

**Response to Applicant's Proposed Findings of Fact, Conclusions of Law and Order in the application for a Site Permit for the Ruso Wind Power Project (ND PSC Docket No. PU-19-28/OAH File No. 20190068)**

August 27, 2019

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

Dear Mr. Kahl:

The Laborers District Council of Minnesota and North Dakota ("LIUNA Minnesota & North Dakota") herewith submits its response to Applicant's Proposed Findings of Fact, Conclusions of Law and Order and attached opinion letter in the above referenced dockets.

Sincerely,



Kevin Pranis  
Marketing Manager

NORTH DAKOTA PUBLIC SERVICE COMMISSION

<p>In the Matter of the Application for a Siting Permit for the Ruso Wind Project - Ward and McLean Counties</p> <p>ND PSC Docket No. PU-19-28</p> <p>OAH File No. 20190068</p>	<p>Response to Applicant's Proposed Findings of Fact, Conclusions of Law and Order</p>
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The Laborers District Council of Minnesota & North Dakota ("LIUNA Minnesota & North Dakota") offers the following response to the Proposed Findings of Fact, Conclusions of Law and Order filed by Ruso Wind Partners, LLC ("Applicant") in its application for a Siting Permit for the proposed Ruso Wind Project ("the Project"). Our organization appreciates the opportunity to participate in the process, and hopes that the testimony and evidence provided in the record will assist the Commission in its consideration of the Project.

The North Dakota Public Service Commission ("Commission") is charged with determining whether the Project will have "minimal adverse effects on the environment upon the welfare of the citizens of North Dakota," is "compatible with environmental preservation and the efficient use of resources," and will minimize adverse impacts while "ensuring continuing system reliability and integrity and ensuring that energy needs are met and fulfilled in an orderly and timely fashion." Applicant has provided substantial information in the record to show that the Project is compatible with environmental preservation and seeks to minimize adverse environmental impacts. But the record is thinner when it comes to the Project's suitability in terms of its impact on energy and economic development.

The Project does not propose to meet the needs of local ratepayers, or any identified energy customer, but is instead a speculative development of the sort that have become common in recent years as companies rush to take advantage of expiring Federal tax credits. Beyond not meeting any defined energy need, the Project can hardly be said to contribute to "system reliability and integrity" or the orderly fulfillment of energy needs, inasmuch as Applicant currently lacks an interconnection agreement or a clear path to attain one.

In the absence of demonstrated energy benefits, the case for the Project rests solely on its potential to support local economic development and generate associated tax revenues. Applicant argues persuasively that the Project could potentially deliver some benefit to the State, local governments, and local residents in the form of tax and lease revenues, although these benefits are not quantified.

The only economic benefit that is quantified in the record is the creation of jobs, of which the overwhelming majority would occur during the construction phase. Uncontested evidence in the record provided by LIUNA Minnesota & North Dakota shows that the value of jobs and payrolls created by the project will depend largely on the degree to which the Project employs local rather than non-local construction labor.

If North Dakota's resources were limitless, it could be argued that any economic benefit, even a single job, might place the Project on the positive side of the ledger. But the Commission is charged with ensuring the efficient use of resources precisely because opportunities to develop energy resources to the benefit of North Dakotans are constrained by factors ranging from limited availability of the resources themselves to increasing congestion on the state's transmission lines to limited market demand for energy.

LIUNA Minnesota & North Dakota has provided testimony and evidence in this case demonstrating that approval of once project under such constrained circumstances can "crowd out" other projects. Nothing in the record speaks more clearly to this question, however, than the fact that Applicant is scrambling to secure a new interconnection agreement after learning that the company's original proposal would entail \$500 million in transmission upgrades to free capacity on congested transmission lines.

Under such circumstances, the Project could result in a net *loss* of jobs and economic development to Ward and McLean Counties and the State of North Dakota by consuming scarce transmission resources and thereby "crowding out" a future project that could have delivered similar energy, lease and tax benefits and greater employment benefits. It is of course impossible to determine exactly where jobs and development opportunities will be lost because Applicant is asking the Commission to approve the Project *without a viable interconnection plan*.

