

STATE OF NORTH DAKOTA  
PUBLIC SERVICE COMMISSION

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

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**Case No. PU-19-028**

**Ruso Wind Partners, LLC’s Response to  
LIUNA Minnesota & North Dakota’s Post-Hearing Filings**

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**INTRODUCTION**

Ruso Wind Partners, LLC (“Ruso Wind”) provides this response to the Laborers District Council of Minnesota & North Dakota’s (“LIUNA Minnesota & North Dakota”) Late-Filed Exhibit No. 60 and Response to Applicant’s Proposed Findings of Fact, Conclusions of Law and Order.

LIUNA Minnesota & North Dakota does not dispute that the Ruso Wind Project (“Project”) is compatible with environmental preservation and minimizes adverse environmental impacts, thus meeting the environmental siting criteria. However, LIUNA Minnesota & North Dakota appears to argue that the siting standard is not met with respect to “impact on energy and economic development.” Essentially, LIUNA Minnesota & North Dakota asserts that (1) the Project is relying solely on the creation of temporary local construction jobs to show an economic benefit, (2) the record does not indicate the Project will create temporary local construction jobs, and as a result (3) the Project has not complied with N.D.A.C. § 69-06-08-01(5)(c)(10) and N.D.A.C. § 69-06-08-01(6)(c)). LIUNA Minnesota & North Dakota then suggests that its proposed labor reporting condition could be used to “mitigate” Ruso Wind’s failure to demonstrate an economic benefit.

In reality, as discussed further below, Ruso Wind does not rely on creation of temporary local construction jobs as the Project's sole economic benefit. Rather, Ruso Wind has presented evidence of multiple economic benefits that would be provided by the Project, and has demonstrated compliance with all of the siting criteria, including N.D.A.C. § 69-06-08-01(5)(c)(10) and N.D.A.C. § 69-06-08-01(6)(c)). Further, while economic impact is a consideration in evaluating an application, it is only one consideration among many, and economic benefit is not a specific requirement of N.D.C.C. § 49-22-02.

Finally, with respect to LIUNA Minnesota & North Dakota's proposed reporting requirement, it is not clear that the North Dakota Public Service Commission ("Commission") has the authority to impose such a requirement. However, if the Commission does, Ruso Wind leaves to the Commission's discretion whether it is appropriate to apply such a requirement in a single wind siting docket.

### **LEGAL STANDARD**

Per N.D.C.C. § 49-22-02, "it is necessary to ensure that the location, construction, and operation of energy conversion facilities . . . will produce minimal adverse effects on the environment and upon the welfare of the citizens of this state." To meet this standard, energy conversion facilities are to be sited "in an orderly manner compatible with environmental preservation and the efficient use of resources," and sites should "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." *Id.* Notably, the standard does not reference economic development.

N.D.C.C. § 49-22-05.1(1) authorizes the Commission to adopt criteria to be used for considering a siting application: "the commission shall develop criteria to be used . . . 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.” Pursuant to this authorization, the Commission adopted the exclusion area, avoidance area, selection, and policy criteria enumerated in N.D.A.C. § 69-06-08-01 for use in evaluating energy conversion facility siting applications.

At issue is Ruso Wind’s compliance with two of the numerous criteria adopted by the Commission in N.D.A.C. § 69-06-08-01:

**N.D.A.C. § 69-06-08-01(5): Selection criteria.** A site may be approved in an area 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 the following, will be at an acceptable minimum, or that those effects will be managed and maintained at an acceptable minimum. The effects to be considered include:

(c)(10) The impact upon [t]emporary and permanent skilled and unskilled labor.

**N.D.A.C. § 69-06-08-01(6): Policy criteria.** The commission may give preference to an applicant that will maximize benefits that result from the adoption of the following policies and practices, and in a proper case may require the adoption of such policies and practices. The commission may also give preference to an applicant that will maximize interstate benefits. The benefits to be considered include:

(c) Training and utilization of available labor in this state for the general and specialized skills required.

