

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Ruso Wind Partners, LLC
Ruso Wind Project – Siting Application
Ward & McLean Counties, North Dakota

Case No. PU-19-028

PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

_____, 2019

Appearances

Commissioners Brian Kroshus, Julie Fedorchak, and Randy Christmann.

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

Zachary Pelham, Special Assistant Attorney General, North Dakota Public Service Commission.

Kevin Pranis, 81 East Little Canada Road, St. Paul, MN 55117, representative of Intervenor Laborers District Council of Minnesota and North Dakota (LIUNA North Dakota).

Hope L. Hogan, Administrative Law Judge, Office of Administrative Hearings, 2911 North 14th Street – Suite 303, Bismarck, ND 58503, as Procedural Hearing Officer.

Preliminary Statement

On January 21, 2019, Ruso Wind Partners, LLC (Ruso Wind) filed an Application for a Certificate of Site Compatibility for a wind energy conversion facility known as the Ruso Wind Project (Project) to be located in Ward and McLean Counties, North Dakota.

Also on January 21, 2019, in Case No. PU-19-029, Ruso Wind filed combined applications for a Corridor Certificate and Route Permit to construct the associated Generation Tie-In Facility and Switching Station (Gen-Tie Line). The proposed 230 kV Gen-Tie Line would extend from the Wind Project Substation in Ward County to the proposed Switching Station in McHenry County.

On January 31, 2019, the North Dakota Aeronautics Commission (NDAC) filed comments on the Wind Project.

On March 27, 2019, the North Dakota Public Service Commission (Commission) consolidated the applications for hearing; deemed both applications complete conditioned upon receipt at least 30 days prior to the hearing of (1) maps and GIS maps showing exclusion and avoidance areas in the study area, and (2) the final site plan including project area boundaries, non-participating parcels, turbines, access roads, collector lines, transmission line structures and all residential receptor points labeled with identification numbers, distance to nearest turbine(s) and participating/non-participating status; and issued a Notice of Filings and Notice of Consolidated Hearing, scheduling a public hearing for June 17, 2019, at 9:00 a.m. at the Sleep Inn & Suites, 2400 10th Street SW, Minot, ND 58701. The Notice identified the following issues to be considered:

1. Will the location and operation of the proposed facilities produce minimal adverse effects on the environment and upon the welfare of the citizens of North Dakota?
2. Are the proposed facilities compatible with the environmental preservation and the efficient use of resources?
3. Will the proposed facility locations 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 May 17, 2019, Ruso Wind filed (1) Updates to Certificate of Site Compatibility Application; (2) Updates to Consolidated Certificate of Corridor Compatibility and Route Permit Application; (3) a Final Wind Project and Transmission Line Map; (4) a Final Wind Project Layout; (5) a map showing the Preliminary Layout (PSC Application) vs. Current Layout (Final Layout); (6) Wind Project Constraints Maps; (7) an Occupied Residence Summary Chart; (8) Shadow Flicker Acknowledgments; (9) a map showing the Final Transmission Line Route, with Pole Locations; (10) a Transmission Line Constraints Map; (11) Local Zoning Permits; (12) Township Letters of Support; (13) Additional Shadow Flicker Modeling Results; (14) Additional Sound Modeling Results; (15) Eagle Use Status Reports; (16) North Dakota Game and Fish Department (NDGF) and United States Fish and Wildlife Service (USFWS) Correspondence; (17) Federal Aviation Administration (FAA) Correspondence; (18) North Dakota Department of Transportation (NDDOT) Correspondence; (19) United States Air Force (USAF) Correspondence; (20) Western Area Power Administration (WAPA) Correspondence; (21) Airstrip Correspondence; (22) Grasslands Map with Wind Project Facilities; (23) Grasslands Map with Transmission Line; and (24) Ruso Wind's Ten Year Plan.

On May 29, 2019, Ruso Wind filed (1) Prefiled Testimony of Morgan Berry; (2) Prefiled Testimony of Aaron Anderson; (3) Prefiled Testimony of Chris Howell; (4) Prefiled Testimony of Kristin Mohon; and (5) a Turbine Layout Chart.

On May 30, 2019, Ruso Wind filed updated Wind Project publication and Gen-Tie Line publication maps.

On May 30, 2019, Commission Staff filed the Prefiled Direct Testimony of David M. Hessler.

On May 30, 2019, NDGF filed comments.