If the Project is ever built, it will certainly take up limited transmission capacity that will no longer be available for competing development proposals. Where local townships express hope that the Project will "spur additional renewable energy investments in our area", the evidence in the record shows that it is more likely to deter or prevent such investments for the reasons laid out in LIUNA Minnesota & North Dakota's direct testimony and attached letter from an investment management firm that invests in renewable energy projects.

Pending significant investments in new transmission capacity, it is clear that most, if not all, new energy generation projects approved, built, and connected to the grid in North Dakota will displace competing projects further down the transmission queue. The question, then, is whether the approval serves to ensure efficient use of resources by encouraging applicants to maximize the benefits of proposed projects, and by selecting those projects that can be expected to deliver the greatest benefits at the lowest cost, including the opportunity cost incurred when a project takes up scarce resources.

The North Dakota Administrative Code establishes two sets of criteria for the consideration of an application for an energy conversion facility site permit that are designed to minimize the harms and maximize the benefits of energy development. First, under Section 69-06-08-01(5), the applicant must show that the Project will minimize adverse impacts on local agriculture, services, populations, and resources. Second, under Section 69-06-08-01(6), the Commission may consider whether (and in a proper case require that) an applicant maximizes certain benefits of a project to the State of North Dakota. The creation of employment opportunities for local workers, which is the particular concern of LIUNA Minnesota & North Dakota, is specifically enumerated as a consideration under both sets of criteria: avoidance of negative impacts on “[t]emporary and permanent skilled and unskilled labor” and “[t]raining and utilization of available labor in this state for the general and specialized skills required,” respectively.

Applicant’s proposed Findings of Fact, Conclusions of Law and Order would have the Commission find that the Project meets both sets of criteria. (At #42). But neither conclusion is supported by the record. While the Project may succeed in minimizing adverse environmental impacts, testimony and evidence provided by LIUNA Minnesota & North Dakota shows that the Project could have a substantial adverse impact on local skilled and unskilled labor by failing to maximize employment of local workforce and by displacing other energy projects that could have delivered similar tax and lease benefits and greater workforce benefits (not to mention tangible energy benefits of a competing project that served North Dakota ratepayers).

None of Applicant’s Policies and Practices as described in Table 6 of the Application would provide tangible benefits to the State of North Dakota or its residents with the exception of the purchase of gravel and such use of “local contractors, suppliers, and laborers” as Applicant actually makes in the construction of the project, and both of these benefits could apply to any wind energy project. Applicant provides no real basis for the speculative claim that “the energy would be used in North Dakota” and the remainder of the Policies and Practices do no more than recapitulate what the owner of any energy project would do, and in some cases is required to do, in the course of construction (use of existing facility corridors, monitoring of impacts).

With respect to employment of local labor, which is among the most significant as well as the only quantified components of economic development, Applicant could have gone further in these proceedings to substantiate the claim that local labor will be “utilized for the project as applicable and feasible,” but notably failed to do so during the hearing. Applicant’s witness Mr. Morgan Berry declined to make any specific commitment either to goals or to efforts with respect to local hiring, nor could he provide any information on what level of local hiring Applicant had determined was “feasible.”

LIUNA Minnesota & North Dakota has provided extensive and unrefuted testimony and evidence showing that enough skilled workers are available to build the Project with a majority-local construction workforce. Yet Applicant has given the Commission no assurance that the company intends to take advantage of the demonstrated feasibility of employing North Dakotans to build the project. Instead, Mr. Berry indicated that utilization of local workforce

would be left up to Applicant's general contractor, even as he acknowledged during the hearing that contractors often look to guidance from project owners when deciding whether to prioritize local workforce.

Had Applicant committed to maximize employment of local workforce, the Commission would have reasonable assurance that the project would deliver net benefits to the State of North Dakota and to host communities. In the absence of such commitments, however, there is a substantial risk that approval of the Project could end up costing the State of North Dakota jobs and associated economic benefits that would otherwise have been delivered by another project that could have made better use of scarce transmission resources.