## **DISCUSSION**

### **I. The Evidence Presented Demonstrates that the Project Will Provide Numerous State and Local Economic Benefits.**

As noted above, “economic development” is not a component of the siting standard outlined in N.D.C.C. § 49-22-02. That said, the testimony and evidence presented by Ruso Wind demonstrates that the Project will provide numerous economic benefits. In addition to providing

an additional source of renewable energy, the Project will provide a variety of state and local economic benefits similar to the benefits of other wind projects permitted by the Commission.<sup>1</sup>

- The Project will generate significant tax revenue for the State, local governments, and local schools, the amount of which is specified by statute. *See, e.g.*, N.D.C.C. Ch. 57-33.2. The taxes paid by Ruso Wind on the Project would significantly increase the revenue available for a variety of local needs.<sup>2</sup>
- The Project would result in increased income to landowners receiving annual lease payments and to landowner-investors receiving profits from the sale of electricity, which could raise the per capita income in surrounding communities.<sup>3</sup> These payments will provide significant revenue to the landowners and diversify the income of the landowners beyond the traditional agricultural farming markets. This diversification of revenue will also benefit the local economy.<sup>4</sup>
- Construction of the Project could provide temporary revenue increases in the vicinity of the Project due to increased demand for lodging, food services, fuel,

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<sup>1</sup> *E.g.*, Case No. PU-18-352, Aurora Wind Project, Siting Application at 3-10 – 3-11, 6-2, 8-2 (certificate of site compatibility granted May 7, 2019); Case No. PU-18-280, Emmons-Logan Wind Energy Center, Siting Application at 7-2 (certificate of site compatibility granted February 6, 2019); Case No. PU-16-123, Oliver III Wind Energy Center, Siting Application at 7-3 (certificate of site compatibility granted June 22, 2016); Case No. PU-17-284, Foxtail Wind Energy Center, Siting Application at 7-2 (certificate of site compatibility granted January 31, 2018); Case No. PU-15-482, Lindahl Wind Farm Project, Siting Application at 16, 58 (certificate of site compatibility granted December 5, 2015)

<sup>2</sup> *See* Hearing Exhibit No. 1 at 29 (Certificate of Site Compatibility Application); *see also* Hearing Exhibit No. 29 at 26-27 (Pre-filed testimony of Morgan Berry); Hearing Exhibit No. 14 (Township letters of support).

<sup>3</sup> *See* Hearing Exhibit No. 1 at 29 (Certificate of Site Compatibility Application); *see also* Hearing Exhibit No. 29 at 26-27 (Pre-filed testimony of Morgan Berry).

<sup>4</sup> *See* Hearing Exhibit No. 1 at 6, 29 (Certificate of Site Compatibility Application); *see also* Hearing Exhibit No. 29 at 26-27 (Pre-filed testimony of Morgan Berry); Hearing Exhibit No. 14 (Township letters of support).

and general supplies.<sup>5</sup> Personal income could also be generated by circulation and recirculation of dollars paid out by the Project as business expenditures as well as state and local taxes.<sup>6</sup>

- The Project will generate up to 200 temporary construction jobs, which may use local labor and would result in local spending.<sup>7</sup>
- The Project will generate 8 to 12 high-paying operations and maintenance positions, which will last for the life of the Project. These 8 to 12 full-time operations and maintenance personnel will live, pay taxes, and spend the income they earn in communities near the Project.<sup>8</sup>

LIUNA Minnesota & North Dakota implies that the Project has not demonstrated an economic benefit because it does not have an off-taker or an interconnection agreement. However, as Ruso Wind's witness Morgan Berry testified, the Project will not be constructed without an interconnection agreement and it is unlikely that it would be constructed without an off-taker.<sup>9</sup> Accordingly, LIUNA Minnesota & North Dakota's assertion that the Project is a speculative development that would be built without serving a need or providing the accompanying benefits is simply not accurate.

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<sup>5</sup> See Hearing Exhibit No. 1 at 29 (Certificate of Site Compatibility Application); *see also* Hearing Exhibit No. 29 at 26-27 (Pre-filed testimony of Morgan Berry).

<sup>6</sup> See Hearing Exhibit No. 1 at 29 (Certificate of Site Compatibility Application); *see also* Hearing Exhibit No. 29 at 26-27 (Pre-filed testimony of Morgan Berry).

<sup>7</sup> See Hearing Exhibit No. 1 at 19, 29 (Certificate of Site Compatibility Application) and Hearing Exhibit No. 29 at 26-27 (Pre-filed testimony of Morgan Berry).

<sup>8</sup> See Hearing Exhibit No. 1 at 19 (Certificate of Site Compatibility Application); *see also* Electronic record of 17 June 2019 Formal Hearing starting at approx. 02:04:10.

<sup>9</sup> Electronic record of 17 June 2019 Formal Hearing at approx. 01:57:30 – 01:58:49.

