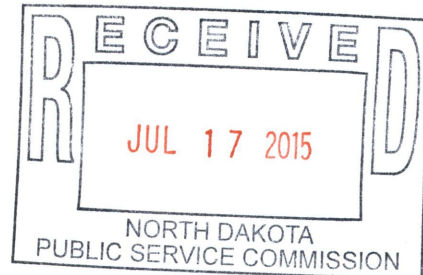


July 17, 2015



VIA FEDERAL EXPRESS

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

RE: Rolette Power Development, LLC's Application for a Certificate of Site Compatibility for the Rolette Wind Power Project, Rolette County, North Dakota
Docket No. PU-15-124

Dear Mr. Nitschke:

Enclosed for filing in the above-referenced matter please find: the original and ten (10) copies of Rolette Power Development, LLC's ("Rolette Power") Post-Hearing Brief in Support of Rolette Power's Application for a Certificate of Site Compatibility; and ten (10) copies of Late-Filed Exhibit No. 14, Affidavit of Warren Enyart (the original will be hand-delivered this afternoon).

Electronic copies of the enclosed documents were filed with the Commission today via e-mail. If you have any questions, please let me know.

Sincerely,

A handwritten signature in blue ink that reads "Mollie M. Smith".

MOLLIE M. SMITH

MMS/ms
Enclosures

cc: Judge Wade C. Mann (w/ enclosure – via Federal Express)
Mr. John Schuh (w/ enclosure – via e-mail)
Mr. Jerry Lein (w/ enclosure – via e-mail)
Mr. Warren Enyart (w/ enclosure)
Mr. Grady Wolf (w/ enclosure)

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Post-Hearing Brief in Support of Application for Certificate of Site Compatibility

STATE OF NORTH DAKOTA

PUBLIC SERVICE COMMISSION

**Rolette Power Development, LLC
Rolette Wind Energy Project – Rolette County
Siting Application**

Case No. PU-15-124

**POST-HEARING BRIEF IN SUPPORT
OF ROLETTE POWER’S APPLICATION FOR
A CERTIFICATE OF SITE COMPATIBILITY**

INTRODUCTION

On June 29, 2015, the North Dakota Public Service Commission (“Commission”) held a public hearing in Rolette, North Dakota, on Rolette Power Development, LLC’s (“Rolette Power”) Application for a Certificate of Site Compatibility (“Application”) for the Rolette Wind Power Project (“Project”). At the public hearing, the recent amendments to N.D.C.C. § 49-22-03(3), which defines what activities constitute “construction” of facilities subject to the Commission’s siting jurisdiction, were discussed. In light of the changes to N.D.C.C. § 49-22-03(3), each of the Commissioners identified different approaches to siting the Project, including designating only limited corridors around Project components as the site, requesting a commitment to a final layout with Commission approval of subsequent modifications, and requesting a commitment to a maximum turbine number and megawatt (“MW”) limit for the site designated.

As a result of the differing approaches discussed and potential commitments identified, Rolette Power requested the opportunity to submit a late-filed exhibit outlining any additional siting commitments it would make regarding the Project, and a post-hearing brief. Accompanying this brief is the Affidavit of Warren Enyart, Late-Filed Hearing Exhibit No. 14. Mr. Enyart reconfirms Rolette Power’s request that the Commission designate the Project area,

as depicted in Hearing Exhibit No. 3 (the “Project Area”), as the site for the Project. Affidavit of Warren Enyart, ¶ 7. Mr. Enyart also states that, in addition to complying with the applicable requirements of N.D.C.C. Ch. 49-22, the exclusion area and avoidance area criteria set forth in N.D. Admin. Code § 69-06-08-01(1)-(4), and the Commission’s Certification Relating to Order Provisions – Energy Conversion Facility Siting, dated June 26, 2015 (“Certification”), Rolette Power will site the Project within the Project Area so as to comply with the following additional commitments:

1. Rolette Power will construct no more than 59 turbines within the Project Area;
2. Rolette Power will construct no more than 100.4 MW within the Project Area;
3. Rolette Power will apply a setback of at least 1,400 feet between turbines and currently occupied residences;
4. Rolette Power will apply a setback of at least 0.5 mile between turbines and the Ghost Valley Waterfowl Production Area; and
5. Rolette Power will apply a shadow flicker goal of 30 hours per year or less at currently occupied residences, unless otherwise agreed to by the homeowner.

