

July 20, 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 an original and ten (10) copies of Rolette Power Development, LLC's ("Rolette Power") proposed Findings of Fact, Conclusions of Law and Order. An electronic copy of the enclosed document was filed with the Commission today via e-mail, and a Word version of the document was e-mailed to Mr. Schuh and Mr. Lein.

If you have any questions, please let me know.

Sincerely,

MOLLIE M. SMITH

MMS/ms
Enclosures

cc: Mr. John Schuh (w/ enclosure – via e-mail)
Mr. Jerry Lein (w/ enclosure – via e-mail)
Mr. Warren Enyart (w/ enclosure – via e-mail)
Mr. Grady Wolf (w/ enclosure – via e-mail)

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Proposed Findings of Fact, Conclusions of Law and Order

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

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

Case No. PU-15-124

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

July ____, 2015

Appearances

Commissioners Julie Fedorchak, Randy Christmann, and Brian P. Kalk.

Mollie M. Smith, Fredrikson & Byron, P.A., 200 South 6th Street, Suite 4000, Minneapolis, MN 55402, on behalf of the Applicant, Rolette Power Development, LLC.

John Schuh, Legal Counsel, North Dakota Public Service Commission.

Wade C. Mann, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

Preliminary Statement

On March 20, 2015, Rolette Power filed its Application for Certificate of Site Compatibility for the Rolette Wind Power Project (Project) in Rolette County, North Dakota, Case No. PU-15-124 (the Application), requesting authority to construct an up to 100 megawatts (MW) gross wind energy conversion facility.

On May 13, 2015, the Commission deemed the Application complete conditioned upon filing final wind turbine locations at least ten days before hearing and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for June 29, 2015, at 9:30 a.m., at Memorial Hall, 503 2nd Avenue, Rolette, North Dakota. The notice was published in the Turtle Mountain Times on May 25, 2015, and in the Turtle Mountain Star on May 25, and June 22, 2015. The notice identified the following issues to be considered:

1. Will the location, construction, and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?

2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?

3. Will the proposed facility locations minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On June 19, 2015, Rolette Power filed its anticipated final layout. On June 25, 2015, Rolette Power filed a number of proposed hearing exhibits.

On June 29, 2015, the public hearing was held as scheduled, during which Rolette Power provided additional hearing exhibits as part of its testimony.

On July 17, 2015, Rolette Power filed Late-Filed Hearing Exhibit No. 14 (Affidavit of Warren Enyart) and a post-hearing brief in support of the Application. On July 20, 2015, Rolette Power filed proposed Findings of Fact, Conclusions of Law and Order.

Findings of Fact

1. Rolette Power is a North Dakota limited liability company and is jointly owned by M-Power, LLC, and Border Power, LLC. Border Power's ownership consists of 27 participating landowners within the Project's footprint, 46 local investors, 30 M-Power investors, and community development organizations, including the Rolette Jobs Development Authority, the City of Rolette, the Rolette Area Development Authority, and the REAP Investment Fund of Minot, North Dakota. M-Power's ownership consists of 97 participating landowners in its wind farm footprints in Griggs and Steele Counties, 64 local investors, as well as four community development organizations, including Zone Investments, LLC, the Griggs-Steele Wind Development Group, Steele County Job Development Authority, and Hope Area Investments, LLC.

2. Rolette Power has been authorized to do business in the State of North Dakota since July 11, 2012, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State on June 2, 2015 (Docket No. PU-13-89).

3. Rolette Power proposes to construct a wind energy conversion facility known as the Rolette Wind Power Project to be located within an area comprised of approximately 14,080 acres of land in Rolette County, North Dakota, approximately three miles south and west of the City of Rolette (Project Area). Rolette Power requested that the Project Area, as depicted in Hearing Exhibit No. 3, be designated as the site for the Project.

4. Rolette Power selected the proposed site for the Project based on a number of factors, including: the quality of the wind resource, strong landowner and community interest and support, suitable transmission interconnection capability, avoidance of environmental issues, compliance with the Commission's siting criteria, compliance with Rolette County's requirements, and economic considerations.

5. Section 49-22-16(4) of the North Dakota Century Code provides that a site shall not be designated that violates the rules of any state agency, and that compliance with an agency's rules shall be presumed if the agency fails to present its position with respect to the proposed facility at the public hearing. The federal, state and local departments, agencies and entities that were consulted and provided comment are as follows:

- a) Federal – United States Department of Agriculture, Natural Resources Conservation Service (NRCS); United States Department of the Army Corps of Engineers (USACE), Planning, Programs, and Project Management Division; USACE, North Dakota Regulatory Office; United States Department of the Interior, Bureau of Indian Affairs (BIA); United States Department of the Interior, Fish and Wildlife Service (USFWS), J. Clark Salyer National Wildlife Refuge; USFWS, Ecological Services; Minot Air Force Base; the Federal Aviation Administration (FAA);
- b) State – North Dakota Department of Commerce; North Dakota Department of Health; North Dakota Department of Transportation; North Dakota Game and Fish Department; North Dakota State Water Commission; State Historical Society of North Dakota, State Historic Preservation Office (SHPO); and
- c) Local – North Central Electric Cooperative, Inc.; Rolette County; Rolette Airport Authority; City of Rolette.

6. Agency consultations and comments are noted in Appendices B and E of the Application and in the exhibits and the testimony presented at the public hearing. No objections to the proposed Project were raised by any state or federal agencies or local governmental entities.

7. Section 49-22-16(2) of the North Dakota Century Code provides that no energy conversion facility site shall be designated that violates any local land use, zoning or building rules, regulations or ordinances. At the hearing, Rolette Power testified that it has obtained a conditional use permit for the Project from Rolette County, and will comply with applicable county zoning ordinance requirements.

Project Design

8. The Project will have a nameplate (gross) capacity of up to 100.4 MW, and the Project layout proposed by Rolette will consist of up to 59 wind turbines, with the final number of turbines determined by the capacity of the turbine model selected.

9. Rolette Power is currently considering six turbine models, or a turbine model of a similar range and class: the GE 1.7-100; the Siemens SWT 2.3-113; the Vestas V110-2.0; the Vestas V117-3.3; the Gamesa G114-2.0; and the Gamesa G114-2.5. Depending on turbine availability, off-taker preference, and economic

considerations, among other factors, Rolette Power may select a turbine model other than those currently under consideration.

10. In addition to turbines, associated facilities constructed within the Project Area will include step-up transformers, access roads, an operation and maintenance (O&M) building, a substation, permanent meteorological towers, and a system of underground collection lines and communication cables. Other temporary facilities required for the Project's construction phase include a concrete batch plant, laydown area for equipment, intersection improvements, crane pads and working pads, and a staging area.

11. Foundation size and design will be finalized once geotechnical analyses have been completed and the turbine model selected.

12. Construction of the Project is anticipated to begin in the second quarter of 2016 and be completed in the fourth quarter of 2016. Rolette Power anticipates that the Project will be operational before the end of 2016.

13. The total cost for construction of the Project is estimated to be approximately \$175 million.

14. Rolette Power anticipates that a portion of the Project's output would serve the needs of one or more regional utilities and their customers, including one or more utilities within the Midcontinent Independent System Operator (MISO) service territory, the Western Area Power Administration (WAPA) service territory, or an adjacent service territory.

Siting Criteria

15. North Dakota Administrative Code Chapter 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria, as set forth in North Dakota Administrative Code Section 69-06-08-01 are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria. With the exception of prime farmland and unique farmland, an energy conversion facility shall not be sited within an Exclusion Area. The exception for prime and unique farmland is if the Commission finds the prime farmland and unique farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then such exclusion shall not apply. An energy conversion facility must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites. In accordance with the Commission's Selection Criteria, a site shall be approved if it is demonstrated that any significant adverse effects resulting from the location, construction, and operation of the energy conversion facility will be at an acceptable

minimum or that the effects will be managed and maintained at an acceptable minimum. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the proposed energy conversion facility.