On June 4, 2019, USFWS filed comments.

On June 6, 2019, LIUNA North Dakota filed a Petition to Intervene.

On June 13, 2019, ALJ Hogan issued an Order granting LIUNA North Dakota's Petition to Intervene.

On June 14, 2019, Ruso Wind filed (1) additional Updates to Certificate of Site Compatibility Application; (2) revised Updates to Consolidated Certificate of Corridor Compatibility and Route Permit Application; (3) revised and additional Shadow Flicker Acknowledgments; (4) Signed Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications; (5) Signed Certification Relating to Order Provisions – Transmission Facility Siting, with accompanying Tree and Shrub Mitigation Specifications; (6) additional NDGF/USFWS Correspondence; (7) additional FAA correspondence; (8) additional USAF correspondence; (9) updated Turbine Layout Chart; (10) a map showing the Preliminary Transmission Line Route and Corridor (PSC Application) vs. Current Route and Designated Corridor (Final); (11) an Updated Land Use Map; (12) Supplemental Class III Cultural Resource Inventory Memorandum; (13) Updated Grassland Assessment; (14) Whooping Crane Migration Habitat Assessment; (15) Second Year (2018-2019) Eagle Point County Survey Report; and (16) State Historical Society of North Dakota (SHSND) Concurrence Letter.

On June 14, 2019, LIUNA North Dakota filed a local construction job analysis.

On June 17, 2019, the public hearing was held. At the public hearing, Ruso Wind submitted an additional Shadow Flicker Acknowledgment and an Avoidance, Minimization, and Mitigation Measures Summary Table.

At the public hearing, LIUNA North Dakota submitted (1) the written testimony of Kevin Pranis; (2) a North Star Policy Institute pamphlet titled "Catching the Wind"; (3) a letter dated July 18, 2018 from the President of Ullico Investment Management Company, LLC to ALJ LeFave of the Minnesota Office of Administrative Hearings;

(4) an excerpt from an Order by the Minnesota Public Utilities Commission; and (5) a case study on the Ruso Wind Project by Kevin Pranis and Lucas Franco.

On July 11, 2019, Ruso Wind filed a request for an extension of the deadline to file late-filed exhibits and proposed Findings of Fact, Conclusions of Law and Order to August 9, 2019. On July 12, 2019, ALJ Hogan issued an Order Granting Request for Extension.

On August 9, 2019, Ruso Wind filed Late-Filed Hearing Exhibit Nos. 49-59: (49) updated and additional sound and shadow flicker modeling results and turbine model/location data; (50) a map showing the Final Revised Transmission Line Layout and a map showing the Previous vs. Current Final Transmission Line Layout; (51) an update on the resolution of the Minot Air Force Base issues raised in the June 6, 2019 letter; (52) storage locations of the Safe Harbor turbines; (53) Ruso Wind's position regarding reducing shadow flicker to 30 hours or less at Receptor 41; (54) data showing sound level impacts at receptors from the Project and existing neighboring wind farms; (55) SHSND Concurrence Letter on Addendum to Class III Cultural Resource Inventory; (56) Class II Architectural Inventory and Viewshed Analysis Report; (57) information regarding the country/countries of origin of turbine components and parts that will be used for the Project; (58) Bat Mist Netting Survey Report; and (59) update regarding interconnection request.

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. Ruso Wind is a Delaware limited liability company and is a wholly-owned subsidiary of Southern Power.
2. Ruso Wind is authorized to do business in the State of North Dakota, as evidenced by the Certificate of Good Standing issued by the North Dakota Secretary of State on May 7, 2019 (Case No. PU-19-178).
3. The Project will be owned and operated by Ruso Wind.

Size, Type, and Preferred Location of Facility

4. Ruso Wind currently proposes to construct the Project within approximately 16,197 acres of land located only in Ward County, North Dakota (Project Area). Ruso Wind requests that the Project Area, as depicted in Late-Filed Hearing Exhibit No. 51(b), be designated as the site for the Project. The Project will consist of up to 47 wind turbines and have a nameplate capacity of up to 205 megawatts (MW).

5. Ruso Wind has not yet selected a specific turbine model for the Project. The turbine output possibilities currently under consideration range from 2.3 MW to 4.8 MW.