Approval of Project as currently proposed by Applicant, and absent adoption of a mechanism that promotes greater accountability and transparency regarding employment of local workers, could have negative consequences for the State of North Dakota and for local residents and businesses in and around Ward County and McLean County. The potential costs are very real and are quantified in the record, including the potential loss of 80 to 120 jobs and between \$5 million and \$8 million in projected local economic activity if resembles recent projects observed by LIUNA Minnesota & North Dakota rather than local hire success stories such as the Sunflower and Tatanka wind farms.

Applicant could address this concern by committing to local hiring goals, or by providing evidence that the construction plans for the Project can reasonably be expected to maximize employment of local workers, but has not yet done so. And apart from simply denying the application, the Commission could mitigate the risk by implementing a quarterly reporting requirement similar to a requirement adopted by Minnesota's Public Utility Commission to provide for greater accountability and transparency in the development process.

The State of North Dakota cannot afford to allow energy development opportunities and scarce resources to be consumed by speculative energy projects that provide few benefits to local residents and limit the potential for future development. Nor can the State afford to miss out on high-quality job opportunities in renewable energy at a time when we are beginning to lose high-quality local jobs in conventional energy generation with the shuttering of coal-fired power plants. The evidence shows that there is a substantial risk that the Project could cost the State jobs unless Applicant takes commitments or the Commission takes action to mitigate the risk, including a form of reporting requirement which has already contributed to greater employment of local workers on wind projects in a neighboring state.

On the other hand, approval of the application without a reporting requirement or a similar accountability mechanism, in a case where there exists a well-developed record concerning the potential cost of lost employment opportunities for North Dakota workers, could send a signal to the wind industry that policymakers are not concerned by the failure of many wind developers to maximize employment of local workforce, and do not expect them to do better. North Dakota's

conventional energy industry has provided high-quality jobs to local workers for generations. The Commission can ensure that the renewable energy industry is not held to a lower standard.

LIUNA Minnesota & North Dakota recommends that, if the Commission is inclined to approve the application for the Project, it do so with the requirement that Applicant file quarterly reports on the employment of local and non-local construction workers. While a reporting requirement is not a local hiring guarantee, it would provide for public transparency, a measure of accountability for the developer, and ultimately data that might inform future decisions by the Commission and other state leaders regarding energy policy and projects.

We believe that the Commission has clear authority to establish such a requirement, and have attached a letter from the Braaten Law Firm that we believe answers questions posed during the hearing regarding the legal foundation for local hire reporting. We would further note that, in addition to training and utilization of North Dakota labor, the Policy Criteria set out in Section 69-06-08-01(6) call for consideration of benefits related to “economies of construction and operation”, “labor relations”, and “monitoring of impacts”, all of which would be served by local hire reporting. In the absence of a local hire reporting requirement or further evidence that the project will benefit local workers, we cannot support approval of the Project given the many uncertainties and reasons for concern regarding its impacts.

Beyond recommending the adoption of a reporting requirement, LIUNA Minnesota & North Dakota would offer the following facts for the Commission’s consideration:

- A typical North Dakota worker employed on a wind energy construction project can be expected to earn \$52,500 in wages and \$25,000 in fringe benefits, which in turn contribute an estimated \$90,000 to the local economy over the short term and \$110,000 over the long term.
- A local construction worker employed on a wind energy project can be expected to contribute over three times more than a non-local worker to local spending activity over the short term and four times more over the long term.
- Utilization of a 50% to 70% local workforce to build the Project is associated with between \$5 million and \$6.7 million in incremental economic benefits compared to use of a 10% to 30% local workforce.
- Past wind energy projects such as the Tatanka and Sunflower wind farms have been constructed using a majority North Dakota workforce.
- There are more than 10,000 workers in the Project area who are employed in retail, accommodations, and food service jobs that pay an average of \$9 to \$15 per hour, and who could benefit from greater availability of higher-paying construction jobs in the area.



