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- 27 PU-15-797 Filed 02/24/2016 Pages: 29
Response to Concerned Citizens of Stark County Motion for Continuance
Brady Wind, LLC
Brian Bjella, Crowley Fleck, PLLP

- 30 PU-15-690 Filed 02/24/2016 Pages: 29
Response to Concerned Citizens of Stark County Motion for Continuance
Brady Wind, LLC
Brian Bjella, Crowley Fleck, PLLP

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF NORTH DAKOTA**

Brady Wind, LLC
Brady 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

**RESPONSE OF BRADY WIND, LLC
TO CONCERNED CITIZENS OF STARK COUNTY
MOTION FOR A CONTINUANCE**

On February 23, 2016, the undersigned counsel on behalf of Brady Wind, LLC (“Brady Wind”) received from the Counsel for Concerned Citizens of Stark County (“CCSC”) a Motion for a Continuance of the Hearing scheduled by the Public Service Commission (“Commission”) for March 2, 2016.

Brady Wind opposes CCSC’s motion for continuance, as CCSC did not seek to intervene in a timely manner and did not request a continuance as far in advance of the hearing as possible as required by Commission rules, has had time to adequately prepare for the hearing, and has not demonstrated good cause. In addition, as the supporting affidavit of Jason Utton outlines, Brady Wind will suffer significant and irreparable harm if a continuance is granted in this case. Brady Wind therefore requests that the Commission reject CCSC’s attempt to use Commission rules in order to delay the hearing to gain tactical advantage in its opposition of the proposed project.

DISCUSSION

A. CCSC Provides No Justification for its Late-Filed Intervention and Does Not Meet the Commission's Requirement for Continuance

CCSC has not justified its request for a continuance or presented good cause, as CCSC had ample notice of these proceedings but did not seek to intervene in a timely manner. In addition, CCSC did not file for a continuance "as far in advance of the date fixed for hearing as possible" as required by the Commission's rules.

CCSC's failure to timely participate in this proceeding cannot be attributed to unfamiliarity with the Commission's processes. CCSC and its attorney in this case have experience filing to intervene in Commission proceedings and are therefore aware of the Commission's requirements. In cases involving Dickinson Wind, LLC, Case Nos. PU-15-111 and PU-15-133, CCSC sought to intervene using the same counsel.¹ It is notable that in that case, the Commission's hearings were scheduled for May 18, 2015, and the Petition to Intervene by CCSC was dated May 7, 2015, CCSC stated that "CCSC will be prepared to appear at the upcoming hearing on May 18, 2015."

Moreover, CCSC has been aware of the activities of the Brady Wind project since at least December 21, 2015. As noted in CCSC's motion, a hearing was held before the Stark County Planning and Zoning Commission on December 22, 2015, on Brady Wind's request for a conditional use permit. Members of CCSC spoke at that hearing, and CCSC had encouraged members to attend the meeting of the Stark County Planning and Zoning Commission set for the next day.²

¹ Attached as Exhibit A is a Petition to Intervene filed in those cases.

² Attached hereto is Exhibit B are the minutes of the Stark County Planning and Zoning Commission meeting on December 22, indicating that those speaking in opposition included Terry Reichert (actually Thomas Reichert) and Pat Praus. In addition, attached hereto as Exhibit C is an excerpt from the Facebook page of CCSC dated December 21, 2015, urging members to attend the meeting of the Stark County Planning and Zoning Commission set for the next day.

In sum, the facts and circumstances around CCSC's participation in the Stark County hearings indicates that the group was aware of Brady Wind's application and could have begun preparing for the March 2 hearing well before it did:

- CCSC has been represented by the same law firm since at least May of 2015, when the firm filed a Petition to Intervene with this Commission on behalf of CCSC.
- The application for a Certificate of Site Compatibility for the wind farm was filed by Brady Wind with the Commission on December 4, 2015. The application of Brady Wind for the transmission line was filed with the Commission on December 8, 2015.
- The Commission issued its Notice of Filings and Public Hearings in the Brady Wind cases on January 20, 2016. The first publication occurred January 29, 2016.
- Members of CCSC attended the December 22, 2015, Stark County Planning and Zoning Commission meeting, and several members spoke in opposition to the projects.
- CCSC filed a Notice of Appeal of the Stark County approval of the Brady Wind conditional use permit on January 19, 2016.

Despite having knowledge of these projects for at least two months, CCSC has sought intervention less than a month before the hearing and waited until only eight days before the hearing to request a continuance, fully intending to use the rules for intervention and continuance to gain a strategic advantage by delaying the Commission hearings and thus construction of these projects. The Commission's rule on continuance, § 69-02-04-03, NDAC, provides in part that "a motion must be made as far in advance of

the date fixed for hearing as possible.” Given its prior knowledge of both the projects and the hearing date, CCSC has clearly not filed this motion for continuance in as far in advance of the date fixed for hearing as possible. As a result, its motion must be denied.

B. CCSC Has Had Time to Adequately Prepare for the March 2 Hearing

As referenced above, CCSC was aware of Brady Wind’s filings well before it filed a Petition to Intervene and had adequate time to prepare for the March 2, 2016 hearing. CCSC claims that Brady Wind has filed additional information since CCSC intervened on February 12, 2016, so CCSC should be provided additional time to prepare. CCSC’s claim ignores how the Commission processes siting applications. First, the Commission has already deemed Brady Wind’s application complete. CCSC therefore has had a complete application with which it could evaluate whether Brady Wind’s projects meet the Commission’s statutes and rules since the Notice of Hearing was issued. Second, the Commission has commonly allowed wind farm applicants to file supplemental data within 10 days of a hearing, and sometimes even less time and sometimes after the hearing.³ Brady Wind’s attempt to provide the Commission a robust record on which to evaluate its application should not be used as a basis for delaying this proceeding and subjecting Brady Wind to financial harm.

