

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Meadowlark Wind I LLC
New Frontier Wind Energy Project – McHenry County
Siting Application**

Case No. PU-11-69

ORDER

May 15, 2018

Preliminary Statement

On April 25, 2012, the North Dakota Public Service Commission (Commission) issued Certificate of Site Compatibility No. 29 to Meadowlark Wind I LLC (Meadowlark) for the New Frontier Wind Project (Project), in McHenry County, North Dakota.

On May 10, 2017, the Commission issued an Order of Continuing Suitability for Certificate No. 29.

On March 29, 2018, the Commission held an informal hearing to discuss Meadowlark's planned access road construction methodology in relation to the topsoil segregation requirement in Certification Provision No. 15 attached to and made a part of the Commission's May 10, 2017 Order of Continuing Suitability.

On April 2, 2018, Meadowlark filed a request to amend Certification Provision No. 15 of the May 10, 2017 Order of Continuing Suitability.

On April 5, 2018, the Commission issued a Notice of Opportunity for Hearing regarding Meadowlark's request to amend. On written comment was received.

On April 25, 2018, a second informal hearing was held as scheduled.

On May 3, 2018, Derrick Braaten of the Braaten Law Firm filed written comments in response to the Commission's Notice of Opportunity for Hearing.

Discussion

Certification provision 15 attached to and made a part of the Commission's May 10, 2017 Order of Continuing Suitability states:

15. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, tower locations, and locations of associated facilities must be carefully

stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.

In its April 2, 2018 filing, Meadowlark requested that, with respect to access roads, it be allowed to remove less than 12 inches of topsoil, or less than topsoil to the depth of cultivation, provided any topsoil removed is segregated from the subsoil. Meadowlark requests the amendment to permit Meadowlark to excavate approximately four inches of topsoil when constructing turbine access roads instead of removing topsoil up to 12 inches or topsoil to the depth of cultivation, whichever is greater, as required by Certification Provision 15.

Meadowlark stated it would then use a cement stabilization procedure to blend a 6% by weight mixture of Portland cement into the soil to form a stabilized subgrade over which an aggregate road surface would be installed. Meadowlark indicated that the cement is primarily composed of lime (calcium carbonate or CaOH), which is not harmful to the soil and often used as a fertilizer. Meadowlark contends that the cement substrate approach to road construction has commonly been used for years and minimizes disturbance of topsoil while conserving aggregate and truck traffic to haul the aggregate. Representatives of the McKenzie and McHenry County Soil Conservation District supported the cement stabilization procedure, opining that leaving as much topsoil in place as possible was prudent and that the approximately 6% cement powder stabilizer would not pose a problem when the road was reclaimed.

Meadowlark also referenced North Dakota Department of Transportation Standard Specifications for Road and Bridge Construction section 203.04.B which specifies to "remove topsoil to its full depth or a depth up to 6 inches, whichever is less, from all excavation and embankment areas.

Commission Staff commented that blending the cement stabilization mixture into topsoil would not be acceptable for coal mining and reclamation in North Dakota. Staff noted that soils in this region are already alkaline such that additional lime is not needed or desired. Staff was concerned the cement substrate material would not dissolve or otherwise disappear in the short term. Staff noted that it takes thousands of years for calcium carbonate in the upper topsoil profile to translocate to the lower subsoil profile.

On May 3, 2018, Derrick Braaten of the Braaten Law Firm filed written comments in response to the Commission's Notice of Opportunity for Hearing. Mr. Braaten retained Western Plains Consulting, Inc. (WPC) to review Meadowlark's proposal.

WPC points out that none of the soils in the project area are deficient in calcium and would not benefit from more calcium being added. WPC was concerned that adding more calcium to soils in the area may have an adverse impact on plant growth. WPC concluded that Meadowlark's proposal was unacceptable, and recommends that Meadowlark's proposal be rejected.

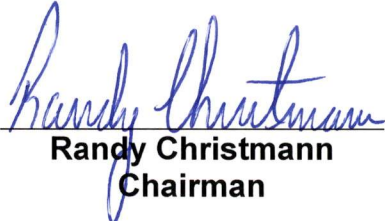

The Commission finds the DOT specifications are not applicable to wind project turbine access roads that must be reclaimed when the project has reached the end of its useful life. Further, the Commission believes removing and storing the topsoil up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, better facilitates reclamation of the access roads and productivity of the soil afterwards.

Having considered this matter, the Commission finds it is not appropriate to grant the requested exception to the Commission's topsoil segregation requirements. Therefore, the Commission issues its:

Order

The Commission Orders Meadowlark's request to amend Certification Provision No. 15 of the Commission's May 10, 2017 Order of Continuing Suitability is DENIED.

PUBLIC SERVICE COMMISSION

 _____ Brian Kroshus Commissioner	 _____ Randy Christmann Chairman	 _____ Julie Fedorchak Commissioner
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