6. The proposed Project layout is designed to accommodate any of the turbine models under consideration at most turbine locations. However, there are a few locations that will only work for certain turbine models. Late-Filed Hearing Exhibit No. 49(a) identifies which of the turbine models currently under consideration may be used at each currently proposed turbine location. As currently proposed, the Project would use a combination of at least two turbine models.

7. In addition to turbines, associated Project facilities constructed within the Project Area will include access roads and improvements to existing roads (as needed); underground electrical collection and communication lines, with above-ground junction boxes; a substation; an operations and maintenance (O&M) facility; and up to three permanent meteorological evaluation (MET) towers. Other temporary facilities required for the Project's construction phase may include a concrete batch plant, a laydown area for equipment, intersection improvements, crane paths, working pads, and a staging area for turbine delivery.

8. Foundation size and design will be finalized based on the results of the geotechnical analyses conducted once the turbine models are selected.

9. Each turbine will communicate directly with the Supervisory Control and Data Acquisition (SCADA) system for remote performance monitoring, energy reporting, and troubleshooting.

10. Construction of the Project is anticipated to begin as early as the Third Quarter of 2019. Commercial testing is anticipated to take place after construction is complete, with commercial operations beginning by the end of 2020.

11. The estimated total cost to construct the Project is approximately \$250 to \$280 million.

Study of Preferred Location

12. Ruso Wind performed a desktop evaluation of the Project Area for soils, land use, wetlands and waterbodies, trees and shrubs, protected species, and critical habitats.

13. Woodlands comprise less than two percent of the total Project Area. If trees or shrubs are impacted by the Project, Ruso Wind will comply with the Commission's tree and shrub mitigation specifications.

14. A wetland delineation was completed for the Project, with the exception of access roads, collection lines, and crane paths for recently activated turbines T48, T51, T53 and T54. See Finding of Fact No. 27. Wind turbines have been sited to avoid permanent impacts to both U.S. Army Corps of Engineers (USACE) jurisdictional and non-jurisdictional wetlands, and USFWS wetland easement basins. Other Project facilities have been sited to avoid wetlands and USFWS wetland easement basins to the extent possible. Where collection lines would intersect a wetland or a USFWS wetland easement basin, impacts will be avoided by boring beneath the wetland/basin. Wetland impacts are anticipated to fall under the threshold for a United States Department of the Army Corps of Engineers (USACE) Nationwide Permit.

15. Ruso Wind will conduct wetland delineations of the access roads, collection lines, and crane paths for turbines T48, T51, T53 and T54 prior to beginning construction in said areas. In the event the Project layout changes from what is depicted in Late-Filed Exhibit No. 51(b), Ruso Wind will complete a wetland delineation of any previously unsurveyed areas, as necessary.

16. Ruso Wind conducted environmental studies of the Project Area, and impacts to wildlife are anticipated to be minimal. Among the studies conducted were:

A. Avian point count surveys, eagle point count surveys, and aerial raptor nest surveys. The surveys identified avian species and raptor nests within and/or near the Project Area. No known, active eagle nests are present within the Project Area.

B. A Whooping Crane Migration Habitat Analysis. The analysis found potential whooping crane habitat and migration areas within the Project Area, but also found that the Project Area does not offer higher quality habitat than the reference areas.

C. Sharp-Tailed Grouse Lek Surveys. The Project will avoid direct impacts to known grouse leks and has sited Project facilities at least one-half mile from active grouse leks.

D. Acoustic Bat Monitoring. Potential northern long-eared bat (NLEB) calls were recorded during the acoustic bat surveys, but it is unlikely that NLEB are actually present within the Project Area, as the closest prior occurrences have primarily been in McLean County near the Missouri River.

E. NLEB Mist Netting Surveys. Ruso Wind conducted NLEB mist netting surveys in the Project Area in summer 2019. No NLEBs were identified during the survey.

F. Dakota Skipper Habitat Evaluation. No Dakota skippers were observed during the surveys, and no Project facilities are sited within areas containing potentially suitable Dakota skipper habitat.

G. Grassland Assessment. Areas of unbroken grasslands are present, but the Project will not permanently impact these areas.

17. Ruso Wind will prepare a Bird and Bat Conservation Strategy prior to operation of the Project, which will outline specific conservation and minimization measures.