Affidavit of Warren Enyart, ¶ 8. These commitments are consistent with Rolette Power’s current development plans for the Project Area. *Id.*

As discussed further below, with these commitments, the Commission should grant a Certificate of Site Compatibility (“Certificate”) designating the Project Area as the site for Project. The Project Area is needed to operate the proposed wind energy conversion facility and

meets the siting criteria; thus, it is the appropriate site for the Project. On the other hand, designating something other than the Project Area as the site for the Project would be inconsistent with Rolette Power's request, unsupported by the siting criteria, and inconsistent with past precedent.

With respect to the other proposed siting approaches, the Commission should not designate only limited corridors around individual Project components as the site for the Project. Such an approach is not within the authority granted to the Commission under the Siting Act. Moreover, the approach would create regulatory uncertainty and risk that would interfere with future wind development in North Dakota.

Additionally, Rolette Power should not have to commit to a final layout and Commission approval of subsequent modifications in order to obtain a Certificate for the Project. First, the Commission should not request that Rolette Power make a commitment that the Commission admittedly cannot order. Second, it is not in the best interest of the Project for Rolette Power to make such a commitment. Rather, maintaining the siting flexibility provided by N.D.C.C. § 49-22-03(3) will better enable Rolette Power to maximize the Project's efficiency and output, secure financing, position the Project to secure an off-taker and maximize the return on investment made by landowners and community members, and accommodate landowner layout modification requests. Third, the siting flexibility provided by N.D.C.C. § 49-22-03(3) is appropriately limited.

RECENT AMENDMENTS TO N.D.C.C. § 49-22-03(3)

In 2015, the North Dakota Legislature enacted certain amendments to N.D.C.C. § 49-22-03(3), which defines "construction" for purposes of determining when construction of a transmission or energy conversion facility requires a route permit or certificate of site

compatibility from the Commission. S.B. 2120, 64th Legis. Assemb., Reg. Sess. (N.D. 2015). The amendments specifically exclude from the definition of “construction,” and, thus, from the Commission’s siting jurisdiction, certain activities, including those activities that are (in relevant part):

For the construction of the same type of facility as the existing type of facility as identified in a subdivision of subsections 5 (defining “energy conversion facility”) or 12 (defining “transmission facility”) of this section and the activities:

- (a) Are within the geographic boundaries of a previously issued certificate;
- (b) Do not affect any known exclusion or avoidance areas; and
- (c) Are for construction of a new energy conversion facility; to improve the existing energy conversion facility; or to increase or decrease the capacity of the existing energy conversion facility.

Id. (see N.D.C.C. § 49-22-03(3)(a)). Before conducting such activities, the utility must certify in writing to the Commission that (b) and (c) above are applicable and it “will comply with all applicable conditions and protections in siting laws and rules and commission orders previously issued for any part of the facility.” *Id.* If an avoidance area would be affected, then the utility must obtain the Commission’s approval for the impact to the avoidance area and, if the Commission does not approve the impact, the utility must obtain the appropriate siting authority (*i.e.*, a Certificate) for the affected portion of the site. *Id.* (see N.D.C.C. § 49-22-03(3)(b)). The amendments went into effect on July 1, 2015.¹

¹ See North Dakota Legislative Council, Effective Dates of 2015 Legislation (available at <http://www.legis.nd.gov/files/resource/64-2015/effective-dates-legislation/2015-effective-dates-legislation.pdf?20150715170030>) (citing N.D. Const. art. IV, § 13 and N.D.C.C. § 1-02-42).

