

Matthew T. Collins

Attorney

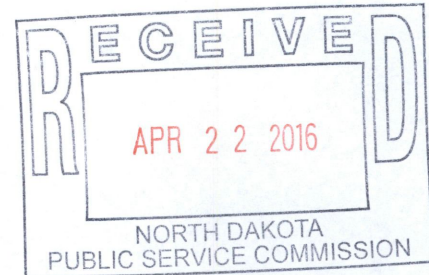
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**FABYANSKE
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April 22, 2016



VIA E-MAIL AND OVERNIGHT DELIVERY

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

Re: Brady Wind, LLC, Case Nos. PU-15-690 and PU-15-797

Dear Mr. Nitschke:

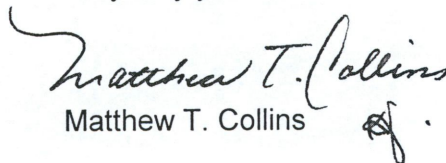
Enclosed for filing in the above-referenced matters are the original and ten copies of:

Intervenor Concerned Citizens of Stark County's

- Post-Hearing Brief; and
- Proposed Findings of Fact, Conclusions of Law, and Order

Pursuant to N.D. Admin. Code 69-02-04-10, I am serving same by U.S. Mail and e-mail to the other parties in this matter.

Very truly yours,


Matthew T. Collins

MTC/KD
Enclosures

cc: Judge Patrick Ward (via e-mail and US Mail) (w/enc.)
Zachary Pelham (via e-mail and US Mail) (w/enc.)
Brian Bjella (via e-mail and US Mail) (w/enc.)
Wade Mann (via e-mail and US Mail) (w/enc.)
Jerry Lein (via e-mail and US Mail) (w/enc.)
John Hamre (via e-mail and US Mail) (w/enc.)
Casey Furey (via e-mail and US Mail) (w/enc.)
Illona Jeffcoat-Sacco (via e-mail and US Mail) (w/enc.)
Timothy J. Dawson (via e-mail and US Mail) (w/enc.)

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Proposed Findings of Fact, Conclusions of Law, and Order
Concerned Citizens of Stark County (CCSC)
Matthew Collins, Attorney

103 PU-15-690 Filed 04/22/2016 Pages: 14
Proposed Findings of Fact, Conclusions of Law, and Order
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STATE OF NORTH DAKOTA
NORTH DAKOTA PUBLIC SERVICE COMMISSION
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Julie Fedorchak
Randy Christmann
Brian P. Kalk

Chairman
Commissioner
Commissioner

Brady Wind, LLC
150 MW Wind Energy Center – Stark County
Siting Application

Case No. PU-15-690

Brady Wind, LLC
230 kV Transmission Line – Stark County
Siting Application

Case No. PU-15-797

**INTERVENOR CONCERNED CITIZENS OF STARK COUNTY’S PROPOSED
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER**

Appearances

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

Brian R. Bjella and Stephanie Dassinger, Attorneys at Law, Crowley Fleck, PLLP, 100 West Broadway, Suite 250, Bismarck, North Dakota 58501, on behalf of the Applicant, Brady Wind, LLC.

Zachary Pelham, Attorney at Law, Pearce Durick PLLC, 314 E. Thayer Ave., Bismarck, North Dakota 58502, Special Assistant Attorney General on behalf of the North Dakota Public Service Commission.

Patrick J. Ward, Administrative Law Judge, PO Box 1695, Bismarck, North Dakota 58502-1695.

Matthew T. Collins, Attorney at Law, Fabyanske, Westra, Hart & Thompson, 333 South Seventh Street, Suite 2600, Minneapolis, MN 55402, on behalf of Intervenor Concerned Citizens of Stark County.

Procedural Posture

On December 8, 2015, Brady Wind, LLC (“Brady Wind”) filed an Application for a

Certificate of Site Compatibility for the Brady Wind Energy Center (“Application”) located in Stark County, North Dakota, with the North Dakota Public Service Commission (“Commission”). Brady Wind also filed an Application for Consolidated Certificate of Corridor Compatibility and Route Permit and Waiver of Procedures and Time Schedules for a transmission line located in Stark County, North Dakota.

On January 20, 2016, the Commission issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for March 2, 2016, at 9:00 a.m. Mountain Time at the Dickinson City Hall, 99 2nd Street East, Dickinson, North Dakota 58601.