18. Ruso Wind completed a Class I literature search for the Study Area, as well as a Class III cultural resources pedestrian survey of all previously unsurveyed areas that might be directly impacted by the Project, with the exception of access roads, collection lines, and crane paths for newly activated turbines T48, T51, T53 and T54. See Finding of Fact No. 27. Turtle Mountain Chippewa participated in the Class III surveys. Six archaeological sites that remain unevaluated for listing on the National Register of Historic Places (NRHP) were identified. Project facilities will avoid these sites, temporary fencing will be installed to create a 50-foot buffer for five sites and a 100-foot buffer for the remaining site during construction, and archaeological monitoring will be conducted during any ground-disturbing activities that occur within 100 feet of these sites.

19. Ruso Wind will conduct Class III surveys of the access roads, collection lines, and crane paths for turbines T48, T51, T53 and T54, in accordance with SHSND guidance; will submit the findings to SHSND for review; and will obtain and file a copy of SHSND's response with the Commission prior to beginning construction in said areas.

20. Ruso Wind completed a Class II architectural history investigation for structures 45 years of age or older within two miles of the Project's proposed construction area. Ruso Wind has coordinated with the SHSND regarding the results and anticipates SHSND's concurrence with its determination of no adverse effects.

21. In the event that the Project layout changes from the layout provided in Late-Filed Hearing Exhibit No. 51(b), Ruso Wind will complete Class III cultural resource survey work for any previously unsurveyed areas, per SHSND's guidance; will submit the findings to SHSND for review; and will obtain and file with the Commission a copy of SHSND's response prior to beginning construction in those areas.

22. Wind Project facilities will avoid identified cultural resource sites; thus, cultural resources are not expected to be impacted by the Project.

23. 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. The federal, state and local departments, agencies and entities that were consulted and provided comment are as follows:

- a. Federal – United States Department of the Air Force – Minot Air Force Base North Dakota; USACE, North Dakota Regulatory Office; Federal Aviation Administration (FAA); United States Department of Commerce – National Telecommunications and Information Administration; USFWS.
- b. State – North Dakota Aeronautics Commission (NDAC); North Dakota Department of Health; North Dakota Department of Trust Lands (NDDTL); NDGF; North Dakota State Water Commission; North Dakota Industrial Commission – Oil and Gas Division; North Dakota Department of Transportation; North Dakota Geological Survey; SHSND; and
- c. Local – Ward County; Brillian Township; Greely Township; Iota Flats Township, North Dakota.

24. Ruso Wind obtained Determinations of No Hazard from the FAA on a preliminary layout of turbines up to 600 feet tall in 2018. Ruso Wind submitted the final layout to the FAA for review in February of 2019.

25. Agency consultations and comments are noted in Appendix C of the Wind Application and in the exhibits and the testimony presented at the public hearing.

26. In a January 31, 2019 letter, the NDAC noted concerns regarding the proximity of a turbine (then identified as T4) to a private airstrip. In response, Ruso Wind removed the identified turbine from the Project layout.

27. On June 10, 2019, Ruso Wind received a letter from the Office of the Assistant Secretary of Defense notifying Ruso Wind that a helicopter flight group at the Minot Air Force Base had raised potential concerns about the Project. See Hearing Exhibit No. 21. At the hearing, Ruso Wind testified that it had committed to engaging in the formal Mitigation Response Team (MRT) process to coordinate with the Department of Defense and the Minot Air Force Base to reach a resolution. Following the hearing, Ruso Wind participated in the MRT with the Department of Defense and the Minot Air Force Base and, in that process, agreed to remove five turbine locations (T12, T13, T14, T26 and ALT-62) to address Minot Air Force Base's concerns. In lieu of primary turbines T12, T13, T14 and T26, Ruso Wind activated turbines T48, T51, T53 and T54. The Air Force also cited safety and operational concerns with installation of an aircraft detection lighting system near the existing nuclear facilities, and indicated a standard lighting system should be installed on the Project.

28. 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. Ruso Wind has obtained a special use permit from Ward County and a conditional use permit from Brillian Township for the Project. Ruso Wind will comply with applicable local zoning ordinance requirements.

29. Ruso Wind currently holds all wind energy leases and easement agreements necessary to construct the Project.

30. The Project will be constructed pursuant to National Electric Safety Code (NESC) requirements.

Siting Criteria

31. North Dakota Administrative Code Chapter 69-06-08 sets forth certain criteria to guide the Commission in evaluating the suitability of granting an application for a certificate of site compatibility. The criteria, as set forth in North Dakota Administrative Code Sections 69-06-08-01, are classified as Exclusion Areas, Avoidance Areas, Selection Criteria and Policy Criteria.

