

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

Harmony Solar ND, LLC  
Harmony Solar Project – Cass County  
Siting Application

Case No. PU-18-219

AFFIDAVIT OF SERVICE BY REGULAR AND ELECTRONIC MAIL

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

**Geralyn R. Schmaltz** deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **1st day of March 2019**, she deposited in the United States Mail, Bismarck, North Dakota, **3** envelopes by first class mail, fully prepaid, securely sealed each containing a photocopy of:

- **Findings of Fact Conclusions of Law and Order**

The envelopes were addressed as follows:

**See Attached List**

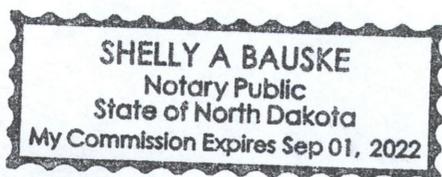
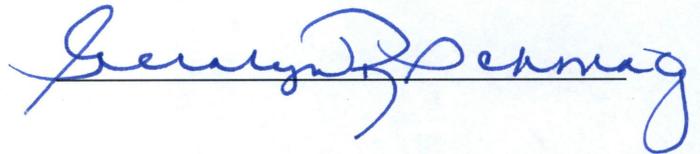
**Geralyn R. Schmaltz** further deposes and says that on the **1st day of March 2019**, she sent an electronic message to **44** addressees, each including an electronic copy in portable document format of the same document.

The electronic mails were addressed as follows:

**See attached list**

The addresses shown are the respective addressee's last reasonably ascertainable post office and electronic mail addresses.

Subscribed and sworn to before me  
this **1st day of March 2019**.



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

**Harmony Solar ND, LLC**  
**Harmony Solar Project – Cass County**  
**Siting Application**

**Case No. PU-18-219**

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER**

**February 26, 2019**

**Appearances**

Commissioners Randy Christmann, Julie Fedorchak, and Brian Kroshus.

Mollie M. Smith, Fredrikson & Byron, P.A., 200 South 6th Street, Suite 4000, Minneapolis, MN 55402, on behalf of the Applicant, Harmony Solar ND, LLC.

John M. Schuh, Special Assistant Attorney General, North Dakota Public Service Commission.

Timothy J. Dawson, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

**Preliminary Statement**

On July 29, 2018, Harmony Solar ND, LLC (Harmony Solar) filed an Application for a Certificate of Site Compatibility (Application) for a 200 megawatt solar energy conversion facility to be located in Cass County, North Dakota (Harmony Solar Project or Project).

On September 5, 2018, the North Dakota Public Service Commission (Commission) deemed the Application complete and issued a Notice of Filing and Notice of Hearing, scheduling a public hearing for November 1, 2018, at 10:00 a.m., at the Days Inn and Governors Conference Center, 2050 Governors Drive, Casselton, North Dakota. The notice identified the following issues to be considered:

1. Will the location and operation of the proposed facility produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Is the proposed facility compatible with the environmental preservation and the efficient use of resources?

**Findings of Fact, Conclusions of Law and Order**

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3. Will the proposed facility location minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion?

On September 10, 2018, the North Dakota Geological Survey filed comments concerning the Project.

On September 19, 2018, the North Dakota Department of Health filed comments concerning the Project.

On November 1, 2018, the public hearing was held.

On December 3, 2018, Harmony Solar filed Late-Filed Exhibits 11 through 15.

On January 14, 2019 and January 17, 2019, Harmony Solar filed a Revised Late-Filed Exhibit 15.

On February 14, 2019, Harmony Solar filed a correction to the Application.

Having allowed all interested persons an opportunity to be heard and having heard, reviewed, and considered all testimony and evidence presented, the Commission makes its:

#### **Findings of Fact**

1. Harmony Solar is a wholly-owned subsidiary of Geronimo Energy, LLC, a renewable energy development company headquartered in Edina, Minnesota.
2. Harmony Solar has been authorized to do business in the State of North Dakota since February 5, 2016, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State on June 25, 2018 filed in Case No. PU-17-328.

#### **Size, Type and Preferred Location of Facility**

3. The Project is a solar energy conversion facility that will have a nameplate capacity of up to 200 megawatts and projected average annual output of up to 360,756 megawatt-hours. The projected average annual output assumes a net capacity factor between 18 and 22 percent. The energy delivered to the electrical transmission system will be approximately 357,149 megawatt-hours annually.
4. Project facilities will include photovoltaic solar modules (panels) and racking, inverters, security fencing, laydown areas, a substation, an operations and maintenance facility, on-site underground electrical collection and communication lines, at least two weather stations, access roads, and associated facilities.
5. Harmony Solar proposes to construct the Project within approximately 1,662 acres of land in Harmony Township in Cass County, North Dakota (Project Area).