Further, possessing a generation interconnection agreement is not a specific requirement of N.D.C.C. Chapter 49-22, the North Dakota Energy Conversion and Transmission Facility Siting Act (“Siting Act”), nor does the Siting Act does give the Commission authority over electric facility interconnection. In *In the Matter of the Application of Nebraska Public Power District*, 330 N.W.2d 143 (N.D. 1983), the North Dakota Supreme Court determined that the need for a facility is not within the Commission’s jurisdiction. *Id.* at 148-49. The court in the *Nebraska Public Power District* case discussed the limited authority of the Commission under the Siting Act, particularly as it relates to the need for a facility: “[t]he PSC’s authority to regulate is limited to that given by the Legislature.” *Id.* at 149. The court further states:

The stated policy in the Siting Act is ‘to route transmission facilities in an orderly manner compatible with environmental preservation and the efficient use of resources.’ Section 49-22-02, NDCC. The Siting Act does not give the PSC the authority to prohibit the construction of transmission lines, but only ‘to ensure that the location, construction, and operation . . . produce minimal adverse effects on the environment and upon the welfare of the citizens of this state. . . .’ Section 49-22-02, NDCC.

*Id.* at 148-49. The court’s analysis is equally applicable to the issue of a wind facility’s interconnection to the electric grid (which is subject to federal regulation). Additionally, the Commission has issued Certificates of Site Compatibility to past wind projects without knowing where, specifically, the project would interconnect to the grid, and/or without the applicant having a generator interconnection agreement.<sup>10</sup> There is no basis for treating Ruso Wind differently.

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<sup>10</sup> *E.g.*, Case No. PU-16-539, Glacier Ridge Wind Farm Project (certificate of site compatibility granted December 7, 2016); Case No. PU-15-124, Rolette Wind Energy Project (certificate of site compatibility granted November 18, 2015).

**II. Ruso Wind Has Demonstrated Compliance with N.D.A.C. § 69-06-08-01(6)(c) and N.D.A.C. § 69-06-08-01(5)(c)(10).**

LIUNA Minnesota & North Dakota contends that Ruso Wind failed to demonstrate compliance with N.D.A.C. § 69-06-08-01(6)(c) and portions of N.D.A.C. § 69-06-08-01(5)(c)(10). However, Ruso Wind has shown that the Project will not have a significant adverse impact on “[t]emporary and permanent skilled and unskilled labor” (N.D.A.C. 69-06-08-01(5)(c)(1)), and that Ruso Wind is committed to maximizing the benefits resulting from the “[t]raining and utilization of available labor in this state for the general and specialized skills required” (N.D.A.C. 69-06-08-01(6)(c)). As discussed above, the Project will have a positive impact on labor by creating approximately 200 temporary construction jobs that may be filled locally, and by creating 8-12 permanent, high-paying positions that will be filled by people who must reside in the area for the life of the Project.

LIUNA Minnesota & North Dakota asserts that it presented “uncontroverted” evidence that the Project would result in a negative local labor impact. However, this assertion ignores the permanent jobs that will be created by the Project. Additionally, it ignores Ruso Wind’s consideration of local hiring when selecting an engineering, procurement and construction (“EPC”) contractor. Specifically, Mr. Berry testified that one of the many factors considered in choosing an EPC contractor is their plan for maximizing use of local labor, and that maximizing local hiring is something Ruso Wind would view as a positive.<sup>11</sup> That said, as Mr. Berry also explained, safety is one of the most important considerations in the EPC contractor selection process, which necessitates selecting an EPC contractor who not only has a good safety record

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<sup>11</sup> Electronic record of 17 June 2019 Formal Hearing at approx. 02:09:00 – 02:10:05.

but who hires workers who have the appropriate training and experience.<sup>12</sup> Given all of the factors that must be considered in hiring (safety, skill, availability, proximity to project, etc.), Mr. Berry explained that Ruso Wind would not dictate a local hiring quota because it believes the EPC is in the best position to determine who to hire to fulfill a project's needs. Notably, though, at no point was evidence presented that the Project would not hire local labor.

Second, although the record demonstrates that the majority of construction jobs would be for skilled labor,<sup>13,14</sup> LIUNA Minnesota & North Dakota admittedly did not demonstrate that an available, skilled construction workforce exists in proximity to the Project.<sup>15</sup> Rather, the LIUNA Minnesota & North Dakota's Report ("LIUNA Report") focused on the large number of *unskilled* laborers potentially available in North Dakota.<sup>16</sup> Further, the LIUNA Report assumes that those unskilled workers would want to leave their current jobs to work on a wind project despite the travel, manual labor, outside working environment, and temporary nature of work involved compared to the types of jobs (retail, accommodations, and food service) noted in the LIUNA Report.