Further, CCSC’s assertion that the information filed since its intervention warrants additional preparation time ignores the fact that the majority of the information was already available in a different format. The only new items that have been filed since CCSC moved to intervene in the wind proceeding are the Cultural Resource Inventory Archeology Summary, Wetlands and other Waters of the United States

³ In Rolette Power Development, LLC’s Application for Certificate of Site Compatibility, Case No. PU-15-124, five exhibits were filed after the hearing that were, presumably, considered by the Commission prior to issuance of the order.

Delineation Report, Class II Historic Architectural Resources Survey Summary, Additional Administrative Agency Correspondence that has occurred since the original application, Eagle Report Memo, Raptor Next Survey, and Bat Acoustic Report. The only new items in the transmission line case are the Pole Locations, Switchyard Diagram, Additional Administrative Agency Correspondence that has occurred since the original application, which is the same as in the Wind Farm Case, Wetlands and other Waters of the United States Delineation Report (which is the same as in the wind proceeding), and the Summary of Class III Cultural Resource Inventory. All of these subjects are raised in Brady Wind's Application, giving CCSC the ability to prepare for the subjects at the hearing. Due process requires that a participant be given notice of the general nature in order to allow him or her "a full and fair opportunity to present her case." *Erovick v. Job Serv. N.D.*, 409 N.W.2d 629, 631 (N.D. 1987). CCSC has had more than adequate information since December 22, 2015 in order to allow it to prepare to present its case.

Finally, CCSC also claims that Brady Wind has not filed a site plan, so a hearing is premature. CCSC is incorrect. Brady Wind filed final turbine locations on February 19, 2016. In a recent order approving a wind project, the Commission contemplated potential changes to the project layout and set forth requirements to ensure compliance with the Commission's order should there be such changes post-approval.⁴

C. CCSC Has Not Demonstrated Good Cause for a Continuance

1. CCSC Has Not Demonstrated Good Cause Because CCSC's Need for Additional Preparation Time Was Due to Its Own Delay

The North Dakota Supreme Court has indicated that "the good cause standard applies in situations in which there is no fault-excusable or otherwise." *State v Fischer*,

⁴ Case No. PU-15-124, Findings of Fact, Conclusions of Law and Order at 12 (Nov. 18, 2015).

2007 ND 22, 727 N.W.2d 750, 753 (2007). Good cause does not exist because there clearly is fault on behalf of CCSC by inexcusable delay of at least two months in seeking to either intervene or file its motion for continuance. *See also, Fahlsing v Teters*, 552 N.W.2d 87 (1996) (Supreme Court states district court did not abuse discretion by refusing to grant a longer continuance.)

In *Alerus Financial, N.A. v Lamb*, 2003 ND 158, 670 N.W.2d 351 (2003), for example, the Court considered whether a district court's denial of a continuance was proper based on the movant's claimed need for additional time. The Court found it was proper when the need for continuance was caused by his own delay. In the same manner, CCSC's motion for a continuance is not justified due to inexcusable delay in seeking the relief.

A case involving a motion for continuance before this Commission was subject of the North Dakota Supreme Court decision in *Shark v Northern States Power Company*, 477 N.W.2d 251 (1991). In that case, the Commission issued a notice of hearing on December 5, 1989, setting the hearing for December 27, 1989, only 22 days later. On December 18, an individual petitioned to intervene and to continue the hearing. This Commission granted the individual's petition to intervene but denied the request for a continuance. The individual appealed stating that he did not have time to prepare for the hearing. On appeal the North Dakota Supreme Court found that the Commission abused its discretion in not granting to the continuance, noting that the individual, "was afforded only a matter of days to prepare for the hearing." *Id.* at 255.

The facts here are markedly different from the facts in *Shark*. Here, the Commission issued its Notice of Filings and Public hearings on January 20, 2016 and

first publication occurred on January 29, 2016 for the hearing on March 2, 2016. Thus, CCSC has had official notice of the hearings for more than a month. The time that CCSC had official notice of the hearing, combined with the fact that we know that CCSC was aware of these pending projects no later than December 21, 2015, makes this set of circumstances much different from *Shark*. CCSC has had adequate time to prepare for the hearing and is seeking a continuance as merely a way to gain a strategic advantage by delaying the hearings.

Finally, the North Dakota Supreme Court has indicated that if a movant seeks an extension for good cause, "we have generally held that the movant must support the request for an extension with affidavits or other evidence." *State v Fischer, Id.* at 753. CCSC has submitted no such affidavit. However, as demonstrated by the attached Affidavit of Jason Utton, Brady Wind has by affidavit demonstrated the harm that it will incur if a continuance is granted.