6. Hearing Exhibits 2 and 6 identify the Project Area.
7. The Application included a preliminary Project layout. The Application stated that final site layout plans will be provided to the Commission and Harmony Township prior to construction.
8. Harmony Solar plans to construct a 0.86-mile, 345 kilovolt electric transmission line to interconnect with Xcel Energy's Bison Substation located in Township 140, Range 51, Section 11.
9. The Project includes a Supervisory Control and Data Acquisition (SCADA) system for performance monitoring, energy reporting, and troubleshooting.
10. Harmony Solar anticipates Project construction may begin in spring of 2019 and be completed by the end of 2020. Commercial operations may begin fourth quarter 2020.
11. The estimated cost of the Project is \$250 million.

#### Study of Preferred Location

12. Harmony Solar collected approximately 18 months of on-site data indicating a site-specific annual direct normal irradiance (DNI) of 1536 kilowatt-hours per square meter. DNI is the energy density perpendicular to the plane of the solar array.
13. Harmony Solar reviewed an area within a three-mile radius of the Project Area (Study Area) for its environmental analysis to provide a description of the natural and human environment in which the Project will be constructed including woodlands, wetlands, and wildlife.
14. Harmony Solar surveyed the Project Area for natural and cultural resources (Survey Area).
15. Harmony Solar conducted a Class I cultural resource literature search and a Class III cultural resource inventory on the Survey Area. The Class I and Class III inventory report was submitted to the State Historic Preservation Office (SHPO) in December 2016. In a letter dated September 28, 2017, SHPO found the report acceptable provided the project remains as described and mapped in the report.
16. Harmony Solar's studies and surveys identified one intermittent waterway, the Lower Branch Rush River, that meets Waters of the U.S. criteria; no woodland communities; no wetlands, and no noxious weeds in the Survey Area.
17. Harmony Solar commissioned a glare analysis of the Project to determine adherence with U. S. Federal Aviation Administration 2013 Policy requirements.

18. Harmony Solar initiated correspondence with federal, state and local departments, agencies and entities as follows:

- a. Federal –Federal Aviation Administration-North Dakota, Minot Air Force Base, United States Department of the Army Corps of Engineers (USACE), United States Department of Defense, United States Fish and Wildlife Service (USFWS);
- b. State – Job Service of North Dakota, State Historical Society of North Dakota, North Dakota Aeronautics Commission, North Dakota Attorney General, North Dakota Department of Agriculture (NDDA), North Dakota Department of Career and Technical Information, North Dakota Department of Commerce, North Dakota Department of Commerce-Division of Community Services, North Dakota Department of Health (NDH), North Dakota Department of Human Services, North Dakota Department of Labor, North Dakota Department of Transportation, North Dakota Department of Trust Lands-Surface Management Division, North Dakota Department of Trust Lands-Minerals Management Division, North Dakota Economic Development and Finance Division, North Dakota Energy Development Impact Office, North Dakota Game and Fish Department, North Dakota Geological Survey (NDGS), North Dakota Governor's Office, North Dakota Highway Department, North Dakota Indian Affairs Commission, North Dakota Industrial Commission, North Dakota Land Department, North Dakota Parks and Recreation, North Dakota Pipeline Authority, North Dakota Soil Conservation Committee, North Dakota State Water Commission, North Dakota Transmission Authority, ; ; and
- c. Local – Cass County; Harmony Township; Cass County Soil Conservation District; Rush River Water Resource District; and Casselton Job Development Authority.

19. Section 49-22-16(4) of the North Dakota Century Code provides that a site shall not be designated that violates the rules of any state agency, and that compliance with an agency's rules shall be presumed if the agency fails to present its position with respect to the proposed facility at the public hearing.

#### Siting Criteria

20. North Dakota Administrative Code Chapter 69-06-08 sets forth criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. These criteria are classified as Exclusion Areas, Avoidance Areas, Selection Criteria, and Policy Criteria.

21. With the exception of prime farmland and unique farmland, an Exclusion Area must be excluded in the consideration of a site for an energy conversion facility. If the Commission finds the prime farmland and unique farmland that will be removed from use

for the life of the facility is of such small acreage as to be of negligible impact on agricultural production, then the exclusion does not apply.

22. Post-construction, the Project will utilize seed mixes across all but 41.4 acres that will promote biodiversity, create stable habitat, attract pollinators, and provide the potential for agricultural production in the form of grazing for sheep, bee-keeping, and/or haying.

23. Approximately 1,662 acres of prime farmland will be removed from agricultural use during the life of the Project. 1,662 acres is approximately 0.17 percent of the prime farmland in Cass County.

24. Within twenty-four (24) months after abandonment or the end of the Project's useful life, Harmony Solar commits to reclaiming the Project Area to the approximate topography that existed prior to construction of the facility with topsoil respreads over the disturbed areas at a depth similar to that in existence prior to the disturbance. The Project Area will be able to return to agricultural use following decommissioning of the Project.

25. The Commission finds the prime farmland that will be removed from use for the life of the Project is of such small acreage as to be of negligible impact on agricultural productions.

26. Aside from the prime farmland, Harmony Solar's studies and surveys identified no other Exclusion Areas within the Project Area.