16. With respect to general Exclusion Areas, a small waterfowl production area (WPA) is located within the southernmost edge of the Project boundary; however, no Project facilities will be located within 0.5 miles of the WPA. Thus, the Project will not impact the WPA. In addition, prime farmland and farmland of statewide importance are present within the Project Area; however, the Project will avoid such land to the maximum extent practicable and is expected to permanently impact less than 0.6% of such land. Thus, the Project will have a negligible impact on agricultural productions.

17. With respect to Exclusion Areas specific to wind energy conversion facilities, three are present within the Project Area: areas less than one and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway; areas less than one and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and areas one and one-tenth times the height of the turbine from the property line of a nonparticipating landowner. However, no turbines will be sited in these areas.

18. With respect to general Avoidance Areas, cultural resources are present within the Project Area, but the Project will be sited to avoid cultural resource sites. Wetlands are also present, but the Project will be sited to minimize permanent impacts to the extent practicable. Some trees and shrubs are located within the Project Area, primarily windbreaks and shelterbelts around farmsteads, and the Project will be sited to minimize tree removal to the extent practicable. Tree or shrub removal and replacement will be coordinated with landowners and conducted in accordance with the Commission's tree and shrub mitigation specifications.

19. No further Exclusion or Avoidance Areas have been identified within the Project Area.

20. The Project and its associated facilities are anticipated to occupy and disturb up to approximately 90.7 acres of land, or up to approximately 0.6 percent of the total Project Area, during the life of the Project. Rolette Power will continue to work with landowners to minimize land use disruptions from the siting of the facilities. No impacts to irrigation or the quality of the agricultural land are anticipated.

21. Rolette Power submitted evidence to demonstrate that any significant adverse effects resulting from the location, construction, and operation of the Project as they relate to the Selection Criteria set forth in Section 69-06-08-01(5) of the North Dakota Administrative Code will be at an acceptable minimum or managed and maintained at an acceptable minimum.

22. Rolette Power submitted evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible to

meet the Policy Criteria set forth in Section 69-06-08-01(6) of the North Dakota Administrative Code.

23. During construction, the Project will likely result in a temporary increase in traffic on county and township roads. However, based on the existing traffic use and the rural nature of the area, the impacts from the additional construction-related traffic are expected to be minimal. Any impacts on county and township roads, and their restoration, will be addressed in accordance with a road use and maintenance agreement between the county and Rolette Power, which will also cover the applicable townships. During operation, no adverse effects to transportation facilities or networks are anticipated.

24. The proposed Project is not anticipated to have significant adverse impacts on the ability of the affected area to provide community services, such as housing, health care, educational services, police and fire protection, water and sewer, or solid waste management.

25. The Project is anticipated to benefit the local economy through the creation of construction and operation and maintenance jobs; easement payments to landowners; state and local tax revenue; and local expenditures for equipment, fuel, operating supplies, products and services.

Cultural Resources

26. Rolette Power has completed a Class I literature search, a Class II architectural history investigation and a Class III cultural resources inventory for the current Project layout, with the exception of the permanent meteorological tower locations. Rolette Power has submitted its Class II architectural history investigation report and its Class III cultural resources inventory report to SHPO for review, and will obtain and file copies of SHPO's responses regarding the reports prior to beginning construction of the Project.

27. Rolette Power will complete a Class III cultural resources inventory of its permanent met tower locations, will submit the findings to SHPO for review, and will obtain and file a copy of SHPO's response prior to beginning construction of the meteorological towers.

28. In the event that the Project layout changes from the layout provided in Hearing Exhibit No. 3, Rolette Power will complete Class III cultural resource survey work for any previously unsurveyed areas, per SHPO's guidance; will submit the findings to SHPO for review; and will obtain and file with the Commission a copy of SHPO's response prior to beginning construction in said areas.

29. Project facilities will be sited so as to avoid cultural resource sites; thus, cultural resource sites will not be impacted by the Project.

Wetlands, Woodlands, and Wildlife

30. Woodlands comprise less than one percent of the total Project Area. Trees within the Project Area consist primarily of planted windbreaks and shelterbelts around farmsteads. If trees or shrubs are impacted by the Project, Rolette Power will comply with the Commission's tree and shrub mitigation specifications.

