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April 22, 2016

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



Dear Mr. Nitschke:

In re: Brady Wind, LLC
150 MW Wind Energy Center
PSC Case No. PU-15-690

Brady Wind, LLC
230 kV Transmission Line
PSC Case No. PU-15-797

Our File No. 35-218-026

Please find enclosed the original and 10 copies of Brady Wind's Post-Hearing Brief in the above matter.

Please call should you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "B. Bjella".

Brian R. Bjella

bw
Enc.
cc: Patrick J. Ward
Zachary Pelham
Matthew T. Collins
Jerry Lein

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STATE OF NORTH DAKOTA
NORTH DAKOTA PUBLIC SERVICE COMMISSION

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

POST-HEARING BRIEF OF BRADY WIND, LLC

Brady Wind, LLC (“Brady Wind”) hereby submits this Post-Hearing Brief in support of its request that the Commission issue a certificate of site compatibility for the Brady Wind Energy Center in Case No. PU-15-690 and a certificate of corridor compatibility and route permit for the 230 kV transmission line in Case No. PU-15-797. As demonstrated by all the evidence submitted in the cases, Brady Wind meets all the requirements for issuance of the requested permits.

A. 150 MW Brady Wind Energy Center: Case No. PU-15-690

On December 4, 2015, Brady Wind filed its Application of Certificate of Site Compatibility for the Brady Wind Energy Center. Brady Wind filed substantial evidence to demonstrate that the Brady Wind Energy Center, as proposed, would produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota; is compatible with the environmental preservation and the efficient use of resources; and would minimize adverse human and environmental impact while ensuring continuing system reliability and ensuring that energy needs are met and fulfilled in an orderly and timely fashion consistent with North Dakota Century Code Chapter 49-22. Additionally, the Application provides the Commission with an evaluation of how the Brady Wind Energy Center designed the project

consistent with the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria that are found in North Dakota Administrative Code Section 69-06-08-01. Together with the application, the following information filed by Brady Wind demonstrates compliance with North Dakota siting requirements:

1. Shadow Flicker Impact Analysis;
2. Acoustic Assessment;
3. Whooping Crane Likelihood of Occurrence Report;
4. Fall Avian Survey;
5. Bat Habitat Assessment;
6. Wetlands Report;
7. Additional Agency Correspondence;
8. Interim raptor nest survey memo;
9. Interim eagle use survey memo;
10. Bat acoustic monitoring report;
11. Summary of archaeology report;
12. Class III Cultural Resource Inventory;
13. Class III Architectural Survey;
14. State Historical Preservation Office Concurrence for the Cultural Resource Inventory;
and
15. Letter from Ollson Environmental Health Management on Wind Turbine Siting and Health.

Further, Brady Wind provided testimony that it has had frequent communication with U.S. Fish and Wildlife Service and North Dakota Game and Fish Department to obtain the agencies' input regarding minimizing wildlife impacts and has incorporated that input into its project design as much as feasible.

Finally, the testimony at the hearing from Mr. Jason Utton, Dr. Kimberly Wells, Dr. Christopher Ollson, and Mr. Christopher Farmer further supports that that the Brady Wind Energy Center has been sited in accordance with all North Dakota laws and administrative rules.

As a result of landowner concerns expressed at the hearing, Brady Wind agreed to not utilize turbines 82, 83 and 84 as identified at the public hearing, and instead to activate alternate turbines.

B. 230 kV Transmission Line: PU-15-797

On December 8, 2015, Brady Wind filed its Consolidated Application for Certificate of Corridor Compatibility & Transmission Facility Route Permit. Brady Wind filed substantial evidence to demonstrate that the transmission line, as proposed, would produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota; is compatible with the environmental preservation and the efficient use of resources; and would minimize adverse human and environmental impact while ensuring continuing system reliability and ensuring that energy needs are met and fulfilled in an orderly and timely fashion consistent with North Dakota Century Code Chapter 49-22. Additionally, the Application explains how Brady Wind designed the transmission line consistent with the Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria that are found in North Dakota Administrative Code Section 69-06-08-01. Together with the application, the following information filed by Brady Wind demonstrates compliance with North Dakota siting requirements:

1. Wetlands Report;
2. Summary archeology report;
3. State Historical Preservation Office Concurrence; and
4. Class III Cultural Resources Inventory.

Further, Brady Wind provided testimony that it has had frequent communication with U.S. Fish and Wildlife Service and North Dakota Game and Fish Department to obtain the agencies' input regarding minimizing wildlife impacts and has incorporated their recommendations into the project design as much as feasible.

The information filed by Brady Wind and the testimony of Mr. Jason Utton and Dr. Kimberly Wells at the public hearing demonstrate that Brady Wind has complied with all of North Dakota's laws and administrative rules related to siting the transmission line.

