, located in the San Francisco Bay Area. In addition, we are pursuing new utility-scale wind and solar projects across the nation, with over 1,500 MW under development in 13 states. We have offices located in California and Idaho. For much more information, please visit our web site at [www.powerworks.com](http://www.powerworks.com).

## 1. Request for Jurisdictional Determination

North Dakota Winds respectfully requests a Jurisdictional Determination of two issues. First, is a “Certificate of Site Compatibility” (“**Certificate**”) required pursuant to North Dakota Century Code Chapter 49-22-07 (“**Code**”) for the construction of our 99 MW Radiance Wind Farm? Secondly, if the Radiance Wind Farm is divided into two projects less than or equal to 60 MW each that continue to utilize the same transmission line, is the requirement for a Certificate avoided?

## 2. Background

On July 9, 2009, the Cromwell Township Board of Supervisors granted North Dakota Winds a Conditional Use Permit (“**CUP**”) for the construction and operation of our 99 MW Radiance Wind Farm (“**Project**”), located on private agricultural land in Cromwell Township, Burleigh County, North Dakota. The CUP is attached as Exhibit A. The Project is sited on two distinct tracts of land separated by approximately 1.5 miles. The capacity of the north site is 57 MW, while the capacity of the south site is 42 MW. Please refer to a preliminary site plan attached as Exhibit B. As currently permitted, both sites combined would be capable of producing only 99 MW. Both sites use the same transmission network, and the Project plans to interconnect with the transmission line owned by Minnkota Power Cooperative, Inc. (“**Minnkota**”).

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Interconnection with the 345 kV transmission line owned by Basin Electric Power Cooperative (and managed by Western Area Power Administration) is an alternative if interconnection with the Minnkota transmission line is not feasible.

At the time the CUP was issued, the Code defined an “Energy Conversion Facility” as “...any plant, addition, or combination of plant and addition, designed for or capable of...[g]eneration of one hundred thousand kilowatts or more of electricity...”.<sup>1</sup> The Code requires a utility wishing to construct or operate an Energy Conversion Facility to first obtain a “Certificate of Site Compatibility” from the Public Service Commission (“**Commission**”).<sup>2</sup>

As planned, the 99 MW Project fell below the 100 MW exemption designated in the original rule, and was thus exempt from the Certificate requirement. In August of 2009, and prior to beginning construction of the Project, however, the Code was amended to define an Energy Conversion Facility as a plant capable of “...[g]eneration exceeding sixty megawatts of electricity...”. The exemption was thus changed from a 100 MW threshold to 60 MW, and North Dakota Winds is now unsure about whether a Certificate is required to begin construction on the Project.

### **3. First Request for Jurisdictional Determination**

North Dakota Winds respectfully requests a jurisdictional determination that a Certificate of Site Compatibility is NOT necessary for the 99 MW Radiance Wind Farm. Due to the issuance of a CUP from the Cromwell Township Board of Supervisors prior to the August 2009 amendment of N.D.C.C. 49-22-03(5)(a), North Dakota Winds believes it proper to be “grandfathered” under the previous 100 MW exemption.

### **4. Second Request for Jurisdictional Determination**

North Dakota Winds respectfully requests a jurisdictional determination that, if the north and south sites were each constructed for a capacity of 60 MW or less, but used the same transmission system, a Certificate of Site Compatibility would NOT be required for either site under the new 60 MW limitation rule.

Thank you in advance for your time. Please contact me if you have any questions.

Sincerely,

North Dakota Winds LLC



Ryan McGraw  
General Counsel

cc: Mr. Jerry Lein, Public Utility Analyst (jlein@nd.gov)

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<sup>1</sup> N.D.C.C. Ch. 49-22-03(5)(a) (2005).

<sup>2</sup> N.D.C.C. Ch. 49-02-07.