27. An energy conversion facility must not be sited within an Avoidance Area unless the applicant shows that under the circumstances there is no reasonable alternative. In determining whether an Avoidance Area should be designated for a facility, the Commission may consider, among other things, the proposed management of adverse impacts; the orderly siting of facilities; system reliability and integrity; the efficient use of resources; and alternative sites.

28. Harmony Solar's studies and surveys identified no Avoidance Areas within the Project Area.

29. In accordance with the Commission's Selection Criteria, a site shall be approved if it is demonstrated that any significant adverse effects resulting from the location, construction, and operation of the energy conversion facility will be at an acceptable minimum or that the effects will be managed and maintained at an acceptable minimum. In accordance with the Commission's Policy Criteria, preference may be given to an applicant demonstrating certain benefits of the proposed energy conversion facility.

30. During construction, the Project will likely result in a temporary increase in traffic on county and township roads. County and township roads will be restored in accordance with the Certification Relating to Order Provisions – Energy Conversion Facility Siting

(Hearing Exhibit No. 10). During operation, no adverse effects to transportation facilities or networks are anticipated.

31. The proposed Project is not anticipated to have significant adverse impacts on the ability of the affected area to provide community services, such as housing, health care, educational services, police and fire protection, water and sewer, or solid waste management.

32. A sound analysis was conducted for the Project. The analysis demonstrates that sound levels for the Project will be less than 50 dBA between 85 to 160 feet from the Project's inverters, which will be the primary source of sound from Project facilities. The closest inhabited residence to the Project is 1,085 feet away from the edge of a solar array.

33. The Project is anticipated to benefit the local economy through the creation of construction and operation and maintenance jobs; easement payments to landowners; state and local tax revenue; and local expenditures for equipment, fuel, operating supplies, products and services.

34. Harmony Solar submitted evidence to demonstrate that any significant adverse effects resulting from the location, construction, and operation of the Project as they relate to the Selection Criteria set forth in Section 69-06-08-01(5) of the North Dakota Administrative Code will be at an acceptable minimum or managed and maintained at an acceptable minimum.

35. Harmony Solar submitted evidence to demonstrate its commitment to maximize the benefits of the proposed energy conversion facility as far as is possible to meet the Policy Criteria set forth in Section 69-06-08-01(6) of the North Dakota Administrative Code.

#### **Additional Mitigative Measures**

36. Harmony Solar has agreed to a number of measures to mitigate potential Project impacts, as indicated by the attached Certification Relating to Order Provisions – Energy Conversion Facility Siting.

37. The Project will be designed according to regional utility practices, Midcontinent Independent Transmission System Operator Standards, Midwest Reliability Organization Standards, the National Electric Safety Code, and the Rural Utility Service Code.

38. Harmony Solar will utilize best management practices to minimize impacts on ground and surface water, and to prevent soil erosion. Harmony Solar will implement the erosion control measures required under the National Pollution Discharge Elimination System (NPDES) permit and the associated Stormwater Pollution Prevention Plan. Construction of the Project is not anticipated to have a significant adverse impact on surface or ground water resources or soils.

39. Harmony Solar will participate in the North Dakota One-Call Excavation Notice System.
40. Harmony Solar will develop and implement an Environmental, Health, and Safety Plan in coordination with local and state emergency management officials.
41. Harmony Solar will maintain coordination with local units of government during the construction and operation of the facility to avoid and mitigate any conflicts that may occur.
42. Lightning and grounding protection for all Project facilities is designed and constructed to be compliant with all applicable National Electrical Code (NEC) and National Electric Safety Code (NESC) requirements.
43. Harmony Solar will comply with the decommissioning restoration and financial assurance commitments set forth in the attached Decommissioning Plan.
44. NDH and NDGS each submitted written comments in this docket with recommendations for minimizing and/or avoiding Project impacts. Harmony Solar presented testimony that it would comply with these recommendations.
45. A representative of NDDA provided comments at the public hearing concerning Project seed mixes and weed control in the Project Area. In response, Harmony Solar testified that it would consult further with NDDA and has incorporated NDDA's recommendations into its Vegetation Management Plan.
46. After the hearing, Cass County filed a letter with comments regarding Harmony Solar's Vegetation Management Plan. Harmony Solar has committed to obtaining lab reports to confirm the absence of Palmer amaranth in the seed mixes used for the Project.
47. Section 49-22-16(2) of the North Dakota Century Code provides that no energy conversion facility site shall be designated that violates any local land use, zoning or building rules, regulations or ordinances. Harmony Solar has obtained a conditional use permit for the Project from Harmony Township, and will comply with applicable township zoning ordinance requirements.
48. Before construction of the Project begins, Harmony will prepare an Unanticipated Discoveries Plan (UDP) that will outline the steps to be taken if previously unrecorded cultural resources or human remains are encountered during construction.
49. Harmony Solar developed a Vegetation Management Plan for the Project. The Vegetation Management Plan identifies how the Project will promote pollinator habitat, establish stable ground cover, reduce erosion and runoff, and improve infiltration. The Vegetation Management Plan includes two seed mixes; one will be used if the Project uses grazing for vegetation management, and the other will be used if the Project uses

mowing for vegetation management. Harmony Solar consulted with the Cass County Soil Conservation District, Cass County Board of Commissioners, and the NDDA on the proposed seed mixes, and the agencies provided positive feedback regarding the seed mixes.

