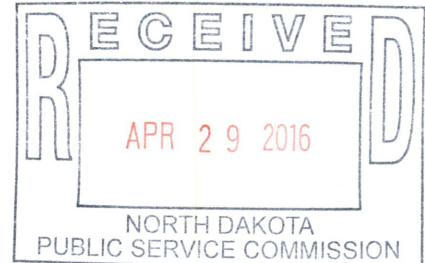


Casey A. Furey
100 West Broadway, Suite 250
P.O. Box 2798
Bismarck, ND 58502-2798
701.223.6585
cfurey@crowleyfleck.com

April 29, 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 Reply Brief in the above matters.

Please call should you have any questions.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Casey A. Furey", written over a horizontal line.

Casey A. Furey

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

79 PU-15-797 Filed 04/29/2016 Pages: 11
Reply Brief of Brady Wind, LLC
Brady Wind, LLC
Casey Furey, Crowley Fleck, PLLP

107 PU-15-690 Filed 04/29/2016 Pages: 11
Reply Brief of Brady Wind, LLC
Brady Wind, LLC
Casey Furey, Crowley Fleck, PLLP

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

REPLY BRIEF OF BRADY WIND, LLC

Brady Wind, LLC (“Brady Wind”) hereby submits this Reply 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.

In its Post-Hearing Brief, Concerned Citizens of Stark County (“CCSC”) raised several issues, none of which undermine the conclusion that the Brady Wind wind facility and transmission line as proposed will be consistent with the Siting Act and the Commission’s regulations.

DISCUSSION

A. Need Is Not Relevant to the Commission’s Determination Under the Siting Act.

Although North Dakota Century Code § 49-22-08(c) states in part 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 stated “. . . we have concluded the PSC does not have the authority or duty to determine need. . .” *Id.* at 349. Thus, the North Dakota Supreme Court concluded that under the Siting Act, North Dakota Century Code Chapter 49-22, the Commission does not have the authority to determine the need for a facility. This was confirmed by Administrative Law Judge Ward in his recent ruling denying CCSC’s request to submit as an exhibit a portion of the Purchase Power Agreement (“PPA”) that Brady Wind entered into with Basin Electric Power Cooperative (“Basin Electric”).

Even if need were relevant under the Siting Act, Brady Wind presented evidence that there is a need for the project because Basin Electric has entered into a PPA to purchase energy from the project and Basin Electric elaborated on its need in the letter filed with the Commission on April 13, 2016. CCSC’s statements related to Basin Electric’s need for power are unsubstantiated and should be disregarded.

B. Brady Wind Has Identified Proposed Locations of Wind Turbines and Has Appropriately Requested Flexibility Consistent with the Siting Act.

CCSC incorrectly claims that Brady Wind has not identified specific locations of turbines. To the contrary, Brady Wind has clearly identified proposed locations of wind turbines and alternates in multiple filings, most recently in Late Filed Exhibit No. 7. In addition, Brady Wind also provided CCSC with the global positioning coordinates for each proposed turbine through discovery.

CCSC also criticizes Brady Wind for requesting flexibility to move turbines after the Commission issues its order in this case. Brady Wind’s request, however, is consistent with recent Commission orders in which the wind facility was allowed some flexibility to move infrastructure within the project area, so long as the infrastructure locations were consistent with the Commission’s siting requirements. *See* (Rolette Power Development, LLC, Rolette Wind

Energy Project – Rolette County, Findings of Fact, Conclusions of Law and Order, November 18, 2015 in Case No. PU-15-124) and (Lindahl Wind Project, LLC, Lindahl Wind Farm Project – Williams County, Findings of Fact Conclusions of Law and Order, December 2, 2015 in Case No. PU-15-482). The Commission’s approach in these orders comports with recent changes to the Siting Act at North Dakota Century Code § 49-22-03(3), which provides that “construction” does not refer to activities conducted “wholly within the geographic location for which a utility has previously obtained a certificate or permit under this chapter” if the activities do not affect any known exclusion or avoidance areas, and the company provides the referenced certification to the Commission. Consistent with these requirements, if any turbine locations change after the hearing, Brady Wind would certify that Siting Act requirements have been met with respect to exclusion and avoidance areas and the Commission’s order.

