

Lein, Jerry R.

From: Brian R. Bjella <bbjella@crowleyfleck.com>
Sent: Thursday, May 26, 2016 1:06 PM
To: Zachary E. Pelham
Cc: Lein, Jerry R.; Matthew T. Collins; Casey A. Furey
Subject: Brady Wind: Case No. PU-15-690--Response of Brady Wind
Attachments: Pelham Letter in response to work session held by PSC on 5-19-16.PDF

Mr. Pelham-

Attached please find the response of Brady Wind to the requests for information made at the work session on May 19. Please let me know should you have any questions. Thank you.

Brian Bjella

Brian R. Bjella

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ATTORNEYS

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Brady Wind response to Work Session information requests
Public Service Commission
Zachary Pelham, SAAG

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Brady Wind response to Work Session information requests
Public Service Commission
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May 26, 2016

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

Dear Mr. Pelham:

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

Our File No. 35-218-026

I am writing in regard to the work session held by the Commissioners on May 19, 2016. Additional information was requested on the following matters:

1. Shadow flicker effect to non-participants who testified at the Public Service Commission public hearing on March 30, 2016.

A request was made to provide the shadow flicker effect upon non-participants who testified against the project at the Public Service Commission public hearing on March 30, 2016.

Brady Wind identified three people (representing two residences) that are responsive to this request. They are Autumn and Farren Richard and Patrick Praus. The shadow flicker effect to the residence of Autumn and Farren Richard is modeled to be 2 hours 17 minutes per year (Turbine 84). The shadow flicker effect to the residence of Patrick Praus is modeled to be 3 hours 36 minutes per year (Turbines 83 – 84). Brady Wind wishes to point out that as a result of the testimony at the public hearing of these three non-participants, the Commission requested that the turbines originally numbered 82-84 be removed. Those turbines were removed, and the results set forth above reflect the minimal shadow flicker effect remaining. Please note that the turbines have been renumbered.

Attached as Exhibit A is a map which depicts the location of the residences and identified shadow flicker effect.

Brady Wind also observes that the shadow flicker impact analysis conservatively assumes a scenario in which natural elements, such as trees, are not factored in, which can greatly reduce any shadow flicker effect.

Brady Wind also wishes to point out that only two residences exceed the Commission's shadow flicker policy of more than 30 hours per year, and both of these residences are on land that is participating in the wind farm. The shadow flicker effect to most participants is much less, ranging from 21 hours 10 minutes per year to 3 hours 56 minutes per year. In addition, the shadow flicker effect to the vast majority of residences on non-participating land is 0 hours per year, and many of the landowners of these residences own property elsewhere in the project area that is participating in the wind farm

2. Review of turbines located within 1,000 feet of a non-participant's property line.

A request was also made to identify turbines less than 1,000 feet from non-participating landowners' property lines. Brady Wind has identified 14 turbines that are located between 845 feet (Stark County setback) and 1,000 feet of a non-participant's property line. This number was originally 17 turbines, but in recent days, Brady Wind has negotiated participation agreements with adjoining landowners for three of the originally identified turbines.

Brady Wind first submits that the project as originally filed is in full compliance with both Stark County and the Public Service Commission laws and regulations regarding the siting of wind farms. In particular, Brady Wind's current turbine locations comply with the requirement in the Commission's regulations with respect to a noise level of no more than 50 dBA within 100 feet of an occupied residence. N.D. Admin. Code § 69-06-08-01(4). Furthermore, Brady Wind's current turbine locations comply both the Commission's and Stark County's regulations with respect to non-participating property lines. Stark County's regulations are more conservative than the Commission's, as Stark County requires turbines to be set back at least 2.5 times the turbine rotor diameter, or 845 feet for the turbines proposed for this project. To require Brady Wind to deviate from these regulations would not be in conformance with the law and would also adversely affect the property rights of the participants in the wind farm who wish to have a turbine on their land.

Further, the testimony of Dr. Chris Ollson does not form the basis for determining that 1,000 feet from a non-participating property line is a necessary setback required to protect public health. Brady Wind reiterates that the current design of the project already protects public health by complying not only with the Commission's requirements but also with the Stark County zoning ordinance that requires that no turbine be located closer than 2,000 feet from an occupied residence. It would be inconsistent with these existing Commission and county requirements to require siting based on potential future residences near property lines, as it is uncertain at this time whether a neighboring non-participating landowner would ever build a habitable structure on his or her property that could potentially be within 1,000 feet of a turbine. In addition, Stark County zoning regulation 3.7(3) states that "the minimum setback for buildings from the centerline of all section lines and the center line of county roads shall be one hundred twenty-five

(125) feet,” so in these instances a landowner could not build a house in close proximity to such a property line.