From the foregoing Findings of Fact, the Commission now makes its:

### **Conclusions of Law**

1. The Commission has jurisdiction over this proceeding under North Dakota Century Code Chapter 49-22.
2. The solar facility proposed by Harmony Solar is an energy conversion facility as defined in North Dakota Century Code Section 49-22-03(5).
3. The location, construction, and operation of the proposed energy conversion facility will produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota.
4. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.
5. The proposed energy conversion facility location will minimize adverse human and environmental impact while ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion.
6. The Commission has jurisdiction to ensure compliance with National Electric Safety Code standards in the construction and operation of the proposed energy conversion facility.

From the foregoing Findings of Fact and Conclusions of Law, the Commission now makes its:

### **Order**

The Commission orders:

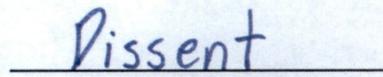
1. Harmony Solar shall construct, operate and maintain the facility in accordance with the Commission's findings of fact.
2. Certificate of Site Compatibility No. 58 is issued to Harmony Solar ND, LLC, designating a site for the construction, operation, and maintenance of a wind energy conversion facility with a nameplate capacity of up to 200 megawatts. For purposes of the Certificate, the designated site is the proposed Project Area depicted in Hearing Exhibit Nos. 2 and 6.

3. The October 2018 Certification Relating to Order Provisions – Solar Energy Conversion Facility Siting (Certification) and January 17, 2019 Decommissioning Plan are incorporated by reference and attached to this Order
4. To the extent that there are any conflicts or inconsistencies between Harmony Solar's application in this proceeding and the Certification, the Certification provisions control.
5. Harmony Solar shall comply with the updated Vegetation Management Plan and with the seed mix source commitments set forth in Late-Filed Exhibit Nos. 11 and 13.
6. Harmony Solar shall comply with the decommissioning restoration and financial security commitments set forth in the attached Decommissioning Plan.
7. The Certification Relating to Order Provisions – Energy Conversion Facility Siting (Hearing Exhibit No. 10) is incorporated by reference and attached to this Order.
8. Final site layout plans must be provided to the Commission and Harmony Township prior to construction.

**PUBLIC SERVICE COMMISSION**

  
Julie Fedorchak  
Commissioner

  
Brian Kroshus  
Chairman

  
Randy Christmann  
Commissioner

**DISSENT**

**Commissioner Randy Christmann**

**February 26, 2019**

**Harmony Solar ND, LLC  
Harmony Solar Project - SASS County  
Siting Application**

**PU-18-219**

Issuance of a Certificate of Site Compatibility for Harmony Solar should be delayed, pending a proposed change to North Dakota Administrative Rules.

Harmony Solar acknowledges there will be an impact on prime farmland acreage throughout the life of the facility, but contends that the acreage total is negligible. North Dakota Administrative Code Chapter 69-06-08 prohibits issuance of a Certificate of Site Compatibility unless the PSC finds that the prime farmland that will be removed from use for the life of the facility is of such small acreage as to be of negligible impact on agricultural production.

In recent years the Commission has issued Certificates of Site Compatibility for other energy infrastructure projects that impacted small amounts of prime farmland, usually just a few acres. Harmony Solar is different because it covers 1662 acres of Red River Valley farmland. (It can be argued that some of the acreage around the outer perimeter will not be covered with infrastructure, but it will also not be available for the kind of agricultural activities one would expect to see on prime farmland)

While it was obvious to call the tiny tracts of prime farmland in previous cases negligible, this case requires a more thorough look at exactly what the rule means by "such small acreage as to be of negligible impact."

The only Commission precedent that I am aware of for siting of an energy infrastructure project that is even close to comparable to the prime farmland impact of Harmony Solar is the combination of siting of the Antelope Valley Station power plants and the neighboring Dakota Gasification plant. These facilities were approved in 1977 and combined, impacted far less prime farmland than Harmony Solar.

The key distinction is that those Certificates of Site Compatibility were granted to applicants that had acquired the property rights prior to adoption of the Siting Act. While not mentioning anything about the acreage volume being negligible in Orders, the Commission did say "For the Commission to exclude the proposed site from consideration would be to make illegal a use of the site which had been recognized as legal at the time the property rights to the site were acquired."

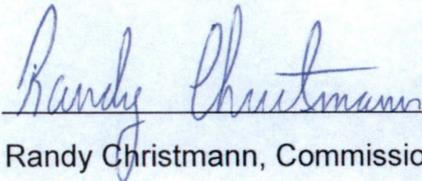
Our Administrative Rules need to be honored just like the Century Code. These rules are not adopted as guidelines for the convenience of the agency. They are in place to

provide citizens with consistency and protection from regulatory bodies and the judiciary. When the rules become outdated, they should be changed, not ignored.