CCSC also argues that North Dakota Century Code § 49-22-08(1)(f), which requires a siting application to include “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,” requires Brady Wind to submit a merit/detriment analysis for each specific turbine location. CCSC misreads the statute. The statute requires the analysis to be provided for the preferred location of “the facility,” which in this case is the wind facility, not a turbine. Section 49-22-08(1)(f) therefore does not require a turbine-by-turbine analysis.

C. Brady Wind Complies with Requirements Applicable to Exclusion and Avoidance Areas.

As demonstrated in Brady Wind’s filings and testimony at the hearing, Brady Wind meets all requirements pertaining to North Dakota’s exclusion and avoidance areas. CCSC appears to misunderstand the Siting Act’s requirements with respect to these exclusion and avoidance areas, and makes a number of inaccurate assertions in relation to Brady Wind’s compliance with the requirements.

First, CCSC incorrectly asserts that Brady Wind did not submit an exclusion and avoidance area map. Brady Wind refers the Commission to Brady Wind's application for a certificate of site compatibility, Docket Entry No. 1. Figure 5 thereto is an exclusion and avoidance area map. Exclusion and avoidance areas are further described in Brady Wind's wind farm application in Sections 3.1 and 3.2.

Second, CCSC argues that Brady Wind's application be denied because of its potential impact on up to four acres of prime farmland. Consistent with the Siting Act, if the Commission finds that prime farmland is of such small acreage as to be of negligible impact on agricultural operations, infrastructure can be located on such lands. For the proposed wind farm, less than 1% of the entire project area is prime farmland. As a result, although Brady Wind will avoid prime farmland to the extent practical, as less than four acres would be impacted and would be negligible impact on agricultural operations. *See* (Antelope Hills Wind Project, LLC, Wind Energy Conversion Facility – Mercer County, Findings of Fact, Conclusions of Law and Order, December 14, 2014 in Case No. PU-14-679) (“The Project area contains only approximately 6.8% of prime farmland. [T]he prime farmland which may be disturbed by this energy conversion facility is of such small acreage as to be of negligible impact on agricultural production.”).

Third, CCSC argues that Brady Wind's potential impact on wetlands justifies rejection of the Application. Consistent with the Siting Act's requirements, Brady Wind explained how it planned infrastructure to avoid wetlands to the extent reasonably possible in Section 7.13.2 of the application. Dr. Kimberly Wells also testified about the avoidance approach that Brady Wind used in siting the project at the hearing. Brady Wind first performed a desktop analysis as followed by a site visit to microsite turbine locations. Brady Wind then conducted wetland

delineations in the project area in October and November 2015. The Wetland Delineation Report submitted to the Commission further describes each potential wetland impact associated with the project and all avoidance and minimization measures taken to avoid individual impacts. Based on these studies, Brady Wind designed the project to minimize impacts to wetlands and streams, and in fact has minimized impacts to less than 0.1 acre at each feature. As a result, the project qualifies for coverage under Nationwide Permit 12 and 14, and no pre-construction notification to the U.S. Army Corps of Engineers is required. Brady Wind's application and testimony therefore appropriately set forth how the project evaluated wetlands and avoided them to the extent there was a reasonable alternative, consistent with N.D.A. C. § 69-06-08-01(3).

CCSC goes further to argue that the project will intrude "into nearly all of Stark County's wetlands." The source of CCSC's statement is unclear and is not supported by any evidence in the record. The record shows that permanent impacts to waters and wetlands will be 0.018 acres on the transmission line and no more than 0.1 acres on the wind farm.