On February 12, 2016, Concerned Citizens of Stark County (“CCSC”) filed a Petition for Intervention. By Order Granting Petition to Intervene dated February 25, 2016, Administrative Law Judge Timothy J. Dawson granted CCSC’s Petition to appear as an intervenor.

On February 23, 2016, CCSC filed a Motion for Continuance of the hearings scheduled for March 6, 2016. On February 25, 2016, the Commission granted the motion for continuance.

On February 25, 2016, the Commission issued its Notice of Continued Hearings indicating that the public hearing previously scheduled for March 2, 2016, was continued to March 30, 2016, at 8:00 a.m. at City Hall, 99 Second Street East, Dickinson, North Dakota 58601.

On March 9, 2016, Brady Wind filed its Certification Relating to Order Provisions – Transmission Facility Siting, dated March 4, 2016.

The public hearing was held as scheduled on March, 30, 2016. Having allowed all interested persons an opportunity to be heard, and having heard, reviewed and considered all testimony and evidence presented, the Commission makes the following:

Findings of Fact

1. Brady Wind, LLC is a Delaware limited liability company headquartered in Juno Beach, Florida, and is registered to do business in the State of North Dakota. Brady Wind, LLC is a wholly-owned, indirect subsidiary of NextEra Energy Resources, LLC.
2. CCSC is a North Dakota non-profit corporation, with its principal executive office located at 104 Oak Avenue, Taylor, North Dakota 58656. CCSC consists of a five-member board of directors who live in and own property in Stark County, North Dakota. CCSC’s primary activity is to protect the natural beauty of the existing landscape in Stark County, North Dakota by providing education to the public and policy-makers of the detrimental effects of placing industrial wind energy facilities within Stark County.
3. Brady Wind proposes to construct, own, and operate the Brady Wind Energy Center (the “Facility”) which will have a nameplate capacity of approximately 150 megawatts

("MW") consisting of up to 87 wind turbines in Stark County, North Dakota ("Project").

4. As part of its development for the Project, Brady Wind entered into land easement agreements with private property owners for the Facility in November 2015.
5. The Project also includes an approximately 19-mile, 230-kilovolt overhead transmission line to connect the Facility to the Belfield to Rhame 230-kilovolt transmission line, in Section 29 of Township 137 North, Range 98 West, approximately 19 miles southwest of the city of Dickinson and will transmit power into the Basin Electric Power Cooperative ("Basin") transmission system.
6. Brady Wind has signed a Power Purchase Agreement ("PPA") with Basin to deliver energy produced at the Facility through the transmission line to an interconnection point on the Belfield to Rhame 230-kV transmission line.
7. Brady Wind plans to begin construction on the Project in May 2016 with an in-service date in October 2016.

Need Analysis

8. In March 2007, the North Dakota Legislature established a goal to have ten percent (10%) of electricity used in the state generated from renewable sources by 2015.
9. As noted in Brady Wind's Application, "the ten percent renewable portfolio objective is being met." (Application, p. 2-1)
10. In its Application, Brady Wind incorrectly claims that there is an increased need for the Facility due to the Environmental Protection Agency's Clean Power Plan. On February 9, 2016, the United States Supreme Court stayed implementation of the Clean Power Plan, making it irrelevant for the purposes of Brady Wind's Application.
11. In its Application, Brady Wind relies on older calculations and older studies which do not accurately reflect the current energy conditions in North Dakota.
12. Brady Wind did not identify or analyze any alternatives to its Facility.
13. Following the March 30, 2016 hearing before the Commission, Brady Wind furnished and served a late filed exhibit from Basin about the need for the Facility. (See Exhibit 13).
14. Based on the letter submitted by Basin, there is no evidence that Basin looked at a broader range of resources than just local wind or made any further needs analysis from a state or regional perspective.

15. Basin's anticipated growth of 600 MW over the next several years does not appear to be realistic given the declining market of the Williston Basin.
16. Neither Brady Wind nor Basin have offered any evidence that energy generated by the Facility will stay and serve the needs of North Dakota.

