

**STATE OF NORTH DAKOTA**  
**PUBLIC SERVICE COMMISSION**

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

**Case No. PU-11-69**

**MEADOWLARK WIND I LLC'S  
REQUEST FOR SETBACK DETERMINATION AND INFORMAL HEARING**

**INTRODUCTION**

Meadowlark Wind I LLC (“Meadowlark”) submits this Request for Setback Determination and Informal Hearing (“Request”) to the North Dakota Public Service Commission (“Commission”) regarding the setbacks for certain turbines within the New Frontier Wind Energy Project (“Project”). As part of this Request, Meadowlark respectfully asks the Commission to schedule an informal hearing during its November 8, 2018, meeting to allow Meadowlark to present additional information and answer any questions the Commission may have. Pursuant to N.D.C.C. § 49-22-07.2 and N.D.A.C. § 69-06-06-01, Meadowlark further respectfully requests that the Commission waive any applicable procedures and time schedules to reasonably expedite its consideration and resolution of this Request.

**BACKGROUND**

Meadowlark filed its Application for a Certificate of Site Compatibility for the Project in August 22, 2011. On April 25, 2012, the Commission issued its Findings of Fact, Conclusions of Law and Order, in which it issued Certificate of Site Compatibility for an Energy Conversion Facility No. 29 for the Project (“2012 Order”). On November 22, 2016, Meadowlark filed with the Commission a Certification of Continuing Suitability. On May 10, 2017, the Commission issued its Order of Continuing Suitability (“2017 Order”). Among other things, the 2017 Order required Meadowlark to “comply with the siting criteria set forth in the version of Section 69-06-

08-01 of the North Dakota Administrative Code in effect as of the date of this Order.”<sup>1</sup> At that time, based on the study and survey work that had been done by Meadowlark and its consultants, Meadowlark believed that the Project layout complied with these requirements.

Meadowlark began construction of the Project in April 2018. Project construction is now approximately 80 percent complete. With respect to Turbines T26, T32, and T6, Meadowlark has completed the turbine foundations, electrical work, and access roads. For Turbines T26 and T6, the tower and nacelle have also been installed, and for Turbine T36, the bottom two segments of the turbine tower have been installed. Turbine construction necessitated in a 200-foot radius of land disturbance around each turbine.

As a result of a recent ALTA survey for the Project, Meadowlark discovered that the transmission facility setback used by its consultant for T6 had been measured from the centerline of Great River Energy’s (“GRE’s) transmission line right-of-way. Additionally, Meadowlark discovered that its consultant had measured the state highway setbacks for Turbines T26 and T32 from the centerline of the highway, rather than the edge of the highway right-of-way. T26 is only 10.7 feet too close to the highway right-of-way, while T32 is approximately 103 feet within the setback area. After this discovery, Meadowlark stopped construction of the turbine towers; as such, the blades have not been installed on any of the three towers. Further, because T32 is more than 100 feet too close to the state highway right-of-way, Meadowlark will move T32 and has submitted the necessary layout modification documentation to the Commission.<sup>2</sup>

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<sup>1</sup> 2017 Order ¶ 4(b).

<sup>2</sup> See Certification Regarding Layout Modifications, filed November 1, 2018.

## DISCUSSION

### **I. Turbine No. T26.**

With respect to Turbine T26, the state highway right-of-way in question is owned in fee by the State of North Dakota. Therefore, both the property line setback set forth in N.D.A.C. § 69-06-08-01(2)(a)(5) and the state highway right-of-way setback in N.D.A.C. § 69-06-08-01(2)(a)(1) apply to Turbine T26. The Commission's rules allow the Commission to grant a variance of the property line setback if the landowner has executed a waiver. Meadowlark has contacted the North Dakota Department of Transportation ("DOT") to determine if it would be willing to execute the requisite waiver. If the waiver is granted, Meadowlark requests the Commission's guidance as to whether it will allow a setback variance to apply to Turbine T26. As discussed below, Meadowlark believes there are several reasons it would be appropriate to allow the variance in these circumstances.

First, moving Turbine T26 would require construction of a new turbine foundation, necessitating another 200-foot radius of land disturbance and extension of the turbine's access road by approximately 110 feet. It would also require the removal of the existing turbine foundation, electrical cabling, turbine components, and access road, and restoration of the area to pre-construction conditions. In discussions with the landowners regarding the situation, the landowners indicated they prefer the turbine to remain in its current location because it would avoid additional construction on and impact to their land.