Next, Brady Wind wishes to point out that, in many cases, it may not be possible to simply move a turbine the exact distance needed to reach a 1,000 foot boundary. For example, if a turbine is located 950 feet from a non-participant's property line, moving the turbine only 50 feet may not always be an option. This is due to the topography of the area and the necessity for a flat surface to construct the turbine, as well as other exclusion, avoidance and setback considerations; thus, it is often necessary to move a turbine more than the minimal requisite distance to get to a point at least 1,000 feet from a non-participant's property line. By way of specific example, one of the 14 turbines is located 901 feet from a non-participant's property line, or just 99 feet short of the 1,000 foot boundary. However, in order to relocate this turbine to a suitable location, Brady Wind would have to move the turbine 168 feet. Another turbine is located 903 feet from a non-participant's property line, or just 97 feet from the 1,000 foot boundary, but would have to be moved 201 feet to find a suitable turbine location.

Nevertheless, in order to be responsive to the Commission's expressed preferences, of the 14 turbine locations which are located between 845 feet and 1,000 feet of a non-participant's property line, Brady Wind has identified 11 turbines which can be moved to get beyond the 1,000 foot line. Brady Wind is unable to adjust the location of three turbines because the required moves would be more than 100 feet, which exceed the tolerance for movement allowed by the Federal Aviation Administration (FAA). This project, as sited in accordance with all Commission and Stark County regulations, has already received Determinations of No Hazard for all turbine locations from the FAA. If these three turbines are moved more than 100 feet, their new locations would have to be re-submitted to the FAA. Based on the Company's recent experience with the FAA, approval of new turbine locations can take months to receive, and approval is not guaranteed. Without approval, Brady Wind cannot construct these turbines.

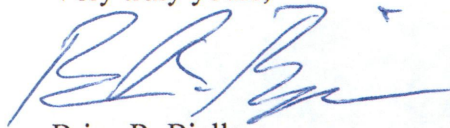
The three turbines which cannot be moved do not impact the shadow flicker effect to Autumn and Farren Richard or Patrick Praus.

Attached hereto as Exhibit B is a map which depicts the 14 turbines, which is color coded to show the 11 turbines which Brady Wind is able to move and the three it is not able to move. Again, please note that the turbines have been renumbered.

Brady Wind respectfully requests that the Commission recognize the extraordinary efforts Brady Wind has made to accommodate the concerns of non-participants and Commissioners by removing Turbines 82-84 due to landowner concerns expressed at the public hearing, removing Turbine 17 due to shadow flicker effects, and now the relocation of 11 turbines so as to locate them at least 1,000 feet from a non-participant's property line.

Brady Wind respectfully requests that an order be issued approving this project as modified.

Very truly yours,

A handwritten signature in blue ink, appearing to read "B.R. Bjella". The signature is fluid and cursive, with a prominent initial "B" and a long, sweeping tail.