Harmony Solar, a subsidiary of Geronimo, is not new to North Dakota's Century Code and Administrative Rules. Harmony filed this application in June of 2018. Had they also requested a rule change, that process would likely be complete by now.

At this time, this Commission has started a rulemaking process to look at the merits of prime farmland being an exclusion area. A hearing is scheduled for March 13, 2019 which provides an opportunity for input from all stakeholders and the general public. That legal, thorough, and public rulemaking process should be our guide regarding whether this rule should be eliminated, altered, or followed.

At this time my opinion is that Harmony Solar meets all requirements for a Certificate, except that approval would violate the prime farmland rule. In fact, Harmony should be commended for going above and beyond with their voluntary decommissioning commitments. But all that does not negate the need to follow other rules, so at this time I cannot support approval of this Certificate of Site Compatibility.

  
Randy Christmann, Commissioner

**Concurring Opinion – Commissioner Brian Kroshus  
Harmony Solar  
Case No. PU-18-219**

Energy development in North Dakota is influenced by siting law, including a rule identifying prime farmland as an exclusion area. However, correctly interpreting that rule is subject to interpretation due to the fact that there is as much speculation as tangible evidence to support original intent.

If anything, Commission testimony from the late 70's and early 80's strongly indicates land type discrimination as the primary reason for developing the prime farmland rule.

At the time wooded areas were afforded more protection than prime farmland and understandably, agricultural producers weren't happy about transmission lines instead being shifted onto their best ground against their wishes.

Properly interpreting statute and applicable rules is a key element in siting. I personally rely heavily the expert opinion of legal staff at the commission and engage with them in the siting process, including Harmony Solar. I believe it's critical to do so.

Extensive review of the rule by legal counsel at the Public Service Commission concludes there is ample flexibility in how this rule can be applied if as it states, there is a negligible impact on agricultural production in the state.

Collectively, our legal experts at the commission have decades of applicable experience related to siting law and North Dakota statute. They apply that background and experience knowledge to effectively and accurately base decisions on.

As a quasi-judicial body, the commission's responsibility is to evaluate the record and make objective decisions regardless of personal preference or create unintended consequences. Each decision sets precedence for not just one specific type energy type, but for all future development including renewables, oil, gas and coal.

There continues to be considerable debate surrounding renewable energy development in our state and across the nation. Some are in favor, some neutral and others opposed for a variety of reasons including how energy subsidies favor some industries more than others. It is a valid concern.

However, attempting to leverage private property rights as a means of countering market inequities is even more troubling.

It was never intended for any regulatory body to have that kind of freedom, or to in effect, attempt to redefine statute in the decision-making process.

It's the commission's role to follow statute and rule-of-law set forth by lawmakers. Unless directed otherwise by the legislative body, it's imperative to regulate within the parameters granted to us by lawmakers in siting laws.

It's equally important the commission remains energy agnostic by applying the same objective reasoning to each individual case. That in effect protects private-property rights.

Protecting private property rights and safeguarding citizens from government overreach is a fundamental reason siting laws exist.

Further, a "government knows best" approach does not reflect the will of the people nor is it the reason citizens elect individuals to represent them.

The creation of the prime farmland rule was developed to prevent the taking of land from an unwilling participant. It was never intended to deny willing individuals from doing as they wish with their own personal property.

The role of government is to protect the public from detrimental or unwanted outside influences, not themselves.

When an individual willingly and freely pursues a new business venture with land they own, within the rule of law, their wishes should be respected.

Doing so otherwise does nothing less than strip them of their private property rights and freedoms granted under the constitution.

The role of government is to respect and protect those rights, not deny them.

**Other Key Considerations in my decision included:**

- The timing of the decision was important to the 7 landowners involved in the project – any potential delay could have negatively impacted crop production for the 2019 growing season if approval was pushed to late summer (to plant or not to plant).
- All siting requirements of the application were met and deemed complete, in full compliance with statute.
- Approval of the project was essentially inevitable and due to that, delaying it without a compelling legal basis to do so would have resulted in needlessly reprocessing parts of the case at additional expense to taxpayers' only months later with the same end result.
- There is no defined basis or comparison language in the rule in which to measure loss of productivity, or if development has a negligible effect, when it involves prime farmland so application of the rule becomes extremely speculative in nature.
- Prime farmland has and continues to be converted in the Red River Valley, including for relatively new facilities like the Tharldson Ethanol Plant just several miles to the west of Casselton, housing developments, roads, parks, etc. Not granting a permit was discriminatory in nature.
- A representative from the Agricultural Commission testified with no concern related to farmland used for the project (their concern was ensuring the use of certified seed for grass cover).
- Not opposing testimony for the project was received.
- Strong, unanimous community support.

- Above all and as stated, this is a private-property rights issue – this sends a message to all landowners in North Dakota that they have the right to monetize their own personal property in the manner they see fit as long as they do so within the parameters of the law.