August 16, 2019

*Via email only to: kpranis@liunagroc.com*

Mr. Tim Mackey  
President and Business Manager  
C/O Kevin Pranis, Marketing Manager  
Laborers' District Council of Minnesota and North Dakota  
81 Little Canada Road East  
St. Paul, MN 55117-1322

**Re: Statutory and Regulatory Authority for the Gathering and Consideration of  
Data Related to Local Labor Usage**

Dear Mr. Mackey:

We have been asked by Laborers' District Council of Minnesota and North Dakota to provide an opinion on whether the Public Service Commission, when evaluating proposed energy conversion facility siting and transmission facility corridors and routes, has the authority to implement a policy that would accomplish the following:

1. Collect data from PSC applicants on their on their intentions and past practices regarding the use of local construction labor to construct and maintain projects proposed for permitting;
2. Collect data from permittees on their actual use of local construction labor; and
3. Consider PSC applicants' intentions and past practice regarding the use of local labor when evaluating applications.

Summary of Opinion

It is our opinion that certain North Dakota Statutes and the Commission's Administrative Rules enable and (to some degree) require these considerations as to conversion facility siting as well as transmission corridor and route evaluation. The applicable law and regulations directly address your first concern (data collection). Your second two concerns reflect a desire that the Commission put the data that it is required to collect to use.

Consideration of these questions required us to review the degree of consideration required regarding the selection and policy criteria. The Commission's review entails not only

considerations of site geography which are implemented through consideration of exclusion and avoidance areas, but also consideration of the ways to mitigate negative social impacts (selection criteria) as well as policies and practices that could provide additional benefits of a project (policy criteria). The language relating to the selection criteria is mandatory and requires a specific result depending upon the findings of the Commission. The language relating to the policy criteria is such that the factors must be considered, but there is no substantive result dictated by the Commission's findings.

There appears to be some confusion surrounding when and how the policy criteria are to be applied. It has been suggested that these criteria may only apply when there are competing projects or that they are optional, and only applicable at the request of the applicant. It is our opinion that an applicant is required to submit a discussion of these criteria before an application is deemed complete, and therefore a review of the selection and policy criteria are mandatory elements of the review process. Although the policy criteria regulations do not require any substantive outcome, they are required to be considered during the Commission's evaluation, and they apply regardless of whether the Commission is concurrently reviewing more than one competing project or only upon request of "preference" from the applicant.

Your second and third concerns flow directly from the first. A review that confirms the realization of anticipated project benefits is important in each individual case. Identifying structural and systemic factors would also be useful to the Commission's review of future projects and ensure that the continued growth of North Dakota's vibrant energy economy benefits North Dakota residents. Consideration of an applicant's past successes at mitigating adverse impacts and providing additional benefits are important considerations when evaluating new proposed projects. The Commission has the power to implement this reasonable policy as a "special condition" as to site designation.

#### Statutory Background of Authority to Consider the Use of Local Labor

The Commission is required to consider the direct and indirect economic impacts of proposed facilities and routes. N.D.C.C. § 49-22-09(1)(g) requires the Commission to consider the direct and indirect economic impacts in evaluating applications and designations of sites, corridors, and routes. Pursuant to N.D.C.C. § 49-22.1-09(7), "The Commission is guided by consideration [of direct and indirect economic impacts], when applicable, to aid the evaluation and designation of sites, corridors, and routes." This information is a required part of both siting and route applications. N.D.C.C. § 49-22.1-06(1)(h) requires that an application for a certificate contain an evaluation of the proposed site or corridor regarding the applicable considerations set out in section 49-22.1-09, including direct and indirect economic impacts under subsection 7. N.D.C.C. § 49-22.1-07(1)(c) requires the same discussion as to permits. Not only is the Commission required to consider the direct and indirect economic impacts of sites and routes, an Applicant has the duty to provide this information before an application is deemed complete because N.D.C.C. § 49-22.1-

06(1) requires that an application for a certificate of site compatibility include considerations set forth in N.D.C.C. § 49-22.1-09. It is only after all of this information (including a discussion of the direct and indirect economic impacts) is received that the Commission is under a duty under N.D.C.C. § 49-22.1-07(2) to serve and publish notice of filing. Your first concern, then, is arguably already a duty of the Commission (and also a requirement for an application to be deemed complete, *see* discussion of N.D.A.C. § 69-06-04-01(2)(e) & (h) and § 69-06-05-01(2)(k), *infra*), but it is doubtless within the Commission's authority to affirmatively request this data at any point. The consideration of this data is related to your third concern as well.