2. CCSC Has Not Demonstrated Good Cause Because the Pending Appeal Is Not a Basis for the Commission to Impose a De Facto Injunction on the Project

CCSC has also sought an indefinite continuance based on the fact that CCSC is appealing the decision of the Stark County Commission to grant a Conditional Use Permit to Brady Wind. This argument is clearly a red herring, as the conditional use permit granted by Stark County is a separate issue unrelated to these proceedings before the Commission. Brady Wind has received its county conditional use permit, and the court cases filed by CCSC relating thereto are not within the jurisdiction or purview of this Commission. CCSC's request to stay this proceeding pending the appeal of the grant of a county conditional use permit is essentially a request for injunction, which is an issue

that should be adjudicated by the court having jurisdiction over CCSC's appeal, not this Commission.⁵

Indeed, the fact that CCSC is requesting a stay of this proceeding pending the litigation on the county permit signals CCSC's true intent to use the Commission's processes to interfere with Brady Wind's right to a fair and prompt determination by the Commission. Section 69-02-02-05 of the North Dakota Administrative Rules provides a protection for this type of abuse by an intervenor, indicating that an intervention should not be allowed when it would "unduly broaden the issues or delay the proceeding." If the Commission indulges CCSC and grants the continuance, it will be granting, in de facto fashion, an injunction—which Brady Wind has argued in the court proceedings that CCSC cannot legally obtain from a court. As such, the process would be unfairly halted and Brady Wind would be unnecessarily denied a prompt and fair hearing on the merits of their applications.

⁵ Brady Wind notes that CCSC is not entitled to a preliminary injunction for a number of reasons. First, the North Dakota Supreme Court has made abundantly clear that where, as here, a party has a right to a statutory appeal a lawsuit and injunction are inappropriate. *See Olson v. Cass Cty.*, 253 N.W.2d 179, 182 (N.D. 1977) ("If the grievance of the person challenging a board's decision is of a type that could have been fairly litigated on appeal, then that statutory appeal is an adequate legal remedy, and no suit for injunction will lie as a substitute."). Further, even if a preliminary injunction were available, CCSC could not get one because there is no prospect that any member of CCSC, or any resident of Stark County, will suffer irreparable harm. *See Nodak Mut. Ins. Co. v. Ward County Farm Bureau*, 676 N.W.2d 752, 761 (N.D. 2004) (stating that to be entitled to injunctive relief, a party must show an irreparable injury will result if an injunction is not granted). Specifically, Brady Wind is "building at risk" which means that it will construct the project despite the pending litigation and if ultimately its conditional use permit is revoked by a court, Brady Wind is committed to tearing down its structures and facilities at its own expense. Thus, Brady Wind will repair and absorb any harm arising from the exercise of its rights under the Stark County permit and so obviously the harm, by definition, cannot be considered irreparable. Therefore, the mention of a preliminary injunction in its Motion for a Continuance is baseless and exists only to give the appearance of justifying the request for a continuance.

D. Brady Wind Will Suffer Significant and Irreparable Harm if the Continuance is Granted

Brady Wind will suffer immediate financial and other irreparable harm by a delay in the proceedings. Attached here as Exhibit D is an Affidavit of Jason Utton, who is the Director of Development for Brady Wind. As this affidavit indicates, Brady Wind has a Purchase Power Agreement with Basin Electric Power Cooperative ("Basin"), which after an extension due to the denial of the Dickinson Wind by the Stark County Board of County Commissioners, has until December 31, 2016, to provide power. Brady Wind will incur damages each day that power is not delivered to Basin Electric Power Cooperative after December 31, 2016. Mr. Utton further indicates that if Brady Wind is unable to obtain unrestricted construction access by April 19, 2016, Brady Wind will be liable for millions of dollars in delay and acceleration costs under its Engineering, Procurement, and Construction ("EPC") contract in the first month of delay, and further delay could result in termination of the EPC contract. Termination of the EPC would cause Brady Wind to be liable for costs incurred under the contract, which Brady Wind estimates to be approximately \$1 million to date.

Moreover, if Brady Wind is unable to obtain unrestricted construction access by April 19, 2016, the project access roads and foundations will not be ready to accept turbine deliveries on schedule. Therefore, if the project is delayed by one month for example, the first 40 turbines would need to be stored at an onsite laydown yard and double handled once infrastructure is complete. The cost to store and double handle these turbines is estimated to cost approximately \$3 million based on a one-month delay in unrestricted access. If unrestricted access was delayed by two months, all turbines would need to be stored on site and double handled at a cost of approximately \$6 million.

Additionally, for each day that commercial operation is delayed, Brady Wind will lose revenue that it would have received under the PPA. Brady Wind estimates that it will lose more than \$3 million for each month of delay in COD after October 1, 2016.

Brady Wind estimates that it has spent approximately \$12 million on development of a wind project to meet its obligations under the PPA with Basin. In addition to these amounts, Brady Wind has entered into contracts to purchase long-lead time materials for which Brady Wind will be subject to termination payments of \$3.2 million.

In addition to these significant and quantifiable impacts to Brady Wind, a delay in unrestricted construction access may also affect Brady Wind II, LLC's ability to achieve timely COD. Currently Brady Wind II, LLC has an application for a certificate of site compatibility pending before this Commission for the Brady II Wind Energy Center.

Finally, Brady Wind has been preparing to present its case to the Commission in the Brady Wind Energy Center proceedings on March 2, 2016 since the Commission issued the Notice of Hearing on January 20, 2016. Brady Wind has made arrangements for approximately 15 out-of-state representatives to travel to Dickinson to participate in the hearings. Brady Wind has also spent considerable time and cost preparing for the hearing based on the Notice of Hearing that was issued more than a month before CCSC filed its Motion for a Continuance. The specific financial harm to Brady Wind that will result from a delay in the March 2, 2016 hearing significantly outweighs CCSC's unjustified claim that it did not have sufficient time to evaluate Brady Wind's application despite being on notice of the application for at least two months.