Brian Kroshus, Commissioner

**Commissioner Julie Fedorchak  
Concurring Opinion  
Case number PU-18-219 Harmony Solar Siting Application**

During the Feb. 26 regular meeting of the North Dakota Public Service Commission, I voted to grant a Solar Energy Conversion facility siting certification to Harmony Solar ND, LLC. This is the correct decision on this application for the following reasons:

The North Dakota Administrative Code Chapter 69-06-08 establishes exclusion areas, avoidance areas, selection criteria and policy criteria to guide the Commission in evaluating the suitability of an application for a site certificate. With the exception of prime farmland and unique farmland, the Commission must exclude Exclusion Areas in the consideration of a site for an energy conversion facility. When evaluating prime farmland, an exception to the rule exists. If the Commission finds that the prime farmland or unique farmland that will be removed from use for the life of the facility is of *such small acreage as to be of negligible impact on agriculture production*, then the prime farmland exclusion does not apply.

The term “negligible impact” is not defined, leaving this determination in the hands of the Commission on a case-by-case basis. In exercising our discretion, the Commission relies on the facts of the case and the record.

In PU-18-219, the company established that the 1662 acres of prime farmland impacted by the project represents approximately .17 percent of prime farmland in Cass County. Using the county as a standard for measuring the impact on agriculture production is reasonable because many standard agriculture production statistics are measured on a countywide basis. This project will affect just a fraction of one percent of the overall prime farmland acres in Cass County. A fraction of one percent can reasonably be determined as “negligible.”

Furthermore, the company consulted with 38 different local, state and federal agencies and entities including the North Dakota Department of Agriculture, North Dakota Land Department, North Dakota Soil Conservation committee and the Cass County Soil Conservation District. None of these agencies with an interest in agriculture and land use expressed concerns about the project’s impact to prime farmland. In fact, no agencies, organizations or members of the public expressed any concerns about the project’s impact to prime farmland, which further supports the conclusion that the project has minimal impact on agriculture production.

Additionally, the project operators testified they will further reduce the project’s impact on agriculture production by using seed mixes to attract pollinators. During the period in which this land is removed from agricultural production, the company committed to properly managing the soil so the site will be suitable for agriculture production when the facility is decommissioned.

For these reasons, I believe the prime farmland exemption is warranted in this case. Beyond this issue, the project met the criteria necessary for receiving a site permit, and approving the order is the appropriate decision.

Julie Fedorchak, Commissioner

**PUBLIC SERVICE COMMISSION  
STATE OF NORTH DAKOTA**

**Certificate of Site Compatibility  
Number 58**

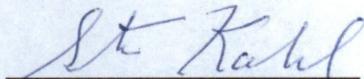
*This is to certify that the Commission has designated a site for Harmony Solar ND, LLC for the construction, operation and maintenance of a solar energy conversion facility in Cass County, North Dakota.*

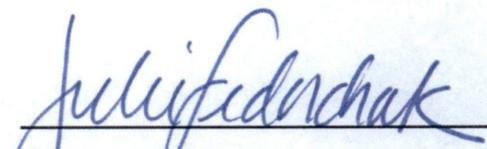
*The facility may be sited in this designated location in compliance with the energy conversion facility siting criteria. This certificate is issued in accordance with the Finding of Fact, Conclusions of Law and Order of the Commission in Case No. PU-18-219 dated February 26, 2019, and is subject to the conditions and limitations noted in that order.*

*Bismarck, North Dakota, February 26, 2019.*

**ATTEST:**

**PUBLIC SERVICE COMMISSION**

  
\_\_\_\_\_  
**Interim Executive Secretary**

  
\_\_\_\_\_  
**Commissioner**

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

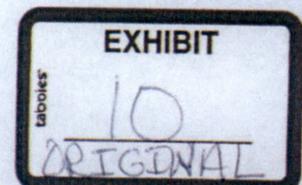
Harmony Solar ND, LLC  
Harmony Solar Project – Cass County  
Siting Application

Case No. PU-18-219

**CERTIFICATION RELATING TO ORDER PROVISIONS  
SOLAR ENERGY CONVERSION FACILITY SITING**

I am David Reamer, a representative of Harmony Solar ND, LLC ("Company") with authority to bind Company to requirements to be set forth by the Commission in its Order and I certify the following:

1. Company understands and agrees that the Certificate of Site Compatibility will be issued by the Commission subject to the conditions and criteria set forth in Chapter 49-22 of the North Dakota Century Code and Chapter 69-06-08 of the North Dakota Administrative Code, and that Company shall be responsible for compliance with this order and conditions and criteria set forth in the applicable laws and rules.
2. Company agrees to comply with the rules and regulations of all other agencies having jurisdiction over any phase of the proposed energy conversion facility including all city, township, and county zoning regulations.
3. Company understands and agrees that it shall obtain all other necessary licenses and permits, and shall provide copies of all licenses and permits to the Commission prior to construction activity associated with the energy conversion facility that requires said license or permit.
4. Company understands and agrees that the Certificate of Site Compatibility is subject to suspension or revocation and may, in an appropriate and proper case, be suspended or revoked for failure to comply with the Commission's order, the conditions and criteria of the certificate or subsequent modification, or failure to comply with the applicable statutes, rules, regulations, standards, and permits of other state or federal agencies.
5. Company agrees to maintain records that will demonstrate that it has complied with the requirements of the Commission's order and the Certificate of Site Compatibility, and that it will preserve these records for Commission inspection at any reasonable time upon reasonable notice.
6. Company understands and agrees that the authorizations granted by the Certificate of Site Compatibility for the energy conversion facility are subject to modification by



order of the Commission if deemed necessary to protect further the public or the environment.

