

November 6, 2018

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Darrell Nitschke
Executive Secretary
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

**RE: Meadowlark Wind I LLC's Application for a Certificate of Site Compatibility
for the New Frontier Wind Energy Project in McHenry County, North Dakota
Case No. PU-11-69**

Dear Mr. Nitschke:

On November 2, 2018, Meadowlark Wind I LLC ("Meadowlark") submitted a Request for Setback Determination and Informal Hearing ("Request"). I am providing this letter to provide further support for why the setbacks discussed in the Request may be modified for the New Frontier Wind Energy Project ("Project"). In addition, on behalf of Meadowlark, I am expanding the Request to specifically include a motion to amend the Order of Continuing Suitability issued in this matter on May 10, 2017 with respect to the setbacks applicable to Turbines T6 and T26 (discussed in the Request) and to allow the turbine setback distance from occupied residences set forth in Order Paragraph 4.c to be waived by the residence owner.

A. Meadowlark Voluntarily Committed to Comply with N.D.A.C. § 60-06-08-01(2).

As indicated in the Request, the Commission issued its Findings of Fact, Conclusions of Law, and Order ("Order") granting Certificate of Site Compatibility No. 29 ("Certificate") to Meadowlark for the Project on April 25, 2012. At the time the Order and Certificate were issued, the Commission's siting criteria did not include the wind energy conversion facility-specific setback requirements that are currently set forth in N.D.A.C. § 60-06-08-01(2). Instead, Meadowlark made certain voluntary commitments regarding setbacks, which were included as Findings of Fact in the Order (*see, e.g.*, Finding Nos. 29 and 30). For instance, Meadowlark agreed to a 1.1 times turbine blade tip height setback from the edge of road right-of-way, a 1.1 times turbine blade tip height setback from transmission lines, and a 1,400 foot setback from occupied residences. *Id.* Thus, at the time the Order was issued, the setbacks identified were not exclusion areas.

In May 2012, the Commission initiated a rulemaking proceeding to revise its rules related to siting applications. *See* Rulemaking Case No. PU-12-165. The proposed rule amendments included

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Supporting information to request for setback determination, request to amend the Order of Continuing Suitability
Meadowlark Wind I LLC
Mollie Smith, Fredrikson&Byron, P.A.

adding the wind energy conversion facility-specific exclusion areas in N.D.A.C. § 60-06-08-01(2). The amended rules, including the wind energy conversion facility-specific exclusion areas, were published in April 2013, a year after the Commission issued the Certificate to Meadowlark.

Capital Power acquired Meadowlark in December 2014. Since the Project was not constructed within four years of issuance of the Certificate, Meadowlark submitted a Certification of Continuing Suitability in November 2016 pursuant to N.D.C.C. § 49-22-17 and N.D.A.C. Ch. 69-06-09. As set forth in N.D.C.C. § 49-22-17, Meadowlark was required to certify to the Commission that the site continued to meet the conditions upon which the Certificate was issued. Meadowlark further voluntarily committed to comply with the siting criteria added in 2013. On May 10, 2017, the Commission issued an Order of Continuing Suitability authorizing construction of the Project under the previously issued Certificate. In the Order of Continuing Suitability, Meadowlark's commitment to comply with the then current version of N.D.A.C. 69-06-08-01 was incorporated into the Order (*see* Order Paragraph 4.b). The Order of Continuing Suitability also specified that the provisions of the April 25, 2012 Order remained in effect except to the extent superseded or modified.

B. The Requirement to Comply with N.D.A.C. § 60-06-08-01(2) May Be Modified.

The Commission has the authority to amend provisions of its orders. N.D.C.C. § 49-05-09. As discussed above, Meadowlark is required to comply with N.D.A.C. § 60-06-08-01(2) because its voluntary commitment to do so was incorporated into the Commission's Order of Continuing Suitability. Under these specific circumstances, the Commission has the ability to modify the Order of Continuing Suitability to vary that provision, and Meadowlark respectfully requests that it do so with respect to Turbines T6 and T26 for the reasons set forth in its Request. Given the unique facts presented, amending the Order of Continuing Suitability in the manner requested will not set a precedent for future cases. Further, as discussed in the Request, granting the motion will not impair public safety, and will avoid impacts to the applicable landowners and the environment.

C. The Requirement to Comply with the Occupied Residences Setback May Be Modified.

In addition to the request to amend the Order of Continuing Suitability with respect to Turbines T6 and T26, Meadowlark also requests that the Commission amend Order Paragraph 4.c to allow homeowners to waive the 1,400 foot setback from occupied residences. Meadowlark has identified two turbines that are less than 1,400 feet from two participating residences (Turbine T24 is approximately 1,395 feet from a residence, and Turbine T8 is approximately 1,365 feet from a residence), and is in the process of obtaining signed setback waivers from the home owners. Since the 1,400 foot setback is a voluntary commitment, and the turbines will still comply with McHenry County's setback requirements (*i.e.*, 500 feet from participating residences and 1,300 from non-participating residences), Meadowlark requests that the Commission modify the Order of Continuing Suitability to allow residence owners to waive the setback from occupied residences.

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D. Conclusion.

For the reasons discussed above, Meadowlark expands its Request to include a motion to amend the May 10, 2017 Order of Continuing Suitability issued in this matter. Further, Meadowlark respectfully reiterates its request that an informal hearing be scheduled as soon as possible to allow Meadowlark the opportunity to provide additional information and answer any questions the Commission may have.

An electronic version of this letter was filed with the Commission today via e-mail, and ten (10) copies are enclosed for filing. If you have any questions, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Mollie M. Smith". The signature is written in a cursive, flowing style.

MOLLIE M. SMITH

MMS/ms/65179182
Enclosures

cc: John Schuh (via e-mail)
Jerry Lein (via e-mail)
Todd Hartleben (via e-mail)
Chad Tucker (via e-mail)
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