D. Consideration of the Factors Listed in North Dakota Century Code § 49-22-09 Justifies Approval of the Project.

CCSC claims that the factors in N.D.C.C. § 49-22-09, which include economic impacts, impacts on public health and welfare, and impacts on the local environment and wildlife, justify rejection of the facility. To the contrary, as discussed in Section 10 of Brady Wind's application, these factors militate in favor of approval.

Brady Wind identified a clear and positive economic impact to both landowners participating in the project and to political subdivisions. Brady Wind provided evidence that the project will result in economic benefits to the region in the form of landowner payments, employment, and property and sales tax revenue. See §§ 7.4 and 10.7 of the Wind Facility Siting Application. In addition, at the hearing, Mr. Jason Utton of Brady Wind testified as to the

economic benefits of the project. Brady Wind also provided to CCSC additional information supporting its economic benefits analysis during discovery. CCSC has not presented any evidence undermining Brady Wind's evidence of expected economic benefits.

CCSC also argues that Brady Wind's application should be rejected because of potential noise impacts. CCSC, however, presented no evidence to rebut Brady Wind's study demonstrating that noise from the facility will be within the Commission's requirement that noise from a wind turbine not exceed 50 dba 100 feet from any occupied residence or structure. CCSC also has not rebutted evidence presented at the hearing from Brady Wind's health expert that the Commission's noise regulation is appropriate to ensure that Brady Wind will not impact the health of local residents. *See* Exhibit 3 at 4.

CCSC makes a number of unsupported claims regarding the impact of the wind facility on citizens' use and enjoyment of their land in the form of visual concerns and impacts on hunting and wildlife observation. CCSC presented no documented evidence—only unsupported assertions—that the transmission line or the wind farm will have any negative effects upon the economy or recreation within the project area. With respect to wildlife, Brady Wind has conducted the requisite analysis required by the Siting Act in order to identify sensitive or endangered plant and animal species, including eagles. Brady Wind has complied with all the requirements of the Siting Act and has even gone beyond to include studies of certain species which are not deemed sensitive or endangered. CCSC's unsupported statements regarding impacts on wildlife cannot justify rejection of the Application

Finally, CCSC argues that the Commission must review Brady Wind's Phase I Environmental Site Assessment ("ESA") for farm dumps and agricultural chemicals prior to approval. Brady Wind, however, is not required to complete a Phase I ESA under the Siting Act.

Brady Wind has already described any potential impacts to human health and safety from potentially hazardous substances or hazard waste in Section 7.5.2. In addition, Brady Wind will comply with all applicable local, state, and federal laws that relate to handling potential releases of hazardous substances through preparation of a Spill Prevention, Control, and Countermeasures Plan if required.

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. CCSC, on the other hand, presented unsupported claims in its brief and testimony from landowners, some of whom acknowledged in their testimony that the proposed wind farm is located many miles from their residence, that they are opposed to the wind facility. These positions do not warrant rejection of a project that will be sited in accordance with the Siting Act and this Commission's rules. Brady Wind therefore respectfully requests that the Commission issue a certificate of corridor compatibility and route permit for the transmission line project, and a certificate of site compatibility for the wind farm project.

Dated this 29th day of April, 2016.

Respectfully submitted,

BRADY WIND, LLC

CROWLEY FLECK PLLP
Attorneys for Applicant
100 W. Broadway, Suite 250
Post Office Box 2798
Bismarck, North Dakota 58502-2798
Phone: 701-223-6585

By:



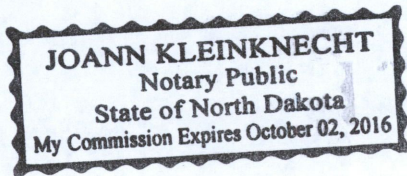
Brian R. Bjella (Bar ID 03549)
bbjella@crowleyfleck.com
Casey A. Furey (Bar ID 08035)
cfurey@crowleyfleck.com

Mr. Zachary Pelham
Pearce & Durick
314 E. Thayer Ave.
Bismarck, ND 58501

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 29th day of April, 2016.



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