31. A wetland delineation was completed for the Project. In the event the Project layout changes, Rolette Power will complete a wetland delineation of any previously unsurveyed areas, as necessary. Rolette Power will minimize permanent wetland impacts from the Project to the extent practicable, and will obtain any permits required from USACE.

32. The Project will be sited so as to avoid permanent impacts to USFWS wetland easement basins.

33. Rolette Power conducted environmental studies of the Project Area, and impacts to wildlife are anticipated to be minimal. In consultation with the USFWS, Rolette Power will prepare a threatened and endangered species document, which will identify any avoidance, minimization and, if necessary, mitigation measures that Rolette Power will implement for the Project with respect to such species.

34. At the public hearing, the Commission inquired regarding a reference by the USFWS in its 2013 consultation letter to eagle nests in proximity to the Project (see Appendix E of Hearing Exhibit No. 1). Rolette Power agreed to provide additional documentation regarding the presence or absence of eagle nests in proximity to the Project as a condition of this Order.

Sound and Shadow Flicker Analyses

35. A sound analysis was conducted for the Project. The analysis demonstrates that sound levels for the Project will comply with the Commission's Avoidance Area requirement that sound levels within 100 feet of an inhabited residence or community building not exceed 50 dBA unless a waiver is obtained (Avoidance Area Sound Requirement) if any of the currently identified turbine models, or a turbine model with the same or less potential sound impact, is selected.

36. In the event Project modifications occur that are not covered by the current sound analysis, Rolette Power will conduct a sound analysis to ensure that the Project complies with the Commission's Avoidance Area Sound Requirement.

37. A shadow flicker analysis was conducted for the Project. Based on a detailed shadow flicker analysis, using realistic assumptions, no occupied residences are anticipated to have shadow flicker levels of over 30 hours a year using any of the turbine models currently under consideration, or a turbine model with the same or less potential for shadow flicker impacts.

38. Rolette Power will site the Project within the Project Area so as to meet a shadow flicker goal of 30 hours per year or less at currently occupied residences, using realistic assumptions, unless otherwise agreed to by the homeowner. In the event Project modifications occur that are not covered by the current shadow flicker analysis, Rolette Power will conduct a shadow flicker analysis to ensure this commitment is met. If individual cases arise indicating a potential shadow flicker concern, Rolette Power will investigate and address the concern, as appropriate.

Additional Mitigative Measures

39. Rolette Power has agreed to a number of steps to mitigate any potential Project impacts, as indicated by the Certification Relating to Order Provisions – Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications, dated June 26, 2015 (Certification), which is attached hereto.

40. In addition to those siting measures set forth above, Rolette Power has agreed to the following:

- a. Rolette Power will construct no more than 59 turbines within the Project Area;
- b. Rolette Power will construct no more than 100.4 MW within the Project Area;
- c. Rolette Power will site the Project so as to comply with a setback of at least 1,400 feet between wind turbines and currently occupied residences; and
- d. Rolette Power will site the Project so as to comply with a setback of at least 0.5 mile from the Ghost Valley Waterfowl Production Area.

41. All setbacks applied will be measured from the center of the base of the turbine to the closest part of the applicable feature.

42. The Project will comply with the Rolette County zoning regulations.

43. Rolette Power will utilize best management practices (BMPs) to minimize impacts on ground and surface water, and to prevent soil erosion. Rolette Power will implement the erosion control measures required under the National Pollution Discharge Elimination System (NPDES) permit and the associated Stormwater Pollution Prevention Plan. Construction of the Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils.

44. Access to the wind turbine towers and the O&M building will be restricted, and access doors will be locked when not in use by maintenance personnel. The Project substation will be fenced, the gate will be locked when not being used for maintenance access, and applicable warning signs will be in place.

45. Rolette Power will participate in the North Dakota One-Call Excavation Notice System.

46. Rolette Power will coordinate with local authorities and first responders regarding emergency response measures as part of the Project commissioning activities.

47. Each turbine will communicate directly with the Supervisory Control and Data Acquisition (SCADA) system for performance monitoring, energy reporting, and troubleshooting.