## **EXHIBITS**

- A Cromwell Township CUP
- B Preliminary Site Plan, Radiance Wind Farm

**EXHIBIT A**  
**Cromwell Township CUP**

July 9, 2009

To: Frank Steinberg, Project Manager  
North Dakota Winds LLC-99 MW Radiance Wind Farm  
15850 P Jess Ranch Road  
Tracy CA 95377

Re: Granted Conditional Use Permit  
Conditional Use Permit Conditions

A special meeting of the Cromwell Board of Supervisors was held July 9, 2009 for the purpose of issuance of a conditional use permit ("CUP") to North Dakota Winds LLC. The Board considered the information presented and having the discretion to allow CUP's for property within Cromwell Township in accordance with the Townships Zoning Ordinance, a resolution was duly made and seconded and adopted to GRANT a CUP to North Dakota Winds LLC to locate, operate and maintain a Wind Farm on properties in Cromwell Township subject to the following conditions:

1. **Fee.** This CUP will become effective upon receipt by Cromwell Township of 1/10 of 1% of the estimated costs of construction of facilities related to and including said wind towers, as stated in Cromwell Townships Zoning Ordinance document 296371, page 5 under fees, before commencing construction.
2. **Location Condition.** Wind turbines must be placed at least 1.1 times the total height of the turbines from roads, section lines, power lines, rails or structures. Wind turbines must be placed at least 1400 feet from residences. Wind turbines must not disturb jurisdictional wetlands or cultural areas. Wind turbines may not overhang an adjoining property without the express written permission of the adjoining property owner. NDW shall obtain written easements and agreements with all landowners with Wind Farm Improvements prior to construction.
3. **Conformity to Applicable Laws.** Locations, construction, operation, and maintenance of the Wind Farm Improvements must at all times conform to the information provided by NDW to the Board and are subject to and must comply with all applicable statutes, regulations, ordinances, state building codes, orders, and easement agreements as they are amended from time to time.
4. **Term.** The CUP shall become effective on July 9, 2009 and shall lapse at the end of five (5) year(s) from the date, unless prior to that date NDW commences construction of the Wind Farm Improvements and diligently pursues the completion of the Wind Farm Improvements or NDW requests a renewal of the CUP from the Board prior to the lapse. Any request for renewal must be in writing and state the reason why construction of the Wind Farm Improvements

has not been timely commenced. The CUP shall expire once the wind energy center ceases operation in Cromwell Township and the Wind Farm Improvements are removed.

5. **Roads.** Following the construction of the Wind Farm Improvements, NDW shall restore any roads in Cromwell Township to their original condition by repairing any damages caused by the construction, operation, maintenance, or existence of the Wind Farm Improvements.

6. **Enforcement.** The Board may enforce the terms of the CUP in the manner and to the fullest extent provided by law, including without limitation, through revocation of the CUP granted to NDW. The CUP shall only be revoked if the Board notifies NDW in writing that it has violated the terms of the CUP and NDW fails to remedy the violation within thirty (30) days of receipt of the Board's notice.

7. **Limitations.** The limitations of the CUP shall run with the land and shall bind NDW and its successors in interest, the CUP may not be assigned by NDW without the prior written consent of the Board which shall not be unreasonably withheld or delayed.

8. **Recordation Required.** After receiving a written request of the Board, NDW shall record a Memorandum of CUP with the Burleigh County Recorder and shall pay for the costs of recordation.

Dated: July 9, 2009

**The Board**  
Cromwell Township Board of Supervisors

  
Raymond Skoglund

  
Date July 9, 09

  
Roger Schroeder


  
Date 7-9-09

  
Eugene Knoll

  
Date 7-9-9

Accepted and Agreed:

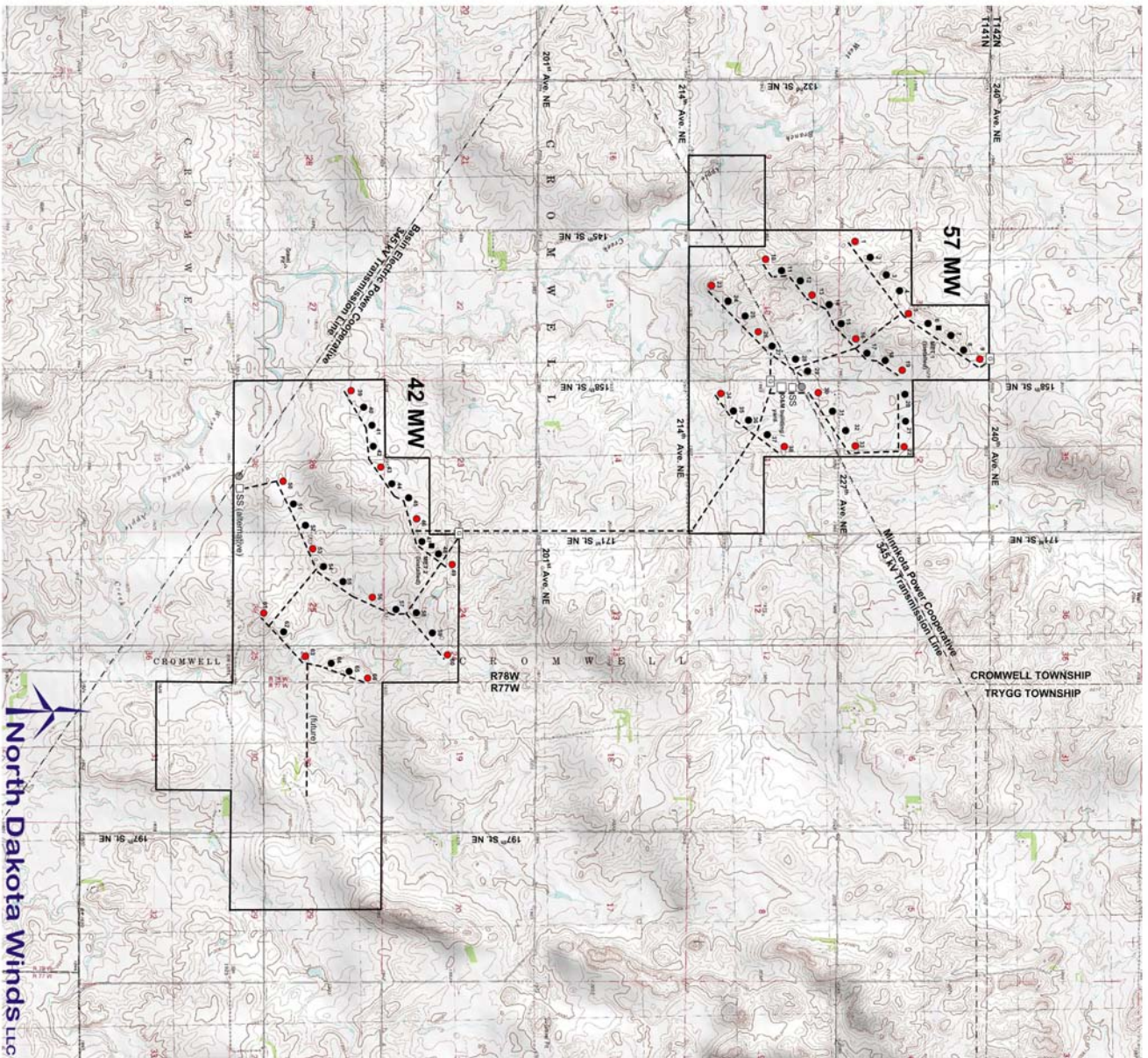
North Dakota Winds LLC – 99 MW Radiance Wind Farm  
Frank Steinberg, Project Manager

By: 

By:  WILLIAM DAMON, VICE PRESIDENT

# EXHIBIT B

## Preliminary Site Plan, Radiance Wind Farm



**Legend**

- Wind Turbine ●
- Local Access Road ———
- Interconnection Point ○
- NET Tower ■
- Wind Turbine with flashing red obstruction light ●
- Substation = SSS

Note: All locations preliminary and approximate.

SCALE 1:24,000

0 1000 2000 3000 4000 FEET

0 1000 2000 3000 4000 METERS

Legend: North Dakota, Challenge, Landmark



**CONFIDENTIAL**

**PRELIMINARY SITE PLAN**

**99 MW Radiance Wind Project**

Burdigh County, North Dakota  
 ICSIS 124,000  
 www.powerworks.com

**North Dakota Winds LLC**

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