

**Hamre, John G.**

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**From:** Brian R. Bjella [bbjella@crowleyfleck.com]  
**Sent:** Wednesday, August 04, 2010 8:23 AM  
**To:** -Info-Public Service Commission  
**Cc:** Lein, Jerry R.; Hamre, John G.; Nitschke, Darrell D.; Wade C. Mann  
**Subject:** Ashtabula III: PSC Case No. PU-10-147  
**Attachments:** 20100804090345229.pdf

Attached for filing in the above case is the Waiver Agreement signed by landowners Mark and Frances Askerooth waiving any noise exceedances caused by the wind farm or by adjoining wind farms.  
Brian Bjella

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**AFTER RECORDING RETURN TO**

Carlos Megias, Esq.  
NextEra Energy Resources, LLC  
700 Universe Blvd.  
Juno Beach, FL 33408  
(561) 691-7378

(This space reserved for recording information)

**WAIVER AGREEMENT**

THIS WAIVER AGEEMENT is dated this \_\_\_\_\_ day of August, 2010 ("Agreement") by and between **MARK C. ASKEROTH AND FRANCES KAREN ASKEROTH**, husband and wife, with an address of 2250 20<sup>th</sup> Street SE Laverne, ND 58056, ("**Owner**"), and **ASHTABULA WIND III, LLC**, a Delaware limited liability company, with an address of 700 Universe Blvd., Juno Beach, FL 33408, and its successors in interests ("**AWIII**").

Owner is the owner of a certain tract of real property located in Barnes County, North Dakota and more particularly described on **Exhibit A** attached hereto and made a part hereof ("**Property**"). AWIII is the holder of certain easement and other related rights covering real property located adjacent to and/or in the vicinity of the Property because it is constructing a wind energy conversion system with wind turbines, collection lines, roads, maintenance and operations facility and an electric substation in Barnes County, North Dakota (collectively "**Wind Farm**"). AWIII desires to have certain landowners participate in the benefit of the Wind Farm and Owner desires to grant and convey to AWIII a non-exclusive easement for effects on the Property attributable to the Wind Farm.

For good and valuable consideration set forth herein, the adequacy and receipt of which is hereby acknowledged, Owner and AWIII agree as follows:

Owner grants to AWIII a non-exclusive easement for sounds, visual, light, flicker, shadow, vibration, wake, electromagnetic, electrical and radio frequency interference, and any other effects (collectively "**Effects**") on the Property caused or alleged to be caused by the Wind Farm and by the cumulative effects caused by other wind farms located in the vicinity. The Effects include the right and privilege to generate and maintain audible noise levels in excess of fifty (50) dbA on and above the Property at any or all times of the day or night. If noise levels emanating from the Wind Farm exceed fifty (50) dbA without the Owner's written consent as measured within 200 feet (or lesser agreed distance) from the inside of a presently existing

residence on the Property by an independent professional applying commonly accepted measurement instruments and standards, AWIII shall reduce the noise level to 50 dbA at 200 feet (or lesser agreed distance) from the residence. Measures to be taken by AWIII may include installing insulation or sound deadening material in the offending turbine(s); installing landscaping, insulation, and sound deadening material at the residence; or, changing the operation of the turbine(s) to reduce noise output.

The easements described in this paragraph shall collectively be referred to as "Easements". The term of the Easements shall begin on the Effective Date, which shall be defined as the last day this Agreement is signed by both Owner and AWIII, and expire on the latter of Ninety-Nine (99) years from the Effective Date or as long as any portion of the Wind Farm exists within one thousand (1000') feet of the Property, unless terminated as provided in this Agreement.

Owner is the holder of fee simple title to all of the Property, and has the right, without the joinder of any other party, to enter into this Agreement and grant AWIII the Easements. Owner agrees to warrant and defend its ownership of the Property and AWIII's interest in this Agreement against any other party claiming to have any ownership interest in or other claim to the Property. This Agreement, and its rights and obligations, may be assigned by either party to its respective heirs, successors and assigns. The Easements shall run with the Property and shall be binding on Owner and AWIII, together with their mortgagees, assignees, and respective successors and assigns, heirs, personal representatives, tenants or persons claiming through them.

Owner reserves the right to use the Property for all other purposes not granted to AWIII under this Agreement, including ranching and agricultural uses, and all recreational uses, provided that no such other use interferes with the Easements. Owner hereby releases AWIII from any and all claims for damages arising from any injury or harm or conditions related to the Property, including but not limited to, any harm or loss due to nuisance, trespass, disturbance, Effects, diminishment of the value of the Property, proximity of the Wind Farm to Owner's Property and/or residence, diminishment or interference with the ability to use or enjoy the Property, and any other injury or harm, of whatever kind or character, to persons or property, whether now known or unknown, or which may appear or develop in the future, caused or alleged to be caused by the Wind Farm or by AWIII, its parent companies, affiliates, successors, assigns, whether claimed or not claimed, or which hereafter might be brought by Owner or any of their successors and assigns.

AWIII shall comply with valid laws applicable to the Property and Owner shall not be liable in the event that AWIII violates a law relating to the Easements on the Property. This Agreement shall be governed by and interpreted in accordance with the laws of the State of North Dakota. The parties agree to first attempt to settle any dispute arising out of or in connection with this Agreement by good faith negotiation. If the parties are unable to resolve amicably any dispute arising out of or in connection with this Agreement, each shall have all remedies available at law or in equity. A judge will decide any disputes between the parties. EACH PARTY WAIVES ALL RIGHT TO TRIAL BY JURY AND SPECIFICALLY AGREES





**EXHIBIT A**

**Legal Description of Property**

Auditors Lot Number 1 of SE¼ of Section 9, Township 142N, Range 57W, Barnes County, North Dakota, and more particularly described as follows: Beginning at the Southwest corner of the SE¼ of said Section 9; thence N02°18'47"W along the Quarter line a distance of 495.00 feet to an iron pin; thence N88°16'14"E a distance of 525.00 feet to an iron pin; thence S02°18'47"E a distance of 495.00 feet to an iron pin on the South line of said Section 9; thence S88°16'14"W along the Section line a distance of 525.00 feet to the Point of Beginning.

**COMPENSATION**

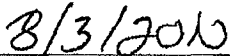
In consideration for entering into the Waiver Agreement granting an Easement to ASHTABULA WIND III, LLC, a Delaware limited liability company ("Grantee"), **MARK C. ASKEROTH AND FRANCES KAREN ASKEROTH**, husband and wife. ("Grantor") shall receive the sum of \$10,000.00 within sixty (60) days after the Agreement is executed by both Grantor and Grantee.

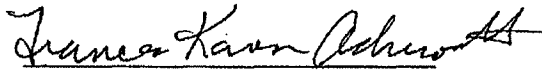
Payment shall be distributed as follows:

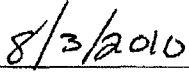
100% to Mark C. Askeroth & Frances Karen Askeroth

Signature and completed W-9 form required for each payee:

  
Mark C. Askeroth

  
Date

  
Frances Karen Askeroth

  
Date