48. Lightning and grounding protection for all wind farm equipment is designed and constructed to be compliant with all applicable National Electrical Code (NEC) and National Electric Safety Code (NESC) requirements.

49. Rolette Power will develop a lighting and marking plan for the turbines and meteorological towers in accordance with FAA and state requirements.

50. In accordance with the Commission's rules, Rolette Power will file a decommissioning plan with the Commission prior to the commencement of operation of the Project, and decommissioning will be performed in accordance with all applicable rules and regulations.

From the foregoing Findings of Fact, the Commission now makes its:

Conclusions of Law

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.

2. The wind energy conversion facility proposed by Rolette Power is an energy conversion facility as defined in North Dakota Century Code Section 49-22-03(5).

3. The Application submitted by Rolette Power meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.

4. The location, construction, and operation of the proposed energy conversion facility will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.

5. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.

6. The proposed energy conversion facility location will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.

7. The Commission has jurisdiction to ensure compliance with National Electric Safety Code standards in the construction and operation of the proposed energy conversion facility.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

Order

The Commission orders:

8. Certificate of Site Compatibility No. ___ for an Energy Conversion Facility is issued to Rolette Power Development, LLC, for the construction, operation, and maintenance of a wind energy conversion facility known as the Rolette Wind Power Project.

9. That the Project Area, as depicted in Hearing Exhibit No. 3, is designated as the site for construction of the Rolette Wind Power Project, and is located within the following sections:

Township 159 North, Range 71 West, Rolette County, ND
Sections 7-9, 16-21, 29-31

Township 159 North, Range 72 West, Rolette County, ND
Sections 13-16, 19-30, 35, 36

10. Within the permitted area, Rolette Power is authorized to site, construct, operate, and maintain wind turbines and associated equipment, access roads, an O&M building, a substation, permanent meteorological towers, and a system of underground collection lines and communication cables, as well as any other associated facilities identified in the Application, at the hearing, in any supplemental filings and in any late-filed exhibits.

11. In addition to complying with the applicable requirements of N.D.C.C. Ch. 49-22, the exclusion and avoidance criteria set forth in N.D.A.C. § 69-06-08-01(1)-(4), and the Certification, Rolette Power shall site the Project within the Project Area so as to comply with the following additional commitments:

- (a) Rolette Power will construct no more than 59 turbines within the designated site;
- (b) Rolette Power will construct no more than 100.4 MW within the designated site;
- (c) Rolette Power will apply a setback of at least 1,400 feet between turbines and currently occupied residences;

- (d) Rolette Power will apply a setback of at least 0.5 mile from the Ghost Valley Waterfowl Production Area; and
- (e) Rolette Power will site turbines so as to meet a shadow flicker goal of 30 hours per year or less at currently occupied residences, unless otherwise agreed to by the homeowner. In the event Project modifications occur that are not covered by the current shadow flicker analysis, Rolette Power will conduct a shadow flicker analysis to ensure this commitment is met.

12. If modifications are made to the Project layout, Rolette Power will complete a Class III cultural resource survey for any previously unsurveyed portions of the designated site upon which Project-related facilities will be located, in accordance with SHPO guidance; will submit cultural resource findings to SHPO for review; and will obtain and file a copy of SHPO's response with the Commission prior to beginning construction in said areas.

13. If modifications are made to the Project layout, Rolette Power will complete a wetland delineation of any previously unsurveyed areas upon which Project-related facilities will be located, as necessary.

14. In the event Project modifications occur that are not covered by its current shadow flicker analysis, Rolette Power will conduct a shadow flicker analysis to ensure the commitment made in Order Provision 4(e) herein is met.

15. In the event Project modifications occur that are not covered by its current sound analysis, Rolette Power will conduct a sound analysis to ensure that the Project complies with the Commission's Avoidance Area Sound Requirement.

16. Rolette Power will submit additional documentation to the Commission regarding the presence or absence of eagle nests in proximity to the Project prior to beginning construction of the Project.

17. The provisions of the Certification are incorporated by reference and attached to the Order issued by the Commission.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian P. Kalk
Commissioner