7. Company understands and agrees that it will decommission, restore, and reclaim the site to equal or better than the condition prior to construction and operation of the facility and to support the uses of which it was capable of supporting prior to being disturbed, or to a better use approved by the commission.

**Construction:**

8. Company agrees to hold a preconstruction conference prior to commencement of any construction, which must include a Company representative, its construction supervisor, and a representative of Commission Staff, to ensure that Company fully understands the conditions set forth in the Commission's order.
9. Company understands and agrees that all cultural resource mitigation plans must be approved by the North Dakota State Historic Preservation Office prior to the start of any fieldwork and construction activity in the affected area.
10. Company understands and agrees that topsoil removal will begin when the Commission's third party construction inspector is present at the Project site to observe that topsoil is properly removed and kept segregated from subsoil until replacement occurs. Company shall establish the date and time for the Commission's third-party construction inspector's topsoil removal oversight in the preconstruction conference.
11. Company agrees to inform the Commission and the Commission's third-party construction inspector of its intent to start construction on the energy conversion facility prior to the commencement of construction. Once construction has started, Company shall keep the Commission and the Commission's third-party construction inspector updated of construction activities on a monthly basis.
12. Company is aware that North Dakota law requires that all companies that own or operate electric generation of any size for the primary purpose of resale must comply with the standards of the National Electrical Safety Code in effect at the time of construction of the generation facility, and agrees to comply with that requirement.
13. Company agrees to construct and operate the energy conversion facility in accordance with all applicable safety requirements.
14. Company understands and agrees that it shall bury all underground electrical cables to a depth of at least 48 inches to the top of the cables.

15. Company understands and agrees that topsoil, up to 12 inches, or topsoil to the depth of cultivation, whichever is greater, over and along trench areas, roadways, tower locations, and locations of associated facilities must be carefully stripped and segregated from the subsoil. Any area on which excavated subsoil will be placed must first be stripped of topsoil. The stripped topsoil must not be stockpiled in natural drainages, and must be protected from water erosion. Care must be taken to protect topsoil from unnecessary compaction by heavy machinery. Unless otherwise approved by the Commission, topsoil must be removed before topsoil freezes in the late fall/ early winter to the point that frost inhibits proper soil segregation. After backfilling with subsoil is completed, any excess subsoil must be placed over the excavation area, blending the grade into existing topography. Topsoil must be replaced over areas from which it was stripped only after the subsoil is replaced.
16. Company understands and agrees that all buried facility crossings of graded roads shall be bored unless the responsible governing agency specifically permits Company to open cut the road.
17. Company understands and agrees that staging areas or equipment shall not be located on land owned by a person other than Company unless otherwise negotiated with landowners.
18. Company understands and agrees that if any cultural resource, paleontological site, archeological site, historical site, or grave site is discovered during construction, it must be marked, preserved and protected from further disturbances until a professional examination can be made by the State Historical Society, a report of such examination is filed with the Commission.
19. Company understands and agrees that construction must be suspended when weather conditions are such that construction activities will cause irreparable damage to roads or land, unless adequate protection measures are taken by Company.
20. Company agrees that the Commission's third-party construction inspector will be allowed to stop Project construction activities to prevent an imminent hazard from occurring before the Commission could take formal action with respect to said activities. For purposes of this provision, "imminent hazard" means a condition that presents a substantial likelihood of death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment. Other Project construction activities would be allowed to continue.

**Restoration and Maintenance:**

21. Company agrees that it shall, as soon as practicable upon the completion of the construction of the energy conversion facility, restore the area affected by the

activities to as near as is practicable to the condition as it existed prior to the beginning of construction.

22. Company understands and agrees that all pre-existing township and county roads and lanes used during construction must be repaired or restored to a condition that is equal to or better than the condition prior to the construction of the energy conversion facility and that will accommodate their previous use, and that areas used as temporary roads or working areas during construction must be restored to their original condition.
23. Company understands and agrees that reclamation, fertilization, and reseeding is to be done according to the Natural Resources Conservation Service recommendations, unless otherwise specified by the landowner and approved by the Commission.
24. Company will fulfil its obligation for reclamation and maintenance of the approved site continuing throughout the life of the energy conversion facility.
25. Company will repair all fences and gates removed or damaged during all phases of construction and operation of the proposed energy conversion facility.
26. Company will repair or replace all drainage tile broken or damaged as a result of construction and operation of the proposed energy conversion facility.
27. Company agrees to comply with the Tree and Shrub Mitigation Specifications, attached.
28. Company understands and agrees that it shall work with landowners and residents to mitigate any increase in television and residential radio interference that results from the construction of the energy conversion facility.
29. Company understands and agrees that it shall remove all waste that is a product of construction and operation, restoration, and maintenance of the site, and properly dispose of it on a regular basis.
30. Company understands and agrees that it shall provide any necessary safety measures for traffic control or to restrict public access to the energy conversion facility.