The direct and indirect economic impacts of a project will change based upon whether local labor is used. It is apparent that the use of local labor has more direct and indirect economic impact than the use of outside labor. The use of local labor for construction and maintenance of facilities and routes provides economic stability to an area by injecting wages into the local economy that support local governments, schools and businesses. Using local labor means that the earned wages will be much more likely to be spent locally. Local laborers live and raise families in the area of the project—this means that their wages are much more likely to support local schools and governments through property taxes and that all of the needs of their children and other dependents will be met at local businesses. Compare this to transient laborers that earn wages in the area but send a portion of it to where they consider home—wages earned here effectively go to support other schools, government infrastructure, and businesses. We assume you have data and factual support for these propositions and suggest providing this to the Commission as part of your argument in favor of collecting data on local hiring.

#### Regulatory Authority for Consideration of the Use of Local Labor

A discussion of the selection and policy criteria are an integral part of an application for both a certificate of site compatibility and a transmission facility permit. In addition to a discussion of the factors outlined in N.D.C.C. § 49-22-09, The Commission's rules require an applicant to provide "a discussion of the criteria evaluated within the study area, including exclusion areas, avoidance areas, selection criteria, policy criteria, design and construction limitations, and economic considerations" in its application for a certificate of site compatibility for an energy conversion facility. N.D.A.C. § 69-06-04-01(2)(e) & (h). This same language appears in N.D.A.C. § 69-06-05-01(2)(h) & (j) with respect to transmission facility permitting. This section also requires that an applicant put forth a discussion that includes "the relative value of each criteria and how the applicant selected the proposed corridor location, giving consideration to all criteria and how the location, construction, and operation of the facility will affect each criteria." N.D.A.C. § 69-06-05-01(2)(k).

The selection and policy criteria referenced in N.D.A.C. Ch. 69-06-08 are authorized by and an implementation of the provisions found at N.D.C.C. §§ 49-22-05.1(1) and 49-22.1-03. This statutory authority requires the Commission to develop criteria

- 1) to be used in identifying exclusion and avoidance areas and
- 2) to guide the site, corridor, and route suitability evaluation process.

The Commission adopted rules to guide the identification of exclusion and avoidance areas pursuant to the first factor quoted above to deal with the geographic concerns that a proposed project may raise. The Commission also adopted its Selection criteria and Policy criteria pursuant to the second factor quoted above. These statutes further state that the criteria may also include an identification of

- 3) impacts and
- 4) policies or practices

which may be considered in the evaluation and designation process. *Id.* There is no reference here to giving any kind of “preference” to one project over another, but rather, only a reference to policy statements that guide the evaluation process. Additionally, under N.D.A.C. § 69-06-01-01(3), “Criteria” means policy statements that guide and govern the preparation of the inventory of exclusion and avoidance areas, and the energy conversion facility site and transmission facility corridor and route suitability evaluation process.” The term “Selection Criteria” is defined as “criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to minimize adverse human and environmental impact after the exclusion and avoidance criteria have been applied.” N.D.A.C. § 69-06-08-01(14). The term “Policy Criteria” is defined as “criteria that guide and govern the selection of energy conversion facility sites and transmission facility corridors and routes in order to maximize benefits during the construction and operation of a facility. N.D.A.C. § 69-06-08-01(12).

The implemented and authorizing statute refers, for example, to criteria to be developed for “impacts.” The “Selection criteria” then refer to “any significant adverse *effects* resulting” from the siting of a given project and go on to reference “*impacts* upon agriculture” and the “*impact* upon the availability and adequacy of” various programs and services at N.D.A.C. § 69-06-08-01(5). Similarly, the implemented and authorizing statute refers to criteria to be developed for “policies and practices.” The “Policy criteria” then refer to “the following *policies and practices*” at N.D.A.C. § 69-06-08-01(6).