32. An energy conversion facility shall not be sited within an Exclusion Area. There are two categories of general Exclusion Areas within the Project Area: (a) two USFWS Waterfowl Production Areas (WPAs); and (b) two intercontinental ballistic missile (ICBM) facility areas.

33. Project facilities have been sited to avoid the two USFWS WPAs and the two ICBM facility areas within the Project Area.

34. Five Exclusion Areas specific to wind energy conversion facilities are present within the Project Area: (a) areas less than 1.1 times the height of the turbine from interstate or state roadway right of way; (b) areas less than 1.1 times the height of the turbine + 75 feet from the centerline of any county or maintained township road; (c) areas less than 1.1 times the height of the turbine from any railroad right-of-way; (d) areas less than 1.1 times the turbine height from a 115 kV or higher transmission line; and (e) areas less than 1.1 times the turbine height from the property line of a non-participating landowner. All turbines have been sited to avoid these Exclusion Areas.

35. All setbacks are met when measured from the center of the base of the turbine to the closest part of the applicable feature.

36. 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.

37. With respect to Avoidance Areas, cultural resources are present within the Project Area. The Project has been sited to avoid known cultural resource sites. An Unanticipated Discovery Plan has been developed and was found acceptable by the SHSND.

38. Wetlands are present within the Project Area. The Project has been sited to avoid wetlands except where there is no reasonable alternative, and then to avoid permanent impact.

39. Minimal trees and shrubs are located within the Project Area. The Project has been sited to avoid shelterbelts and other areas where trees are located. Any tree and shrub removal and replacement will be conducted in accordance with the Commission's tree and shrub mitigation specifications.

40. An historic landslide area is located within the Project Area. Project facilities have been sited to avoid the landslide area.

41. In accordance with the Commission's Selection Criteria, a site may 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 in accordance with Section 69-06-08-01(6) of the North Dakota Administrative Code.

42. The Project will not have a significant adverse impact on the Selection Criteria set forth in Section 69-06-08-01(5) of the North Dakota Administrative Code. Ruso Wind 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.

43. The Project is anticipated to permanently occupy and disturb up to approximately 45.7 acres of land, or up to approximately .28 percent of the total Project Area, during the life of the Project. Ruso Wind will continue to work with landowners to minimize land use disruptions from the siting of the facilities. No impacts to irrigation or the quality of the agricultural land are anticipated.

44. Ruso Wind may need to clear areas up to 100 feet wide in order to construct collection lines, access roads, and/or crane walks for the Project. Ruso Wind

requested Commission approval to remove trees and/or shrubs from an area wider than 50 feet in these locations.

45. During construction, the Project will likely result in a temporary increase in traffic on county and township roads. The increase in traffic during construction is not expected to be at a volume that will disrupt residents or travel in the Project Area. Haul road permits and road use and maintenance agreements will be negotiated with Ward County and applicable Townships, if needed. County and Township roads will be restored in accordance with the Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting (dated June 10, 2019). During operation, no adverse effects to transportation facilities or networks are anticipated.

46. The proposed Wind Project will not 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.

47. The Project will 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 temporary expenditures for equipment, fuel, operating supplies, products and services.

48. Ruso Wind coordinated with USFWS and NDGF with respect to the Project. Both agencies recommended avoidance of wetland and grassland impacts, and both agencies acknowledged the changes Ruso Wind made to reduce Project impacts. Only 10.8 percent of the Project Area is grassland, and the majority of the remaining portion is cultivated land. No Project facilities are sited in unbroken grasslands, and the Project avoids USFWS grassland easements. No turbines are sited in USACE-jurisdictional or non-jurisdictional wetlands or USFWS wetland easement basins. Where collection lines would intersect a wetland or a USFWS wetland easement basin, impacts will be avoided by boring beneath the wetland/basin.

49. Sound analyses were conducted for the Project. The analyses demonstrate that the sound levels for the Project will comply with the Commission's Avoidance Area requirement that sound levels within 100 feet of an inhabited residence or community building not exceed 50 dBA unless a waiver is obtained, so long as Ruso Wind complies with the turbine model location limitations identified in Late-Filed Hearing Exhibit No. 49(a).