Finally, LIUNA Minnesota & North Dakota presumes, without supporting evidence, that other potential projects would provide more local labor opportunities than Ruso Wind. LIUNA Minnesota & North Dakota seems to imply that the Commission has the authority to choose

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<sup>12</sup> Electronic record of 17 June 2019 Formal Hearing starting at approx. 02:00:30.

<sup>13</sup> Electronic record of 17 June 2019 Formal Hearing starting at approx. 00:53:20, 00:53:50, 01:09:00 and 02:04:29 (Berry).

<sup>14</sup> As Mr. Berry and LIUNA Minnesota & North Dakota's witness Kevin Pranis testified, there are not many unskilled jobs available. Electronic record of 17 June 2019 Formal Hearing at approx. 00:53:15, 00:53:50, and 02:04:29 (Morgan); 04:22:45 (Pranis).

<sup>15</sup> Electronic record of 17 June 2019 Formal Hearing starting at approx. 04:24:35, and 04:35:50 (Pranis).

<sup>16</sup> Electronic record of 17 June 2019 Formal Hearing starting at approx. 04:22:15 and 04:24:35 (Pranis).

between projects. However, based on *In the Matter of the Application of Nebraska Public Power District*, the Commission's role is to analyze the site proposed, and not to decide whether or not a project should go forward. See *In the Matter of the Application of Nebraska Public Power District*, 330 N.W.2d at 148-49 (holding that "[t]he Siting Act does not give the [Commission] the authority to prohibit the construction of transmission lines, but only 'to ensure that the location, construction, and operation ... produce minimal adverse effects on the environment and upon the welfare of the citizens of this state ....'"). Thus, it stands to reason, that the Siting Act likewise does not authorize the Commission to choose between this Project and other, hypothetical projects not before the Commission.

### **III. Imposing the Proposed Labor Reporting Requirement May Exceed the Commission's Authority.**

Finally, with respect to LIUNA Minnesota & North Dakota's proposed reporting requirement, it is not clear that the Commission has the authority to impose such a requirement. Specifically, N.D.C.C. § 49-22-05.1(1) authorizes the Commission to adopt criteria to be used for considering a siting application: "the commission shall develop criteria to be used ... 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." Pursuant to this authorization, the Commission adopted the criteria enumerated in N.D.A.C. § 69-06-08-01 to "guide and govern ... the site suitability evaluation process." N.D.A.C. § 69-06-08-01. These criteria, which include a consideration of the impact on temporary and permanent skilled and unskilled labor (N.D.A.C. § 69-06-08-01(5)(c)(10)) and an applicant's maximization of the benefit of training and utilization of available labor in this state for the general and specialized skills required (N.D.A.C. § 69-06-08-01(6)(c)), are for use in evaluating whether to approve a siting application. A labor reporting

requirement, which would only provide information post-approval, is not relevant to the Commission's consideration of criteria to be used in making a determination on the Project's application.

Even if it is within the Commission's authority, it is unclear how imposing a labor reporting requirement in a single wind siting docket would be useful. Likewise, it is unclear what, if anything, the Commission would do with the information. Additionally, the reporting requirement would only potentially be required in future siting dockets, which would provide limited information. It seems that such a reporting and tracking requirement would be better addressed by the Legislature so it could, if desired, be applied uniformly across the state and administered by the appropriate agency. That said, if the Commission determines it does have the authority to impose the labor reporting requirement, Ruso Wind leaves to the Commission's discretion whether it is appropriate to apply such a requirement in this docket.

### **CONCLUSION**

As discussed above, Ruso Wind has provided testimony and evidence demonstrating that its Project will provide a variety of state and local economic benefits. Likewise, Ruso Wind has provided testimony and evidence demonstrating that its Project complies with the Commission's siting criteria, as well as the siting standard set forth in N.D.C.C. § 49-22-02. Thus, contrary to LIUNA Minnesota & North Dakota's assertion, there is not a need for implementation of a labor reporting requirement. Additionally, imposition of such a requirement may not be within the Commission's jurisdiction, nor does it seem appropriate to impose in a single siting docket. That said, if the Commission determines it does have authority to impose such a condition, Ruso Wind defers to the Commission regarding whether it is appropriate to do so in this docket.

Dated this 23rd day of September, 2019.

FREDRIKSON & BYRON, P.A.

By 

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MOLLIE M. SMITH, ND Bar #06714  
*Attorney for Ruso Wind Partners, LLC*  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402-1425  
(612) 492-7270  
msmith@fredlaw.com

68023018