

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

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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

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**APPLICATION TO PROTECT INFORMATION**

Applicant Brady Wind, LLC (“Brady Wind”) submits this application to protect from disclosure certain trade secret information that the intervenor, Concerned Citizens of Stark County (“CCSC”), has obtained through discovery that might be introduced into evidence for the public hearings on March 30, 2016.

During discovery, pursuant to certain non-disclosure restrictions set forth in that certain Confidentiality Agreement among Brady Wind and CCSC dated March 8, 2016, CCSC obtained copies the following documents:

1. Redacted Procurement and Construction Agreement for Substation Facilities and Switchyard Facilities by and between Brady Wind, LLC and Paradigm Enterprises, Inc., dated December 14, 2015 (“PC Contract”);
2. Redacted Engineering, Procurement and Construction Agreement by and between Brady Wind, LLC and Blattner Energy, Inc., dated December 11, 2015 (“BOP EPC Contract,” together with the PC Contract, the “Construction Agreements”);

3. Redacted Power Purchase Agreement by and between Basin Electric Power Cooperative and Dickinson Wind, LLC, dated December 18, 2014 (“Dickinson PPA”);
4. Redacted Power Purchase Agreement by and between Basin Electric Power Cooperative and Brady Wind, LLC, dated March 4, 2016 (“Brady PPA,” together with the Dickinson PPA, the “PPAs”);
5. Compensation Agreements for transmission line easements; and
6. Compensation Agreements for collection easements.

(collectively, the “Confidential Documents”).

In providing the Confidential Documents to CCSC, Brady Wind noted several objections to the admissibility of the documents. In particular, the Construction Agreements and the PPAs are irrelevant to the issues before the North Dakota Public Service Commission (“Commission”). However, in the event CCSC requests admission of, and the Administrative Law Judge requires disclosure of, any of the Confidential Documents, Brady Wind seeks to protect the Confidential Documents from disclosure. The limited information for which protection is sought is eligible for protection under this Commission’s rules for trade secret protection set forth in N.D.A.C. chap. 69-02-09 and therefore is entitled to protection from disclosure. Consistent with this Commission’s rules for an application to protect information, CCSC has agreed to file the Confidential Documents only in a sealed envelope labeled “TRADE SECRET – PRIVATE.” *See* N.D.A.C. § 69-02-09-02. Additionally, the envelope will be marked “Commissioners’ and Attorneys’ Eyes Only.”

Under North Dakota’s open records law, “all records of a public entity are public records” unless an exception applies. N.D.C.C. § 44-04-18. Trade secret information is exempt

from disclosure under North Dakota's open records law. *See* N.D.C.C. § 44-14-18.4. In recognition of that fact, this Commission's regulations provide a process by which an applicant may request trade secret protection for the Confidential Documents filings. *See* N.D.A.C. chap. 69-02-09. The Commission will protect information that qualifies for the definition of "trade secret" under N.D.C.C. § 47-25.1-01. *See* N.D.A.C. § 69-02-09-03. That definition provides:

"Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

- a. Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
- b. Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.D.C.C. § 47-25.1-01(4).

The Confidential Documents qualify for trade secret protection under N.D.A.C. § 69-02-09. Below is an explanation of why the Confidential Documents satisfy each of the six requirements for protection set forth in N.D.A.C. § 69-02-09-01:<sup>1</sup>

1. The Confidential Documents define the relationships between Brady Wind and its customer, contractors, and landowners.

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<sup>1</sup> Pursuant to N.D.A.C. § 69-02-09-01, an application for trade secret protection must include:

1. A general description of the nature of the information sought to be protected;
2. An explanation of why the information derives independent economic value, actual or potential, from not being generally known to other persons;
3. An explanation of why the information is not readily ascertainable by proper means by other persons;
4. A general description of the persons or entities that would obtain economic value from disclosure or use of the information;
5. A specific description of known competitors and competitors' goods and services that are pertinent to the tariff or rate filing; and
6. A description of the efforts used to maintain the secrecy of the information.

2. The Confidential Documents derive independent economic value by not being generally known because it would give Brady Wind's competitors an advantage in competing with Brady Wind in the wind energy industry.
3. The Confidential Documents are not readily ascertainable by third parties because the Confidential Documents contain confidentiality provisions and are treated by all the parties as confidential. The Confidential Documents were only provided to CCSC in this proceeding pursuant to a confidentiality agreement.
4. Brady Wind's competitors in the wind energy industry would obtain economic value from obtaining access to the Confidential Documents.
5. This is not a tariff or rate case; therefore, this factor does not apply.
6. All of the Confidential Documents contain confidentiality provisions and are maintained as confidential documents by the parties to the agreements. When disclosing the Confidential Documents during discovery, they were disclosed pursuant to a confidentiality agreement.

Further, in the event testimony is elicited about the Confidential Documents during the hearings on March 30, 2016, in accordance with N.D.A.C. § 69-08-09-08, Brady Wind respectfully requests the hearing room be cleared prior to the testimony taking place.

Accordingly, Brady Wind respectfully requests that this Commission grant its application to protect proprietary information, and allow the Confidential Documents, if filed by CCSC, to be filed confidentially, and enter an appropriate protective order limiting disclosure of the Confidential Documents. Brady Wind also requests that the provisions of N.D.A.C. § 69-08-09-08 be followed with respect to clearing the hearing room prior to any testimony being elicited about the Confidential Documents.

Dated this 22<sup>nd</sup> day of March, 2016.

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