

June 26, 2018

Via Hand Delivery and E-mail

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

E-mail: ndpsc@nd.gov

Dear Mr. Nitschke:

In re: Langdon Wind Energy Center Upgrade Project
PSC Case No. PU-18-186

We are writing on behalf of our client Langdon Wind, LLC (“Landon Wind”).

On May 25, 2018, Langdon Wind filed a certification pursuant to N.D.C.C. 49-22-03(3)(a) (the “Certification”). Docket No. 1 in PU-18-186. The Certification notified the Commission of activities relating to an improvement consisting of a facility upgrade that would result in an increase of the Langdon Wind Energy Center’s nameplate capacity sited in Case Nos. PU-07-026, PU-07-722, and PU-08-159. *See* PU-18-186 Docket No. 1 Paragraph 8 (facility upgrades will result in an increase of nameplate capacity from 159 MW to 171.72 MW).

The Certification was filed pursuant to provisions in the Siting Act that expressly provide for an exemption from the siting process once a utility certifies in writing to the Commission regarding an improvement and/or an increase in generation capacity. Specifically, section 49-22-03(3)(a) provides that certain activities do not constitute “construction” that would otherwise require Commission siting approval. Permitted activities include activities to “improve the existing electric energy conversion facility or electric transmission facility” or to “*increase* or decrease the capacity of the existing electric energy conversion facility or electric transmission facility.” N.D.C.C. § 49-22-03(3)(a)(4)(b) (emphasis added).

Langdon Wind has discussed the Certification with Commission staff on several occasions and appreciates staff's willingness to engage in discussion on the topic. In these discussions, staff has advised Langdon Wind that, because the upgrade will result in an increase in the facility's maximum nameplate capacity, staff believes it is necessary as an administrative matter to revise Langdon Wind's siting certificate to conform to the increased capacity amount. Staff has advised that this administrative revision would require the Commission to issue a notice of opportunity for hearing.

Langdon Wind has expressed its position to staff that notice of opportunity for hearing on the issue of an order amendment is inconsistent with the provisions of section 49-22-03(3)(a). Pursuant to these provisions, Langdon Wind has certified that the modifications are for similar facilities as approved in the respective original orders granting certificates of site compatibility, that the activities will not affect any known exclusion or avoidance area, and that the activities will occur wholly within the geographic location permitted. Langdon Wind has also certified it will "comply with all *applicable* conditions and protections in siting laws and rules and commission orders previously issued for the facility." *See* N.D.C.C. § 49-22-03(3)(a)(4)(c) (emphasis added).

Langdon Wind does not interpret the requirement in section 49-22-03(2)(a)(4)(c) that a utility certify it will comply with all application conditions and protections in an order as a limitation that binds a utility to the capacity threshold designated in its original order and/or certificate. The Siting Act clearly provides that a utility may increase or decrease a facility's capacity by way of a certification filing and contains no requirement that an order and/or certificate be amended for a utility to invoke this statutory right. A statutory construction that construes a capacity designation in an order and/or certificate as a restriction on a utility's ability to increase capacity subject to amendment would effectively render section 49-22-03(3)(a) inoperative.

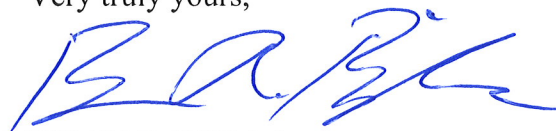
An increase to the capacity of the Langdon Wind Energy Center was contemplated and brought before the Commission during the siting of the original facility. *See* Langdon Wind 2007 Order (PU-07-26), Finding of Fact No. 36, and Langdon Wind 2008 Order (PU-07-722), Finding of Fact No. 32. ("Retrofitting the turbines and power systems with upgrades based on new technology may allow the wind farm to produce efficiently and successfully for many more years."). Regardless of the foregoing, the procedure for certification filings is clearly governed by statute, and the requirement for order amendments and associated notice of opportunity for hearing are not contemplated therein. Where a utility has filed a certification pursuant to section 49-22-03(3)(a), an assertion that capacity increases are limited by an order and/or certificate's capacity designation conflicts with the precise action statute expressly permits. Once a certification is filed pursuant to section 49-22-03(3)(a), an order and/or certification amendment and corresponding notice of opportunity are not required as a condition of a utility's compliance.

While Langdon Wind does not believe that an order amendment and notice of opportunity for hearing is necessary or required, in the event the Commission deems notice of opportunity for hearing necessary, Langdon Wind respectfully requests that (1) the notice be narrowly tailored to the specific issue of removing the designated capacity threshold contained in the ordering provision and certificate and (2) if the order and/or certificate is amended, it be reissued in form similar to the Certificate of Site Compatibility issued in PU-16-123, and omit any designation of a specific megawatt threshold for the facility.

Langdon Wind has met its statutory obligations under law in order to commence construction activities on the upgrade of the Langdon Wind Energy Facility and hereby notifies the Commission that it intends to commence construction activities on July 10, 2018, consistent with prior Commission precedent. *See, e.g.*, PU-15-113 Docket No. 5 (permitting commencement of construction activities during notice period).

Thank you for your attention to this matter.

Very truly yours,



BRIAN R. BJELLA

BRB:sal

cc: Tracy Davis - TracyC.Davis@nexteraenergy.com