The important point is that the authorizing statute states: “The commission shall develop criteria to be used in identifying exclusion and avoidance areas and to guide the site, corridor, and route suitability evaluation and designation process. The criteria also may include an identification of *impacts* and *policies or practices* which may be considered in the evaluation and designation process.” N.D.C.C. § 42-22.1-03. There is no authority here to develop a “preference” protocol for competing applications, but rather, simply a reference to two different sets of criteria that may

be developed in order to evaluate siting applications. The Selection criteria refer back to the “impacts,” and the Policy criteria refer back to the “policies and practices.”

*The Impacts Related to the Use of Skilled and Unskilled Labor are Required to be Mitigated*

The North Dakota Administrative Code permits the Commission to approve a proposed facility’s siting application only “only when it is demonstrated to the commission by the applicant that any significant adverse effects resulting from the location, construction, and operation of the facility in that area as they relate to [temporary and permanent skilled and unskilled labor], will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum.” NDAC § 69-06-08-01 (5)(c)(10). This establishes a mandatory duty upon the Commission to deny a project which will cause significant adverse effects that are not minimized.

This requirement would certainly be furthered by the three policies that you are suggesting. In order to make its required determination, the Commission would at least find it very helpful to be apprised of the source of the skilled and unskilled labor that would be used in the construction and maintenance of these facilities.<sup>1</sup>

*A Discussion of Labor Relations as well as the Training and Utilization of In-State Labor are Required Elements of an Application*

Given that a discussion of the selection and policy criteria are required parts of an application, their consideration is not optional. N.D.A.C. § 69-06-04-01(2)(e) & (h); N.D.A.C. § 69-06-05-01(2)(h), (j) & (k). The Commission does have the discretion as to the weight afforded the policy criteria in reaching its decision on whether to approve a project, but providing a discussion as to each of the criteria is a mandatory element of an application, and therefore must be considered by the Commission in the first instance. Failure to consider a required element of an application would make the requirement itself an idle act.

The Commission may give preference to an applicant that will maximize benefits from policies such as the “training and utilization of available labor in this state for the general and specialized skills required” as well as “labor relations.” N.D.A.C. § 69-06-08-01(6)(c) & (k). These same policy criteria are echoed in the Commission’s rules that govern the approval of corridors and routes for transmission facilities. N.D.A.C. § 69-06-08-02(4)(b) & (f). As mentioned above, the term preference should be interpreted with an eye toward the statutes that it implements as well as

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<sup>1</sup> I will also note that subsection 10 of this rule requires consideration of the impact upon temporary and permanent housing, implying that the Commission should be aware of whether construction and/or maintenance activities will be performed by individuals who reside within a reasonable travel distance from the facility, or whether employees will be brought in from afar and affect the supply of permanent, long term housing through the creation of long-term jobs and/or temporary, short-term housing through the creation of temporary jobs.

practicality and logic. When one interprets the term “preference” in relation to “policies and practices which may be considered in the evaluation and designation process,” it is clear that the factors listed in N.D.A.C. § 69-06-08-01(6) are those that, when present, may sway the Commission to favor development over denial, or, “in a proper case” may condition their approval on certain of these criteria being met.

It is my understanding that the Commission has taken the position in the past that the sections involving “preference” have been interpreted to mean that they will only be applied when there are competing projects, specifically, during the June, 17 public hearing on the Ruso Wind Project. N.D. P.S.C. Case No. PU-19-028, Doc. Id. No. 102. The language used here (i.e. “impacts” and “policies or practices”) is critical to understanding how the criteria are to be applied, and whether or not the policy criteria are a “preference” such as those used in employment preference laws, for example. Based on the language of the statute and these rules, that is not the case.

I will also point out that an interpretation of the term “preference” to mean that it is only applicable if the Commission is faced with two competing projects creates a confusing result in most circumstances. One necessary condition to planning and implementing an energy conversion facility project is ownership and/or control of the site. Presumably, the only way that regulatory preference would be a factor is if the owner of a site had himself proposed two competing projects that were irreconcilable, forcing the Commission to choose for the undecided applicant. If two projects were competing over a transmission route, these would not be irreconcilable as they could be adjacent to each other or otherwise co-located. This approach also assumes that the Commission would evaluate more than one project in a particular case, and it is our understanding that the Commission evaluates each proposed facility and transmission project on its own merits. A better and more reasonable interpretation of this term is that the Commission can give preference to development over nondevelopment if policy criteria are met.