The amendments specifically limited the Commission's jurisdiction over activities within the boundaries of a previously designated site. However, none of the energy conversion facility siting requirements set forth in N.D.C.C. Ch. 49-22 were amended, and none of the siting criteria set forth in the Commission's rules have changed since April 1, 2013. Therefore, while the Commission's siting jurisdiction over certain activities within a designated site changed, the siting criteria the Commission must apply when designating a site for an energy conversion facility, such as the Project, remain the same as they were prior to the July 1, 2015.

ARGUMENT

I. The Project Area Should Be Designated As the Site For the Project.

The Project Area should be designated as the site for the Project because the Project Area is needed to operate the Project and satisfies the siting criteria. Designating something other than the Project Area as the site for the Project would be inconsistent with Rolette Power's request, unsupported by the siting criteria, and inconsistent with past precedent.

A. The Project Area is necessary to operate the Project and satisfies the siting criteria.

The Project Area should be designated as the site for the Project because the Project Area is necessary to operate the proposed Project and satisfies the siting criteria. As a wind energy conversion facility, operation of the Project is tied directly to harvesting the wind resource within the Project Area. Unlike a transmission line or a pipeline, which only requires a right-of-way for placement of linear facilities that transport products produced elsewhere, a wind energy facility, such as the Project, harvests the wind resource within its project area. Thus, regardless of whether a parcel within the Project Area hosts Project facilities, it contributes its wind resource to and is an essential part of the Project. As both Mr. Enyart and Dr. Brandon Storm testified, Rolette Power is fully utilizing the entire Project Area in order to develop a Project that meets

Rolette Power's goal of 100.4 MW, while complying with the Commission's setback and avoidance and exclusion area requirements, as well as Rolette Power's own voluntary siting commitments.

In addition, as a responsible developer, Rolette Power heeded comments made by the Commission in past wind project siting proceedings, and sought the participation and support of as many landowners as possible in the targeted development area to minimize the number of nonparticipating parcels and maximize the buffer between Project facilities and nonparticipating landowners. As a result, Rolette Power acquired wind easements covering all but two parcels within the outer boundary of the Project Area (excluded from the proposed site), and will maintain as much separation between above-ground facilities and nonparticipating landowners as possible. Rolette Power also listened to landowners and ensured it had sufficient acreage to develop access roads that are "square with the world" and interconnect with and utilize existing roadways to the extent possible. Meeting this goal required careful planning and full utilization of the Project Area, as roadways were not simply the straightest line between two points.

Finally, the Project Area corresponds to the parcels under easement by Rolette Power. The owners of those parcels voluntarily chose to execute easements allowing development of the Project, with the understanding that they may or may not host turbines or other facilities. The landowners will receive land rent payments for each acre within the Project Area, regardless of whether they host facilities, because Rolette Power recognizes that all of those acres contribute to the wind resource and the overall ability to develop a viable Project. The Commission's designation of the Project site should also recognize this contribution, and support the landowners' right to utilize their property in the manner they determine is best.

The site designated for a generation facility cannot exclude portions of the site essential to operate the facility. Think of it this way: If the Commission would not issue a site permit for another wind facility within the Project Area because the two facilities could not both operate in the same space, then the Project Area *must be* necessary to develop the Project and, therefore, should be designated as the site for the Project.

B. The Commission's decision should be based on the site proposed, tied to its siting criteria, and consistent with past precedent.

Based on past precedent, Rolette Power, as the developer of the Project, has the right to seek a Certificate for a specific site, and the Commission's decision should be limited to a determination on the site proposed. In past wind energy conversion facility proceedings, even when the Commission has imposed restrictions on the location of facilities within the proposed site (for instance, not approving specific turbine locations²), modifications to the boundary of a proposed site for a wind energy conversion facility were proposed by the applicant, and not imposed by the Commission.

In addition, if a modification to the Project Area were to be imposed by the Commission, the modification should be necessary to ensure compliance with the siting requirements of N.D.C.C. Ch. 49-22 or the Commission's siting criteria, and not simply to circumvent a change in the law governing what activities fall under the Commission's jurisdiction. As demonstrated by Rolette Power's testimony and evidence at the public hearing and in the accompanying Affidavit of Warren Enyart, the Project will be sited within the Project Area so as to comply with all applicable siting criteria, as well as Rolette Power's additional voluntary commitments.