CONCLUSION

Feb. 24. 2016 4:47PM

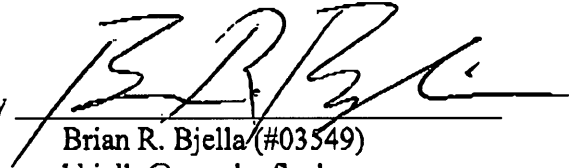
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CCSC had ample time to intervene and to be prepared for the Commission hearing set forth March 2, 2016. CCSC has sought to abuse the process by filing a very late motion for continuance. Brady Wind respectfully requests that a motion for continuance sought by CCSC be denied and that the hearings proceed as scheduled on March 2, 2016.

Dated this 24th day of February, 2016.

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By



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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

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

Case No. PU-15-111

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

Case No. PU-15-133

PETITION TO INTERVENE

Pursuant to North Dakota Century Code (“N.D.C.C.”) § 69-02-02-05, the Concerned Citizens of Stark County (“CCSC”), through undersigned counsel, hereby respectfully petition the North Dakota Public Service Commission (the “Commission”) to intervene in the above-captioned docket. CCSC files this Petition to Intervene in order to preserve its ability to participate substantively in this proceeding at the public hearing currently scheduled for **May 18, 2015**.

CCSC is a North Dakota nonprofit corporation dedicated to preserving the growing and thriving economies of Richardton, Taylor and Gladstone. The members of the board of directors of CCSC are all residents of and property owners in Stark County. This petition should be granted because the outcome of this proceeding will bind or affect the members of CCSC, their communities, and their property rights. Furthermore, CCSC’s interests are not adequately represented by the other parties currently participating in this docket.

Dickinson Wind, LLC (“Dickinson Wind”), a wholly-owned indirect subsidiary of NextEra Energy Resources (“NEER”), submitted an application for a Certificate of Site Compatibility for the construction and operation of the Dickinson Wind Energy Center in Stark County. After reviewing

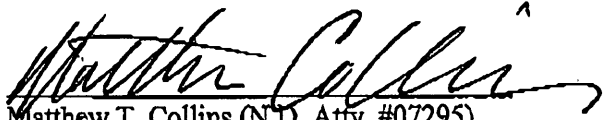
Dickinson Wind's application, CCSC believes that the application does not comply with North Dakota law nor the applicable Stark County ordinances. Among other things, CCSC believes that the proposed Dickinson Wind Energy Center does not promote the public health, safety, or welfare of the citizens of Stark County. As such, CCSC opposes Dickinson Wind's application for a Certificate of Site Compatibility.

The approval of a Certificate of Site Compatibility for Dickinson Wind will have a substantial impact on the members of CCSC. The proposed wind farm will, among other things, directly impact residential development in Stark County; property values of non-participating property owners, including CCSC members; the wildlife and environment of Stark County; and the health and quality of life of Stark County residents. Given these concerns, it is anticipated that CCSC's participation in this proceeding will bring valuable and necessary perspectives to light as the Commission considers Dickinson Wind's application. Furthermore, granting this Petition to Intervene will not adversely impact this proceeding. CCSC will be prepared to appear at the upcoming hearing on May 18, 2015.

For the reasons stated above, CCSC respectfully requests that its Petition to Intervene be granted.

DATED: May 7, 2015

FABYANSKE, WESTRA, HART & THOMSON,
P.A.

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ATTORNEYS FOR CONCERNED CITIZENS
OF STARK COUNTY

Stark County Planning and Zoning Commission Minutes**December 22, 2015****10:00 am**

Chairman Russ Hoff called the meeting of the Stark County Planning and Zoning Commission to order. Chairman Hoff, Klayton Oltmanns, Duane Grundhauser, Kurt Froelich, Larry Messer, Gene Jackson, Sue Larsen and Jay Elkin present. Also present were County Planner Steve Josephson, States Attorney Tom Henning and Nicole Roberts of the Auditor's office.

Klayton Oltmanns moved to approve the minutes from the November 24, 2015 meeting. Duane Grundhauser seconded. All voted Aye and motion carried.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for wind energy facilities, including an electrical substation, on parcels located in Sections 35 and 36 of Township 138, Range 95, Sections 1, 11, 12, 14,15,16, 21,22,23, 24, 27, 28,29, 31,32,33 and 34 of Township 137, Range 95, Sections 25, 26, 29, 30, 31, 35 and 36 of Township 137, Range 96 and Sections 25, 26, 27,28, 32, 33,34,35, and 36 of Township 137, Range 97 on approximately 17,665.01 acres.

Chairman Hoff asked for anyone to speak for or against the Conditional Use Permit. Terry Reichert, John Wert, Pat Praus, Doug Tarpo, and Craig Kubas all voiced their concerns about view, health, property values, sound, and flicker flash. Mike Schoch voiced his concern on the health effects it would impose on his ill daughter. Mike Branenberg, Rose Hafes, Leland Brand, Steve Tomac, Jason Zering, Wayne Backman, Chase Dauenhauer, Glen Olberg, Don Beshner, Donna Ritter, Elvin Kaufman, Janice Gjermain, Ruth Steier all spoke in favor of the conditional use permit for wind energy facilities. Chairman Hoff closed the public hearing.