C. Testimony of CCSC at Public Hearing Addressed Issues Irrelevant to the Commission's Siting Jurisdiction and Did Not Undermine the Substantial Evidence that Brady Wind's Wind Energy Center and Transmission Line Will Be Sited in Accordance with North Dakota Law.

At the public hearing on March 30, 2016, the Concerned Citizens of Stark County ("CCSC") presented testimony, most of which addressed the need for the electricity generated from the Brady Wind Energy Center, and CCSC's dissatisfaction with the Stark County Planning and Zoning Board and the Stark County Commission. These issues are not relevant to the issues before the Commission and testimony relating to these issues should be disregarded.

First, although N.D.C.C. § 49-22-08(c) states that an application for a site or corridor certificate must explain the need for the facility, North Dakota law provides that need is not a criterion to be considered by the Commission in a siting case. In the North Dakota Supreme Court case of *In the Matter of the Application of Nebraska Public Power District*, 330 N.W.2d 143 (N.D. 1983), the Court evaluated whether "need" is a criterion to be considered by the Commission under the Siting Act and whether the Commission has the authority to determine "need" under the Siting Act. The Court recognized that § 49-22-08 lists nine items which must be included in an application for a corridor certificate which includes a "statement explaining the need for the facility." But the Court stated that "need" is not listed in § 49-22-09, N.D.C.C., which lists eleven factors, such as environmental, social and economic impacts, by which the Commission is to be guided when it evaluates a siting application. *Id.* at 348. Further, the Court noted that while other states allow their public service commissions to consider need, North Dakota does not. The Court stated ". . . we have concluded the PSC does not have the authority or duty to determine need . . ." *Id.* at 349. N.D.C.C. §§ 49-22-08 and 49-22-09, have not been amended with respect to the substantive terms considered by the Supreme Court.

Second, a great deal of the testimony by members of CCSC and other members of the public dealt with the Stark County zoning ordinances and the hearing process before the Stark County Planning and Zoning Commission and County Commission. As this Commission is fully aware, it has no authority over zoning processes of a county planning and zoning commission or a county commission. The Siting Act, Chapter 49-22, NDCC, provides in part in Section 49-22-16 that a certificate of site compatibility for an energy conversion facility shall not supersede or preempt any local land use, zoning or building regulations. Thus, this Commission has no authority to preempt local zoning or to mandate that Stark County change the setbacks in its zoning ordinance.

D. The Commission Should Disregard CCSC's Late-Filed Exhibits E-J.

On April 15, 2016, CCSC filed six documents (Exhibits E-J) associated with CCSC witness Jon Wert's testimony as late-filed exhibits. Judge Ward requested that CCSC file these documents as late-filed exhibits because Mr. Wert testified to his opinion on the impact of wind turbines on crops and referenced several studies. Brady Wind objected to the studies, as they had not been provided through discovery.

Brady Wind objects to the admission of Exhibits E-J. First, as Brady Wind stated at the hearing, the exhibits were filed too late for Brady Wind to have the opportunity to review and respond in testimony. Prior to the hearing, Brady Wind served discovery requests upon CCSC, one of which requested any documents to be relied upon by witnesses at the Commission hearing. CCSC provided no documents pertaining to possible effect of wind turbines upon crops was identified or submitted. Had the studies been provided, Brady Wind would have had the opportunity to review and consult agronomy experts in preparation for the hearing and provide

rebuttal testimony. Brady Wind renews its objection to admittance and consideration of these studies by the Commission in its deliberations and determinations in this case.

Second, the documents provided by CCSC do not support a finding that Brady Wind's project will negatively impact crops. Two of the documents (Exhibit G and I) are internet commentaries, not peer-reviewed research papers, and none of the documents purport to study the impact of wind turbines on crop production. These documents provide no basis for the Commission to conclude that the Brady Wind project will have an adverse impact on crops.

E. Conclusion

In conclusion, Brady Wind has presented substantial evidence that its proposed wind facility and transmission line will be sited consistent with North Dakota statutes and regulations. Brady Wind respectfully requests that the Commission grants a certificate of site compatibility for the Brady Wind Energy Center and grant a certificate of corridor compatibility and route permit for the Brady Wind transmission line.

Dated this 22nd day of April, 2016.

Respectfully submitted,

BRADY WIND, LLC

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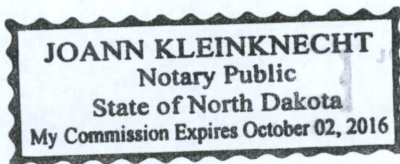
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To the best of affiant's knowledge, the addresses above given are the actual post office addresses of the parties intended to be served.

Beth Wald

Beth Wald

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



Joann Kleinknecht

Joann Kleinknecht, Notary Public
Burleigh County, North Dakota
My Commission Expires: