

## Jeffcoat-Sacco, Illona

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**From:** Kaitlin Spak <kspak@exponent.com>  
**Sent:** Monday, February 25, 2019 4:56 PM  
**To:** Jeffcoat-Sacco, Illona  
**Cc:** Schuh, John M.; Fahn, Patrick J.  
**Subject:** Retention letters for Burke and Ruso Wind Farm Sound Analyses  
**Attachments:** 1901821 Burke Wind Farm Sound Analysis.pdf; 1901827 Ruso Wind Farm Sound Analysis.pdf

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Hello,

Please find retention letters attached for each of the projects requested to evaluate the applicability of sound analyses to the existing ND regulations. Let me know if you have any questions or need further details.

Thanks,  
Kaitlin

**Kaitlin Spak, PhD, PE** | Managing Engineer | **Exponent**  
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February 25, 2019

Via Email: [ijs@nd.gov](mailto:ijs@nd.gov), [pfahn@nd.gov](mailto:pfahn@nd.gov)

Illona Jeffcoat-Sacco  
North Dakota Public Service Commission  
600 E. Blvd Ave. Dept. 408  
Bismarck, ND 58505 - 0480

Subject: Burke Wind Farm Sound Analysis  
Exponent Project No. 1901821

Dear Ms. Jeffcoat-Sacco:

Thank you for your interest in retaining Exponent, Inc. (Exponent) to provide services related to the above-referenced project. This letter presents our current understanding of the scope of services sought and the terms of the engagement regarding the Burke Wind Farm.

#### **Task A: Review of Existing Sound Studies and Preparation of Expert Report**

Exponent will review the existing sound analysis, all relevant and available siting materials, and applicable regulations to determine the adequacy of the sound analysis used to address the commission's avoidance area siting criteria that a wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within 100 feet of an inhabited residence or community building will exceed 50 dBA. An expert report will be prepared to comment on the existing report and answer the question of relevance to the avoidance area siting criteria when requested, but not sooner than March 8. This work will be prepared by Dr. Kaitlin Spak and Dr. Kevin Graf, Managing Engineers, and reviewed by Dr. Joseph Rakow, Principal Engineer.

#### **Task B: Expert Testimony**

If requested, Exponent will provide expert testimony on this matter based on the findings listed in the prepared report. Expert testimony is billed at hourly rates depending on the testifying expert.

Our scope of services is anticipated to include engineering consulting as described on the above matter. Charges will include professional fees, equipment use fees, and other out-of-pocket expenses according to our *Schedule of Rates & Charges*, a copy of which is enclosed and made a part hereof by reference. Exponent charges \$375 per hour for my services in calendar year 2019. Other Exponent staff members will be utilized where appropriate. Exponent estimates the scope of review of the available documents, review of the relevant regulations, and preparation of an expert report to be approximately \$20,000 on a time-and-materials basis. Additional preparation for expert testimony and testifying is billed at hourly rates.

Ms. Ilona Jeffcoat-Sacco

February 25, 2019

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Exponent's services are provided only in accordance with our *Terms and Conditions of Agreement*, a copy of which is enclosed and made a part hereof by reference. It is our understanding that Exponent's proposed retention on this project is with your organization and all charges (i.e., fees and expenses) incurred by Exponent on this project will be your responsibility, independent of other parties/payees involved. Please verify the contact information for billing purposes in the table at the end of this letter. If not correct, please provide the updated information.

Based on the information you have provided, we have performed a conflict-of-interest check for the following parties:

- North Dakota Public Service Commission
- Burke Wind LLC
- NextEra
- Epsilon Associates
- Coteau Preservation Alliance

Using this information, Exponent has determined that it does not currently have a conflict that would preclude us from assisting you in this matter. Please inform us as soon as possible if this list of parties is inaccurate or incomplete, and if other parties become involved as this matter proceeds.

A retainer in the amount of \$5,000 is required prior to commencement of our work. The retainer will be held on account until the final invoice has been issued, at which time, you will have the option of paying the invoice in full and requesting a refund of your retainer or applying the retainer against the final invoice. Exponent will begin work after the retainer is received. Exponent's federal tax ID number is 77-0218904 and is included on all invoices.

This proposed retention letter is valid for 15 days from the date first set forth above. Please sign and return this letter if you would like us to proceed with this work. If you have any questions or require additional information, please do not hesitate to contact me at (303) 802-3424. We look forward to working with you.

Ms. Ilona Jeffcoat-Sacco

February 25, 2019

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Sincerely,



Kaitlin S. Spak, Ph.D., P.E.  
Managing Engineer  
Licensed Mechanical Engineer, M37973  
By the California Board for Professional  
Engineers and Land Surveyors  
Also licensed in Colorado

Enclosures (2)

Accepted by:

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Authorized Signature

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Name and Title

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Organization

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Date

Ms. Ilona Jeffcoat-Sacco

February 25, 2019

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**INVOICE TRANSMITTAL ADDRESS**

By default, Exponent will email invoices to the email address(es) listed below. Please verify the email address(es) as well as any reference information that should be contained on the invoice.

If you wish to receive hard copies of invoices via US Mail, please check the box below and provide the address(es) to which the hard copies should be mailed.

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**Invoice Reference Number(s):** 1901821 Burke Wind Farm Sound Analysis

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<b>Name/Title</b>	<b>Email</b>
Ms. Jeffcoat-Sacco	<a href="mailto:ijs@nd.gov">ijs@nd.gov</a> , pfahn@nd.gov

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Please send hard copy of invoices via US Mail: Yes  No

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**Physical address for invoicing:**

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**Other Notes:**

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## SCHEDULE OF RATES AND CHARGES



### PROFESSIONAL FEES

Exponent charges its clients for services provided according to the qualifications and experience level of the individuals assigned to the client's project at each employee's specific current hourly rate. These rates are modified annually on or about January 1. Exponent provides the following staff classifications that designate relative experience, training, and accomplishment within a technical field, together with the range of hourly rates. Payment is required in U.S. dollars within 30 days after the date of the invoice, or interest charges may be applied.

Principal/Officer	Senior-level technical or management person, responsible for technical direction or general management or administration.	\$300-\$750
Senior Manager	Senior technical professional providing high-level or individual consulting assignments, or overall technical direction of projects, may have management responsibility for a technical field.	\$250-\$500
Manager	Senior technical professional providing high-level or individual consulting assignments or overall technical direction of projects.	\$200-\$425
Senior Engineer/ Scientist/Associate	Experienced technical professional skilled in planning, organizing, controlling, and executing complex, higher-order projects or assignments.	\$175-\$365
Engineer/Scientist/ Associate	Trained/degreed professional responsible for executing technical assignments in support of client projects.	\$150-\$285
Technical/Research Specialist	Personnel experienced in instrumentation, programming, testing, library science, or the development or execution of research methodologies in support of projects.	\$135-\$210
Technical/Research Assistant	Laboratory, data processing, engineering-graphics, engineering technician, or other personnel responsible for the execution of specialized tasks in support of projects.	\$90-\$160
Non-technical Assistant	Personnel who assist technical staff in various non-technical areas, including scheduling, report productions, communications, logistics, and project support.	\$ 75-\$125

### TECHNICAL EQUIPMENT, SOFTWARE AND LAB CHARGES

Exponent personnel may utilize Exponent's technical equipment and software to assist them in the performance of client's project. Exponent charges an hourly or daily usage fee for selected equipment, software and labs (e.g., scanning electron microscope, finite element software and biomedical laboratory).

### TRAVEL AND MEAL EXPENSES

Travel and meal expenses are charged at Exponent's cost. Local mileage is charged in accordance with I.R.S. guidelines. The most effective air travel for the project will be utilized and personnel below the Principal classification will charge coach fares.

### OTHER PROJECT EXPENSES

Project expenses including materials, subcontractors and third-party vendors are charged at cost plus fifteen percent. If the client prefers to procure the project expenses directly to avoid the additional fifteen percent charge then notify Exponent at the initiation of the engagement. Consumable materials may be charged on an applied rate rather than an incurred cost basis.