Klayton Oltmanns moved to recommend to the Stark County Board of Commissioners the approval for a conditional use permit for wind energy facilities, including an electrical substation, on parcels located in Sections 35 and 36 of Township 138, Range 95, Sections 1, 11, 12, 14,15,16, 21,22,23, 24, 27, 28,29, 31,32,33 and 34 of Township 137, Range 95, Sections 25, 26, 29, 30, 31, 35 and 36 of Township 137, Range 96 and Sections 25, 26, 27,28, 32, 33,34,35, and 36 of Township 137, Range 97 on approximately 17,665.01 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Sue Larsen seconded. Roll call vote. All voted aye except for Chairman Russ Hoff, Jay Elkin and Gene Jackson who voted nay and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

1. The location of the proposed project should not adversely impact the existing agricultural uses in the vicinity; and
2. The conditional use shall to limited through the inclusion of the following conditions:
 - a. **Development shall be limited to a maximum of 87 wind turbines, an electrical substation, and an operation and maintenance building as well as any required infrastructure.**

- b. Development shall be in accordance with the application material dated October 27, 2015.
- c. The location of the wind turbines shall be as generally shown on the drawings dated October 27, 2015. Any significant change to the location of the turbines and/or the addition of turbines shall require approval by the County Commission.
- d. The maximum turbine height shall be 431 feet. The maximum ground clearance for each turbine blade tip shall be 90 feet.
- e. The maximum square footage of the operations and maintenance building (O&M) shall be 7,500 square feet. The exterior of the O&M building shall use materials, colors, and textures that will blend the building into the natural setting and existing environment.
- f. The laydown yard and storage area will only be utilized during the construction phase of the project. The laydown yard and storage areas shall be restored by the developer within 180 days after the end of the construction phase.
- g. Development of wind energy facilities shall be performed in accordance with Chapter 6.19 of the Stark County Zoning Ordinance as adopted on October 2, 2012 as well as with all applicable County, State and Federal rules and regulations.
- h. The developer shall be responsible for all maintenance associated with the turbines and private roads accessing the turbines during the operation of the project.
- i. The developer shall enter into a road maintenance agreement with the Stark County Road Department to ensure that all County roads shall be repaired or restored to a condition at least equal to the road condition prior to construction of the project.
- j. Prior to the project's development, the developer shall contact the County Road Superintendent and request an inspection of the haul routes.
- k. The developer shall contact the County Road Superintendent no later than November 1 of each year to request a subsequent inspection of the haul routes.
- l. The developer shall be responsible for dust control along the haul routes.
- m. The developer shall work in concert with law enforcement and emergency responders to facilitate public safety. This includes the provision of additional special rescue equipment and training necessary to accommodate high-angle rescues if necessary for law enforcement and emergency responders.
- n. Upon approval of the siting permit by the State of North Dakota Public Service Commission, the applicant shall post a bond, a letter of credit, or a parent guarantee for restoration of property in an amount as determined by the County Commission. The bond shall be posted and received by Stark County prior to the issuance of building permits for structures that are part of the approved wind energy facility;
- o. Building permits for structures that are part of the wind energy facility will be issued only after the following documents have been submitted to Stark County:
 - a. determinations of no hazard issued by the Federal Aviation Administration (FAA) based upon the final turbine array;
 - b. proof of approval of a siting permit by the North Dakota Public Service Commission;
 - c. a copy of the signed decommissioning and restoration bond agreement with the State of North Dakota;
 - d. a signed road maintenance agreement with Stark County;
 - e. evidence that a wind energy facility map identifying wind turbine locations and numbers have been filed with local fire departments, law enforcement, and county emergency managers;
 - f. a plan with dates for meetings with law enforcement and emergency responders and provisions of special rescue equipment and training necessary to accommodate high-angle rescue; and

- g. A summary of anticipated decibel output of each wind turbine.
- p. Within 90 days of wind energy facility construction, the developer shall submit to the Zoning Administrator an updated and final USGS topographical map; or survey if available, demonstrating actual compliance with the requirement and conditions of this conditional use permit.
- q. The developer shall report to the Zoning Administrator should the termination or abandonment of leases or easements for the wind energy facilities occur. Reclamation of the sites shall be completed within 180 days of termination or abandonment of leases or easements.
- r. Any proposed change of the conditional use permit, including location of the facility, shall require a hearing before the Stark County Planning and Zoning Board and approval from the Stark County Commission.
- s. The permit may be revoked by the County Commission anytime the applicant is in non-compliance with any of the conditions set by the Planning and Zoning Board or the County Commission for the issuance of the permit.

The subject properties are currently zoned Agriculture. As the surrounding area is largely undeveloped and appears to be in agricultural use, and as no wind turbines are proposed within one mile of the jurisdictional limits of any incorporated cities, the proposed conditional use is consistent with the following objectives of The Stark County Comprehensive Plan:

- **LAND USE-Avoid conflict between land uses.**
- **LAND USE- Ensure orderly and desirable energy development.**

The proposed conditional use permit is consistent with the following implementation strategies in the Stark County Comprehensive Plan:

- **GOVERNMENTAL-Stark County supports coordination with state, federal and regional agencies and companies and associations involved in energy development to ensure appropriate planning.**
- **NATURAL RESOURCES-Stark County supports proper planning for impacts resulting from, coal, oil, natural gas, wind, uranium, or other natural resource development.**

Jay Elkin moved to recess the Planning and Zoning Commission meeting until the conclusion of the Stark County Commission meeting scheduled for 10:00 am that morning.

Klayton Oltmanns seconded. Roll call vote. All voted Aye and the motion carried.

The Planning and Zoning Commission meeting resumed shortly after the adjournment of the County Commission meeting.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for a 197 foot meteorological tower on a parcel located in the E ½ of the W ½ of Section 32, Township 137, Range 97 containing approximately 160 acres on a lease area of approximately 2.5 acres.