Turbine Locations

17. Despite entering into easement agreements back in November 2015, Brady Wind has only identified preliminary turbine locations in its Application. (Application, p. 1-4)
18. To date, Brady Wind has not provided the Commission or the citizens of Stark County with the final locations of the wind turbines, meaning there will be no public input on the final turbine locations.
19. Despite claiming that it is having "ongoing communications" with landowners about locations of the turbines, Brady Wind has not identified any discussions with non-participating landowners.
20. Brady Wind's Application does not provide detailed maps showing all applicable criteria for each proposed turbine location. Specifically, Brady Wind's maps fail to identify avoidance/exclusion areas and applicable setback distances.
21. Brady Wind's Application contains no merit/demerit analysis of each specific proposed turbine location.

Siting Criteria

22. North Dakota Administrative Code Chapter 69-06-08-01 sets forth criteria to guide and govern the preparation of the inventory of exclusion and avoidance areas, and the site suitability evaluation process for energy conversion facilities.
23. The Figure 5 map provided with Brady Wind's Application is not sufficiently detailed, thereby preventing the Commission from properly analyzing just how close each exclusion and avoidance area is to the O&M building, substation, turbines, collection lines and transmission line.
24. Pursuant to N.D. Admin. Code 69-06-08-01, Section 1, Brady Wind is prohibited from considering exclusion areas for a site for an energy conversion facility.
25. Brady Wind admits that the following exclusion areas are present in the Project Area: archaeological sites and prime farmland. (Application, p. pp. 3-2 and 3-3, Table 6.)
26. While the current location of the proposed facilities and turbines do not affect these

archeological sites, such sites are present in the Project Area (as defined in the Application) and there is potential to run into additional sites if the turbine locations are moved post-approval.

27. Brady Wind admits that four (4) acres of prime farmland will be permanently disturbed as a result of the wind farm project. (Application, p. 3-2, Table 6.)
28. The map provided by Brady Wind in its Application is of such a large scale that there is no way to tell exactly where the four acres is located (or if additional prime farmland is affected).
29. Pursuant to N.D. Admin. Code 69-06-08-01, Section 2, avoidance areas may not be considered in routing of a transmission facility 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 alternate routes. Economic considerations alone will not justify approval of these areas.
30. Brady Wind admits that the following avoidance areas are present in the Project Area: historical farmsteads, 100-year floodplain, and woodlands and wetlands. (Application, p. 3-3, Table 7.)
31. Brady Wind's Application does not discuss any reasonable alternatives to the proposed site.
32. At the March 30, 2016 hearing, Brady Wind's representatives stated that they had not considered alternatives to the proposed turbine locations which will be installed in avoidance areas.
33. The maps in Brady Wind's Application show that collection lines (underground), the transmission line (overhead), transmission line poles, crane paths and the disturbance areas for these items run directly through wetlands and that some turbines are very close to wetlands.
34. Brady Wind admits that "[o]f [the 39] delineated wetlands, 30 would be impacted by currently planned Project infrastructure . . ." (Wetland Delineation Report, p. 11, § 3.1.) In other words, 76.9% of present wetlands will be impacted by this project.
35. Brady Wind also admits that eight (8) streams have a collection line, transmission line pole or crane path running through them and that three (3) ponds have a transmission line pole or crane path running through them. (Wetland Delineation Report, pp. 24-26, §§ 3.3.1 and 3.3.2.)

Additional Siting Considerations

36. Pursuant to N.D.C.C. 49-22-09, the Commission must consider available research and investigations relating to the effects of the location, construction and operation of the proposed facility on public health and welfare, natural resources, and the environment.
37. OBrady Wind's Application highlights Stark County's recreational opportunities and resources, which include: hunting, fishing, wildlife observation, the Old Red/Old Ten Scenic Byway, the Dickinson Reservoir-Edward Arthur Patterson Lake and the Enchanted Highway.
38. Brady Wind admits that there will be auditory and visual impacts in the Project Area for people hunting, fishing, or observing nature. (Application, p. 7-19)
39. In its Application, Brady Wind does not address the impacts of the Facility on local animals (being hunted, fished, or observed), nor does it offer any mitigation plan.
40. With regard to the Dickinson Reservoir-Edward Arthur Patterson Lake, the Old Red/Old Ten Scenic Byway, and the Enchanted Highway, Brady Wind admits that the turbines will be visible at these natural sites. (Application, p. 7-19)
41. Brady Wind does not provide any further detail about the visibility of the turbines at these various locations, such as the height of the turbines (vis a vis the tree line) and more information about the number of turbines which will now be features in the natural landscape.
42. Brady Wind admits that 89 occupied structures in the Project Area will be subject to increased received sound levels as a result of the Facility.
43. Brady Wind's Application has no mitigation plan for short term noise increases associated with construction.
44. Pursuant to N.D.C.C. 49-22-09, the Commission must also consider adverse and indirect environmental effects which cannot be avoided should the proposed site or route be designated.
45. Brady Wind admits that a Phase I Environmental Site Assessment ("Phase I") is needed to properly analyze whether any hazardous materials, hazardous waste or other environmental conditions exist within the Project Area.
46. Brady Wind claims that it will conduct a Phase I prior to construction after its Application has been approved by the Commission. (Application, pp. 7-11 and 7-12.) In other words, the Commission must approve Brady Wind's Application before the citizens of Stark County can discover or analyzing the impact of the Facility on the local