In addition, Meadowlark's construction contractor estimates that moving Turbine T26 would cost over \$1 million, given the substantial amount of work that has already occurred. Further, moving Turbine T26 has the potential to significantly impact the construction schedule, given the necessity of remobilizing crews at the turbine site to remove and restore the foundation and turbine from existing location, as well as to construction the foundation and access road,

install the collector system, and erect the turbine at the new location. Given that it is late fall, the likelihood of winter weather conditions interfering with construction increases daily.

Although moving Turbine T26 would have significant impacts to the landowners and Meadowlark, allowing the turbine to remain in place would not impair public safety. Once fully constructed, Turbine T26 would be only approximately 10.7 feet within the state highway setback. Thus, even if the turbine fell directly over (which Meadowlark is not aware of ever happening), the turbine would still be at least 114 feet from the edge of the highway. Further, the variance would only be allowed if DOT agrees to grant the requisite waiver.

For these reasons, if the DOT agrees to grant a waiver, Meadowlark requests that the Commission grant a variance and allow T26 to remain in its current location.

## **II. Turbine No. T6.**

With respect to Turbine T6, the setback of 1.1 times turbine tip height from a transmission line facility applies. *See* N.D.A.C. § 69-06-08-01(2)(a)(4). Unlike other setbacks, N.D.A.C. § 69-06-08-01(2)(a)(4) does not specify whether the turbine setback should be measured from the edge or the center of the transmission line right-of-way. Here, Meadowlark's consultant measured the setback for Turbine T6 from the center of GRE's transmission line right-of-way. Given the ambiguity in the rule, Meadowlark respectfully requests clarification from the Commission that Turbine T6 complies with N.D.A.C. § 69-06-08-01(2)(a)(4). To the extent that the Commission determines that Turbine T6 does not comply with N.D.A.C. § 69-06-08-01(2)(a)(4), Meadowlark requests that the turbine be allowed to remain in place, given the ambiguity in the rule and the specific circumstances presented.

As discussed previously, Meadowlark has constructed the foundation, electrical system, access roads, and bottom two segments of Turbine T6. Meadowlark spoke with the landowner about the situation with Turbine T6, and given the additional construction time on their property

and additional land disturbance required, the landowners prefers that Turbine T6 remain in its current location. Moreover, the cost of the shift would be significant (approximately \$1 million), and poses significant schedule risks (see discussion above).

Additionally, Meadowlark has discussed the situation with GRE, and GRE concurs that the current location of Turbine T6 is not anticipated to impact the safe operation of its transmission line, so long as the turbine's tip height remains the proposed height of 492 feet. Even if Turbine T6 fell directly over (which, as noted previously, would be an extremely rare occurrence), the turbine would be approximately 34 feet away from GRE's transmission line. Further, in the unlikely event any damage were to occur to GRE's transmission line, Meadowlark will agree to be financially responsible for such damage.

Given that N.D.A.C. § 69-06-08-01(2)(a)(4) does not specify how it is to be measured, measuring from the centerline of GRE's right-of-way is not unreasonable. In addition, GRE agrees that the current location of T6 is not anticipated to impact the safe operation of its transmission line. On the other hand, moving T6 would result in additional environmental and landowner impacts, and would significantly increase Project costs. For these reasons, Meadowlark requests that the Commission determine that Turbine T6 may remain in its current location.

### **III. Waiver and Informal Hearing Request.**

Pursuant to N.D.C.C. § 49-22-07.2 and N.D.A.C. § 69-06-06-01, Meadowlark respectfully requests that the Commission waive any applicable procedures and time schedules to reasonably expedite its consideration and resolution of this Request. In addition, Meadowlark respectfully requests that the Commission schedule an informal hearing during its November 8, 2018, meeting to allow the Meadowlark to present additional information and answer any questions the Commission may have concerning the issues identified in this Request.

**CONCLUSION**

For the reasons set forth above, Meadowlark respectfully requests that the Commission grant its request for an expedited informal hearing and the relief requested herein.

Dated this 2nd day of November, 2018.

Respectfully Submitted,



By \_\_\_\_\_

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