## TERMS AND CONDITIONS OF AGREEMENT

1. Work performed on a time-and-expenses basis will be billed in accordance with Exponent's most current Schedule of Rates and Charges. Work performed under a fixed-price arrangement will be billed at the agreed fixed amount. A payment in advance or a suitable retainer may be required from the client. Exponent will hold any retainer until the final invoice is prepared, at which time it will reconcile the client's account. Following Exponent's completion of work, the client is responsible for and may be charged for the storage and disposal of evidence, exemplars and samples. Exponent will charge taxes where applicable.
2. Invoices are typically rendered monthly or in accordance with the agreed upon payment schedule, and are due in U.S. dollars within 30 days of the date of the invoice. Exponent, without liability, may withhold delivery of reports and other data, and may suspend performance of its obligations to the client, pending payment of outstanding charges. Exponent reserves the right to decline further work with any client who has been delinquent in payment of Exponent's invoices.
3. Exponent will perform its services consistent with the professional skill and care ordinarily provided by professionals practicing in the same or similar locality under the same or similar circumstances. In the event that Exponent fails to meet the foregoing standard of care or that the client has any other claim, client's sole and exclusive remedy shall be limited to Exponent re-performing the work at Exponent's expense, or reimbursing the client up to the amount the client paid Exponent for the work. No other warranty, express or implied, is made concerning work performed under the agreement.
4. The client assumes full and complete responsibility for all uses and applications of Exponent's recommendations or work under this agreement, or failure to use recommendations or work, and agrees to indemnify and hold harmless Exponent, its affiliates, officers, directors, employees, agents, and stockholders against any and all liabilities, damages, losses, claims, demands, actions, causes of action, and costs including attorney's fees and expenses resulting from the death or injury to any person or damage to any property or any other alleged or actual damages resulting from the aforementioned use, application, or nonuse of Exponent's recommendations or work under this agreement.
5. In no event shall Exponent, its affiliates, officers, directors, employees, agents, or stockholders be liable for any incidental or consequential damages.
6. Exponent will hold in confidence all information provided by the client that the client designates and/or marks as confidential or proprietary. If Exponent and the client have entered into a separate non-disclosure agreement, it is deemed incorporated herein. All deliverables and any improvements to the client's processes or products arising from this agreement shall be and remain the property of client; however, Exponent has a right to retain a copy of such deliverable(s). Exponent shall retain all rights, title, and interest in and to its proprietary information (along with any modifications or improvements to such information), including, but not limited to Exponent's know-how, methodologies, techniques, processes, tools, test fixtures, technologies, trade secrets, software, data, databases, algorithms, source code, computational engines, logic formulas, non-interface worksheets, macros, and other materials used by Exponent in connection with providing its services.
7. Anybody required to be present at Exponent's laboratories for the project, including other parties and the like, will be required to sign an agreement that contains confidentiality obligations and a general release of claims for injuries or damages to property related to the visit.
8. Client understands that evidence, materials, test articles or the like ("Articles") may be damaged or destroyed during testing and as such Exponent is not responsible for any loss or damage thereto. The client shall bear the risk of loss of the Articles while they are in transit. Notwithstanding any language to the contrary herein, should Exponent be obligated to replace the Articles, the cost of such replacement shall be its fair market value and not any implicit value. Exponent, unless other specific arrangements are made, will maintain technical files and evidence for 30 days after the completion of work. Exponent will retain financial records according to I.R.S. requirements, but in no event less than 1 year after completion of the work.
9. Client shall not use Exponent's (or any of its affiliates' or its personnel's) name(s), trade names, service marks, trademarks, trade dresses, logos, symbols, or the like in any form for advertising, publicity, marketing, or in any way that could be construed as endorsement or promotion and the like without the prior written consent of Exponent in each instance.
10. This agreement is solely between, and may only be enforced by, Exponent and the client, and this agreement shall not create or be construed to create any third party rights, obligations, or liabilities including, but not limited to, affiliates, employees, contractors, stockholders, licensees, or the like. Any deliverables, recommendations, or service provided by Exponent shall be for the client's use only. Exponent's services are expressly limited to the terms herein and are not modified or supplemented by terms from the client's purchase order. Exponent will reference the client's purchase order for billing purposes only.
11. Upon receipt of written notice from the client, Exponent will terminate work under this agreement. Work under a fixed-price agreement that is terminated before completion will be billed on a percentage of completion basis. Exponent may terminate work under this Agreement only for cause. "Cause" includes, but is not limited to, development of a material conflict of interest, delinquency in payment, judicially required participation in onerous discovery or other legal process outside the intended scope of the work, or the presence of circumstances beyond Exponent's control, such as natural disasters or government intervention. Exponent shall not be liable for any delay or failure to perform resulting from unforeseen causes beyond its reasonable control.
12. If Exponent is required to testify or to produce information regarding work under this agreement in any third party litigation, including but not limited by subpoena or court order, the client agrees to provide counsel of its choosing and to pay Exponent's reasonable time and expenses, including attorney's fees associated with responding to such request. In the event of any such request, Exponent will promptly notify the client to enable the client to object to any such testimony or production. This paragraph is not intended to apply to claims between Exponent and the client.
13. This agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the internal laws of the state of California, without regard to the conflicts of laws principles of such state. The parties to this agreement consent to the jurisdiction of any state or federal court located in San Francisco, California. The prevailing party in any action shall recover from the losing party its reasonable attorney's fees and costs of suit incurred in addition to any other relief granted.