Chairman Hoff asked for anyone to speak for or against the Conditional Use Permit. Craig Kubas suggested postponing the remaining items to allow time to digest the approval of the wind energy facilities. Chairman Hoff closed the public hearing.

Klayton Oltmanns moved to recommend to the Stark County Board of Commissioners the approval for a conditional use permit for a 197 foot meteorological tower on a parcel located in the E ½ of the W ½ of Section 32, Township 137, Range 97 containing approximately 160 acres on a lease area of approximately 2.5 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Duane Grundhauser seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and
2. The conditional use shall be limited through the inclusion of the following conditions:
 - a. Development shall be limited to a guy-wired meteorological tower (MET) to be used to be used to monitor and collect wind data;
 - b. No outdoor storage shall be allowed on site;
 - c. The maximum height of the MET shall be limited to 197 feet;
 - d. The location of the MET shall be as generally shown on the drawing dated September 2, 2015;
 - e. The duration of the conditional use permit shall be three and one-half years;
 - f. The developer shall be responsible for all maintenance associated with the MET; and guys, and the driveways/roads accessing the tower;
 - g. The developer shall provide a six-foot chain link fence around the MET and baseplate;
 - h. Unless required by the Federal Aviation Authority, the MET shall not be lighted;
 - i. If necessary, the developer, prior to construction, shall submit a letter from the Federal Aviation Administration (FAA) stating that the MET does not exceed the maximum height permitted under FAA rules and does not require lighting;
 - j. Any proposed change of use of the MET, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission; and
 - k. Development of the MET shall be performed in accordance with all applicable County, State and Federal rules and regulations.
 - l. The applicant shall report to the Zoning Administrator if the tower is no longer in use. The tower shall be removed, at the applicant's expense, within six (6) months of this notice and the site shall be restored by the applicant to its pre-existing condition.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a zoning change from Agriculture to Agricultural Residential on a parcel located in the NW 1/4 of Section 25, Township 137, Range 96 containing approximately 13 acres.

Chairman Hoff asked for anyone to speak for or against the zoning change. Chairman Hoff closed the public hearing.

Duane Grundhauser moved to recommend to the Stark County Board of Commissioners the approval of the zoning change from Agriculture to Agricultural Residential on a parcel located in the NW 1/4 of Section 25, Township 137, Range 96 containing approximately 13 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Sue Larsen seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed rezoning based upon the following finding:

- The proposed rezoning is consistent with the development pattern in the vicinity.

The request is consistent with the following objectives of the Stark County Comprehensive Plan:

- LAND USE-Strive to protect the agricultural integrity of rural areas; and
- LAND USE-Avoid conflicts between land uses.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for a 190 foot microwave tower on a parcel located in the NW ¼ of Section 25, Township 137, Range 96 containing approximately 13 acres.

Chairman Hoff asked for anyone to speak for or against the zoning change. Chairman Hoff closed the public hearing.

Klayton Oltmanns moved to recommend to the Stark County Board of Commissioners the approval of the conditional use permit for a 190 foot microwave tower on a parcel located in the NW ¼ of Section 25, Township 137, Range 96 containing approximately 13 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Larry Messer seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and
2. The conditional use shall be limited through the inclusion of the following conditions:
 - a. Development shall be limited to a lattice microwave tower to support a wind energy facilities;
 - b. The maximum height of the radio tower shall be limited to 190 feet;
 - c. The location of the tower shall be as generally shown on the drawings dated October 19, 2015 and received as part of the application dated October 30, 2015;
 - d. The developer shall be responsible for all maintenance associated with the tower;
 - e. The developer shall provide a six-foot chain link fence around the perimeter of the pad;

- f. Prior to construction, the developer shall submit a letter from the Federal Aviation Administration (FAA) stating that the tower does not exceed the maximum height permitted under FAA rules;
- g. Any proposed change of use of the tower, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission; and
- h. Development of the microwave tower shall be performed in accordance with all applicable County, State and Federal rules and regulations.
- i. The applicant shall report to the Zoning Administrator if the tower is no longer in use. The tower shall be removed, at the applicant's expense, within six (6) months of his notice and the site shall be restored by the applicant to its pre-existing condition.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a conditional use permit for a 263 foot lattice meteorological tower on a parcel located in the NE ¼ of the SW ¼ and Lots 1,2, and 3, Section 30, Township 137, Range 96 containing approximately 149.65 acres on a lease area of approximately 3.191 acres.

Chairman Hoff asked for anyone to speak for or against the conditional use permit. Craig Kubas spoke against the conditional use permit. Bob Zent voiced his concerns about the air space with the airport. Chairman Hoff closed the public hearing.

Sue Larsen moved to recommend to the Stark County Board of Commissioners the approval of the conditional use permit for a 263 foot lattice meteorological tower on a parcel located in the NE ¼ of the SW ¼ and Lots 1, 2, and 3, Section 30, Township 137, Range 96 containing approximately 149.65 acres on a lease area of approximately 3.191 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Duane Grundhauser seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and
2. The conditional use shall be limited through the inclusion of the following conditions:
 - a. Development shall be limited to a lattice meteorological tower to support a wind energy facility
 - b. The maximum height of the meteorological tower shall be limited to 263 feet;
 - c. The location of the tower shall be as generally shown on the drawings dated October 23, 2015 and received as part of the application received on October 30, 2015;
 - d. The developer shall be responsible for all maintenance associated with the tower;
 - e. The developer shall provide a six-foot chain link fence around the perimeter of the pad;
 - f. Prior to construction, the developer shall submit a letter from the Federal Aviation Administration (FAA) stating that the tower does not exceed the maximum height permitted under FAA rules;

- g. Any proposed change of use of the tower, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission;**
- h. Development of the tower shall be performed in accordance with all applicable County, State and Federal rules and regulations; and**
- i. The applicant shall report to the Zoning Administrator if the tower is no longer in use. The tower shall be removed, at the applicant's expense, within six (6) months of this notice and the site shall be restored by the applicant to its pre-existing condition.**

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a zoning change from Agriculture to Agricultural Residential on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres.