² See, e.g., Findings of Fact, Conclusions of Law and Order (Apr. 29, 2009), Just Wind Wind Farm, Case No. PU-07-54; Findings of Fact, Conclusions of Law and Order (Jul. 8, 2009), Luverne Wind Farm, Case No. PU-09-221.

Further, in the comments made at the hearing, the Commission did not identify a concern with the Project's siting criteria compliance; rather, the Commission's concern focused primarily on the impact of the recent amendments to the Siting Act on the Commission's siting authority.

There is no legal basis for imposing limitations on this Project that are different from those imposed on all other wind projects previously sited in North Dakota simply because of a change in the Commission's siting authority. In other words, if the Commission would have designated the Project Area as the site for the Project prior to July 1, 2015, then it should also do so after July 1, 2015.

II. The Commission Should Not Limit the Designated Site to Corridors Around Individual Project Components.

At the public hearing, the Commission discussed the idea of designating a limited corridor around each of the Project components (presumably, turbines, access roads, the substation, the operations and maintenance ("O&M") building, collector lines, communication lines and meteorological ("met") towers) as the "site" for the Project. Such an approach should be rejected because it: (1) is outside the authority granted to the Commission under the Siting Act; and (2) creates significant regulatory risk and uncertainty that will interfere with the development of not only this Project, but all future North Dakota wind projects.

A. Designating limited corridors around individual components as the site for a wind energy conversion facility is contrary to the authority granted to the Commission under the Siting Act.

Designating limited corridors around individual components as the site for the Project is contrary to the authority granted to the Commission by the Siting Act. Pursuant to N.D.C.C. § 49-22-03(11) and (5), a "site" is "the location of an energy conversion facility," and an "energy conversion facility" includes "any plant, addition, or combination of plant and addition, designed for or capable of generation by wind energy conversion exceeding one-half megawatt of

electricity.” The Project’s turbines, collector lines, communication lines, substation and other associated facilities are part of a single, integrated system that harvests the wind resource within the Project Area to produce electricity. The Project has a single substation, and will have a single point of interconnection to the transmission grid. Thus, the Project is a single energy conversion facility, and a single site that enables operation of the Project must be designated.

Designating limited corridors around individual components as the site is the equivalent of issuing individual Certificates for each component, despite the fact that the Project is a single energy conversion facility. In the past, the Commission made it clear that it would not allow wind developers to circumvent the requirements of the Siting Act by dividing a wind project into smaller pieces in order to avoid the megawatt threshold³ for a Certificate.⁴ The Commission, likewise, should not be able to circumvent the recent amendment to the Siting Act by issuing what is the equivalent of multiple, component-specific site Certificates for a single energy conversion facility within a single Project site.⁵

In addition, the Commission is charged under the Siting Act with ensuring the orderly siting of energy infrastructure in North Dakota. By permitting only limited corridors around individual Project components, the Commission would be shifting that responsibility and

³ Prior to 2011, when the Legislature amended the Siting Act so that the Commission’s siting jurisdiction applied to wind energy conversion facilities greater than one-half MW (2011 N.D. Laws Ch. 348), the Commission had, at various times, siting jurisdiction over wind energy conversion facilities larger than 60 MW (2009 N.D. Laws Ch. 404), 100 MW or more (2005 N.D. Laws Ch. 403), and 50 MW or more (1975 N.D. Laws Ch. 436).

⁴ See, e.g., Letter Responding to Request for Jurisdictional Determination (Dec. 31, 2009), Radiance Wind Farm, Case No. PU-09-680.

⁵ Permitting a limited corridor around individual components could also be viewed as an attempt to apply the transmission facility corridor and routing requirements to an energy conversion facility siting application, which is also not authorized under the Siting Act.

authority to wind developers. While Rolette Power has no intentions of releasing acreage outside of the approved site if the site were limited specific corridors, other developers may do so, knowing that the acreage is not needed for Commission siting purposes and another developer will not realistically secure easements and develop another project within the bounds of the actual project area. As a result, landowners who would be within the actual “site” for a wind project, and would have otherwise received a per acre payment for lands under easement within that site, would not be fully compensated for the use of their property. The Legislature placed responsibility for orderly siting in the hands of the Commission for a reason, and the Commission must not shift that obligation or authority to individual developers.

B. Designating limited corridors around individual Project components as the site for a wind energy conversion facility creates significant regulatory risk and uncertainty that will interfere with the development of future wind projects in North Dakota.

Designating only limited corridors around individual Project components as the Project site creates significant uncertainty and risk that would threaten the ability to develop not only this Project, but any future wind project in North Dakota. As noted in Dr. Storm’s testimony, and discussed further in Section III below, the geotechnical analysis, discovery of unanticipated cultural resources or utilities, and turbine availability may require changes in turbine and associated facility locations. Any change in the location of a Project component (*e.g.*, a turbine, collector line, access road, or a met tower) that extends outside of the limited corridor would be outside of the “site” designated for the Project in the Certificate. Since construction of an energy conversion facility must occur within a site designated in a Certificate (*see* N.D.C.C. § 49-22-07), each and every move outside of the limited corridor would require designation of a new site, with the associated process requirements and cost.

Such a permitting regimen would impose significant regulatory uncertainty (since designation of a new site outside of a designated site is not specifically contemplated by the Siting Act) and financial burden on not only this Project, but every subsequent Project in North Dakota. Further, as discussed in Section III below, financiers are risk-averse, and will look less favorably on projects with significant regulatory uncertainty. No other previously sited wind project in North Dakota, nor any project sited in surrounding states, would be subject to the same regulatory risk. Thus, the Project would be at a significant disadvantage with respect to financing when compared to other projects – as would all subsequent North Dakota wind projects. Given the uncertainty, the financial burden, and the financing risk, adopting the corridor siting concept would discourage future wind development in North Dakota.

III. Rolette Power Should Not Be Required to Designate a Final Layout and Agree to Commission Approvals of Subsequent Modifications in Order to Obtain a Certificate for the Project.

Rolette Power should not be required to commit to a final layout and Commission approval of subsequent modifications in order to obtain a Certificate. First, the Commission should not ask Rolette Power to agree to a condition it cannot otherwise require. Second, it is in the best interest of the Project for Rolette Power to maintain the siting flexibility provided by N.D.C.C. § 49-22-03(3). Third, the siting flexibility provided by N.D.C.C. § 49-22-03(3) is appropriately limited.

A. The Commission should not request that Rolette Power agree to a condition it cannot otherwise require.

As the Commission acknowledged at the June 29, 2015 public hearing, and as evidenced by the recent modifications made to the Certification omitting the requirement that a permittee obtain Commission approval for Project modifications, the Commission does not believe it has the authority to order Rolette Power to commit to a specific layout and seek Commission

approval of any subsequent modifications. Since the Commission does not have the authority to order such a requirement, Rolette Power's receipt of a Certificate for the Project should not be dependent on conceding to a limitation that the Commission cannot otherwise impose.

B. It is in the Project's best interest to maintain the siting flexibility provided by N.D.C.C. § 49-22-03(3).

As discussed further below, it is in the Project's best interest for Rolette Power to maintain the siting flexibility provided by N.D.C.C. § 49-22-03(3). Maintaining siting flexibility will better enable Rolette Power to: (1) maximize the Project's efficiency and output; (2) maximize the Project's financing potential; (3) secure an off-taker and maximize the Project's rate of return on investment; and (4) accommodate landowner layout modification requests when possible.

1. Maintaining siting flexibility is essential to maximizing Project efficiency and output.

Rolette Power has identified a Project layout that not only complies with all applicable siting requirements and commitments, but also maximizes operational efficiency and output. However, as discussed in Dr. Storm's testimony, it is possible that layout changes may be necessary during final micrositing of the Project in order to preserve that operational efficiency and output, and to avoid unanticipated cultural resources and infrastructure.

For instance, due to the significant expense involved, geotechnical borings at turbine locations are typically not conducted until well into the Project development process, often after key permits, such as a Certificate, have been secured. The results of the geotechnical analysis are used to determine whether each proposed turbine location is geologically suitable for placement of a turbine, and aid in determining the appropriate foundation specifications for each

turbine. Thus, the geotechnical surveys could result in one or more proposed turbine sites being unsuitable.

Likewise, while extensive cultural resource surveys have been conducted, the potential to discover unanticipated cultural resources during construction is always present. Since cultural resources are to be avoided under the Commission's siting criteria, discovery of a cultural resource may also mean that a turbine location is no longer usable. Layout shifts may also be necessary to accommodate underground utilities identified after issuance of a Certificate.

If an identified turbine location cannot be used, there are two options: eliminate the location, or shift the location to an area that is usable. Whether the location is eliminated or shifted, as Dr. Storm testified, it may be necessary to shift additional surrounding turbines to optimize the facility's overall operational efficiency and output. Thus, to maintain maximum Project efficiency and output, it often is not as simple as just selecting a different approved turbine site.

Finally, a turbine model other than those identified for the current Project layout may become available that could increase overall efficiency and lower Project costs. However, selecting a new turbine model may require layout modifications in order to realize the turbine's benefits.

If Rolette Power agrees to a final Project layout and Commission approval of modifications, Rolette Power loses the flexibility it currently has – limited by the Commission's siting criteria and its own siting commitments – to select the best turbine model available for the Project and shift turbines within the Project Area to accommodate site conditions, avoid features and infrastructure, and ensure maximum Project efficiency and output. Considering that the facility will be operational for at least 25-30 years, and that the economic benefits to landowners

and other community investors are directly tied to the facility's efficiency, output, and rate of return, it is in the Project's best interest to maintain the siting flexibility within the Project Area provided by N.D.C.C. § 49-22-03(3).

2. Maintaining siting flexibility increases the Project's financing potential.

Siting flexibility is also important to securing financing for the Project. As noted above, operational efficiency and output are directly tied to the layout; in turn, the more efficient and productive a wind energy conversion facility is projected to be, the better opportunity it has of securing financing and doing so with favorable terms.

Financiers are also risk-averse, and they view the need for regulatory approval as a risk to the successful development of a wind project. Thus, if further Commission approval is required to shift the Project layout within the Project Area, it is a risk that a financier will consider when determining whether and under what terms to finance the Project. The risk is greater where, as in North Dakota, the procedure for obtaining approval of layout changes is not clearly defined. In the past, some wind farm layout changes have been handled via an informal Commission approval process⁶, while others have resulted in the issuance of a notice of opportunity for hearing and an informal Commission hearing,⁷ or the Commission conducting an additional

⁶ See, e.g., Commission Motion Acknowledging Staff Approval of Turbine Location Changes (Jul. 8, 2015), Sunflower Wind Project, Case No. PU-14-105; Commission Motion Acknowledging Met Tower Location Change (Dec. 17, 2014), Courtenay Wind Farm Project, Case No. PU-13-64.

⁷ See, e.g., Notice of Filing and Notice of Informal Hearing and Notice of Opportunity for Hearing (Nov. 6, 2014), Sunflower Wind Project, Case No. PU-14-105; Notice of Informal Hearing and Notice of Opportunity for Hearing (Sept. 27, 2012), Wilton IV Wind Energy Center, Case No. PU-11-646.

public hearing.⁸ However, what layout change triggers each type of approval is not specified in the Siting Act or the Commission's rules.

As a result, to financiers, a requirement that the Commission approve layout shifts within the Project Area is a regulatory hurdle without a clearly defined process or timeframe. Thus, it would not be in the Project's best interest for Rolette Power to voluntarily submit to Commission review of layout modifications, thereby subjecting the Project to increased risk and potentially impacting the Project's ability to secure necessary financing.