It appears that the Commission has agreed with this interpretation in the past, such as when it evaluated whether preference was merited for a single wind energy siting application. *See* N.D. P.S.C. Case Nos. PU-18-302 & PU-18-344, Findings of Fact, Conclusions of Law, and Order, ¶¶ 70, 71 (Jun. 12, 2019) (“The Commission recognizes the Wind Project may have a positive impact on some of the criteria set forth in N.D.A.C § 69-06-08-01(6). However, under the Case Nos. PU-18-302 & PU-18-344 Findings of Fact, Conclusions of Law and Order Page 18 circumstances, the Commission is not of the opinion that any preference that could apply under these criteria outweighs the adverse direct and indirect impacts as a whole. Therefore, no preference will be given under N.D.A.C. § 69-06-08-01(6).”) This passage implies that the Commission’s grant of “preference” may act as a counterweight to negative impacts under certain circumstances. This suggests that consideration of the policy criteria may be given dispositive weight if the factors weighing in favor of approval and disapproval of a project are more or less equal. However, this interpretation is not at odds with the notion that the Commission must still consider these factors in all cases.

I will also note that, in addition to a grant of “preference”, the “Commission may require the adoption of [the] policies and practices” outlined in section 6 of N.D.A.C. § 69-06-08-01 “in a proper case”. N.D.A.C. § 69-06-08-01; *See* N.D.A.C. § 69-06-04-02(2)(a); *See* N.D.A.C. § 69-06-05-02(1)(b). This portion of the regulation is further authority for the Commission to reach the same result that you desire even if the Commission wishes to continue interpreting its regulations regarding preference in a way that would require two simultaneous, competing project applications in order to be applicable.

#### Authority for the Collection of Data Regarding Actual Use of Local Labor

The Commission has the power to require a successful applicant to report on its actual use of in-state and local labor by means of a “special condition” as to site designation (N.D.A.C. § 69-06-04-02(2)(a)) and the designation of corridors and routes (N.D.A.C. § 69-06-05-02(1)(b)). This broad authority allows the Commission to attach conditions to its approval of any project that the applicant may accept with the permit. The conditional approval process is used in all levels of government, from local zoning boards to the Commission and its sister agencies such as the Department of Environmental Quality in order to further their policies and procedures. It allows a project to move forward upon an applicant’s acceptance of the authority’s reasonable use of discretion. Importantly, an approval conditioned on the applicant reporting back to the Commission regarding the composition of its workforce would not be burdensome, especially given that your request does not call for any quota of actual hires. Were this reporting requirement implemented, it would inform and guide the Commission as to the impacts and benefits of these projects to the state.

#### Conclusion

It is our opinion that the Commission has the authority to collect data on the efforts of applicants to use local labor in construction and maintenance of wind energy conversion projects. There is also authority for the Commission to require this information be included in the application itself. This subject is germane to required elements of applications for certificates of site compatibility and for permits for transmission routes. This data will also materially affect the direct and indirect economic impacts of a project and should therefore be addressed by the Commission under its statutory mandate. Auditing the success (or lack thereof) that a successful applicant has encountered in meeting representations made to the Commission regarding local hiring practices would be useful to identify the positive impacts of Commission approved projects. On another level, the inability of applicants to hire locally could be helpful in identifying specific skills that are in demand which could be addressed by state training programs, etc. The review of these applications requires more than a geographical review of exclusion zones and avoidance areas. The Commission has a responsibility to review all elements of an application—including those

Mr. Kevin Pranis  
August 16, 2019

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dealing with the impacts, policies & practices that are a part of the regulations that are enabled by the relevant statutory law.

Please contact me should you have any questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Derrick Braaten", is written in a cursive style.

Derrick Braaten