Brian R. Bjella

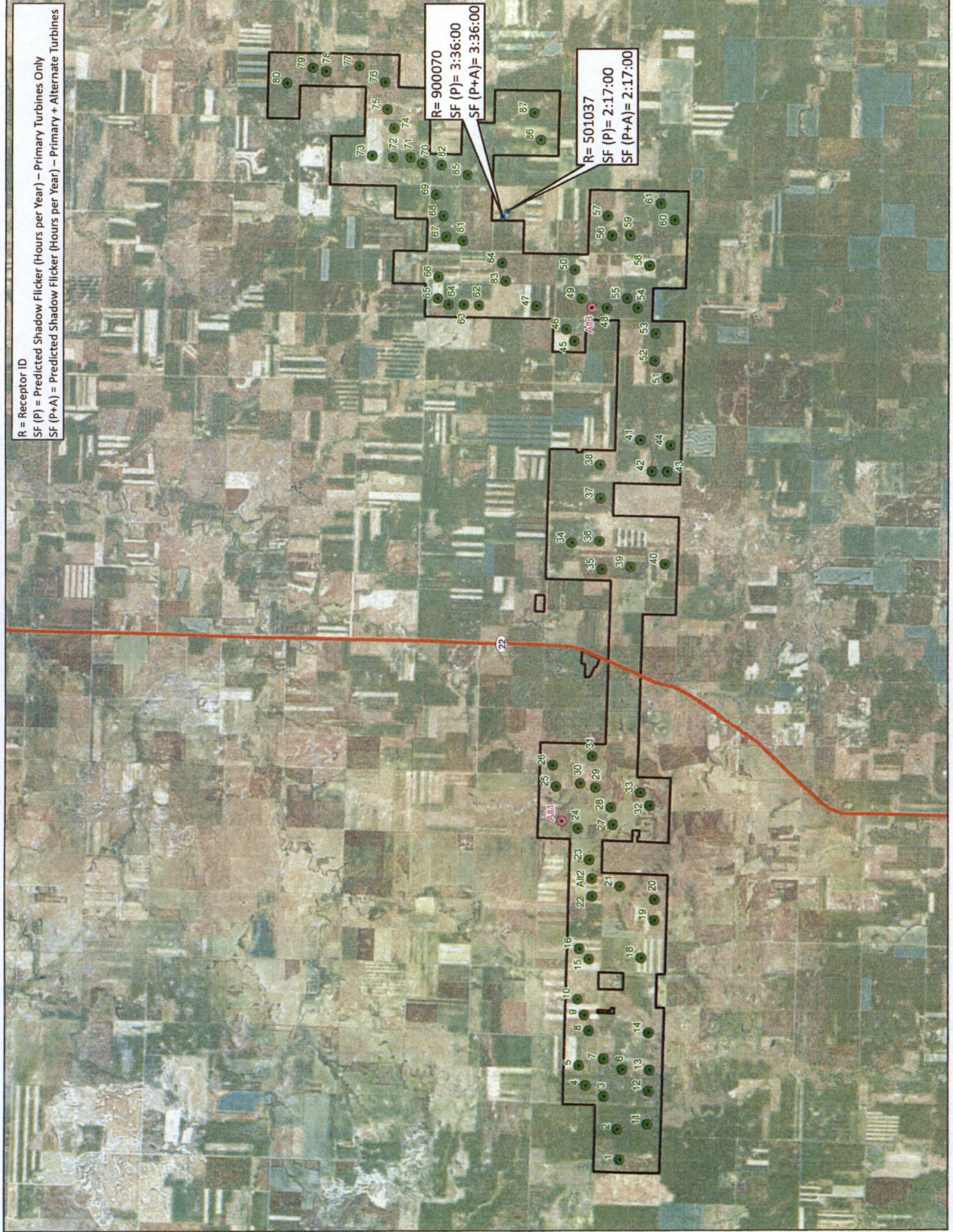
bw

Enc.

cc:

Jerry Lein

Matthew Collins



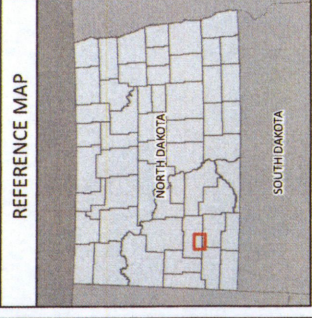
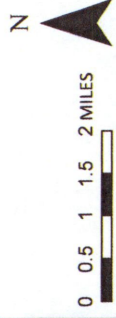
R = Receptor ID
 SF (P) = Predicted Shadow Flicker (Hours per Year) – Primary Turbines Only
 SF (P+A) = Predicted Shadow Flicker (Hours per Year) – Primary + Alternate Turbines

**NEXTERA ENERGY
 RESOURCES, LLC**
 BRADY WIND PROJECT
 STARK COUNTY
 NORTH DAKOTA

**PREDICTED SHADOW FLICKER
 VALUES AT RECEPTORS ON
 NON-PARTICIPATING LAND, WHERE
 LANDOWNERS ATTENDED BRADY I
 HEARING AND SPOKE AGAINST
 PROJECT**

MAY 2016

- Proposed Turbine Array (4/4/2016)***
- Primary Turbine
 - Alternate Turbine
 - Receptor on Non-Participating land. Landowner attended Brady I hearing and spoke against the Project
 - Project Boundary
- *Revised 4/4/2016 array shown with turbine #17 removed and Alt 2 activated.



NEXTERA ENERGY
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BRADY WIND PROJECT
STARK COUNTY
NORTH DAKOTA

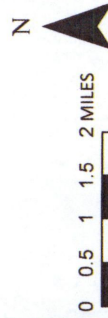
TURBINES WITHIN 1,000 FEET
OF NON-PARTICIPATING
PROPERTY LINES

MAY 2016

Proposed Turbine Array (4/4/2016)*

- No Move Required
- Move < 100ft
- Move > 100ft
- Project Boundary

*Revised 4/4/2016 array shown with turbine #17 removed and Alt 2 activated.



D (Property Boundary) = Distance (ft) turbine is from Non-Participating Property Boundary
 D (Revised) = Distance (ft) turbine would have to move to get outside 1,000 foot Property Line Buffer, and to a suitable sited location based on terrain and other engineering factors