3. Maintaining siting flexibility will better position the Project to secure an off-taker and maximize its rate of return.

In order to obtain a return on the investment made in the Project, Rolette Power will need to secure an off-taker to purchase the power produced. As with any business enterprise, Project costs factor into the price at which power may be sold and, ultimately, the return on investment to the Project's landowners and community investors. Thus, it is in the Project's best interest for Rolette Power to maintain siting flexibility, thereby avoiding potential costs associated with future regulatory approval of layout modifications, and better positioning the Project to secure an off-taker and maximize potential returns to the landowners and community members who have made significant investments in the Project.

4. Maintaining siting flexibility will better enable Rolette Power to accommodate landowner requests.

As a locally-owned, community-based Project, landowner input has been an important part of Project development. As Mr. Enyart testified, landowner input played a significant role

⁸ See, e.g., Notice of Filing and Notice of Hearing (Nov. 6, 2014), Merricourt Wind Power Project, Case No. PU-08-932.

in how Rolette Power has designed access roads for the Project. Therefore, maintaining the siting flexibility necessary to accommodate landowner requests when possible is also important.

To be clear, landowner input cannot be the controlling factor in the Project's layout design. As Mr. Enyart and Dr. Storm testified at the public hearing, designing a wind project layout is a complex, scientific process that involves a host of factors, including turbine specifications, wind characteristics, terrain, existing site features, setbacks and other siting constraints. As a result, an individual landowner's preferences may conflict with what is best for the overall Project. Accommodating a landowner's preference may also have a ripple effect, resulting in the need for layout changes that impact other landowners, or one landowner's request may conflict with what another landowner wants. Thus, landowner preferences must be considered in light of Rolette Power's obligation to ensure the overall success of the Project. As Mr. Enyart, as well as landowners within the Project Area, testified at the public hearing, Rolette Power explained to landowners the need to maintain final siting authority when negotiating easements for the Project because of the factors noted above.

That said, where it is feasible to do so, Rolette Power is committed to accommodating landowner requests. Maintaining the siting flexibility provided in N.D.C.C. § 49-22-03(3) will better enable Rolette Power to accommodate layout change requests made after issuance of the Certificate.

C. **The siting flexibility provided by N.D.C.C. § 49-22-03(3) is appropriately limited.**

While the amendment to N.D.C.C. § 49-22-03(3) provides Rolette Power with some flexibility in siting Project facilities within the Project Area, it must still comply with a host of siting requirements. Rolette Power's layout must comply with all applicable requirements of N.D.C.C. Ch. 49-22, the exclusion area and avoidance area criteria set forth in N.D. Admin.

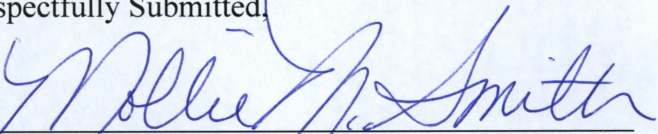
Code § 69-06-08-01(1)-(4), and the requirements set forth in the Certification. Rolette Power has also committed to construct no more than 59 turbines and 100.4 MW within the Project Area; apply a setback of at least 1,400 feet from currently occupied residences; and meet a shadow flicker goal of 30 hours per year or less at currently occupied residences, unless otherwise agreed to by the homeowner. Thus, Rolette Power does not have unfettered discretion to site turbines and facilities wherever it chooses; rather, as shown in Hearing Exhibit No. 13, Rolette Power's siting flexibility is appropriately limited.

CONCLUSION

For the reasons set forth above, Rolette Power Development, LLC, respectfully requests that the Commission issue a Certificate of Site Compatibility for the Rolette Wind Power Project designating the Project Area, as depicted in Hearing Exhibit No. 3, as the site for the Project, with the commitments set forth in Paragraph No. 8 of the Affidavit of Warren Enyart included as conditions in the Order issuing the Certificate.

Dated this 17th day of July, 2015.

Respectfully Submitted,

By 

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