environment.

47. As identified above, the Project and the Facility will adversely impact 76.9% of present wetlands and 11 bodies of water in Stark County.
48. Brady Wind's Application offers no evidence of the Facility's impacts on any other wildlife in Stark County except for bats and birds.
49. The bat and avian studies do not provide conclusive evidence on the impact of the Facility on Stark County's bat and bird populations.
50. Brady Wind's mitigation measures for wildlife in its Application are premised on being utilized *to the extent practicable*.
51. In the Application, Brady Wind does not offer any detail about its wildlife mitigation programs and how they work.
52. Pursuant to N.D.C.C. 49-22-09, the Commission must consider alternatives to the proposed site, corridor or route which are developed during the hearing process and which minimize adverse effects.
53. In its Application and at the March 30, 2016 hearing, Brady Wind offered no alternatives to the Facility's proposed site, corridor or route.
54. Pursuant to N.D.C.C. 49-22-09, the Commission must consider the direct and indirect economic impacts of the proposed facility.
55. Brady Wind's Application does not conclusively prove the alleged economic benefit of the Facility.
56. Brady Wind's Application does not conclusively establish (a) the number of permanent employees hired following construction of the Facility; (b) the actual positions for the full-time employees; (c) the requirements for these positions and whether they can be filled by local citizens; and (d) the salaries for these employees.
57. Brady Wind's Application has not established the extent to which local contractors will be used for portions of the construction of the Facility. (Application, p. 7-2)
58. Brady Wind has not offered evidence of the exact amount of payments being offered to local landowners through the easement agreements.
59. Brady Wind's Application does not differentiate between absentee property owners and resident property owners. To the extent that most of the easements involve absentee property owners, the payments being made to those landowners will not trickle down into

the local economy.

60. Brady Wind has not offered any evidence on the impact of the Facility on farm animal health.
61. Brady Wind admits that the actual impacts of the Facility on Stark County's land-based economies will not be known until the final turbine locations are determined. (Application, p. 7-21)
62. Brady Wind has not offered any evidence that (a) shows how the lease payments offset agricultural losses; (b) shows how Brady Wind will mitigate impacts on land values once the lease payments end; (c) proves that non-participating landowners' farms and livelihoods will not be adversely impacted by the Facility.
63. Brady Wind has not offered any evidence of its mitigation plan for farmland and whether that plan includes non-participating landowners.
64. Because Brady Wind cannot prove that energy produced by its Facility will stay in North Dakota, it cannot establish that the Facility will positively impact Stark County citizens' energy bills.
65. The property value report submitted by Brady Wind focuses, almost exclusively, on vacant, agricultural land and does not discuss residential property values.

Conclusions of Law

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

1. The Commission has jurisdiction over this matter pursuant to North Dakota Century Code Chapter 49-22.
2. The proposed Brady Wind Energy Center is an energy conversion facility as defined by North Dakota Century Code § 49-22-03(8).
3. The proposed transmission line and associated facilities are transmission facilities as defined by North Dakota Century Code § 49-22-03(12).
4. Pursuant to N.D.C.C. 49-22-02, it is necessary to ensure that the location, construction, and operation of energy conversion facilities and transmission facilities will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state.
5. Pursuant to North Dakota Century Code § 49-22-07, a utility may not begin construction of an energy conversion facility or transmission facility in the state without first having

obtained a certificate of site compatibility or a route permit.