Chairman Hoff asked for anyone to speak for or against the zoning change from Agriculture to Agricultural Residential. Chairman Hoff closed the public hearing.

Duane Grundhauser moved to recommend to the Stark County Board of Commissioners the approval of the zoning change from Agriculture to Agricultural Residential on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources.

Klayton Oltmanns seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed rezoning based upon the following finding:

- The proposed rezoning is consistent with the development pattern in the vicinity.

The request is consistent with the following objectives of the Stark County Comprehensive Plan:

- LAND USE-Strive to protect the agricultural integrity of rural areas; and
- LAND USE-Avoid conflicts between land uses.

Chairman Hoff opened the public hearing on a request from Melissa Hochmuth of NextEra Energy Resources. The request is for a Conditional Use Permit for an electrical substation and accessory buildings on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres.

Chairman Hoff asked for anyone to speak for or against the Conditional Use Permit for an electrical substation and accessory buildings on a parcel located in the NE 1/4 of Section 29, Township 137, Range 98 containing approximately 30 acres following staff recommendations for Melissa Hochmuth of NextEra Energy Resources. Chairman Hoff closed the public hearing.

Larry Messer moved to recommend to the Stark County Board of Commissioners the approval

Klayton Oltmanns seconded. Roll call vote. All voted Aye and the motion carried.

STAFF RECOMMENDATION: Approval of the proposed conditional use based upon the following findings:

1. The location of the proposed project should not adversely impact the existing uses in the vicinity; and
2. The conditional use shall be limited through the inclusion of the following conditions:
 - a. Development shall be limited to an electric substation/switch yard to support a wind energy facility;
 - b. The location of the substation/switch yard shall be as generally shown on the drawings dated August 7, 2015 received as part of the application dated October 30, 2015;
 - c. The developer shall be responsible for all maintenance associated with the substation/switch yard;
 - d. The developer shall provide a six-foot chain link fence around the perimeter of the substation;
 - e. Prior to construction, the developer shall submit a letter from the Federal Aviation Administration (FAA) stating that the substation does not exceed the maximum height permitted under FAA rules;
 - f. Any proposed change of use of the electric substation/switch yard, increase in height or change of location shall require a hearing before the Stark County Planning and Zoning Board and approval as well as approval from the Stark County Commission; and
 - g. Development of the electrical substation/switch yard shall be performed in accordance with all applicable County, State and Federal rules and regulations.

Klayton Oltmanns moved to adjourn, Duane Grundhauser seconded.

Concerned Citizens of Stark County ND

Stephanie Home



Concerned Citizens of Stark County ND

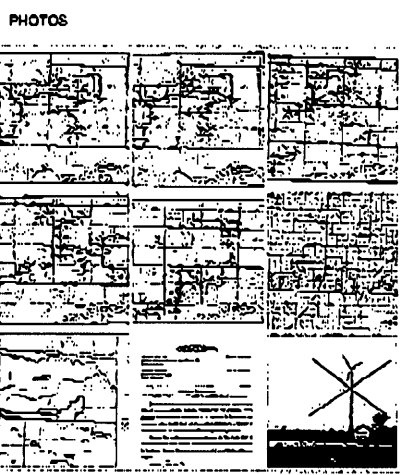
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ABOUT
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Concerned Citizens of Stark County ND

December 21, 2015

VOTING TOMORROW! Today is your last chance to contact the Individuals voting on the future of Stark County. Let them know how you feel!

Planning and Zoning Board Members:
Klayton Oltmanns- 483.6973
Gene Jackson- 483.1340
Duane Grundhauser- 225.2076
Sue Larson- 974.3859
Larry Messer- 974.3323
Kurt Froelich- 483.3387
Russ Hoff- 226.9420
Jay Elkin- 290.6583

County Commissioners:
Russ Hoff- P&Z Member
Jay Elkin- P&Z Member
Duane 'Bucky' Wolf- 483.5884
Pete Kuntz- 225.8600
Ken Zander- 483.9294

Planning and Zoning Meeting, Stark County Courthouse, 8:00
County Commissioner Meeting, Courthouse, 10:00

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Concerned Citizens of Stark County ND

December 12, 2015

<http://www.thedickinsonpress.com/.../3902126-letter-county-co...>

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Concerned Citizens of Stark County ND

December 8, 2015

Mike's post regarding the wind farm informative meeting in Scheffield this past weekend:

I want to thank all the people from our community for coming to the meeting on the wind farm proposed in Stark County, south of Dickinson. I am thankful that people see my point of view with my house surrounded by about a dozen turbines some 2000 feet from my house. The big thing is the 230kv transmission line which will be only 1100 feet from my house. My daughter had a shunt placed in h... [See More](#)

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STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Brady Wind, LLC
Brady 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

**AFFIDAVIT IN SUPPORT OF BRIEF IN OPPOSITION TO CONCERNED CITIZEN'S
OF STARK COUNTY'S MOTION FOR A CONTINUANCE**

STATE OF FLORIDA)
) ss.
COUNTY OF PALM BEACH)

Jason Utton, being first duly sworn, deposes and states:

1. I am Director of Development for NextEra Energy Resources, LLC ("NEER"). I have personal knowledge concerning the matters herein.