50. Detailed shadow flicker analyses were conducted for the Project. Based on the shadow flicker analyses, potential shadow flicker levels will be below 30 hours per year at all but four participating residences. Ruso Wind has obtained a Shadow Flicker Acknowledgment and Waiver from each of the owners of the four participating residences.

Measures to Minimize Impacts

51. Ruso Wind has agreed to measures to mitigate potential Project impacts, as indicated by the attached Certification Relating to Order Provisions – Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications (dated June 10, 2019).

52. Based on the current Project layout, as depicted in Late-Filed Hearing Exhibit No. 51(b), all Project turbines are located at least 2,018 feet from currently occupied residences of nonparticipating landowners.

53. Ruso Wind will utilize best management practices (BMPs) to minimize impacts on ground and surface water, and to prevent soil erosion. Ruso Wind 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.

54. Ruso Wind will participate in the North Dakota One-Call Excavation Notice System.

55. Ruso Wind will coordinate with local authorities and first responders regarding emergency response measures as part of the Project commissioning activities.

56. Lightning and grounding protection for all wind farm equipment is designed and constructed to be compliant with all applicable National Electrical Code (NEC) and NESC requirements.

57. Ruso Wind will comply with the Commission's decommissioning rules, including filing a decommissioning plan with the Commission prior to the commencement of operation of the Project, and performing decommissioning in accordance with all applicable rules and regulations.

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 wind energy conversion facility proposed by Ruso Wind is an energy conversion facility as defined in North Dakota Century Code Section 49-22-03(5).

3. The application submitted by Ruso Wind meets the site evaluation criteria required by North Dakota Century Code Chapter 49-22.

4. 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.

5. The proposed energy conversion facility is compatible with environmental preservation and the efficient use of resources.

6. 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.

7. The Commission has jurisdiction to ensure compliance with NESC 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. Certificate of Site Compatibility No. ___ for an Energy Conversion Facility is issued to Ruso Wind Partners, LLC, designating a site for a wind energy conversion facility that corresponds to the Project Area depicted in Late-Filed Hearing Exhibit No. 51(b).

2. That within the designated site, as depicted in Late-Filed Hearing Exhibit No. 51(b), Ruso Wind is authorized to site, construct, operate, and maintain wind turbines and associated equipment, access roads, an O&M facility, a substation, permanent MET towers, and a system of underground electrical collection lines and communication cables with above-ground junction boxes, as well as any other associated facilities identified in the Application, at the hearing and in any supplemental filings.

3. Ruso Wind shall file a copy of the SHSND's correspondence regarding the Class II Architectural History Survey with the Commission prior to Construction.

4. If modifications are made to the Project layout, Ruso Wind will complete a Class III cultural resource survey for any previously unsurveyed portions of the designated site affected by Project-related construction activities, in accordance with SHSND guidance; will submit cultural resource findings to SHSND for review; and will obtain and file a copy of SHSND's response with the Commission prior to beginning construction in said areas.

5. If modifications are made to the Project layout, Ruso Wind will complete a wetland delineation of any previously unsurveyed areas affected by Project-related activities, as necessary.

6. Ruso Wind shall comply with the Commission's Avoidance Area Sound Requirement. In the event Project modifications occur that are not covered by its current sound analyses, Ruso Wind will conduct a sound analysis to ensure that the Project complies with the Commission's Avoidance Area Sound Requirement.

7. Ruso Wind shall site Project turbines so as to meet a shadow flicker goal of 30 hours per year or less at each currently occupied residence, considering site-specific conditions, unless otherwise agreed to by the landowner. In the event Project modifications occur that are not covered by its current shadow flicker analyses, Ruso Wind shall conduct a shadow flicker analysis to ensure this requirement is met.

8. The June 10, 2019 Certification Relating to Order Provisions – Wind Energy Conversion Facility Siting, with accompanying Tree and Shrub Mitigation Specifications (Hearing Exhibit No. 15) is incorporated by reference and attached to this Order. Ruso Wind is authorized to clear areas in the Project Area up to 100 feet wide in order to construct collection lines, access roads, and crane walks.

9. Prior to commencing construction of any portion of the proposed Project, Ruso Wind shall obtain all other necessary licenses and permits for the construction of such portion, and provide copies to the Commission.

PUBLIC SERVICE COMMISSION

Randy Christmann
Commissioner

Brian Kroshus
Chairman

Julie Fedorchak
Commissioner