**Communication with Landowners and PSC:**

31. Company agrees to provide the Commission with engineering design drawings showing surveyed structure and collection substation locations prior to construction.

32. Company understands and agrees that it shall advise the Commission as soon as reasonably possible of any extraordinary events which take place at the site of the energy conversion facility, including OSHA-reportable injuries to any person.
33. Company agrees to report to the Commission, as soon as reasonably possible, the presence in or near the approved site of any critical habitat of threatened or endangered species that Company becomes aware of and which were not previously reported to the Commission.
34. Company agrees to provide the Commission with both an electronic and a paper copy of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built, and will provide this information within 3 months of the completion of the construction. Company also agrees to provide an electronic version of the site approved by the Commission and the facility design specifications for the construction of the energy conversion facility showing the location of the energy conversion facility as built that can be imported into ESRI GIS mapping software within 3 months of the completion of the construction. This electronic map data must be referenced to the North Dakota coordinate system of 1983, North and/or South zones US Survey feet (NAD 83) UTM Zone 13N or 14N feet (NAD 83), or geographic coordinate system (WGS 84) feet. The vertical data must be in the appropriate vertical datum for the coordinate system used. All submissions must specify the datum in which the data was developed.
35. Company shall notify the Commission, as soon as reasonably possible, if any damage, as defined by North Dakota Century Code Chapter 49-23, occurs to underground facilities during construction conducted under the certificate or permit issued in this proceeding. In the event of any damage to underground facilities, Company shall suspend construction in the vicinity of the damage until compliance with One-Call Excavation Notice System requirements under North Dakota Century Code Chapter 49-23 has been determined.
36. Company agrees that it shall provide, if requested, educational material for landowners within the site boundaries about the proposed energy conversion facility and any restriction or danger concerning the proposed energy conversion facility.
37. Company understands and agrees that it shall implement a procedure for how complaints concerning the proposed energy conversion facility will be handled by Company

**Modification of Energy Conversion Facility or Energy Conversion Site Plan:**

38. Before conducting any construction activities for any modification within the designated site, Company will file the name and contact information for a key

contact person for the purposes of notice and communication during the site modification application and will use the following procedures:

A. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known exclusion or avoidance areas within the designated site, Company will file certification and supporting documentation:

1. Affirming that construction activities will be within the designated site and will not affect any known exclusion or avoidance areas within the designated site;
2. Including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying the designated site and the site modification(s);
3. Affirming that each owner of real property on which the modification is to be located and any applicable governmental entity with an interest in the same modification area do not oppose the modification; and
4. Affirming that Company will comply with the Commission's order, law and rules designating the site.

B. Before conducting any construction activities for any modification within the designated site, and such construction activities will not affect any known exclusion area but are expected to affect an avoidance area within the designated site, the Company will file:

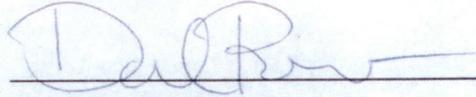
1. A specific description of the avoidance area expected to be impacted, including a map meeting the requirements of N.D. Admin. Code § 69-06-04-01(2)(n) identifying:
  - a. the designated site and the site modification;
  - b. all exclusion and avoidance areas within the portion of the designated site containing the site modification.
2. Certification and supporting documentation affirming:
  - i. That construction activities will be within the designated site, and
  - ii. That construction activities will not affect any known exclusion area.
3. Certification and supporting documentation affirming that construction activities are expected to impact an avoidance area.
4. Certification and supporting documentation, unless the Commission previously authorized the impact to the same avoidance area, that the utility has good cause and a specific reason to impact the avoidance area and a reasonable alternative does not exist.
5. Certification that Company will comply with the Commission's order, law and rules designating the site.
6. Certification and supporting documentation that each owner of real property on which the modification is to be located and any applicable governmental entity with an interest in the same modification area do not oppose the modification.
7. All detailed field studies performed on the portion of the designated site containing the site modification.

8. Specific information about any mitigation measures Company will take within the modification area.

39. When applicable, Company may submit the field studies from the original application for the corridor and route provided they cover the adjustment area.
40. Company acknowledges and agrees that written authorization from the Commission for impacting the avoidance area(s) is necessary prior to commencement of construction activity.

Dated this \_\_\_\_ day of October, 2018.

Harmony Solar ND, LLC

A handwritten signature in blue ink, appearing to read "D. Reamer", is written over a solid horizontal line.

By: David Reamer

Its: President