2. In my role as Director of Development I direct all wind development efforts in North Dakota, including development of the Brady Wind Energy Center and associated 230kV transmission line. I am also the lead negotiator for all power purchase agreements for wind energy projects in North Dakota. I have been employed at NEER since 2008, and since that time have developed over 800 MW of wind energy projects.

3. If the Public Service Commission grants a continuance of the above-captioned cases, there will be a delay in the construction schedule for the Project. A delay in the Project construction schedule will jeopardize Brady Wind, LLC's ("Brady Wind") ability to complete the Project by December 2016.

4. Brady Wind is developing the Brady Wind Energy Center and associated facilities (the "Project") pursuant to a Power Purchase Agreement ("PPA") between Basin Electric Power

Cooperative ("Basin") and Dickinson Wind, LLC executed in December, 2014. After execution of the PPA, Dickinson Wind, LLC changed its name to Brady Wind, LLC.

5. The PPA provides for a commercial operation date ("COD") of December 31, 2015, but allows for an extension of the COD to December 31, 2016 under certain circumstances. The current COD required by the PPA is December 31, 2016.

6. The PPA requires Brady Wind to pay Basin daily damages if the COD of Brady Wind occurs after December 31, 2016, until termination of the agreement or a limit in delay damages is achieved.

7. In addition, Brady Wind has entered into an Engineering, Procurement, and Construction ("EPC") contract that provides for unrestricted construction access to the contractor by April 19, 2016. A delay in the date of unrestricted construction access would cause Brady Wind to be liable to the contractor for delay and acceleration costs. Brady Wind estimates these costs to be approximately \$2.3 million for the first month in delay in unrestricted access. Delays beyond one month could result in termination of the EPC contract, which would result in Brady Wind missing the COD date required under the PPA and incurring damages as outlined in Paragraph 6. Brady Wind will also be liable to the EPC contractor for costs the contractor incurred prior to termination, which Brady Wind estimates to be approximately \$1 million to date.

8. Moreover, if Brady Wind is unable to obtain unrestricted construction access by April 19, 2016, the project access roads and foundations will not be ready to accept turbine deliveries on schedule. Therefore, if the project is delayed by one month for example, the first 40 turbines would need to be stored at an onsite laydown yard and double handled once infrastructure is complete. The cost to store and double handle these turbines is estimated to cost

approximately \$3 million based on a one-month delay in unrestricted access. If unrestricted access was delayed by two months, all turbines would need to be stored on site and double handled at a cost of approximately \$6 million.

9. Additionally, for each day that commercial operation is delayed, Brady Wind will lose revenue that it would have received under the PPA. Brady Wind estimates that it will lose more than \$3 million for each month of delay in COD after October 1, 2016.


10. A delay in unrestricted construction access to construct the transmission line and switchyard may also affect Brady Wind II, LLC's ability to achieve timely COD. Currently Brady Wind II, LLC has an application for a certificate of site compatibility pending before this Commission for the Brady II Wind Energy Center. The Brady II Wind Energy Center will transmit energy over the 230kV transmission line proposed in this case and the substation equipment for the Brady II Wind Energy Center will be located within the Brady Wind Energy Center substation. NEER has planned Brady Wind and Brady Wind II to be constructed sequentially, with Brady Wind II following construction of Brady Wind. Any delays to Brady Wind will significantly impact the ability of Brady Wind II to meet its COD deadline. A delay in unrestricted construction access for construction of the transmission line and substation in this case would cause a delay in the Brady II Wind Energy Center and cause Brady Wind II, LLC significant financial harm.

11. Brady Wind estimates that it has spent approximately \$12 million on development of a wind project to meet its obligations under the PPA with Basin. In addition, Brady Wind has entered into contracts to purchase long-lead time materials for which Brady Wind will be subject to termination payments of \$3.2 million.

12. Brady Wind has been preparing to present its case to the Commission in the Brady Wind Energy Center proceedings on March 2, 2016 since the Commission issued the Notice of Hearing on January 20, 2016. Brady Wind has made arrangements for approximately 15 out-of-state representatives to travel to Dickinson to participate in the hearings. Brady Wind has also spent considerable time and cost preparing for the hearing based on the Notice of Hearing that was issued more than a month before CCSC filed its Motion for a Continuance.

FURTHER THE AFFIANT SAYS NOT.

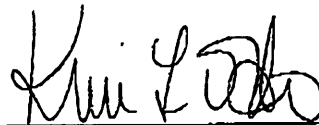
Dated this 24th day of February, 2016.



 Jason Utton

SUBSCRIBED AND SWORN to before me this 24th day of February, 2016.



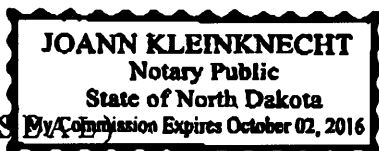


 Notary Public

Beth Wald

Beth Wald

Subscribed and sworn to before me this 24th day of February, 2016.



Joann Kleinknecht

Joann Kleinknecht, Notary Public

Burleigh County, North Dakota

My Commission Expires: _____