6. Under North Dakota Century Code § 49-22-08 and North Dakota Administrative Code § 69-06-04-01, an application for a certificate of site compatibility must include the following information:
 - A statement explaining the need for the facility and projected demand for the product or products to be produced by the proposed facility, including the most recent system studies supporting the analysis of the need;
 - A description of the merits and detriments of any location identified and a comprehensive analysis with supporting data showing the reasons why the preferred location is best suited for the facility;
 - A description of any feasible alternative methods of serving the need;
 - A study area that includes the proposed facility site, of sufficient size to enable the commission to evaluate the factors addressed in North Dakota Century Code section 49-22-09;
 - A map identifying the criteria that provides the basis for the specific location of the proposed facility within the study area; and
 - A discussion of the mitigative measures that the applicant will take to minimize adverse impacts which result from the location, construction, and operation of the proposed facility.
7. Based on the information provided in Brady Wind's Application and the testimony offered at the March 30, 2016 hearing, Brady Wind's Application does not contain all of the information required by North Dakota Century Code § 49-22-08 and North Dakota Administrative Code § 69-06-04-01.
8. Pursuant to North Dakota Century Code § 49-22-09, the North Dakota Public Service Commission ("PSC") must be guided by the following factors in its evaluation of Brady Wind's Application:
 - Available research and investigations relating to the effects of the location, construction, and operation of the proposed facility on public health and welfare, natural resources, and the environment.
 - The effects of new energy conversion and transmission technologies and systems designed to minimize adverse environmental effects.
 - The potential for beneficial uses of waste energy from a proposed energy

conversion facility.

- Adverse direct and indirect environmental effects which cannot be avoided should the proposed site or route be designated.
 - Alternatives to the proposed site, corridor, or route which are developed during the hearing process and which minimize adverse effects.
 - Irreversible and irretrievable commitments of natural resources should the proposed site, corridor, or route be designated.
 - The direct and indirect economic impacts of the proposed facility.
 - Existing plans of the state, local government, and private entities for other developments at or in the vicinity of the proposed site, corridor, or route.
 - The effect of the proposed site or route on existing scenic areas, historic sites and structures, and paleontological or archaeological sites.
 - The effect of the proposed site or route on areas which are unique because of biological wealth or because they are habitats for rare and endangered species.
 - Problems raised by federal agencies, other state agencies, and local entities.
9. The application submitted by Brady Wind does not meet the evaluation criteria required by North Dakota Century Code § 49-22-09.
10. The proposed energy conversion facility, transmission facility corridor and route will adversely impact the welfare of Stark County citizens, nor are the facilities necessary to meet any demonstrable energy need.
11. The proposed energy conversion facility, transmission facility corridor and route are not compatible with the environmental preservation and the efficient use of resources.

Order

The Commission hereby orders:

1. Brady Wind, LLC's Application for a Certificate of Site Compatibility for the Brady Wind Energy Center is denied.
2. Brady Wind, LLC's Application for Consolidated Certificate of Corridor Compatibility and Route Permit and Waiver of Procedures and Time Schedules for a transmission line

is also denied.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Julie Fedorchak
Chairman

Brian P. Kalk
Commissioner

STATE OF NORTH DAKOTA
NORTH DAKOTA PUBLIC SERVICE COMMISSION
600 E. Boulevard, Dept. 408
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Brady Wind, LLC
150 MW Wind Energy Center – Stark County
Siting Application

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Brady Wind, LLC
230 kV Transmission Line – Stark County
Siting Application

Case No. PU-15-797

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

Kathy Jensen, being first duly sworn on oath, deposes states that she is over the age of eighteen years and not a party to the above-entitled matter. That on April 22, 2016, she served the following documents:

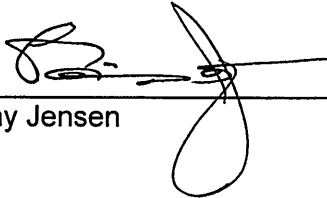
Intervenor Concerned Citizens of Stark County's

- Post-Hearing Brief; and
- Proposed Findings of Fact, Conclusions of Law, and Order

by e-mailing and mailing a true and correct copy thereof, postage prepaid, by US Mail to:

Judge Patrick Ward Administrative Law Judge PO Box 1695 Bismarck, ND 58502 pward@zkslaw.com	Zachary Pelham Pearce Durick 314 East Thayer Avenue PO Box 400 Bismarck, ND 58502 zep@pearce-durick.com
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<p>Timothy Dawson Public Service Commission 600 E. boulevard, Dept. 408 Bismarck, ND 58505 tdawson@nd.gov</p>	



 Kathy Jensen

Subscribed and sworn to before me
this 22nd day of April, 2016.



 Notary Public

